

ORDINANCE No. 12024 C. M. S.

AN ORDINANCE AMENDING IN ITS ENTIRETY CHAPTER 13.16 OF THE OAKLAND MUNICIPAL CODE

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, additional enforcement tools will provide an alternative to current abatement and infraction procedures that do not always provide for a timely resolution of non-storm water discharges into Watercourses; and

WHEREAS, Ordinance No. 11590 C.M.S. does not provide sufficient protections to Creeks in that under existing law, development and other activities injurious to the natural qualities of the Creeks of Oakland may be or have been permitted, including but not limited to, dumping, construction resulting in erosion and undercutting of existing buildings, private culverting, construction of retaining walls that endanger downstream property, improper Maintenance of retaining walls, and removal of bank vegetation; and

WHEREAS Ordinance No. 12005 C.M.S. was adopted on July 29, 1997 to incorporate new creek protection measures, and additional administrative enforcement tools; and

WHEREAS additional amendments are necessary to provide clarity, and precision; and

WHEREAS, the Open Space, Conservation and Recreation Element (OSCAR) was adopted as part of the City of Oakland (City) General Plan on June 11, 1996, setting forth Objectives, Policies, and Actions to be undertaken to further the goals of the General Plan; and

WHEREAS, the "Open Space Land Uses" section of OSCAR sets forth as Policy OS-1.2, to "conserve privately-owned areas with important natural resource values through a combination of land acquisition and development controls;" and

WHEREAS, the "Open Space for Community Character" section of OSCAR sets forth as Policy OS-9.1 to "design new development to preserve natural topography and terrain;" and as Policy OS-9.2 to "use open space and natural features to define city and neighborhood edges and give communities within Oakland a stronger sense of identity...Use Creeks, parks, and topographical features to help define neighborhood edges and create neighborhood focus points," and as Policy OS-10.3 to "enhance Oakland's underutilized visual resources, including the waterfront, Creeks, San Leandro Bay, architecturally significant buildings or landmarks, and major thoroughfares;" and

WHEREAS, the "Earth Resources" section of OSCAR sets forth as Policy CO-1.1 to "regulate development in a manner which protects soil from degradation and misuse or other activities which significantly reduce its ability to support plant and animal life. Design all construction to ensure that soil is well secured so that unnecessary erosion, siltations of streams, and sedimentation of water bodies does not occur;" and

WHEREAS, the "Water Resources" section of OSCAR sets forth as Policy CO-5.1 to "encourage groundwater recharge by promoting large open space areas, maintaining setbacks along Creeks and other recharge features, limiting impervious surfaces where appropriate, and retaining natural drainage patterns within newly developing areas;" and as Objective CO-6 "to protect the ecology and promote the beneficial uses of Oakland's Creeks, lakes, and nearshore waters;" and as Policy CO-6.1 to "protect Oakland's remaining natural Creek segments by retaining Creek vegetation, maintaining Creek setbacks, and controlling bank erosion; design future flood control projects to preserve the natural character of Creeks and incorporate provisions for public access, including trails, where feasible; and strongly discourage projects which bury Creeks or divert them into concrete channels;" and as associated Action CO-6.1.2, *Improvements to the Watercourse Protection Ordinance*, to "strengthen the Watercourse Protection Ordinance by adding development guidelines for properties abutting Creeks and drainage courses, and provisions for conservation easements"; and as Policy CO-6.2 to "strictly enforce local, state, and federal laws and ordinances on the Maintenance of Creeks and Watercourses, abate health and safety hazards along and within Creeks through a variety of measures, including Creek clean-up programs, stronger enforcement of litter and anti-dumping laws, and vegetation Maintenance of Watercourse requirements for properties abutting Creeks;" and

WHEREAS, the "Plant and Animal Resources" section of OSCAR sets forth as Policy CO-7.1 to "protect native plant communities, especially oak woodlands, redwood forests, native perennial grasslands, and riparian woodlands, from the potential adverse impacts of development. Manage development in a way which prevents or mitigates adverse impacts to these communities;" and as associated Action CO-7.3.1, *Preparation of Residential Design Guidelines*, to "prepare residential design guidelines which include provisions for retaining trees and other native vegetation when citing new buildings or additions;" and

WHEREAS, the OSCAR further recommends that "preparation of a Creeks Master Plan would be endorsed, along with development guidelines for properties abutting Creeks and strengthening of the existing Watercourse Protection Ordinance. Also stronger penalties for Creek dumping, and additional Creek Maintenance, clean-up , and education campaigns are recommended;" and

WHEREAS, the 1987 Amendments to the federal Clean Water Act, as implemented by U.S. Environmental Protection Agency regulations adopted November 16, 1990, make necessary the adoption of plans and programs for storm water management meeting specified criteria; and

WHEREAS, Section 402(p) of the Clean Water Act (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that all large and medium sized incorporated municipalities must:

- (a) "effectively" prohibit non-storm water discharges into the storm sewer; and
- (b) require controls to reduce the discharge of Pollutants from storm water systems to waters of the United States to the maximum extent practicable ("MEP") and

WHEREAS, the City seeks to comply with all provisions of state and federal law; and

WHEREAS, in order to implement the federal regulatory requirements described above, the City, Alameda County Flood Control and Water Conservation District (ACFCWCD) and the thirteen other cities in Alameda County developed a Storm Water Management Plan, adopted the first five year plan in June 1991, and the second in July 1996, and entered into an agreement entitled "Agreement to Implement the Alameda County Urban Runoff Clean Water Program" dated, July 1991; and

WHEREAS, on October 16, 1991 the California Regional Water Quality Control Board, San Francisco Bay Region, issued Order No. 91-146, National Pollutant Discharge Elimination System (NPDES) Permit No. CA 0029831, regulating, inter alia, storm water discharges by the City; and

WHEREAS, on February 19, 1997 the California Regional Water Quality Control Board, San Francisco Bay Region, reissued Order No. 91-146, National Pollutant Discharge Elimination System (NPDES) Permit No. CA 0029831, regulating, inter alia, storm water discharges by the City; and

WHEREAS, the Storm Management Plan became an enforceable part of said NPDES Permit; and

WHEREAS, this ordinance provides the legal authority to implement the Pollutant control measures described in the Storm Water Management Plan and to comply with the NPDES Permit; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the California State Secretary for Resources, and the City's Environmental Review Regulations have been satisfied, and that in accordance with Section 15061(b)(3) or Section 15308 of the California Code of Regulations this project is exempt from the provisions of the California Environmental Quality Act; and

WHEREAS, this Ordinance has been duly processed with proper public notice and full environmental review; and

WHEREAS, the City Council has conducted legally noticed public hearings and has provided all interested parties an opportunity to be heard on these issues; and

WHEREAS, the City Council has carefully considered the proposed Storm Water Management and Discharge Controls and finds that said proposed Storm Water Management and Discharge Controls comply with the requirements of applicable federal and state law, and further that said Ordinance contributes to the comprehensiveness of the City General Plan and provides an acceptable plan for the conservation of water resources within the City and protection of the health, safety and general welfare of its citizens;

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

SECTION 1:

Chapter 13.16, entitled "Creek Protection, Storm Water Management and Discharge Control" is repealed and replaced to read as follows (additions are in **bold** and deletions are shown as ~~strike out~~):

"Article I

Title, Purpose and General Provisions

SEC. 13.16.010 Title

This Chapter shall be known as the "City of Oakland Creek Protection, Storm Water Management and Discharge Control Ordinance" and may be so cited.

SEC. 13.16.020 Purpose and Intent

The purpose of this Chapter is to ensure the future health, safety, and general welfare of City of Oakland citizens by:

- A. Eliminating non-storm water discharges to the municipal separate storm sewer;
- B. Controlling the discharge to municipal separate storm sewers from spills, dumping or disposal of materials other than storm water;
- C. Reducing Pollutants in storm water discharges to the maximum extent practicable;
- D. Safeguarding and preserving Creeks and Riparian Corridors in a natural state;
- E. Preserving and enhancing creekside vegetation and wildlife;
- F. Preventing activities that would contribute significantly to flooding, erosion or sedimentation, or that would destroy riparian areas or would inhibit their restoration;
- G. Enhancing recreational and beneficial uses of Creeks;
- H. Controlling erosion and sedimentation;
- I. Protecting drainage facilities; and
- J. Protecting the public health and safety, and public and private property.

