


Office of the City Manager

February 9, 2004

To: Agenda Committee
From:  Phil Kamlarz, Acting City Manager
Subject: Creeks Workshop Information

The City Council has requested a workshop to discuss the creeks ordinance and it has been scheduled for March 16. On February 2, 2004, the City Council Agenda Committee requested the following information regarding the workshop:

- 1) A copy of the ordinance. Enclosed.
- 2) A description of the administrative procedure that we use to determine whether there is a creek on a parcel. Enclosed.
- 3) A listing of all the issues that have been surfaced by Council members. This is addressed below.

Creeks Issues

In preparing for the March 16 workshop, Staff met with Councilmembers Hawley and Worthington. Councilmember Hawley referred us to her memo of May 13, 2003 (enclosed) that raised issues related to process, impacts of the ordinance, and notice. Councilmember Worthington referred us to notes taken at a meeting of primarily Creek advocates concerning the issues they have with the current ordinance. In addition, staff reviewed draft changes to the Creeks ordinance (enclosed) prepared in response to a referral (CF 126-02) from Councilmember Spring and issues brought up by some Councilmembers concerning the ability of a home owner to rebuild after a natural disaster. Consideration of those draft changes was deferred on June 13, 2003 to the proposed workshop.

Based on our review of these documents, Staff created a list of key issues that we believe should be addressed at the workshop. Staff has outlined those key issues below, with brief descriptions as to the issues/questions raised. This is not intended to be an exhaustive list of potential topics, but is intended to focus the March 16 Council discussion on a few key concerns.

1. What is an appropriate setback area for creek protection?

This refers to the issue of whether the currently required 30-foot setback is too little or too much. This issue relates to other issues such as protection for riparian habitat values, and those concerned with the impact of this or other setback distances on property rights and values.

2. Should the setback area be modified for culverts?

Culverted and open creeks are treated the same in the current ordinance. Whether culverted portions of a creek should be treated similarly to open creeks has been generally raised, and specifically raised in regard to the setback requirements. This issue would become more significant if the regulations are further strengthened as discussed under #3.

3. What should be regulated in the setback area subject to protection?

Currently only roofed structures are regulated. There has been discussion about whether to increase regulations to regulate such things as pavement and other structures. (See the June 13, 2003 City Manager memo to the City Council, enclosed, that suggests proposed amendments to the Creeks ordinance to address this referral which was deferred until the Creeks workshop)

4. How can/should the City encourage daylighting?

There has been much discussion of the goal of daylighting creeks and how best to achieve this goal and whether it is feasible to achieve that goal.

5. Should the City provide special notice to the property owners identified on the "Creeks Map" that they are likely to be regulated under the ordinance?

Whether property owners affected by the creek ordinance are aware of the regulation and whether they should be provided special notice has been generally discussed (see May 13 memo from Council members Hawley and Olds).

6. How should property regulated under the ordinance be treated after a disaster.

This has been raised both by creek advocates and by the Hawley/Olds memo. (See June 13 memo from the City Manager to the City Council with draft amendments to the creeks ordinance to address the issue; discussion was deferred until the Creeks workshop).

7. Should the City adopt stronger penalties for violation of the ordinance?

The need for stronger penalties has been raised both in regards to illegal activities (grading, etc.) in protected areas, and illegal discharge to creeks. The discharge issue is not part of the creek ordinance, and staff would not recommend that it be discussed except in regard to erosion control, as discussed under #8.

8. Should the City adopt stronger guidelines/regulations for addressing run-off, including specific erosion control measures, best-management practices for development, stronger grading protection near creeks, etc.?

This issue has generally arisen in relation to how the City manages erosion control and creek protection measures when work is being done in or near a creek and may affect it.

Title 17 WATER AND SEWERS

Chapter 17.08 PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES*

Section 17.08.010 Purpose.

Section 17.08.020 Findings.

Section 17.08.030 Definitions.

Section 17.08.040 Obstructing or interfering with watercourses prohibited.

Section 17.08.050 Setbacks for new construction required.

Section 17.08.060 Construction of walls, drains, bulkheads, etc.--Permit conditions required.

Section 17.08.070 Obstructions or structures declared nuisance when--Notice to remove--City to perform work when--Costs.

Section 17.08.080 Failure to enforce chapter.

Section 17.08.090 Fees.

