

REVISED
7-16-02

Revised

APPROVED AS TO FORM AND LEGALITY

Mark P. Wall
CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE No. 12439 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND
02 JUL 18 AM 11:14

Revised

ORDINANCE AMENDING SECTIONS 13.16.450 AND 13.16.460 OF THE CREEK PROTECTION, STORMWATER MANAGEMENT AND DISCHARGE CONTROL ORDINANCE TO HAVE ALL CREEK DETERMINATION APPEALS HEARD BY THE PLANNING COMMISSION INSTEAD OF THE DIRECTOR OF THE PUBLIC WORKS AGENCY

WHEREAS, Ordinance No. 11590 C.M.S. was adopted on June 1, 1993, to, in part, reduce or eliminate non-storm water discharges to Watercourses; and

WHEREAS, Ordinance No. 12024 C.M.S. was adopted on December 16, 1997 to incorporate new creek protection measures, and new creek protection permit process and is codified as Chapter 13.16 of the Oakland Municipal Code (“OMC”); and

WHEREAS, currently a determination of a whether a property is subject to OMC Chapter 13.16 is initially made by the Environmental Services Manager, with appeals heard by the Public Works Agency Director, or his/her designee; and

WHEREAS, the City Council directed staff on February 26, 2002 to prepare an amendment to the OMC to have creek determination appeals heard by the Planning Commission;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS

1. Section 13.16.450 is amended to read as follows (New Text is indicated in Bold):

“SEC. 13.16.450 Appeal To the City of Oakland City Planning Commission

Except as provided elsewhere in this Chapter, the following appeal procedures govern. Within ten (10) calendar days after the date of a written decision by the Chief of Building Services on an application for a Creek Protection Permit, pursuant to SEC. 13.16.210, or **within ten (10) calendar days after the date of a written decision by the Environmental**

Services Manager for a creek determination, pursuant to SEC 13.16.030, an appeal from said decision may be taken to the City of Oakland City Planning Commission by the applicant or any other interested party. In event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by CEDA and shall be filed with such Agency. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Chief of Building Services or wherein his/her decision is not supported by the evidence in the record. Upon receipt of the appeal, the City of Oakland City Planning Commission, shall set the date for consideration thereof and, not less than ten (10) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the City of Oakland City Planning Commission deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the City of Oakland City Planning Commission shall determine whether the proposed use conforms to the permit criteria set forth in SECS. 13.16.130 and 13.16.200, and may grant or deny a permit or require such changes in the Permit Category, proposed use or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the City of Oakland City Planning Commission shall be final.”

2. Section 13.16.460 is amended to read as follows (New Text is indicated in Bold):

“SEC. 13.16.460 Appeal To Director of PWA

Except as provided elsewhere in this Chapter (including without limitation, Orders to Abate, Emergency Work, Administrative Citations and Penalties, **Creek Determination**, and Creek Protection Permit), the following appeal procedures govern. Within ten (10) calendar days after the date of a written decision by the Environmental Services Manager, an appeal from said decision may be taken to the Director by the applicant or any other interested party. In event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Public Works Agency (PWA) and shall be filed with such Agency. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Environmental Services Manager or wherein his/her decision is not supported by the evidence in the record. Upon receipt of the appeal, the Director shall set the date for consideration thereof and, not less than ten (10) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Director or his or her designee, deems appropriate, of the date and place of the hearing on the appeal. Upon receipt of the appeal, the Director shall consider the purposes and intent, as well as the letter, of the pertinent provisions of the Chapter, and shall affirm, modify or reverse the Environmental Services Manager’s written decision. The decision of the Director shall be final.”

3. This Ordinance is effective immediately upon its adoption but shall also apply to all Creek Determination Appeals that have been filed as of the date of this Ordinance but which have not yet been heard or decided by the Director of the Public Works Agency.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 30 2002, 2002

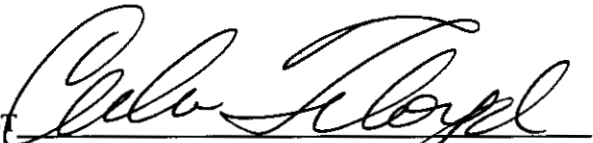
PASSED BY THE FOLLOWING VOTE:

AYES – BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND
PRESIDENT DE LA FUENTE - 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

ATTEST 
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California