

ORDINANCE NO. 6-2012

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
REPEALING ELK GROVE MUNICIPAL CODE CHAPTER 22.15, CONTIGUOUS
LAND AND MERGER, AND CHAPTER 22.140, NOTICE OF MERGER, FROM
TITLE 22, LAND DEVELOPMENT, AND ADOPTING CHAPTER 22.16, TITLED
CONTIGUOUS LAND MERGER AND UNMERGER**

WHEREAS, the City intends to streamline its merger process by repealing Elk Grove Municipal Code (EGMC) Chapters 22.15 and 22.140 with language that will exclusively become EGMC Chapter 22.16; and

WHEREAS, the City did not have in effect a merger ordinance prior to January 1, 1984, and Section 66451.21 of the Government Code requires the City to adopt a Resolution of Intention to replace and/or revise the current adopted EGMC Chapter 22.15, Contiguous Land and Merger, and EGMC Chapter 22.140, Notice of Merger; and

WHEREAS, the Resolution of Intention was adopted by the City Council of the City of Elk Grove on February 22, 2012; and

WHEREAS, in accordance with Section 6061 of the Government Code, a notice of this hearing along with a copy of the adopted Resolution of Intention was published by the City Clerk of the City of Elk Grove in a newspaper of general circulation on March 9, 2012; and

WHEREAS, the City of Elk Grove, having complied with both Sections 6061 and 66451.21 of the Government Code, now wishes to repeal from EGMC Title 22, Land Development, Chapter 22.15, Contiguous Land and Merger, and Chapter 22.140, Notice of Merger, and adopt a new EGMC Chapter 22.16, titled Contiguous Land Merger and Unmerger.

NOW, THEREFORE, the City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority.

The purpose of this Ordinance is to streamline the merger process by repealing Elk Grove Municipal Code (EGMC) Chapters 22.15, Contiguous Land and Merger, and EGMC Chapter 22.140, Notice of Merger, from Title 22, Land Development, and adding EGMC Chapter 22.16, titled Contiguous Land Merger and Unmerger.

Section 2: Repeal of EGMC Chapter 22.15 Contiguous Land and Merger.

The City Council hereby repeals EGMC Chapter 22.15, Contiguous Land and Merger, from Title 22, Land Development.

Section 3: Repeal of EGMC Chapter 22.140 Notice of Merger.

The City Council hereby repeals EGMC Chapter 22.140, Notice of Merger, from Title 22, Land Development.

Section 4: Addition of EGMC Chapter 22.16 Contiguous Land Merger and Unmerger.

The City Council does hereby adopt EGMC Chapter 22.16, titled Contiguous Land Merger and Unmerger into Title 22, Land Development, as follows:

**Chapter 22.16
CONTIGUOUS LAND MERGER AND UNMERGER**

Sections:

Article I. Purpose and Applicability

- 22.16.010 Purpose.
- 22.16.020 Applicability.
- 22.16.022 Definitions for the purpose of this Chapter.
- 22.16.024 Contiguous.
- 22.16.026 Resultant Parcel.
- 22.16.028 Record Owner.

Article II. Involuntary Merger of Substandard Parcels

- 22.16.030 Notice of Intent to Merge Substandard Parcels.
- 22.16.040 Request for Hearing on Determination of Status.
- 22.16.050 Hearing: Time, Date and Place.
- 22.16.060 Hearing Procedure.
- 22.16.070 Notice of Merger.
- 22.16.080 Determination of Merger when No Hearing Requested.

Article III. Voluntary Merger of Contiguous Parcels Under Common Ownership

- 22.16.090 Contiguous Parcels Under Common Ownership.

22.16.100 Authority.

22.16.110 Requirements for the Merger of Contiguous Parcels Under Common Ownership.

22.16.120 Application and fees.

22.16.130 Determination.

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22.16.210 Determination of Unmerger or Continued Merger.

22.16.220 Appeals.

Article I. Purpose and Applicability

22.16.010 Purpose.

The purpose of this chapter is to provide a procedure by which the City may provide for the merger of two (2) or more Contiguous parcels held in common ownership where the requirements of Sections 66451.11 et. seq. and Section 66499.20³/₄ of the California Government Code are met.