The intent of this Chapter is to protect and enhance the water quality of our Watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the federal Clean Water Act.

SEC. 13.16.030 Definitions

A. Any terms defined in the federal Clean Water Act and acts amendatory thereof or supplementary thereto, and/or defined in the regulations for the storm water discharge permitting program issued by the U.S. Environmental Protection Agency on November 16, 1990 (as may from time to time be amended) as used in this Chapter shall have the same meaning as in that statute or regulations. Specifically, the definition of the following terms included in that statute or regulations are hereby incorporated by reference, as now applicable or as may hereafter be amended: illicit discharge, waters of the United States and storm water. These terms presently are defined as follows:

Illicit Discharge: any discharge to the City storm sewer system or to any Watercourse that is not composed entirely of storm water except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities.

Storm water: storm water runoff, snow melt runoff, and surface runoff and drainage.

1. Waters of the United States:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of tide.
- (b) All interstate waters including interstate wetlands.
- (c) All other waters, such as intra-state lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce.
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs 1-4 of this definition;
- (f) The territorial sea; and
- (g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1-6 of this definition.

2. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

B. When used in this Chapter, the following words shall have the meanings ascribed to them in this Section:

Authorized Enforcement Official or Enforcement Official:

- 1. The following City employees are designated Authorized Enforcement Official or Enforcement Official: Principal Civil Engineer, Supervising Civil Engineer, Civil Engineer, Assistant Engineer I, Assistant Engineer II, Supervisor, Senior Construction Inspector, Construction Inspector, Senior Engineering Technician, Supervising Planning Investigator, Planning Investigator, Design Review Planning Investigator, Supervising Building Inspector, Senior Building Inspector, and Building Inspector, Intermediate Engineering Technician, Creek Protection Specialist, Hazardous Materials Supervisor, Senior Hazardous Materials Program Inspector, Hazardous Materials Inspector I, Hazardous Materials Inspector II, and Fire Prevention Inspector.

2. In addition to the employees mentioned above, the City Manager shall have the power to designate, by written order, that particular officers or employees shall also be authorized to enforce particular provisions of this Chapter. Officers or employees so designated shall have the authority to arrest persons who violate any of said provisions.

Bank: any embankment, dike, levee, wall or similar feature of natural or man-made origin which adjoins or parallels any Watercourse and which has as a function the confinement of the water of said Watercourse.

Best Management Practices ("BMPs"): schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, Maintenance of Watercourse procedures, and other management practices to prevent or reduce the discharge of Pollutants directly or indirectly to "Waters of the United States." BMPs also include storm water treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Chief of Building Services: Chief of Building Services, Community and Economic Development Agency, City of Oakland or his or her designee.

City: the City of Oakland, a municipal corporation, including any subsequently annexed geographic portion thereof.

City Storm Sewer System: includes but is not limited to those Structures within the City right-of-way or easement by which storm water may be conveyed to Waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, which ~~is not part of~~ **does not convey water to** a Publicly Owned Treatment Works (POTW) as defined at 40 CFR § 122.2.

County: Alameda County.

Creek: a Watercourse that is a naturally occurring swale or depression, or engineered channel which carries **fresh or Estuarine** water either seasonally or year round within the City boundaries, as identified on the "Watershed Map of Oakland and Berkeley Area" and the "Creek and Watershed Map of Hayward and San Leandro," published by the Oakland Museum of California and as modified by the City and/or any area identified through field investigation by the Environmental Services Manager as meeting the above criteria.

Creekside Property: those properties located in Oakland, as identified by the Environmental Services Manager, as having a **Creek or Riparian Corridor** crossing the property and/or are contiguous to a **Creek or Riparian Corridor**.

Creek Protection Permit: permit that must be obtained from the City, Community and Economic Development Agency (CEDA), prior to **Development or Work** on a Creekside Property.

Creek Protection Plan: a Creek Protection Plan is required for a Creek Protection Permit when the work falls within Categories III and IV, **as defined in SEC. 13.16.130 of this Chapter**. The Creek Protection Plan outlines measures, including BMPs, to be taken to protect the Creek during **Development or Work**.

Development or Work: any act of filling, depositing, **clearing, grubbing**, mining, drilling, paving or ~~excavating~~, **Earthwork**, or removing any natural material, or constructing, reconstructing, **repairing** or enlarging any Structure, **or any activity that requires a Building, plumbing, electrical, mechanical or demolition Permit**.

Director: Director, Public Works Agency or his or her designee.

Environmental Services Manager: Manager of Environmental Services Division, Public Works Agency, or his or her designee.

Estuarine Water: water at, or upstream from the mouth of a creek which consists of a mixture of ocean water from the San Francisco Bay and fresh water that has drained from the surrounding upland.

Earthwork: ~~Excavation~~: movement, stockpiling, importing, excavation, fill or removal of three cubic yards of material (dirt, earth, cement, asphalt, rocks, gravel, sand) or more.

Facility: residential, commercial or industrial processes within a property boundary discharging storm water associated with residential, commercial, industrial or construction activities.

Floodway: a channel of a Watercourse and adjacent land areas that must be reserved in order to convey flood flows as determined by the Environmental Services **Division**. Where shown on a Flood Boundary and Flood Map of the National Flood Insurance Program, "Floodway" means the area so designated on said map.

Flowline: the lowest point of the watercourse.

Hearing Officer: Director, Public Works Agency or his or her designee.

Hydrology report: a hydrology report is prepared by a licensed engineer, and includes information as outlined in Section 13.16.170. The purpose of the report is to provide information about the Development's or Work's impact to the Creek.

Illicit Connection: a pipe or any other type of connection to the City storm sewer system or to a Watercourse conveying a discharge that is not composed entirely of storm water, except discharges in compliance with a NPDES permit issued to the discharger and discharges in accordance with Section 13.16.070 (B) of this Chapter.

Increase in flow: any increment of increase in the total volume or rate of storm water runoff, as determined by the Environmental Services Manager or Chief of Building Services, resulting from any activity or Development occurring after the effective date of this Chapter.

Maintenance: ~~means~~ the desilting, pruning or removal of overgrown vegetation, the removal of trash and debris, the removal of algae, water treatment, mosquito abatement activities, repair, planting of ~~native vegetation~~ **Riparian Vegetation** or any other work required to maintain or improve conveyance or storage capacities of Watercourses or Creeks (as appropriate) or purity and quality of water, or to safeguard public health and safety.

Non-storm water discharge: any discharge that is not entirely composed of storm water and/or containing Pollutants.

Person: any individual, firm, organization, corporation, partnership, or other **public or private** entity.

Pollutant: dredged soil, solid waste, incinerator residue, sewage, garbage, litter, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, petroleum products, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharge into water. A Pollutant shall also include any increment of increase in the total volume or rate of storm water runoff resulting from any activity or Development occurring after the

effective date of this Chapter. (This definition includes, as now applicable or as may hereafter be amended, the meaning of Pollutant as defined in the federal Clean Water Act and acts supplementary thereto, and/or defined in the regulations for the storm water discharge permitting program issued by the U.S. Environmental Protection Agency on November 16, 1990.)

Premises: any building, lot parcel, real estate, or land or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

Riparian Corridor: whichever of the following covers the larger area: (a) a Watercourse together with its Bank and its Setback; or (b) a Watercourse together with an area of adjacent Riparian Vegetation which may be identified through field investigation.

Riparian Vegetation: plant species typically native to Riparian Corridors **or salt marshes**.

Setback: an area adjacent to a Watercourse that is the larger of the following: (a) a portion of any Floodway that is adjacent to a Watercourse, or (b) the area between the Top of Bank and a point twenty feet further from the Watercourse than the Top of Bank.