*Not
included*

* For watercourse design requirements in subdivisions, see Ch. 21.24 of this code.

Chapter 17.08 PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES*

Section 17.08.010 Purpose.

The purpose of this chapter is to establish a policy on: (1) the issuance of permits for culverting open creeks; (2) the rehabilitation and restoration of natural waterways; and (3) the management of watersheds. (Ord. 5961-NS § 2, 1989)

Chapter 17.08 PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES*

Section 17.08.020 Findings.

The City Council does find and declare that:

A. Public health and safety requires creek and watershed management and planning in order to control flood and erosion damages. Maintenance of natural channels, including removal of debris and erosion control.

B. A dependence on structural solutions for reduction of property damage such as creek channelization, culverting and channel riprapping, often has been found to result in the loss of property from unanticipated problems associated with their design. Channelization can result in changes in stream meander, bank erosion, channel filling and channel degradation, causing damages by the undercutting of bridges, homes and other structures or by the over-the-bank flows caused by channel filling. Culverts can result in upstream and downstream bank erosion problems and, because debris removal from them is difficult, they can back up flows and cause floods. Undersized culverts and culverts installed at the wrong slope can also cause flooding and serious bank erosion.

C. The use of riprap or other debris to stabilize banks can result in the erosion of streambanks up and downstream of the riprap. Riprap and other debris may decrease channel capacity contributing to potential flood damages.

D. Streams managed as close to a natural system as possible without interference from structures, maintain a geomorphic equilibrium or watercourse best suited for carrying stream flows, and carrying and depositing suspended bed loads.

E. Natural streams provide the most environmental amenities to the community and riparian owners.

F. Streams and their riparian environment should be held as an important public asset in an increasingly endangered environment that provides an unusual urban ecological habitat with recreational and aesthetic value.

G. Culverting or channelization of existing open creeks should only occur if there is an extreme hazard to public health or safety and no other alternatives can prevent the hazard.

H. It is in the interest of the City of Berkeley to encourage the removal of culverts and channels, prevent channel riprapping, and to restore natural watercourses whenever safely possible. (Ord. 5961-NS § 2, 1989)

Chapter 17.08 PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES*

Section 17.08.030 Definitions.

The following definitions shall be applicable in the construction and application of this chapter.

A. "Creek" means a watercourse which carries water from either a permanent or natural source, either intermittently or continuously; and which runs in a defined channel or continuous swale or depression, which later merges with a larger watercourse. The definition includes a channel, swale, depression, or watercourse, whether or not culverted. The definition excludes any part of an engineered system which was developed by a public agency for collection of storm or flood waters, provided however that such part does not follow the original course of the creek. The City of Berkeley may maintain maps and other reliable records, reflecting such creeks for the guidance of the public. The word "creek" will be synonymous with "natural watercourse" as used in the chapter.

B. "Culverting" means the placement or construction of a pipe or box shaped conduit in a creek bed for the purpose of conducting water.

C. "Rehabilitation" means the improvement of a natural watercourse by the use of erosion control technology, revegetation, vegetation management and/or selective channel clearing with the objective to conserve and manage a natural waterway and riparian system.

D. "Restoration" means the unearthing of a culverted stream or natural watercourse and the design of a new open channel to re-create the original stream channel and environment.

E. "Reconstruction" means the partial re-creation of the original natural watercourse by allowing a portion of a culverted stream to flow to the surface and flow through a landscaped riparian environment.

F. "Riprap" means cobbles, rock, concrete pieces or other non-vegetative debris used to protect streambanks against erosion. Riprapping, the placement of riprap on streambanks.

G. "Cribwalls" means a rectangular framework of logs which is filled with soil and/or rocks and planted with cuttings.

H. "Brush matting" means the use of dead or live cuttings from riparian vegetation stacked and secured against streambanks to check erosion and revegetate banks.

I. "Fascines" (sometimes called, "wattles") means bundles of cuttings from riparian plants used to revegetate banks.

J. "Plant cuttings" means sticks cut from riparian shrub and tree branches in their dormant state such as willows and alder, which are buried about halfway in the ground and take root.

K. "Brush layering" means the use of live branches or cuttings which are inserted into the streambanks perpendicular to the slope so that the rooting occurs back into the slope.

L. "Retention basins" means open spaces which hold overbank stream flows and can be used as parks and other open space uses in drier seasons.