22.16.020 Applicability.

This chapter provides the procedure the City shall follow for the involuntary and voluntary merger of two (2) or more Contiguous parcels held in common ownership if all of the following requirements are satisfied:

- A. One (1) or more of the Contiguous parcels does not conform to the applicable standards for minimum parcel size as set forth in EGMC Title 23, Zoning;
- B. At least one (1) of the Contiguous parcels is undeveloped by any structure as defined in EGMC Title 23, Zoning, for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, as defined in EGMC Title 23, Zoning, or is developed with a single structure, other than an accessory structure, that is also partially sited on a Contiguous parcel or unit;

- C. At least one (1) of the following applies to at least one (1) of the Contiguous parcels:
1. The parcel is less than five thousand (5,000 ft²) square feet in area at the time of determination of merger;
 2. The parcel was not created in compliance with applicable laws and ordinances in effect at the time of its creation;
 3. The parcel does not meet current standards for sewage disposal and domestic water supply;
 4. The parcel does not meet slope stability standards;
 5. The parcel has no legal access which is adequate for vehicle and safety equipment and maneuverability;
 6. The parcel's development would create health or safety hazards;
 7. The parcel is inconsistent with the City's General Plan, any applicable Specific Plan or any applicable Special Planning Area, other than minimum lot size or density standards.
- D. This Section shall not apply if one (1) of the following conditions exist: parcels under common ownership which on July 1, 1981 were: 1) enforceably restricted open lands; 2) timberlands or lands devoted to agricultural use; 3) lands within two thousand (2,000' 00") feet of an existing or approved future commercial mining operation; or 4) lands within a coastal zone which, prior to July 1, 1981, were formally identified or designated as being of insufficient size to support residential development.

22.16.022 Definitions for the purpose of this chapter.

Whenever in this chapter the words or phrases hereinafter defined are used, they shall have the meanings respectively ascribed to them in this chapter unless the context indicates to the contrary.

22.16.024 Contiguous.

"Contiguous" means adjoining along a common border and touching at more than one (1) point.

22.16.026 Resultant Parcel.

"Resultant Parcel" means the new parcel description once the parcels have been merged.

22.16.028 Record Owner.

“Record Owner” means the current owner(s) of the parcels according to the records of the County Recorder of the County of Sacramento at the time an application is submitted to the Planning Director or a Notice of Determination is mailed.

Article II. Involuntary Merger of Substandard Parcels

22.16.030 Notice of Intent to Merge Substandard Parcels

Prior to recording a Notice of Merger, the City shall do all of the following:

- A. Mail a Notice of Intent to Determine Status, by certified mail, to the current Record Owner of the property stating that the parcels may be merged pursuant to the provisions of this Chapter. The notice shall state that the Record Owner will have the opportunity to request a hearing on the determination of status and present evidence that the property does not meet the criteria for merger.
- B. The Notice of Intention to Determine Status shall be recorded in the office of the County Recorder of the County of Sacramento on the date the notice is mailed to the Record Owner.

22.16.040 Request for Hearing on Determination of Status

At any time within thirty (30) days after the City records the Notice to Determine Status, the Record Owner may file a written request for a public hearing by the Planning Commission by either personal delivery or certified mail to the Planning Director requesting such a hearing.

22.16.050 Hearing: Time, Date and Place

Upon filing an application and payment of a fee as established by a resolution of the City Council, the request for a hearing on determination of status as described in EGMC Section 22.16.040, the Planning Director shall set a time, date, and place for the hearing to be conducted by the Planning Commission and shall notify the owner of the time, date, and place for the hearing via certified mail.

The hearing shall be conducted no more than sixty (60) days following the Planning Director’s receipt of the request, but may be postponed or continued with the mutual consent of the property owner and the Planning Commission.

22.16.060 Hearing Procedure

A. At the hearing on determination of status, the Record Owner shall be given the opportunity to present evidence that the affected property does not meet the standards for merger specified in EGMC Section 22.16.020.