Structure: any works or constructions of any kind, including those of earth or rock, permanent or temporary, and including but not limited to fences, patios, swimming pools, decks, poles, buildings, pavings, inlets, levees, tide gates, spillways, drop structures, retaining walls, **erosion control devices** and similar facilities.

Toe of Bank: the point at which the Bank slope intersects the **bottom** of the Watercourse nearest the side of the proposed Development.

Top of Bank: the point at which a line projected from the Toe of the Bank toward the **top of the Bank** at a slope of 2 (horizontal) to 1 (vertical), or 26 1/2 degrees from horizontal, intersects surrounding level ground, unless such a line does not intersect surrounding level ground at all, the Top of Bank shall be determined at the discretion of the Chief of Building Services or his or her designee as the point at which the slope of the Bank begins most closely to approximate the horizontal.

Watercourse: any conduit or natural or man-made channel through which water flows continuously or intermittently in a definite direction and course **or alternating directions and course under the influence of tides** or any appurtenant structure thereof which is used for the holding, delay or storage of water, except enclosed public water delivery and storm sewer system conduits.

SEC. 13.16.040 Responsibility for Administration

This Chapter shall be administered and interpreted for the City by the Environmental Services Manager except where the Chief of Building Services for the Community and Economic Development Agency (CEDA) has the responsibility to implement certain provisions of this Chapter, in which case the Chief of Building Services shall administer and interpret those provisions. Where the storm drain systems and/or Watercourses are owned or have been accepted for Maintenance of Watercourse by the Alameda County Flood Control and Water Conservation District (ACFCWCD) or other public agency legally responsible for certain Watercourses, then the responsibility for enforcing the provisions of this Chapter may be assigned to such agency (through contract or written agreement executed by the City and such agency) with respect to those Watercourses which they own or for which they have accepted Maintenance of Watercourse. In addition, the City may assign responsibility for enforcing certain provisions to another public agency (through contract or written agreement executed by the City and such agency).

SEC. 13.16.050 Construction and Application

This Chapter shall be construed as consistent with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit No. CA0029831 and any amendment, revision or reissuance thereof. If there is any inconsistency between this Chapter and any other ordinance or regulation of the City, the more stringent provisions shall apply.

SEC. 13.16.060 Severability and Validity

If any portion of this Chapter or the application thereof to any Person or circumstances is declared invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Chapter and the application of such portions to other Persons or circumstances are to be considered valid.

Article II

Discharge Regulations and Requirements

SEC. 13.16.070 Discharge of Pollutants

A. Non-storm water discharges or increase in flow to the City storm sewer system is prohibited. All discharges of material other than storm water must be in compliance with a NPDES permit issued for the discharge (other than NPDES permit No. CA0029831).

B. The following non-storm water discharges are exempt from the prohibition set forth in Section 13.16.070 above:

1. Non-storm water discharges regulated under a ~~National Pollutant Discharge Elimination System~~ NPDES permit issued to the discharger and administered by the State of California under authority of the ~~United States~~ U.S. Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.
2. Non-storm water discharges from the following activities will not be considered a source of Pollutants to Waters of the United States when properly managed: water line flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, infiltration to separate storm drains, **less than 1,000 gallons per day of** uncontaminated pumped ground water, foundation and footing drains, water from crawl space pumps, air conditioning condensation, springs, individual residential car washings, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting, and accordingly are not subject to the prohibition on non-storm water discharges.

SEC. 13.16.080 Discharge in Violation of Permit

Any non-storm water discharge or increase in flow that would result in or contribute to a violation of NPDES Permit No. CA0029831, and any amendment, revision or reissuance thereof, either separately considered or when combined with other non-storm water discharges, is prohibited. A copy of said NPDES Permit is on file in the Office of the City Clerk. Liability for any such discharge or increase in flow shall be the responsibility of the Person(s) causing or responsible for such discharge or increase in flow, and such Person(s) shall defend, indemnify and hold harmless the City, its Councilmembers, directors, officers, agents, and/or employees from any and all claims, losses, actions, causes of actions, judgments, penalties, fines, liabilities and expenses (including reasonable attorney's fees), including damage of property or injury to or death of persons occurring or resulting from such violation, in any administrative or judicial action relating to such discharge or increase in flow.

SEC. 13.16.090 Illicit Discharge and Illicit Connections

It is prohibited to establish, use, maintain, or continue illicit drainage connections to the City storm sewer system or to a Watercourse, and to commence or continue any illicit discharges to the City storm sewer system or to a Watercourse. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection.

SEC. 13.16.100 Reduction of Pollutants in Storm Water

Any Person engaged in activities which will or may result in Pollutants entering the City storm sewer system shall eliminate such Pollutants to the maximum extent practicable. Examples of such activities include, but are not limited to ownership and operation of leaking vehicles and ownership and use of facilities which may be a source of Pollutants such as parking lots, gasoline stations, industrial facilities, commercial facilities, stores fronting city streets, etc. The following minimal requirements shall apply:

A. Littering

No Person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, business place, or upon any public or private lot of land in the City, so that the same might be or become a Pollutant, except in lawfully established garbage containers or in lawfully established dumping grounds.

The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the City in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the disposal of garbage.

No Person shall throw or deposit litter in any fountain, pond, lake, ~~stream~~ **Creek** or any other body of water in a park or elsewhere within the City.

B. Standard for Parking Lots and Similar Structures

Persons owning or operating a parking lot, gas station pavement or similar structure shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of Pollutants to the City storm sewer system.

C. Best Management Practices for New Developments and Redevelopments

Any Person or construction contractor performing work in the City shall, at a minimum, provide filter materials at the catch basin to prevent any debris and dirt from flowing into the City's storm sewer system. In addition, any Person or construction contractor performing work in the City is subject to all the provisions of Ordinance No. 10446 C.M.S., entitled "Ordinance for Erosion And Sedimentation Control To Supplement Ordinance No. 10312 C.M.S. (Chapter 12 of the Oakland Municipal Code) dated January 18, 1983" and to any amendment or revision thereof.

The Chief of Building Services or his or her designee may establish controls on the volume and rate of storm water runoff from new Developments and redevelopments as may be appropriate to minimize the discharge and transport of Pollutants. **The** Chief of Building Services or his or her designee may require as a condition of Development or redevelopment implementation of continuous or post construction Best Management Practices such as good housekeeping practices or storm water treatment systems.

When required by the Chief of Building Services or his or her designee, Best Management Practices shall be incorporated into required grading plans, erosion and sedimentation control plans, private improvement plans, plans associated with a building permit and subdivision Development.

Any Person or construction contractor performing work in the City shall ensure that Best Management Practices required by the Chief of Building Services or his or her designee are properly maintained at all times during construction. Best Management practices shall be employed as shown on said plans approved by the City, as required on the conditions on a permit, or as directed by the City's field representative.

Where continuous or post construction Best Management Practices or storm water treatment systems have been required by the Chief of Building Services or his or her designee, proper Maintenance of Watercourse of said continuous or post construction Best Management Practices or said treatment systems employed on a site shall be the responsibility of the property owner or, when applicable, the local homeowner association.

D. Notification of Intent and Compliance with General Permits

Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general storm water permit addressing such non-storm water discharges or increase in flow, as may be adopted by the ~~United States~~ **U.S.** Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide Notice of Intent, comply with, and undertake all other activities required by any general storm water permit applicable to such non-storm water discharges or increase in flow.

Each discharger identified in an individual NPDES permit relating to non-storm water discharges or increase in flow shall comply with and undertake all activities required by such permit.

E. Compliance with Best Management Practices

Where Best Management Practices guidelines or requirements have been adopted by any federal, State of California, regional, and/or City agency with jurisdiction for such adoption, for any activity, operation, or facility which may cause or contribute to storm water pollution or contamination, increase of flow, illicit discharge, and/or discharge of non-storm water to the storm water system, **or Watercourses**, every Person undertaking such activity or operation, or owning or operating such facility shall comply with such guidelines or requirements as such compliance is identified by the Environmental Services Manager.