M. "Gabions" means wire baskets filled with rocks and soil and planted with seeds, cuttings and rooted plants. They can be used to rebuild streambanks. (Ord. 6716-NS § 1, 2002: Ord. 5961-NS § 2, 1989)

Chapter 17.08 PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES*

Section 17.08.040 Obstructing or interfering with watercourses prohibited.

It is unlawful for any person, organization, institution, corporation or the City of Berkeley to fill, or cause to be filled, to obliterate or cause to be obliterated, to obstruct or cause to be obstructed, to construct a building bridging a creek or cause such building to be constructed, or in any manner to interfere with or cause to be interfered with, any natural watercourse in Berkeley which carries off at any time of the year any storm water, or any surface waters, which have been precipitated by rains. This chapter does not apply to structures or conditions existing in creeks on or before the effective date of this chapter. (Ord. 5961-NS § 2, 1989)

Chapter 17.08 PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES*

Section 17.08.050 Setbacks for new construction required.

A. Except as otherwise provided in subsection B, it is unlawful for any person, organization, institution, corporation or the City of Berkeley to construct any structure having a roof supported by columns or walls, including dwellings, garages, other accessory buildings and commercial buildings, within thirty feet of the center line of any creek.

Approval for such construction may be granted only by appeal to the Zoning Adjustments Board for a variance. The decision of the Zoning Adjustments Board may be appealed to the City Council pursuant to Chapter 23B.44 of the Berkeley Zoning Ordinance.

B. A residential addition to an existing single-family home may be constructed through the issuance of a Conditional Use Permit pursuant to Chapter 23B.32 of the Berkeley Zoning Ordinance if the Zoning Adjustments Board or the City Council on appeal makes all of the following findings:

1. All portions of the creek on the subject parcel are enclosed within a culvert, which is located below the surface of the land and there is no open creek within 30 feet of the proposed addition on any adjacent parcel.

2. The existing single-family home is bisected by a culverted creek such that at least 30 percent of its footprint is located on both sides of the culverted creek.

3. No portion of the proposed addition is located on land or improvements directly above the culverted creek.

4. There is no feasible alternative for development of the proposed addition on an area outside of the setback required by subsection A because of physical conditions on the site and/or the limitations imposed by otherwise applicable development standards.

5. The existing single-family home has two or fewer bedrooms and is smaller than the median size of single-family homes within a 500 foot radius, measured from the property boundary line of the existing single-family home.

6. The proposed addition shall not increase the size of the home to be larger than the median size of single-family homes within the 500 foot radius in subsection B.5.

7. A report by an independent structural engineer selected by the City and funded by the applicant has concluded that the culvert is sound and structurally adequate to support the existing and proposed improvements or will be made so as part of the proposed project.

8. The proposed addition will not adversely affect the creek.

9. The proposed addition will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use, or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City. (Ord. 6740-NS § 1, 2003; Ord. 5961-NS § 2, 1989)

Chapter 17.08 PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES*

Section 17.08.060 Construction of walls, drains, bulkheads, etc.--Permit conditions required.

The intent of this section is to prohibit culverting and riprapping, unless there is strong evidence that there is no other reasonable means to prevent the erosion of adjacent supports, foundations or other structures.

It is unlawful for any person, organization, institution, corporation or the City of Berkeley to construct or cause to be constructed, any wall, culvert, drain, bulkhead, or other structure in any natural watercourse or creek in the City of Berkeley, or to place riprap or any debris in the channel or on the banks, without first obtaining a permit therefor from the City Engineer. If a permit for construction is granted, the City Engineer shall require the applicant to submit plans and specifications for such a wall, bulkhead, culvert, drain, structure or bank protection work which shall specify the exact location and extent of the project. Any work that has been granted a permit, shall be carried out under the supervision of the City Engineer, or his/her designated representative.

Such a permit will not be granted if any one or more of the following alternatives, or any other is available to solve the problem.

- A. Excavating to restore a natural meander, stream geometry and channel roughness.
- B. Clearing debris cleanup.
- C. Flood proofing: e.g. minor redesign of buildings, relocation of porches or other minor structures, sheds, garages; raising of such structures; raising the grade of adjacent land.
- D. Removal of structures where feasible.
- E. Bank stabilization using vegetation or combination revegetation construction (soil bioengineering) that does not degrade the existing natural environment. This may include the use of vegetated and dirt filled gabions, vegetated wood cribwalls, live and dead brush matting, fascines, brush layering and cuttings, and other similar strategies based on employing plants as the long-term stabilizing materials.
- F. Vegetation management that can include selective clearing that retains a riparian canopy and root structure to preserve riparian habitat, control unwanted undergrowth, and stabilize banks.
- G. Set-back levee construction: flood wall construction on the flood plain.
- H. Changes in site design.