B. At the conclusion of the hearing, the Planning Commission shall make a determination of whether the parcels are to be merged or not.

1. If the determination is that the parcels are to be merged the following findings must be made:
 - a. The Parcels to be merged satisfy the requirements of EGMC Section 22.16.020.
 - b. The Parcels to be merged comply with the requirements of the Subdivision Map Act. .
2. After the findings have been made, the Planning Director shall file a Notice of Merger with the Sacramento County Recorder within thirty (30) days of the conclusion of the hearing.
3. If the Planning Commission makes a determination that the parcels are not to be merged, the Commission shall direct the Planning Director to record a Release of the Notice of Intent to Determine Status with the Sacramento County Recorder within thirty (30) days after the conclusion of the hearing.

22.16.070 Notice of Merger

A Notice of Merger shall contain the names of the Record Owner, a legal description of the existing parcels, a legal description and accompanying plat of the Resultant Parcel and the findings of the Planning Commission.

22.16.080 Determination of Merger when No Hearing Requested

If the Record Owner does not file a request to have a public hearing within the thirty (30) day period as specified in EGMC Section 22.16.040, the Planning Commission may make a determination as to whether the parcels are to be merged or not be merged. Upon such determination by the Planning Commission that the parcels are not to be merged, the Planning Director will be directed to record a Release of Notice of Intention to Determine Status with the County Recorder of the County of Sacramento and a copy of the release shall be mailed to the Record Owner.

If the Planning Commission determines that the parcels are to be merged, the Commission shall direct the Planning Director to record a Notice of Merger with the County Recorder of the County of Sacramento within ninety (90) days from the mailing of the Notice of Intention to Merge and mail a copy of the Notice of Merger shall be mailed to the Record Owner.

Article III. Voluntary Merger of Contiguous Parcels Under Common Ownership

22.16.090 Contiguous Parcels Under Common Ownership.

All legal parcels conforming to the Subdivision Map Act and the City of Elk Grove Municipal Code may be merged under the provisions of this section without reverting to acreage pursuant to Section 66499.20³/₄ of the Subdivision Map Act of the Government Code. Nothing in this section shall be construed to prevent an applicant from filing a tentative map, a final parcel map, or subdivision map for any merger. For the purposes of this section, a legal parcel shall be a parcel for which a final parcel map or subdivision map has been filed or one for which a Certificate of Compliance has been issued.

22.16.100 Authority.

The Planning Director shall have the authority to approve or disapprove the merger of Contiguous parcels under common ownership without reverting to acreage.

22.16.110 Requirements for the Merger of Contiguous Parcels Under Common Ownership.

To apply for voluntary merger of contiguous parcels the applicant must prove all of the following conditions are met:

- A. The merger shall not interfere with any existing fee, grants, easements, agreements, conditions, dedications, offers to dedicate or security provided in connection with any and all previously-granted approvals by the City of Elk Grove.
- B. The exterior boundaries of the parcels to be merged shall not change.
- C. The parcels shall be under common ownership at the time of the application filing and all common owners shall consent, in writing, to the merger.
- D. The Resultant Parcel must be in conformance with the General Plan, any applicable specific plan, any applicable special planning area, and EGMC Title 23.
- E. The Resultant Parcel, after the merger, shall have adequate access and frontage length adjacent to a Public Street as defined in EGMC Section 22.10.125.
- F. All required fees shall be paid, including a recording fee for the merger.

22.16.120 Application and fees.

An application shall be filed with the Planning Department and all fees shall be paid as approved by resolution of the City Council.

22.16.130 Determination.

The Planning Director shall make the following findings in order to merge the parcels:

- A. The Resultant Parcel will be consistent with the General Plan, an applicable specific plan, or any special planning area.

- B. The Resultant Parcel has adequate access and frontage to a public street.
- C. Any development of the Resultant Parcel will not adversely affect the public health, safety or welfare.