SEC. 13.16.110 Watercourse Protection

Every Person owning property through which a Watercourse passes, or such Person's lessee or tenant, shall keep and maintain in a manner satisfactory to the Environmental Services Manager that part of the Watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the Watercourse; shall maintain existing privately owned Structures within or adjacent to a Watercourse, so that such Structures will not become a hazard to the use, function, or physical integrity of the Watercourse; and shall not remove healthy **Riparian Vegetation Bank** ~~vegetation~~ beyond that actually necessary for said Maintenance of Watercourse, nor remove said vegetation in such a manner as to increase the vulnerability of the Watercourse to erosion.

No Person shall place any loose or unconsolidated material along the side of or within a Watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by storm waters passing through such Watercourse.

No Person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the Environmental Services Manager. (Acts or work that is covered under a Private Job Permit obtained in accordance with the procedures and requirements of Section

12.16.040, Section 12.16.050 and Section 12.20.020 of the Municipal Code and acts or work covered under a valid ~~Building Permit~~, Creek Protection Permit and/or valid Grading Permit shall not be subject to aforementioned separate permit):

- A. Discharge concentrated stormwater into or connect any stormwater pipe or stormwater channel to a Watercourse;
- B. Modify the natural flow of water in a Watercourse;
- C. Carry out Development within a Watercourse Floodway; or within 20 feet from the Top of Bank of a Watercourse;
- D. Deposit in, ~~plant non-native vegetation in~~, or remove any material from a Watercourse including its Banks, except as required for necessary Maintenance of Watercourse; or
- E. Construct, alter, enlarge, connect to, change, or remove any Structure, **or alter the stream course or profile** in a Watercourse.

In addition to the provisions stated herein, every Person owning a property through which a Watercourse passes, or such Person's lessee or tenant, shall be subject to the provisions of SEC. 9.16.040, "Watercourses" of the Municipal Code and to any amendment or revision thereof, **except if a Private Job Permit is obtained in accordance with the procedures and requirements of Section 12.16.040, Section 12.16.050 and Section 12.20.020 of the Municipal Code or for acts or work covered under a valid Creek Protection Permit and/or valid Grading Permit.**

SEC. 13.16.120 Creek Protection Permit Requirements

No Person shall commit or cause Development **or Work** within the boundaries of a Creekside property, **or within the public right of way fronting a creekside property**, unless a Creek Protection Permit has first been obtained from the Chief of Building Services.

SEC 13.16.130 Determination Of Permit Category:

Depending on the type and location of **Development or Work** ~~to be constructed~~, a Creek Protection Permit may fall into the following categories.

- (a) Category I: Any **indoor Development or Work**. ~~indoors that requires any permit (e.g. building, mechanical, plumbing, or electrical).~~ Although **Development or Work** indoors should not affect the quality of the Creek environment, this is an opportunity for the City to distribute brochures regarding Creek protection and overall quality of water that drains to the bay. Best Management Practices recommended in those brochures to protect water quality must be followed.
- (b) Category II: Any ~~non-Excavation~~ exterior **Development or Work** that **does not include Earthwork, and** is more than 100 feet from the center line of the Creek to the location of the **Development or Work**. ~~which requires any permit (building, mechanical, plumbing, or electrical.)~~ Category II provides the City with an opportunity to educate residents about Creek protection and overall quality of water that drains to the Bay. Best Management Practices recommended in those brochures to protect water quality must be followed.
- (c) Category III: Any exterior **Development or Work** that **may adversely impact the creek**, beyond the 20 foot setback from the Top of Bank **of the Creek, and is within 100 feet of the centerline of the creek**, ~~that involves Excavation or is within 100 feet of~~

~~the centerline of the Creek and requires a permit (building, mechanical, plumbing, or electrical), or Development or Work that may not require any other permits, such as, but not limited to, the following:~~ **that may or may not require any other development related permit, including without limitation: landscape walls, fences, patios, decks, private drainage improvements, irrigation systems, any or trenching work. Additionally, any work or development that includes Earthwork beyond the 20 foot setback from the Top of the Bank of the Creek.**

(d) Category IV: Any exterior **Development or Work** that is conducted ~~within~~ **from the centerline of the creek to the 20 foot setback from the Top of Creek Bank of the Creek,** ~~Development or Work includes construction that requires any permit (building, mechanical, plumbing, or electrical), or Development or Work that may not require any other permits, such as the following: Excavation including: Earthwork, landscape walls, fences, patios, decks, private drainage improvements, irrigation systems, any trenching work, and any other Development or Work that may adversely impact the Creek that may or may not require any other development related permits including without limitation: Earthwork, landscape walls, fences, patios, decks, private drainage improvements, irrigation systems, or trenching work.~~

(e) Reclassification of Category: The Chief of Building Services may, in order to further the purpose and intent of the Chapter, reclassify an application in accordance with the following:

(1) If the Chief of Building Services reasonably believes that there are unusual circumstances that warrant the applicant providing further information, the Chief of Building Services may reclassify an application for Categories II, III or IV, ~~respectively.~~

(2) If the applicant can demonstrate to the reasonable satisfaction of the Chief of Building Services that Development or Work shall not cause adverse impacts to the Creek (including without limitation: erosion, bank failure, increased runoff, sediment loading, transfer of pollutants, or damage to the natural habitat, riparian vegetation or wildlife), then an application for Categories II, III or IV may be reclassified. ~~respectively.~~

(f) Emergency Work: Work to abate an imminent threat to the public's health, safety or property may be undertaken prior to the issuance of a Creek Protection Permit. Such emergency work shall be limited to the abatement of the imminent threat. An application for a Creek Protection Permit shall be initiated as soon as practical, but in no event later than 14 calendar days after the commencement of the emergency work, and said application shall be diligently pursued by the applicant.

SEC 13.16.140 Creek Protection Permit Submittal Requirements and CEQA

The application for a Creek Protection Permit shall include the following information for the Categories indicated:

(a) Category I: No submittals from the applicant are required to obtain a Creek Protection Permit for this category of **Development or Work**, except for normal submittal requirements related to other permits that must be obtained.

(b) Category II: In addition to normal submittal requirements related to other permits that must be obtained, a simple site plan must be submitted that shows the relationship and distance between the **Development or Work** to be conducted and the **Top of Bank of the Creek**. Staff shall

confirm the location of the Creek by **methods such as field inspections**, reviewing aerial photographs of the property overlain by contour lines that are part of the City's **Geographic Information System (GIS)**.

- (c) Category III: In addition to normal submittal requirements related to other permits that must be obtained, a site plan must be submitted that shows the relationship and distances between the **Development or Work** to be conducted and the **Top of Bank** of the Creek. In addition, a Creek Protection Plan must be submitted for review and approval that describes the Best Management Practices that will be employed to assure construction activity will not adversely impact Creek Bank, **Riparian corridor** or water quality.
- (d) Category IV: In addition to normal submittal requirements related to other permits that must be obtained, a site plan must be submitted that shows the relationship between the **Development or Work** to be conducted and the **Top of Bank** of the Creek. A Creek Protection Plan must be submitted for review and approval that describes the Best Management Practices that will be employed to assure construction activity will not adversely impact Creek Bank, **Riparian Corridor**, or water quality. A Hydrology Report must be submitted for review and approval pursuant to SEC. 13.16.170 ~~Evidence that the properties within 300 feet have been notified of the application.~~

Categories I and II are ministerial actions and therefore exempt from CEQA. Categories III and IV are discretionary actions and therefore subject to CEQA review. **Reclassification by the Chief of Building Services is discretionary and therefore subject to CEQA review.**

SEC 13.16.150 Creek Protection Plan

When required, a Creek Protection Plan, **including creek protection measures**, shall be submitted prior to the issuance of a Creek Protection Permit. **The purpose of the Creek Protection Plan is to protect the Creek, its banks, the Riparian Vegetation, wildlife, and surrounding habitat and the creek's natural appearance.** The following are the minimum elements that must be addressed in a Creek Protection Plan that is to be prepared by the applicant and submitted for City review and approval prior to the issuance of a Creek Protection Permit for **Development or Work** that is determined by the City to fall into Categories III or IV as described above. (The Chief of Building Services may require additional reasonable information due to special circumstances):