The request for any permit to culvert or perform any construction in a natural watercourse must conform to the requirements of the California Environmental Quality Act (C.E.Q.A.) and its current amendments and guidelines.

If the City engineer recommends the granting of a permit for culverting or any other construction in any natural watercourse, the matter shall be referred to the Public Works Commission for review. If the City engineer denies a permit, the applicant may appeal to the Public Works Commission for review and recommendation. In all cases the decision of the Public Works Commission will be final, unless the matter is appealed within fifteen days to the City Council by the applicant, City staff or an interested party. (Ord. 5961-NS § 2, 1989)

CITY OF BERKELEY

ADMINISTRATIVE REGULATIONS

A.R. NUMBER:

EFFECTIVE DATE:

REVISED DATE:

APPROVED BY CITY MANAGER:

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SUBJECT Procedure for Processing Permit Applications Where a Creek May Be Present on the Property

PURPOSE

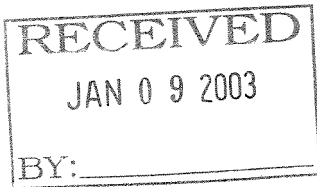
The purpose of this Administrative Regulation is establish a process to implement the Creeks Ordinance, Berkeley Municipal Code Chapter 17.08, by requiring certain documentation from property owners where City records indicate that development on the property might be subject to the restrictions of this Chapter.

POLICY

The City of Berkeley has adopted the Creeks Ordinance, Chapter 17.08. The Creeks Ordinance was intended to establish a policy on: (1) the issuance of permits for culverting open creeks; (2) the rehabilitation and restoration of natural waterways; and (3) the management of watersheds. With regard to new construction, the Creeks Ordinance requires a property owner to maintain a 30 foot setback from the centerline of a creek unless certain findings can be made by the Zoning Adjustments Board. To assist the staff and property owners in identifying and enforcing the Creeks Ordinance with regard to new construction, the City has adopted the following procedure. Accordingly, when staff receives a permit application for construction on a parcel that has been identified by the City as potentially subject to the setback requirements, the procedure described below must be followed:

PROCEDURE

1. Require those property owners to submit a topographical map of their property and any adjoining property to adequately identify drainage patterns on the parcel.
2. If the owner does not dispute that their parcel is subject to the ordinance, then the Department of Public Works, City Engineer, shall determine the centerline of the creek from the topographical map and identify the setbacks required under the ordinance.
3. If the owner does dispute that their parcel is subject to the ordinance, then they would also be required to submit a certification from a either a registered civil engineer or a licensed land surveyor that a creek does not exist on the parcel as well as any adjoining property or portion thereof where the topography map suggests that such adjoining property or portion thereof may contain a creek, after two (2) inches of rain has fallen in a twenty-four (24) hour period.
4. If the owner submits a such a certification, the City Engineer shall review it and the topographical map and, if deemed necessary, conduct a site visit.
5. After this investigation/review is complete, the City Engineer would either verify or reject the certification.



CONSENT CALENDAR
May 13, 2003

To: Honorable Mayor
Members of the City Council

From: Councilmembers Miriam Hawley and Betty Olds

Subject: **Reconsider the Definition of "Creek" in BCM Ordinance 17.08.030**

RECOMMENDATION:

That the City Council request that the City Attorney revisit the definition of "creeks" in Section 17.08.030 of the BMC; and that the City Council reconsider the recently adopted change in the ordinance in order to provide for broader staff input and a more public process.

BACKGROUND:

On October 22, 2002, when the City Council adopted new language for the City's Creek Preservation Ordinance (Section 17.08.030), the intent was to be more specific about the definition of a creek so that enforcement would be less dependent upon specific maps that could be either outdated or incomplete. The major change in the creek definition was the elimination of "naturally occurring" and the inclusion of "whether or not culverted." (The City Manager's original proposal from January 16, 2001, would have amended the ordinance only by identifying a particular map for reference. There was no change in the actual definition of "creek.")