22.16.140 Certificate of Merger.

Upon making the findings, the Planning Director shall cause a Certificate of Merger to be filed with the County Recorder of the County of Sacramento. The Certificate shall include the names of the Recorded Owners, legal descriptions of the existing parcels, a legal description and map of the Resultant Parcel, and the Planning Director's findings. Recordation of the Certificate of Merger shall establish that the parcels are merged and one parcel exists under the provisions of the Subdivision Map Act and the Elk Grove Municipal Code.

22.16.150 Determination that Parcels may not be Merged.

The Planning Director may determine that the parcels may not be merged under this section and that a tentative map may be required and processed in conformance with EGMC Chapter 22.20. The Planning Director shall issue a letter outlining his/her findings as to why a tentative map is required.

22.16.160 Appeals.

Any person dissatisfied with the decision of the Planning Director may appeal such action to the Planning Commission within ten (10) days from the date of the action. All appeals shall be submitted in writing, identifying the action being appealed and specifically stating the basis or grounds of the appeal. Appeals shall be filed within ten (10) days following the date of determination or action for which an appeal is made, accompanied by a filing fee established by City Council resolution, and submitted to the City Clerk.

Article IV. Unmerger of Parcels

22.16.170 Applicability.

This section applies to parcels which were merged prior to January 1, 1984, and for which a Notice of Merger was not recorded on or before January 1, 1986, as such recordation was required by Section 66451.19 of the Government Code.

Because the mergers to which this section applies occurred prior to the City's incorporation, there may be instances where merger of parcels failed to comply with Section 66451.19 of the Government Code or other applicable laws establishing requirements for merger of Contiguous parcels held in common ownership of which the City does not have a record. The purpose of this Article is to provide a procedure by

which Record Owners of such improperly merged parcels may seek to void any such merger and to allow the City to determine if parcels previously merged will continued to be merged when certain conditions exist under EGMC Section 25.16.200.

22.16.180 Requirements for Unmerger.

A written request shall be filed with the Planning Director and signed by the Record Owners. The application shall include any information, documents, or maps which prove the ownership of the parcels, a valid legal description of the parcels requested to be unmerged and evidence that the criteria listed in EGMC Section 22.16.190 are met.

The request shall be accompanied by a fee as established by resolution by the City Council of the City of Elk Grove.

22.16.190 Unmerger Criteria.

A. The parcels or units of land shall be deemed unmerged if, as of the date of the request, the parcels or units of land meet all of the following criteria:

1. Comprises at least five thousand (5,000 ft²) square feet in area.
2. Was created in compliance with applicable laws in effect at the time of its creation.
3. Meets current standards for sewage disposal and domestic water supply.
4. Meets slope density requirements
5. Has legal access which is adequate for vehicular and safety equipment access and maneuverability.
6. Development of the parcel would create no health or safety hazards.
7. The parcel would be consistent with the City's General Plan and any applicable specific plan, other than minimum lot size or density standards.

B. And, with respect to such parcel, none of the following conditions exist:

1. On or before July 1, 1981, one (1) or more of the Contiguous parcels or units of land is enforceably restricted open-space land pursuant to a contract, agreement, scenic restriction, or open-space easement, as defined and set forth in Section 421 of the Revenue and Taxation Code.
2. On July 1, 1981, one (1) or more of the Contiguous parcels or units of land is timberland as defined in subdivision (f) of Section 51104, or is land devoted to an agricultural use as defined in subdivision (b) of Section 51201
3. On July 1, 1981, one (1) or more of the Contiguous parcels or units of land is located within two thousand (2,000' 00") feet of the site on which an existing commercial mineral resource extraction use is being made, whether or not the extraction is being made pursuant to a use permit issued by the local agency.