- (a) Property identification;
- (b) Name of the property owner;
- (c) Name of the general contractor;
- (d) Name of Sub-contractors;
- (e) Telephone numbers of primary contact people;
- (f) List of informational material **related to creek protection**, provided to workers on the site;
- (g) Litter prevention measures;
- (h) Dust control measures;
- (i) Methods of cleaning tools and equipment;

- (j) Construction site fencing;
- (k) Erosion control protection;
- (l) **Future and ongoing siltation and erosion control;**
- (m) Wet weather protection;
- (n) Stockpile locations;
- (o) Special circumstances/additional information; and
- (p) **Emergency Preparations for construction related spills.**

SEC. 13.16.160 Hydrology Report - When Required

A Hydrology Report is required to meet the standards of, and requirements established by the Chief of Building Services, if the proposed construction activity falls into Category IV of a Creek Protection Permit or if the proposed activity has the potential to:

- (a) Discharge concentrated stormwater into or connect any stormwater pipe or stormwater channel to a Creek;
- (b) Modify the natural flow of water in a Creek;
- (c) Cause Development within a Creek Floodway, Riparian Corridor, or within 20 feet from the Top of Bank of a Creek.
- (d) Deposit in, plant non-native vegetation in, or remove any material from a Creek including its Banks, except as required for necessary Maintenance of Creeks; or
- (e) Construct, alter, enlarge, connect to, change, or remove any Structure in a Creek.

SEC. 13.16.170 Hydrology Report Requirements

The following are the minimum elements that must be addressed in a Hydrology Report that is to be prepared by a licensed **civil engineer with creek hydrology expertise** and submitted for City review and approval prior to the issuance of a Creek Protection Permit for **Development or Work** that is described in SEC. 13.16.160. (The Chief of Building Services may require additional reasonable information due to special circumstances):

- (a) Property identification;
- (b) Name of the property owner;
- (c) California Department of Fish and Game approval; **if appropriate;**
- (d) Alameda County Flood Control and Water Conservation District approval; **if appropriate;**
- (e) **5 yr., 10 yr., 25, yr. and 100 yr. flows and water surface levels;**
- (f) How future development in the area (unrelated to the proposed work) may impact flows;

- (g) Creek bank stability, **before and after the project**;
- (h) Impact of proposed work with regard to direction, as well as quantity of flow in the Creek;
- (i) Upstream and downstream conditions, **before and after the project construction**;
- (j) Location of major drainage facilities (e.g. trash racks, culverts, discharge points, etc.);
- (k) Profile of stream bed across the property and upstream and downstream 100 feet in each direction;
- (l) Cross sections **at 50 foot intervals (or as determined to be necessary by the Chief of Building Services)**;
- (m) Proposed improvements to the Creek; **including any vegetative or other natural screening enhancements utilized.**
- (n) Impacts of proposed project on existing vegetation or wildlife within the affected riparian corridor; and
- (o) Special circumstances/additional information.

SEC. 13.16.180 Notice

Notices shall be provided in accordance with the following procedures for all applications initially classified, or subsequently reclassified by the Chief of Building Services in accordance with SEC. 13.16.130, as Categories III and IV:

(a)

Category III: The applicant shall ~~also~~ be required to post notices of the application (provided by the City) in clear public view on the subject property and within a 300 foot radius of the subject property. The Chief of Building Services may determine that the applicant shall also be required to mail a public notice, provided by the City, to all property owners of record within a 300 foot radius of the subject property. The determination of the Chief of Building Services to require mail notice is within his or her absolute discretion and is not appealable. One factor the Chief of Building Services may consider is whether the mailed notice is, or will be, already provided due to other permit application. If mailing is required, the list of property owners shall be provided by the City. The applicant shall provide an affidavit of mailing.

Category IV: The applicant shall ~~also~~ be required to post notices of the application (provided by the City) in clear public view on the subject property and within a 300 foot radius of the subject property. The applicant shall also be required to mail a public notice, provided by the City, to all property owners of record within a 300 foot radius of the subject property. The list of property owners shall be provided by the City. The applicant shall provide an affidavit of mailing.

(b) Notices shall be provided ten (10) calendar days before a decision is made on the application.

(c) Notice by mail is deemed given on the date the notice is placed into the U.S. Mail system.

SEC. 13.16.190 Creek Protection Permit - Conditions For Issuance

In granting a Creek Protection Permit, the Chief of Building Services may attach such conditions thereto as he/she deems reasonably necessary to carry out the purposes and intent of this Chapter, including without limitations, protecting the Creek, the Riparian Corridor and Vegetation, safeguarding life, public and private property, and to assure all **Development or Work** is carried out in an orderly manner in conformance with all regulations and without creating a public nuisance; and he/she may add to, remove, or change such conditions from time to time during the duration of the permit as deemed reasonably necessary as a result of changed conditions or otherwise.

At the discretion of the Chief of Building Services, a permit may be withheld until the applicant has posted security in an amount satisfactory to the Chief of Building Services for either the faithful performance of the **Development or Work** or the cost of removing the **Development or Work** or otherwise reconstructing or restoring a Creek to conditions existing prior to such **Development or Work** in the event of default on the part of the permittee. Said security shall be in the form of cash, a certified or cashier's check, performance bond, or an **irrevocable** letter of credit.

SEC. 13.16.200 Criteria for Permit Approval

A. Creek Protection Permit shall be granted if the applicant demonstrates to the satisfaction of the Chief of Building Services that all the following criteria are met:

- (a) The proposed activity (**during construction and after project is complete**) will not (directly or indirectly) adversely affect the Creek. In determining whether the Creek would be adversely impacted, the Chief of Building Services shall, at a minimum, consider the following factors:
 - (1) Whether the proposed activity may discharge Pollutants into the Creek;
 - (2) Whether the proposed activity may result in modifications to the natural flow of water in the Creek;
 - (3) Whether the proposed activity may ~~result in~~ **deposit new material into the Creek or cause** bank erosion or instability;
 - (4) Whether the proposed activity may result in alteration of the capacity of the Creek; and
 - (5) Such other factors as the Chief of Building Services deems appropriate.
- (b) The proposed activity will not adversely affect the Riparian Corridor, including Riparian Vegetation, animal wildlife **or result in loss of wildlife habitat**;
- (c) **The proposed activity will not degrade the visual quality & natural appearance of the riparian corridor**;
- (d) The proposed activity is consistent with the intent and purposes of this Chapter;
- (e) The proposed activity will not endanger public or private property; and

(f) The proposed activity will not (directly or indirectly) threaten the public's health or safety.

If in the opinion of the Chief of Building Services the above findings can be met with imposition of Conditions For Issuance, pursuant to Section 13.16.190, the Chief of Building Services may grant the permit upon imposition of such conditions.

SEC. 13.16.210 Decision on Application

The Chief of Building Services shall issue a written decision granting or denying each application for a Creek Protection Permit, (Categories III and IV initially classified, or subsequently reclassified by the Chief of Building as Categories III or IV). The decision shall contain findings as to the conformity of the proposed development project with each of the criteria for permit approval specified in SEC. 13.16.200 (a) - (e), and the determination of permit category specified in SEC. 13.16.130. The decision shall be mailed to the applicant and to each Person who commented on the application and who has provided a self-addressed, stamped envelope to the Chief of Building Services.

Article III

Inspection and Enforcement

SEC. 13.16.220 Authority to Inspect

Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Authorized Enforcement Official has reasonable cause to believe that there exists in any building or upon any Premises any condition which constitutes a violation of the provisions of this Chapter, the Enforcement Official may enter such building or Premises at all reasonable times to inspect the same or perform any duty imposed upon the Enforcement Official by this Chapter; provided that (i) if such building or Premises be occupied, he or she shall first present proper credentials and request entry; and (ii) if such building or Premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other Persons having charge or control of the building or Premises and request entry.

Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of an inspection warrant by a duly authorized Judicial Officer. In the event the owner and/or occupant refuses entry after such request has been made, the Enforcement Official is hereby empowered to request such inspection warrant from any court of competent jurisdiction to obtain such entry.

Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Chapter, including but not limited to dye testing to determine illicit connections, random sampling and/or sampling or metering in areas with evidence of storm water contamination, illicit discharges, increase in flow, discharge of non-storm water to the storm water system, or similar factors.

Notwithstanding the above, in exigent circumstances, where there is an imminent threat to the public's health or safety, the emergency procedures outlined in section 13.16.330, "Emergency Work By The City," shall be followed.

A. Authority to Sample and Establish Sampling Devices

The City shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Authorized Enforcement Official may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities onsite.

B. Notification of Spills

As soon as any Person in charge of a facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, Pollutants or waste which may result in Pollutants or non-storm water discharges entering the City storm sewer system, such Person shall take all necessary steps to ensure the discovery and containment and cleanup of such release and shall contact the appropriate state and local regulatory agencies which have jurisdiction. If hazardous materials are involved, the Person in charge of a facility or responsible for emergency response for a facility shall contact immediately, as a minimum, the Oakland Fire Department and Alameda County Hazardous Materials Division and other state and local agencies.

In addition, any Person with confirmed or unconfirmed knowledge of release of materials which may result in non-storm water discharges entering the City storm system shall notify the City of the occurrence by telephoning the Environmental Services Manager and confirming the notification by written correspondence to the Environmental Services Manager within 24 hours of said

occurrence. During non-business hours, such Person shall notify the City of the occurrence by contacting the Oakland Fire Department.

C. Requirement to Test or Monitor or Provide Reports

Any Authorized Enforcement Official may request that any Person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution or contamination, illicit discharges, increase in flow, and/or discharge of non-storm water to the storm water system, undertake, at that Person's own cost and expense, such monitoring or testing activities and/or analyses and/or furnish such reports and/or documentation as the official may specify. Such reports and/or documentation may include but are not limited to: interpretation of the results of such monitoring activities or tests; description and/or design data or as-built plans for the facility's storm water conveyance system; and/or the facility's waste disposal documentation or records. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses, reports and/or documentation requested. Failure to undertake and provide such monitoring, analyses reports and/or documentation may result in the City undertaking such and assessing a lien against the property as described in Sections 13.16.300, 13.16.310, 13.16.320 and 13.16.340, in addition to other penalties described in this Chapter.

SEC. 13.16.230 Violations Constituting Infractions

Any Person violating or failing to comply with any of the provisions of this Chapter may be guilty of an infraction.

SEC. 13.16.240 Penalty for Violation

Any Person convicted of an infraction under the provision of this Chapter may be punished upon a first conviction by a fine of not more than \$100.00 and, for a second conviction within a period of one year, by a fine of not more than \$200.00 and, for a third or any subsequent conviction within a one year period, by a fine of not more than \$500.00. Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same may be punishable by a fine of not more than \$1000.00 or by imprisonment in the County Jail for a period of not more than six months or by both.

SEC. 13.16.250 Continuing Violation

Unless otherwise provided, a Person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this Chapter is committed, continued or permitted by the Person and shall be punishable accordingly as herein provided.

SEC. 13.16.260 Concealment

Causing, permitting, aiding, abetting or concealing a violation of any provision of this Chapter shall constitute a violation of such provision.

SEC. 13.16.270 Acts Potentially Resulting in Violation of Federal Clean Water Act and/or Porter-Cologne Act

Any Person who violates any provision of this Chapter, any provision of any permit issued pursuant to this Chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the federal Clean Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those

Acts including civil and criminal penalty. Any Enforcement action authorized under this Article may also include notice to the violator of such potential liability.

SEC. 13.16.280 Violations Deemed a Public Nuisance

In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare, and is declared and deemed to be a dangerous condition and a nuisance, and may be summarily abated and/or restored by any Authorized Enforcement Official pursuant to the provisions of ~~section~~ **SEC. 13.16.290 et. seq.** In addition to or in lieu of the abatement procedures authorized by the Enforcement Official, civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken by the city attorney.

If any violation of this Chapter constitutes a seasonal and recurrent nuisance, the City Council shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

SEC. 13.16.290 Order to Abate

A. When an Authorized Enforcement Official finds that a non-storm water discharge or increase in flow has taken place or is likely to take place in violation of this Chapter, and/or when an Authorized Enforcement Official finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind in or upon any parcel of land or grounds, which may result in an increase in Pollutants entering the City storm sewer system in violation of this Chapter, the Enforcement Official may declare and deem the violation a nuisance and issue an order to abate such discharge, or practice, or operation, or condition likely to cause such discharge or increase in flow, or result in an increase in Pollutants entering the storm drain system and direct that those Persons not complying shall:

1. Comply with the requirement,
 2. Comply with a time schedule for compliance;
- and/or
3. Take appropriate remedial or preventive action to prevent the violation from recurring.

B. Upon declaring and deeming a violation of this Chapter a nuisance, an Authorized Enforcement Official shall send a Notice of Abatement to the property owner and to the business owner/operator. The Notice of Abatement shall contain the following:

1. The street address and a legal description of the property sufficient for identification of the Premises or property upon which the nuisance is located.
2. A statement that the Enforcement Official has determined pursuant to this article that the property owner and the business owner/operator of the subject property are in violation of this Chapter.
3. A statement specifying the dangerous condition.
4. A statement ordering the property owner and the business owner/operator to abate the dangerous condition, and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished. (In determining said period within which said property owner and said business owner/operator shall abate said dangerous condition, the Enforcement Official shall consider the nature of said condition and its effect on life, safety, and property, together with the time reasonably required by said property owner and said business owner/operator to comply with said order.)

C. Service of said notice may be made by delivery to the property owner and to the business owner/operator or Person in possession personally or by enclosing the same in a sealed envelope, addressed to the occupant at such Premises, or to the property owner at his/her last known address as the same appears on the last equalized assessment rolls of the City County, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

D. It shall be unlawful for the property owner and/or business owner/operator to fail or neglect to comply with such order or Notice Of Abatement. In the event that the property owner and/or the business owner/operator shall not promptly proceed to abate said dangerous condition, as ordered by the Enforcement Official, the following abatement procedure may be undertaken:

SEC. 13.16.300 Notice of Administrative Hearing, Administrative Hearing and Appeal

A. Notice of Administrative Hearing

The Enforcement Official, upon failure of the property owner and/or the business owner/operator to promptly proceed to abate said dangerous condition as ordered and/or upon receipt of a written notice from the subject property owner and or the business owner/operator stating that they wish to appeal the Enforcement Official's violation determination, may forthwith fix a time and place for an administrative hearing of the matter. In all such cases, the Enforcement Official shall serve, or cause to be served, notice of said hearing upon the Person in possession of such Premises, upon the property owner and the business owner/operator thereof, not less than seven (7) days prior to the time fixed for such hearing. The notice shall specify the hour, date and place of the hearing and the dangerous condition that is the subject of the hearing. Service of said notice may be made by delivery to the property owner and to the business owner/operator or Person in possession Personally or by enclosing the same in a sealed envelope, addressed to the occupant at such Premises, or to the property owner at his last known address as the same appears on the last equalized assessment rolls of the City County, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

B. Administrative Hearing

At the time and place set for the hearing, the Hearing Officer shall hear such evidence as may be presented by said property owner and/or said business owner/operator, Person in possession or their representative. Such hearing may be continued from time to time by the Hearing Officer, provided that notice is given in the manner provided in section SEC. 13.16.300 (A) to said property owner and to said business owner/operator or Person in possession. Service of said notice shall be deemed complete at the time of deposit in the United States mail. The findings of the Hearing Officer shall be rendered at the time of such hearing and thereupon shall be announced to such property owner and to such business owner/operator, Person in possession or their representative, provided that such Person(s) appears at the hearing. Failure to appear at the administrative hearing shall constitute, unless good cause is shown, a waiver of the right to appeal to the City Council.