In retrospect, this was not merely a clarification but was, instead, a major change in the intent of the ordinance, one that has major implications for property owners and policy makers. There is no exemption for homeowners who may need to rebuild due to fire or earthquake damage, and no exemption for existing institutions that may need to remodel. And clearly, projects completed prior to the change in definition were not subject to the restriction in the current definition. (In the "Environmental Constraints Map," developed by the Planning and Development Department, and the "city of Berkeley Drainage" map published by Berkeley's Engineering Department, one can identify several properties with culverted creeks, where developments approved before October 2002 were not subject to the creeks ordinance, including the Civic Center project.)

In her 10/22/02 report to Council (see attached), the City Attorney says "groups interested in the protection of creeks have had numerous discussions to come to a resolution on the issue of the creek definition." Though the City Attorney's office has

CONSENT CALENDAR

May 13, 2003

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determined there is no mechanism that allows the Planning Commission to review this change (see attached Planning Commission Communications dated April 23, 2003), because of the unknown impacts of the definition change, we request that the Planning Commission has the opportunity to review and report to council. The Council has not had the opportunity to hear from other Departments or from members of the public who do not know of the change but whose property could be directly affected.

Certainly, something that impacts our city in such an enormous way deserves more review and better public process. Opening up the review of the definition would allow the City Council to:

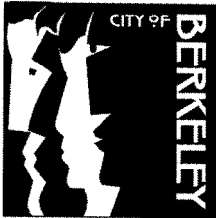
1. Require and review an up-to-date map of creeks both above ground and culverted
2. Solicit comments from appropriate Commissions, Planning staff and members of the public
3. Discuss the possible necessity of an EIR

FISCAL IMPLICATIONS: Staff time to review and reconsider definition and to research and report to Council regarding land use implications.

CONTACT:

Councilmember Miriam Hawley 981-7150

Councilmember Betty Olds 981-7160



Office of the City Manager

June 13, 2003
CF 126-02

To: Honorable Mayor and
Members of the City Council

From: Weldon Rucker, City Manager

Subject: AMENDMENT TO CREEKS ORDINANCE

The City Council referred Councilmember Spring's item number 126-02 to the City Manager and directed that a status report be given on July 8, 2003. The referral requested that the Manager examine the possibility of amending the Creeks Ordinance, BMC 17.08 *et seq.*, to prevent any kind of development within 30 feet of an above-ground or culverted creek. The City Attorney's Office was appointed the lead Department. Subsequently, the Council also asked that the issue of single-family homes destroyed by disasters be evaluated as well.

Staff prepared a draft ordinance and forwarded it for review and comment to creek preservation advocates in preparation for the July 8, 2003 Council meeting. However, Ms. Juliet Lamont, the creek advocate with whom staff has been communicating, indicated that the creek preservation organizations would prefer to have this matter discussed in a more comprehensive way through the previously-scheduled creeks workshop in the fall. I have agreed to accommodate that request.

Currently, the draft ordinance has been forwarded to the creek preservation organizations so that they may provide feedback to the staff. Thus, the report on these issues will be presented at the full creeks workshop instead of on July 8, 2003.

ORDINANCE NO. - N.S.

AMENDING SECTION 17.08.050 AND ADDING SECTIONS 17.08.060 THROUGH 17.08.120 OF THE BERKELEY MUNICIPAL CODE TO: 1) PROHIBIT THE CONSTRUCTION OF CERTAIN UNENCLOSED STRUCTURES AND THE PERFORMANCE OF CERTAIN TYPES OF WORK WITHIN THIRTY FEET OF THE CENTER LINE OF A CREEK; 2) TO PERMIT OTHER TYPES OF UNENCLOSED STRUCTURES ONLY UPON THE ISSUANCE OF A PERMIT FROM THE CITY ENGINEER AND/OR ZONING OFFICER WITHIN THIRTY FEET OF THE CENTER LINE OF A CREEK; 3) TO PERMIT THE REPLACEMENT OF SINGLE-FAMILY HOMES DESTROYED BY A NATURAL DISASTER UPON THE ISSUANCE OF A CONDITIONAL USE PERMIT FROM THE ZONING ADJUSTMENTS BOARD WHERE CERTAIN FINDINGS ARE MADE AND; 4) RENUMBERING CURRENT SECTIONS 17.08.060 THROUGH 17.08.090 TO BE SECTIONS 17.08.130 THROUGH 17.08.160.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 17.08.050 of the Berkeley Municipal Code is amended to read as follows:

Section 17.08.050 Setbacks from creek for new construction enclosed structures required.

~~A. Except as otherwise provided in subsection B, it is unlawful for any person, organization, institution, corporation or the City of Berkeley to construct any structure having a roof supported by columns or walls, including dwellings, garages, other accessory buildings and commercial buildings, within thirty feet of the center line of any creek. No existing structure of this type shall be repaired, replaced or expanded except as otherwise provided in Sections 17.08.100 and 17.08.110.~~

~~Approval for such construction may be granted only by appeal to the Zoning Adjustments Board for a variance. The decision of the Zoning Adjustments Board may be appealed to the City Council pursuant to Chapter 23B.44 of the Berkeley Zoning Ordinance.~~

~~B. A residential addition to an existing single family home may be constructed through the issuance of a Conditional Use Permit pursuant to Chapter 23B.32 of the Berkeley Zoning Ordinance if the Zoning Adjustments Board or the City Council on appeal makes all of the following findings:~~

~~1. All portions of the creek on the subject parcel are enclosed within a culvert, which is located below the surface of the land and there is no open creek within thirty feet of the proposed addition on any adjacent parcel.~~

~~2. The existing single family home is bisected by a culverted creek such that at least 30 percent of its footprint is located on both sides of the culverted creek.~~

~~3. No portion of the proposed addition is located on land or improvements directly above the culverted creek.~~

~~4. There is no feasible alternative for development of the proposed addition on an area outside of the setback required by subsection A because of physical conditions on the site and/or the limitations imposed by otherwise applicable development standards.~~

~~5. The existing single family home has two or fewer bedrooms and is smaller than the median size of single family homes within a 500 foot radius, measured from the property boundary line of the existing single family home.~~

~~6. The proposed addition shall not increase the size of the home to be larger than the median size of single family homes within the 500 foot radius in subsection B.5.~~

~~7. A report by an independent structural engineer selected by the City and funded by the applicant has concluded that the culvert is sound and structurally adequate to support the existing and proposed improvements or will be made so as part of the proposed project.~~

~~8. The proposed addition will not adversely affect the creek.~~

~~9. The proposed addition will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use, or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.~~

Section 2. That Sections 17.08.060 through 17.08.120 of the Berkeley Municipal Code are added to read as follows:

Section 17.08.060 Setbacks from creek required for walls and fences required – permits required for repair, replacement or expansion of existing retaining walls and fences – permits required for new non-retaining fences and repair, replacement or expansion of existing non-retaining fences.

It is unlawful for any person, organization, institution, corporation or the City of Berkeley to construct any of the following within thirty feet of the center line of any creek.

A. A retaining wall or retaining fence. No existing retaining walls or fences shall be repaired, replaced or expanded without first obtaining a permit from the City Engineer. Such permit may be issued only where the applicant demonstrates that the repair, replacement or expansion of such retaining wall or fence is the only feasible engineering alternative to support the existing structures and/or other development required by Chapter 23 of the Berkeley Municipal Code on the parcel or to prevent slope degradation and/or loss.

B. A non-retaining fence without first obtaining a permit from the City Engineer. No existing non-retaining fences shall be repaired, replaced or expanded without first obtaining a permit from the City Engineer.

Section 17.08.070 Setbacks from creeks for paving, grading and excavation required – permits required for restoration.

It is unlawful for any person, organization, institution, corporation or the City of Berkeley to perform any of the following work within thirty feet of the center line of any creek.

A. Any paving with impervious materials including, but not limited to, asphalt or concrete. No existing pavement of this type shall be repaired, replaced or expanded.

B. Any grading or excavation except where such work is being performed in the restoration of a natural watercourse and a permit has first been obtained from the City Engineer. If a permit for restoration work is granted, the City Engineer shall require the applicant to submit plans and specifications for such restoration work which shall specify the exact location and extent of the project. Any work that has been granted a permit pursuant to this subsection, shall be carried out under the supervision of the City Engineer, or his/her designated representative.

Section 17.08.080 Setbacks from creeks for uncovered decks and porches required – permits required for decks and porches with no foundational support or foundational support outside setback.

It is unlawful for any person, organization, institution, corporation or the City of Berkeley to construct any uncovered deck or porch within thirty feet of the center line of any creek except that uncovered decks or porches without any foundational support or where the support for the foundation is located outside of the thirty foot setback may be constructed with a permit from the City Engineer. No existing uncovered deck or porch with foundational support within the thirty foot setback shall be repaired, replaced or expanded.

Section 17.08.090 Setbacks for unenclosed structures - permits required.

It is unlawful for any person, organization, institution, corporation or the City of Berkeley to construct any unenclosed structure such as, but not limited to, gates, pergolas, trellises, arbors, solar energy equipment, ground or pole-mounted satellite dishes, play structures, skateboard ramps, tree houses, windmills, bridges, hot tubs, Jacuzzis or spas within thirty feet of the center line of any creek without first obtaining an Administrative Use Permit from the Zoning Officer in consultation with the City Engineer pursuant to Berkeley Municipal Code Chapter 23B.28. All existing structures of this type shall not be repaired, replaced or expanded without first obtaining an Administrative Use Permit issued by the Zoning Officer in consultation with the City Engineer pursuant to Berkeley Municipal Code Chapter 23B.28.

Section 17.08.100 Construction of an addition to a single-family home where home is located above culverted creek permissible under specified conditions – permits required.

Notwithstanding Section 17.08.050, a residential addition to an existing single-family home may be constructed within thirty feet of the center line of any creek through the issuance of a Conditional Use Permit pursuant to Chapter 23B.32 of the Berkeley Zoning

Ordinance if the Zoning Adjustments Board or the City Council on appeal makes all of the following findings:

A. All portions of the creek on the subject parcel are enclosed within a culvert, which is located below the surface of the land and there is no open creek within thirty feet of the proposed addition on any adjacent parcel.

B. The existing single-family home is bisected by a culverted creek such that at least 30 percent of its footprint is located on both sides of the culverted creek.

C. No portion of the proposed addition is located on land or improvements directly above the culverted creek.

D. There is no feasible alternative for development of the proposed addition on an area outside of the setback required by subsection A because of physical conditions on the site and/or the limitations imposed by otherwise applicable development standards.

E. The existing single-family home has two or fewer bedrooms and is smaller than the median size of single-family homes within a 500 foot radius, measured from the property boundary line of the existing single family home.

F. The proposed addition shall not increase the size of the home to be larger than the median size of single-family homes within the 500 foot radius in subsection B.5.

G. A report by an independent structural engineer selected by the City and funded by the applicant has concluded that the culvert is sound and structurally adequate to support the existing and proposed improvements or will be made so as part of the proposed project.

H. The proposed addition will not adversely affect the creek.

I. The proposed addition will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use, or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

17.08.110 Replacement of a single-family homes where home destroyed due to natural disaster – permits required.

Notwithstanding Section 17.08.050, a single-family home may be replaced or reconstructed through the issuance of a Conditional Use Permit pursuant to Chapter 23B.32 of the Berkeley Zoning Ordinance if the Zoning Adjustments Board or the City Council on appeal makes all of the following findings:

A. The single-family home previously located on the parcel has been completely destroyed as a result of a natural disaster including, but not limited to, a fire, earthquake or flood.

B. There is no feasible alternative for development of the single-family home on an area outside of the setback required by Section 17.08.050 because of physical conditions on the site and/or the limitations imposed by otherwise applicable development standards.

C. The proposed single-family home will not be constructed to be larger than the gross floor area and footprint of the single-family home which existed prior to destruction by the natural disaster.

D. If a culvert exists on the parcel, a report by an independent structural engineer selected by the City and funded by the applicant has concluded that the culvert is sound and structurally adequate to support the existing and proposed improvements or will be made so as part of the proposed project.

E. The proposed project will not adversely affect the creek.

F. The proposed project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use, or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

17.08.120 Variances

Approval for construction prohibited by Sections 17.08.050 through 17.08.110 may be granted only by appeal to the Zoning Adjustments Board for a variance pursuant to Chapter 23B.44 of the Berkeley Municipal Code. The decision of the Zoning Adjustments Board may be appealed to the City Council pursuant to Chapter 23B.44.

Section 3. That Sections 17.08.060 through 17.08.090 of the Berkeley Municipal Code are renumbered to be Sections 17.08.130 through 17.08.160 respectively.

Section 4. Copies of this Ordinance shall be posted for two (2) days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King, Jr. Way. Within fifteen (15) days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.