4. On July 1, 1981, one (1) or more of the Contiguous parcels or units of land is located within two thousand (2,000' 00") feet of a future commercial mineral extraction site as shown on a plan for which a use permit or other permit authorizing commercial mineral resource extraction has been issued by the local agency.
5. Within the coastal zone, as defined in Section 30103 of the Public Resources Code, one or more of the Contiguous parcels or units of land has, prior to July 1, 1981, been identified or designated as being of insufficient size to support residential development and where the identification or designation has either: A) been included in the land use plan portion of a local coastal program prepared and adopted pursuant to the California Coastal Act of 1976 (Division 20 of the Public Resources Code), or B) prior to the adoption of a land use plan, been made by formal action of the California Coastal Commission pursuant to the provisions of the California Coastal Act of 1976 in a coastal development permit decision or in an approved land use plan work program or an approved issue identification on which the preparation of a land use plan pursuant to the provisions of the California Coastal Act is based.

22.16.200 Continued Merger Criteria.

If any parcels or units of land merged under a then-valid Sacramento County merger ordinance which was in effect prior to January 1, 1984, but for which a notice of merger had not been recorded before January 1, 1988, and one (1) or more of the merged parcels or units of land is within one (1) of the categories specified in EGMC Section 22.16.190 (B) (1) to (5), the parcels shall be deemed not to have merged unless all of the following conditions exist:

- A. The parcels or units are Contiguous and held by the same Record Owner.
- B. One (1) or more of the Contiguous parcels or units do not conform to minimum parcel size under the City's General Plan, applicable specific plan, or EGMC Title 23.
- C. At least one (1) of the affected parcels is undeveloped by any structure as defined in EGMC Title 23, , for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, as defined in EGMC Title 23, or is developed with a single structure, other than an accessory structure, that is also partially sited on a Contiguous parcel or unit.
- D. The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map.

If all the conditions described in subdivisions (A), (B), (C), and (D) above exist, only a parcel or unit of land which does not conform to minimum parcel size shall remain merged with a Contiguous parcel.

22.16.210 Determination of Unmerger or Continued Merger.

A. The Planning Director will determine whether the parcels meet the criteria as described in EGMC Section 22.16.190 for Unmerger or Continued Merger under EGMC Section 22.16.200 above based on the information in the application.

B. If the Planning Director determines that the parcels meet the standards as described in EGMC Section 22.16.190 above, the Planning Director shall issue to the Record Owner and record with the Sacramento County Recorder, a Notice of Status of the parcels which shall identify each parcel and declare that the parcels are-unmerged pursuant to this section.

C. If the Planning Director determines that the parcels do not meet the criteria as described in EGMC Section 22.16.190 and do meet the criteria of EGMC Section 22.16.200 above, the Planning Director shall issue to the Record Owner, and record with the Sacramento County Recorder, a Certificate of Merger as provided for in EGMC Section 22.16.140.

22.16.220 Appeals.

Any person dissatisfied with the decision of the Planning Director may appeal such action to the Planning Commission within ten (10) days from the date of the action. All appeals shall be submitted in writing, identifying the action being appealed and specifically stating the basis or grounds of the appeal. Appeals shall be filed within ten (10) days following the date of determination or action for which an appeal is made, accompanied by a filing fee established by City Council resolution, and submitted to the City Clerk.

Section 5: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.


Section 6: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City, or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

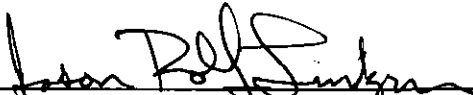
Section 7: Effective Date and Publication.

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the Office of the City Clerk, pursuant to Section 36933(c) (1) of the Government Code.

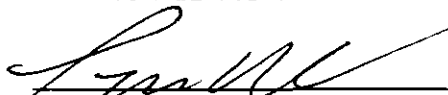
ORDINANCE: **6-2012**
INTRODUCED: March 28, 2012
ADOPTED: April 11, 2012
EFFECTIVE: May 11, 2012



JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN HOBBS,
INTERIM CITY ATTORNEY

Date signed: April 27, 2012


CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 6-2012

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on March 28, 2012 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 11, 2012 by the following vote:

AYES : COUNCILMEMBERS: Cooper, Hume, Detrick, Scherman
NOES: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: Davis

A summary of the ordinance was published pursuant to GC 36933(c) (1).


Jason Lindgren, City Clerk
City of Elk Grove, California