C. Appeal

Within three (3) days of the administrative hearing and the announced findings of the Hearing Officer, said property owner and/or said business owner/operator or Person in possession may notify in writing the Hearing Officer that he or she wishes to appeal such findings to the City Council. Failure to give the required written notice within the three-day period or failure to appear at the administrative hearing shall constitute, unless good cause is shown, a waiver of the right to appeal to the City Council. Upon timely receipt of notice of an intent to appeal, the Hearing Officer

shall give the appellant not less than seven (7) day prior written notice of the date, place and hour of the appeal to the City Council. Service shall be made in the manner described in ~~Section~~ SEC. 13.16.300 (A) of this Chapter and shall be deemed complete at the time of deposit in the United States mail.

SEC. 13.16.310 Abatement Procedure

A. Nonappearance and Untimely Appeals

In those cases where the property owner and/or the business owner/operator or Person in possession either does not appear for the administrative hearing, or appears for the administrative hearing but does not give timely notice of an intent to appeal, and there is no good cause shown, the Hearing Officer may present his report and findings to the City Council for confirmation at the earliest available City Council meeting after the date set for the administrative hearing. Said reports and findings shall be placed on the City Council's Agenda and shall be confirmed or overruled by the Council. If the reports and findings are confirmed, the City Council shall direct that the dangerous condition be abated.

Thereafter the Hearing Officer shall forthwith give or cause to be given written notice, in the manner provided in ~~Section~~ SEC. 13.16.300 (A), to the property owner and to the business owner/operator or Person in possession of said Premises to abate such condition forthwith. Service of said notice shall be deemed complete at the time of deposit in the United States mail. If such abatement is not commenced within seven (7) days thereafter and diligently prosecuted to completion, the Hearing Officer shall, at the property owner's and/or business owner's/operator's expense, cause the same to be abated.

B. Hearing of Appeal

Upon the date and at the place and hour fixed for the Hearing of Appeal and findings of the Hearing Officer, the Council of the City shall hear such evidence as may be presented by the property owner and/or the business owner/operator, Person in possession or other representative. Such hearing may be continued from time to time by the City Council. Upon the completion of such hearing, the City Council shall either overrule the findings or shall direct that the dangerous condition be abated.

Upon direction of the City Council to abate, the Hearing Officer shall give written notice, in the manner provided in ~~Section~~ SEC. 13.16.300 (A), to the property owner and to the business owner/operator or Person in possession of said Premises to abate such condition forthwith. Service of said notice shall be deemed complete at the time of deposit in the United States mail. If such abatement is not commenced within seven (7) days thereafter and diligently prosecuted to completion, the Hearing Officer shall at the property owner's and business owner's/operator's expense cause the same to be abated.

C. Abatement

The Council shall order to be paid by the property owner and the business owner/operator of said Premises all sums which may be necessarily expended by the Hearing Officer and the Authorized Enforcement Official in abating such condition, including but not limited to the abatement work cost, abatement contract administering costs, and abatement work supervising costs. In lieu of employing a contractor or other Person to abate such condition, the Hearing Officer may call upon the Public Works Agency, Maintenance Services Division, or other Departments of the City to abate such condition. Upon completion of the abatement work said abatement costs shall be secured by a special assessment lien recorded against the subject property in the Office of the County Recorder, Alameda County. Said special assessment lien shall substantially comply with

the form outlined in ~~section~~ **SEC. 13.16.340**. At the time that the City elects to perform the abatement work, the Hearing Officer may record a notice of prospective special assessment lien against the subject property. Such notice shall include a description of the proposed abatement work and an estimate of its costs. The notice shall indicate that the actual costs may exceed the City's estimate.

SEC. 13.16.320 Expense of Abatement Against Property

If upon recordation of the special assessment lien the property owner and/or the business owner/operator fail to pay the abatement costs and any accrued interest, said costs and interest shall constitute a special assessment against that real property abated. The Hearing Officer shall prepare a Report of Assessment. Said report shall describe the work performed, the date(s) on which it was performed, the costs incurred by the City and any accrued interest. The Hearing Officer shall cause a copy of the Report of Assessment to be served upon the property owner and the business owner/operator of the subject property. Said report shall be accompanied by a notice of date, time and place of the confirmation hearing before the City Council. Said notice and report shall be served on the property owner and the business owner/operator of the subject property not less than five (5) days prior to the time fixed for confirmation of said assessment, service shall be made in the manner described in ~~Section~~ **SEC. 13.16.300 (A)**, and service shall be deemed complete at the time of deposit in the United States Mail.

A copy of the Report of Assessment shall be posted in the Office of the City Clerk at least **three (3)** days prior to the time when the Report will be submitted to the City Council.

At the time set forth in the notice, the City Council shall hear the matter and either modify or confirm the Report of Assessment. The Council shall confirm said Report as presented by the Hearing Officer, unless the Council, after a review of the evidence in the record, finds that either the work assessed was not performed or that there was an error made in calculating the amount owed. After the assessment is made and confirmed, in addition to being a personal obligation of the property owner and the business owner/operator, it shall be a special assessment on the subject property, until said sum, with interest at the maximum legal rate per annum, has been paid in full. Interest shall begin to accrue on the date of lien recordation.

After confirmation of said Report, a certified copy of the resolution of confirmation shall be filed with the County Auditor, Alameda County, on or before August 10. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the County tax roll opposite the parcel of land. The amount of the assessment shall be collected, and shall be subject to the same penalties and the same procedure for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes.

SEC. 13.16.330 Emergency Work By The City

A. Emergency Abatement

Whenever, in the opinion of the Authorized Enforcement Official, an imminent threat to the public's health or safety exists, the Enforcement Official is hereby authorized to proceed with all necessary work to abate the condition. The official may take whatever reasonable steps are necessary to inspect or abate such imminent hazard without resort to notice, obtaining permission of entry or an inspection warrant. Such official shall, however, provide such pre-inspection or abatement notice and seek permission as appropriate in the circumstances and document the hazard and the reasons it needs to be immediately abated. A post-inspection or abatement hearing shall be held by the Hearing Officer as soon as practical thereafter.

B. Hearing

At the time and place set for the post-inspection or abatement hearing, the Hearing Officer shall hear such evidence as may be presented by said property owner and/or said business owner/operator, Person in possession or their representative, including evidence that no emergency existed. Such hearing may be continued from time to time by the Hearing Officer, provided that notice is given in the manner provided in ~~Section~~ SEC. 13.16.300 (A) to said property owner and to said business owner/operator or Person in possession. Service of said notice shall be deemed complete at the time of deposit in the United States Mail. The findings of the Hearing Officer shall be rendered at the time of such hearing and thereupon shall be announced to such property owner and to such business owner/operator, Person in possession or their representative, provided that such Person(s) appears at the hearing. Failure to appear at the administrative hearing shall constitute, unless good cause is shown, a waiver of the right to appeal to the City Council.

C. Confirmation Hearing

The Hearing Officer or his or her designee shall keep an itemized account of the costs of the abatement work. A report of the costs shall be submitted to the Council for confirmation. The property owner and the business owner/operator shall be given written notice of the confirmation hearing in the manner provided in ~~Section~~ SEC. 13.16.300 (A) of this Chapter. Service of said notice shall be deemed complete at the time of deposit in the United States Mail.

Upon the date and at the place and hour fixed for the Confirmation Hearing, the Council of the City of Oakland shall receive said report and hear such evidence as may be presented by the property owner and/or the business owner/operator, including evidence that no emergency existed. Such hearing may be continued from time to time by the City Council. Upon completion of such hearing, the City Council shall either overrule the Hearing Officer's report or shall confirm it, provided that the City Council, if good cause exists, may adjust downward the cost of abatement. After the abatement cost is confirmed, it shall be secured by a special assessment lien recorded against said property in the office of the County Recorder, Alameda County, until said sum with interest at the maximum legal rate per annum has been paid. Said special assessment lien shall substantially comply with the form outlined in ~~section~~ SEC. 13.16.340. Interest shall begin to accrue on the date that the special assessment lien is recorded.

If upon recordation of the lien the property owner and/or the business owner/operator fail to pay the confirmed sum and any accrued interest, said sum and interest shall constitute a special assessment against the real property abated and the Hearing Officer shall follow the procedures outlined in ~~Section~~ SEC. 13.16.320 to place such assessment on the County tax roll opposite said property. The amount of assessment shall be collected, and shall be subject to the same penalties and the same procedures for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes.

SEC. 13.16.340 Notice of Special Assessment Lien

The special assessment lien mentioned in ~~Section~~ SEC. 13.16.330 and ~~Section~~ SEC. 13.16.310 shall substantially comply with the following form:

Notice of Special Assessment Lien

Pursuant to authority vested in me by Resolution No. __ C.M.S., of the Council of the City of Oakland, passed on the ___ day of ___, 19_, and the provisions of Chapter __, of the Oakland Municipal Code, I did, on the ___ day of ___, 19_, cause a dangerous condition located upon the hereinafter described real property to be abated at the expense of the property owners thereof, in the amount of \$ _____, and that said amount has not been

paid nor any part thereof, and the City does hereby claim a special assessment lien upon the hereinafter described real property in said amount; the same shall be a special assessment lien upon the said real property until said sum with interest thereon at the legally allowable rate from the date of the recordation of this special assessment lien in the office of the County Recorder of the County of Alameda, State of California, has been paid in full. The real property hereinabove mentioned and upon which a special assessment lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to wit:

(Insert Description of Property)

Dated this ___ day of _____, 19__.

(Title of Hearing Officer)
City of Oakland

SEC. 13.16.350 Civil Actions

In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, and the Court shall grant, as appropriate, any or all of the following remedies:

- (a) A temporary and/or permanent injunction.
- (b) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection, including but not limited to attorney compensation.
- (c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.
- (d) Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing or enforcing the provisions of this Chapter.

SEC. 13.16.360 Administrative Enforcement Powers

In addition to the other Enforcement powers and remedies established by this Chapter, any Authorized Enforcement Official has the authority to utilize the following administrative remedies:

A. Cease and Desist Order

When an Authorized Enforcement Official finds that a non-storm water discharge has taken place or is likely to take place in violation of this Chapter, the Enforcement Official may issue and order to cease and desist such non-storm water discharge, or practice, or operation likely to cause such discharge, and direct that those Persons not complying shall: a) comply with the requirement; b) comply with a time schedule for compliance; and/or c) take appropriate remedial or preventive action to prevent the violation from recurring.

Any Person failing to comply with said Cease and Desist Order shall be guilty of an infraction and may be subject to the penalties outlined in ~~Section~~ SEC. 13.16.240, "Penalty for Violation" and to

all other Enforcement procedures outlined in this Chapter. In addition, failure to undertake the activities described in said Cease and Desist Order may result in the City undertaking an abatement action and assessing a lien against the property in accordance with the procedures outlined in ~~sections~~ **SECS. 13.16.290 - 13.16.340** of this Chapter.

B. Notice to Clean

Whenever an Authorized Enforcement Official finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in Pollutants entering the City storm sewer system or a non-storm water discharge to the City storm sewer system, he or she may give notice to remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

Any Person failing to comply with said Notice to Clean shall be guilty of an infraction and may be subject to the penalties outlined in ~~Section~~ **SEC. 13.16.240**, "Penalty for Violation" and to all other Enforcement procedures outlined in this Chapter. In addition, failure to undertake the activities described in said Notice to Clean may result in the City undertaking an abatement action and assessing a lien against the property in accordance with the procedures outlined in ~~sections~~ **SECS. 13.16.290 - 13.16.340** of this Chapter.

C. Suspension of Permits

Failure of any Person engaged in an activity, **Development or Work**, and/or owning or operating any Facility which may cause or contribute to storm water pollution or contamination in violations of this Chapter to cease such activities or comply with corrective measures upon receipt of notice from an Authorized Enforcement Official, shall be cause for revocation or suspension of any permit issued by the City and/or its Boards, Commissions, Departments, Officers and the City Council.

When any Person is found to be in violation of this Chapter, the Enforcement Official may request the permit issuing authority to suspend or revoke any building permit, grading permit, encroachment permit, conditional use permit and any other permit issued by the City and/or its Boards, Commissions, Departments, Officers and the City Council associated with the subject property until such time that applicant is found to be in compliance with the provisions of this Chapter. The procedures that govern the suspension, revocation and appeal process of the individual permit shall be followed.

SEC. 13.16.370 Administrative Civil Penalties

When an Authorized Enforcement Official finds that a **violation of this Chapter** ~~a non-storm water discharge~~ has taken place or is likely to take place ~~in violation of this Chapter~~, the Enforcement Official may assess civil penalties pursuant to the standards and procedures established in Chapter 1.08 of the Oakland Municipal Code and any amendments or revisions thereto.

SEC. 13.16.380 Administrative Citations

When an Authorized Enforcement Official finds that a **violation of this Chapter** ~~a non-storm water discharge~~ has taken place or is likely to take place ~~in violation of this Chapter~~, the Enforcement Official may issue administrative citations pursuant to the standards and procedures

established in Chapter 1.12 of the Oakland Municipal Code and any amendments or revisions thereto.

SEC. 13.16.390 Property Use Limitation

When an Authorized Enforcement Official finds that a **violation of this Chapter** ~~a non-storm water discharge~~ has taken place or is likely to take place ~~in violation of this Chapter~~, the Enforcement Official may record a notice of violation limiting the use of the property pursuant to the standards and procedures established in Chapter 1.16 of the Oakland Municipal Code and any amendments or revisions thereto.

SEC. 13.16.400 Reinspection Fees

Whenever an Authorized Enforcement Official determines that upon reinspection of the Premises there has been a failure to comply with any orders, notices or directions of the City, the Enforcement Official may charge a reinspection fee.

SEC. 13.16.410 Authority to Issue Citations

Authorized Enforcement Officials or employees may issue a citation and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this Chapter.

SEC. 13.16.420 Remedies Not Exclusive

Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The Enforcement Official shall have the discretion to select a particular remedy to further the purposes and intent of the Chapter, depending on the particular circumstances. The Enforcement Official's decision to select a particular remedy is not subject to appeal.

SEC. 13.16.430 Joint and Several Liability

The property owner and the business owner/operator shall be jointly and severally liable for violations of this Chapter.

Article IV

Coordination with Other Programs

SEC. 13.16.440 Coordination with Hazardous Materials Inventory and Response Program

The first revision of the business plan for any Facility subject to the hazardous materials inventory and response program as administered by the Oakland Fire Services Agency shall include a program for compliance with this Chapter, including the prohibitions on non-storm water discharges and illicit discharges, and the requirement to reduce storm water Pollutants to the maximum extent practicable.

Article V

Appeals and Fees

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**, an appeal from said decision may be taken to the ~~Director of CEDA or his or her designee~~ **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 ~~Director of CEDA or his or her designee~~ **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 ~~Director of CEDA~~ **the City of Oakland City Planning Commission** shall determine whether the proposed use conforms to the permit criteria set forth in ~~Section 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 ~~Director of CEDA~~ **the City of Oakland City Planning Commission** shall be final.

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, 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.

SEC. 13.16.470 Fee Schedule

Fees, and regulations pertaining to fees, for filing of applications, written decisions and appeals shall be in accordance with the City Master Fee Schedule.

SECTION 2:

This ordinance will take effect immediately upon its adoption by the City Council.

SECTION 3:

The City Council finds and determines that:

- (a) This ordinance is necessary to protect the public health, safety and welfare;
- (b) The findings set forth in support of this ordinance in ~~Section~~ **SEC.** 13.16.020 are true and correct and provide a further basis for this **Ordinance**; and
- (c) The foregoing recitals are true and correct and are an integral part of this **Ordinance**.

SECTION 4:

The City Council finds and determines that this **Ordinance** complies with CEQA and approves the categorical exemption and directs the Review Officer to file a Notice of Exemption with the Alameda County Clerk.

Introduced - 12-2-97

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 16 1997, 19__

PASSED BY THE FOLLOWING VOTE:

AYES-BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES AND ~~PRESIDENT HARRIS~~ 8

NOES- None

ABSENT- Harris - 1

ABSTENTION- None

EXCUSED- None

ATTEST:



CEDA FLOYD
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA