



**OFFICE OF THE AGENCY DIRECTOR**  
1000 San Leandro Boulevard, Suite 300  
San Leandro, CA 94577  
TEL (510) 618-3452  
FAX (510) 351-1367

June 7, 2022

Honorable Board of Supervisors  
County of Alameda  
1221 Oak Street, Suite 536  
Oakland, CA 94612-4305

**SUBJECT: FIRST READING OF AMENDMENTS TO ORDINANCE SECTION 15.18.40 TO AUTHORIZE THE ONSITE WASTEWATER TREATMENT SYSTEM (OWTS) COMMISSION TO CONDUCT APPEAL HEARINGS**

Dear Board Members:

**RECOMMENDATION:**

- A. Conduct a first reading of amendments to Ordinance Section 15.18.40 to authorize the Onsite Wastewater Treatment System (OWTS) Commission to conduct appeal hearings; and
- B. Approve revised OWTS Bylaws, including the new Section Article VII, "Appeal Hearings"; and
- C. Authorize the OWTS Commission to make minor administrative changes to the Onsite Wastewater Treatment System Commission Bylaws for efficiency, consistency, or clarity, with approval as to form by County Counsel.

**DISCUSSION/SUMMARY:**

The current process for a property owner or other person aggrieved by any decision made by the OWTS Program pursuant to the Local Agency Management Program (LAMP) or OWTS Ordinance is to appeal to the Director of the Department of Environmental Health (Director). If the individual is not satisfied with the final determination of the Director, they may file an appeal with the Alameda County Board of Supervisors.

The proposed ordinance revisions create authority for the OWTS Commission to hear appeals in their advisory capacity and the new Bylaw Article VII Appeal Hearings establishes appeal hearing processes.

On May 25, 2022, the OWTS Commission unanimously approved recommending to the Alameda County Board of Supervisors' Transportation and Planning Committee that the Alameda County Board of Supervisors adopt the proposed ordinance revisions to add authority and processes for the OWTS Commission to conduct appeal hearings and approve revised Bylaws, including adding Section Article VII Appeal Hearings.

Honorable Board of Supervisors

Page 2 of 2

June 7, 2022


**FINANCING:**

No net County cost will be incurred as a result of your approval.

**VISION 2026 GOAL:**

The OWTS Commission conducting appeal hearings in an advisory capacity will promote a healthy environment and safe and livable communities which advances the 10x goal pathways of **Healthcare for All** and **Accessible Infrastructure** in support of our shared visions of **Safe and Livable Communities**, **Thriving and Resilient Population**, and **Healthy Environment**.

Sincerely,

DocuSigned by:  
  
CB284AE84C50405...

Colleen Chawla, Agency Director  
Health Care Services Agency

Attachments

cc: County Counsel

**ALAMEDA COUNTY ONSITE WASTEWATER  
TREATMENT SYSTEM COMMISSION**

**BYLAWS AND RULES OF PROCEDURE**

**Article I  
General Provisions**

Section 1.1.           Name of Commission. The name of the Commission is the Alameda County Onsite Wastewater Treatment System Commission" (hereinafter "the Commission")

Section 1.2.           Purpose of Commission. The purpose of Commission is to discuss general and specific difficulties encountered in the onsite wastewater system program and possible remedies as contained in the Resolution establishing the Commission, [Resolution R-2011-355 passed November 1, 2011].

Concerns include difficulties with the permit process, fees, scheduling of inspections, maintenance of onsite wastewater treatment systems and new technology. Site specific matters may also be discussed.

The discussions will be used by the Department to clarify what works and what can be improved upon within Chapter 15.18 of the County General Ordinance, the Onsite Wastewater Treatment System and Individual/Small Water System Ordinance, and their Regulations and within the Department's operating procedures.

Section 1.3.           Purpose of Rules. The purpose of these rules is to provide for orderly and fair conduct of the meetings, hearings, and other business of the Commission.

Section 1.4           Change to Bylaws and Rules. These Bylaws and Rules are approved by the Board of Supervisors. The OWTS Commissioners may make minor administrative changes to the Bylaws and Rules for efficiency, consistency, or clarity, with approval as to form by County Counsel.

## **Article II Definitions**

- Section 2.1. "Board" means the Alameda County Board Of Supervisors.
- Section 2.2. "Commission" means the Alameda County Onsite Wastewater Treatment System Commission.
- Section 2.3. "Department" means the Alameda County Department of `
- Section 2.4 "Meeting" means any regular, special, or adjourned meeting of the Commission.
- Section 2.5. "Member" means each of the seven (7) members appointed to the Commission by the Board of Supervisors. The appointments, as approved by the Board on November 11, 2011 are:  
District 1 – Two (2) Appointees  
District 2 – Two (2) Appointees  
District 3 – No (0) Appointees  
District 4 – Two (2) Appointees  
District 5 – One (1) Appointee
- Section 2.6. Majority Vote. "Majority Vote" means a majority of votes cast, to include yeas, nays and abstentions.

## **Article III Commission Meetings, Quorum**

- Section 3.1. Regular Meetings. Regular meetings of the Commission shall be held once every six months in a central location convenient to property owners with septic systems, such as in Castro Valley, Dublin, or Sunol areas. If the Commission, or Department if the Commission concurs, determines an additional meeting would be beneficial two (2) additional meetings may be held in any calendar year.
- Section 3.2. Special Meetings. Special meetings of the Commission may be called by the Chair or a majority of the Commission. The order calling the special meeting shall specify the time of the meeting and the business to be transacted and no other business shall be transacted at that meeting.
- Section 3.3. Adjourned Meetings. Any meeting of the Commission may be adjourned to any date prior to the date established for the next succeeding regular meeting of the Commission.

- Section 3.4. Quorum. A quorum will consist of a simple majority. Depending on the number of appointed Members, a simple majority will consist of at least half of the number of appointed Members plus one Member. Action may be taken on a majority vote of the quorum present.
- Section 3.5. Absence of Quorum. In the absence of a quorum, the Members present may proceed with the meeting and discussion of items on the meeting Agenda, but shall not take any official actions. If it is known that a quorum will not be in attendance in advance of a meeting the chair may cancel and/or reschedule the meeting.
- Section 3.6. Absence of Members. If any Member is unable to attend a regular or special meeting, that Member shall notify Department staff by the day before the meeting for an excused absence. Any Member who, without the approval of the Commission, has unexcused absences from three successive regular or special meetings or who has not attended at least two-thirds of the regular or special meetings in a three year period shall be recommend for termination to the Board with a request for a new appointment.
- Section 3.7. New Appointment. When a Member resigns or is terminated, the Department shall request the Board appoint a new Member. The Board must approve the resignation of the former Member and appointment of the new Member.
- Section 3.8 Meetings Open to the Public. All meetings of the Commission are open to the public.

#### **Article IV Presiding Officer**

- Section 4.1. Chair and Vice Chair. The Members of the Commission shall annually elect a Chair and Vice Chair who shall serve for two (2) years.
- Section 4.2. Successor to Chair and Vice Chair. At the last regular meeting of the Commission prior to expiration of the two year elected term, the Members of the Commission shall elect a Chair and Vice Chair for the next two years. There are no limits to the number of terms a chair and vice chair may serve, and terms may be consecutive.
- Section 4.3. Duties of Chair. The Chair shall preside at all meetings of the Commission and shall conduct the business of the Commission in the manner prescribed by these Bylaws. The Chair shall preserve

order and decorum and shall decide all questions of order subject to the action of a majority of the Commission.

- Section 4.4. Duties of Vice Chair. In the absence, or inability to act, of the Chair, the Vice Chair shall act as Chair, and when so acting shall have all of the powers and duties of the Chair, including the authority to call special meetings.

## **Article V Conduct of Business**

- Section 5.1. Order of Business. The business of each meeting of the Commission shall be transacted at the discretion of the Commission Chair, in accordance with the published agenda.

The regular order of business may be suspended at any time upon order of the Chair.

- Section 5.2. Roll Call. Each roll call of the Commission shall be in alphabetical order, except that the Chair shall be called last.

- Section 5.3. Roll Call Not Required. The roll need not be called in voting upon a motion except when requested by a Member. If the roll is not called, in the absence of objection, the Chair may order the motion unanimously approved.

- Section 5.4. Attendance. Members are expected to attend all meetings of the Commission. Members who cannot attend a meeting(s) must notify Department staff, preferably at least seventy-two (72) hours in advance of the scheduled meeting.

If any Member is absent at three consecutive meetings, the Board of Supervisors shall be notified and replacement of that Member will be recommended. A copy of that letter will be sent to the Member.

- Section 5.5. Robert's Rules of Order. Meetings shall be conducted pursuant to Robert's Rules of Order, except as modified by these Rules.

- Section 5.6. Standing Committees. Standing Committees may be created by a majority vote of the Commission. Standing Committees must be for a purpose consistent with the Resolution establishing this Commission. Standing Committees shall have at least one Member and may include Members of the public appointed by the Commission.

- Section 5.7. Ad Hoc Committee. Ad Hoc Committees may be created by a majority vote of the Commission. Ad Hoc Committees must be for a purpose consistent with the Resolution establishing this Commission and for a specific time period with a particular purpose, not one of a continuing nature. Ad Hoc Committees shall have at least one Member and may include Members of the public appointed by the Commission.
- Section 5.8. Open Forum. Open Forum is provided for any of the public wishing to speak on an item not listed on the agenda. Each speaker will be allowed time approximately three minute to speak, unless the Chair determines otherwise.
- Section 5.10 Conflict of Interest. Members of the Commission who have a material or economic interest (investments, business positions, interests in real property and income) in any item discussed by the Commission shall disclose that interest to the Commission prior to discussion and shall be required to abstain from voting on any action related to such item.

## **Article VI Staff Support**

- Section 6.1. Staff Support. The Department shall name a staff member to serve as Staff Support to the Commission.
- Section 6.2. Duties of the Staff Support. The Staff Support shall have the following duties and responsibilities:
- (a) To attend each meeting of the Commission;
  - (b) To maintain an official record of all proceedings, meetings, hearings and actions of the Commission;
  - (c) To prepare an agenda of each meeting; and
  - (d) To notify all Commission Members of the time and place of any all regular and special meetings.

## **Article VII Appeal Hearings**

- Section 7.1. Authority For Appeal Hearing. In accordance with the OWTS Ordinance, the Commission will conduct an appeal hearing when there is a timely appeal of a decision received by the Director of Environmental Health a property owner or other person (the

Appellant) aggrieved by any decision made pursuant to OWTS Ordinance or LAMP Documents. The appeal for a hearing before the Commission must be made in writing to Director and specify grounds for the appeal. The written appeal must be received by the Director no later than fifteen (15) business days after the decision.

Section 7.2.

Duties of the Staff Support. Staff Support shall, within 15 days, have the following duties and responsibilities:

7.2.1 Schedule Appeal Hearing Date.

7.2.1.1 Set Meeting – Regular Meeting on Calendar Within 45 Days. Following receipt of a timely appeal, the Director shall direct staff to schedule the appeal hearing for the next routine meeting of the Commission.

OR

7.2.1.2 Set Meeting - No Commission Meeting on Calendar Within 45 Days. If there is not a routine meeting on calendar within 45 calendar days of receipt of the appeal, staff shall contact Commission members and arrange a special meeting of the Commission to conduct the appeal hearing within in 45 calendar days.

7.2.2 Notice. Send notice to the Appellant by US mail and, if an email address was provided by the Appellant by email also, of the date of the appeal hearing and attach a copy of this *Section 7 Appeal Hearings* of the OWTS Commission bylaws. Information shall also be provided on where to send any additional materials in accordance with Section 7.3. Staff shall provide a copy of the notice, with the attachment, to the Chief of Land and Water Protection Division.

7.2.3 Prepare And Distribute Hearing Packet. Prepare and provide the Commission a hearing packet at least 72 hours before the appeal hearing.

7.2.4 Appeal Summary For Commission. Provide a brief summary of the application, Staff determination, and the basis of the appeal to the Director at the Commission Appeals Hearing.

7.2.5 Determination Summary for Director. Prepare Commission Appeal Hearing meeting minutes documenting the motion, and Commission Member votes, brief comments, and decision and provide to the Director within two (2) business days of the vote.



7.2.6 Distribution of Final Department Determination. In accordance with Alameda County Ordinance 15.18.40, after considering the determination and comments from the Commission Appeal Hearing, the Director shall issue the final appeal decision within 20 days of the issuance of the OWTS Commission determination, and it shall be the final Departmental decision. The Director shall have Staff provide a copy of the final Department decision to the Appellant and, if the Appellant is not the property owner, a copy shall be provided to the property owner. Staff shall also provide a copy of the final Departmental decision to the OWTS Commission members prior to the next OWTS Commission meeting.

### Section 7.3

#### Hearing Packet.

7.3.1 Required Materials. The hearing packet shall contain copy of the original written appeal received by the Department.

7.3.2 Additional Materials. Additional Materials may be included in the Hearing Packet as follows:

7.3.2.1 Department. The Department may provide copies of relevant sections of the any ordinance, LAMP documents, correspondence with the Appellant, and documents from the Department file to be included in the Commission Hearing Packet. The Department (directly or through Staff Support) shall provide copies of any additional materials to the Appellant at least ten (10) calendar days prior to the appeal hearing date with information on how Appellant may submit additional materials to Staff Support to be included in the Hearing Packet.

7.3.2.1 Appellant. If additional materials are submitted by the Department, the Appellant may also submit additional materials to include in the Hearing Packet. Any additional materials must be received by Staff Support at least five (5) calendar days prior to appeal hearing date or they may not be included in the Commission hearing packet.

### Section 7.4

Hearing Procedures. After the Commission meeting is called to order the appeal hearing shall occur in the order it is placed on the agenda unless there is a determination by the Chair to conduct the appeal hearing in a different order. Any Commission Member may request that the Chair conduct the appeal hearing in a different

order. There must be a quorum of the Commission in attendance to conduct the appeal hearing. A quorum will consist of a simple majority. The Chair may allow recess of the meeting to obtain a quorum. If there is not a quorum present, the appeal hearing shall be continued to the soonest possible date.

Once called, the appeal hearing shall proceed in the following order:

7.4.1 Open Hearing. Once the matter is called, the Chair shall explain the following:

This is an appeal hearing on a decision from a determination by the Onsite Wastewater System Program of the Department of Environmental Health made pursuant to OWTS Ordinance or LAMP Documents. The Commission will hear and consider relevant evidence, objections and protests. The Commission will issue its decision at the conclusion of today's appeal hearing. Staff will then provide the Commission determination to the Director in writing, which may be a copy of the meeting minutes or a separate summary of the appeal hearing determination.

7.4.2 Staff Oral Comments. DEH Onsite Wastewater System Program staff shall provide a brief summary of the application, their determination, and the basis of the appeal. Commission Members may ask questions of the Onsite Wastewater System Program staff both during and after their presentation.

7.4.3 Appellant Oral Comments. Appellant, at their choice, may provide a brief summary of their position on the determination and speak to the basis of their appeal. Commission Members may ask questions of the Appellant both during and after the Appellant's presentation.

7.4.4 Public Comment. The Commission Chair may allow comments from other interested individuals. Individuals must complete a speaker card that will be provided to the Chair. The Chair may limit these comments to three minutes. If the appeal hearing is being conducted virtually, instructions will be provided by the Chair or Staff Support on how individuals are to indicate that they are interested in providing comments.

7.4.5 Deliberations. Commission Members shall discuss the information presented in the Hearing Packet and orally during the appeal hearing. Commission Members may ask further questions of the Onsite Wastewater System Program staff and Appellant during deliberations.

Section 7.5

Commission Determination.

7.5.1 Motion for Determination. After a motion, Members will vote for a decision on the appeal. Commission may vote to affirm the Department's Decision or reject the Decision in part or its entirety. The Commission may revise the Decision so it is consistent with the requirements of the OWTS Ordinance, LAMP, property specifications and local, state and federal legal requirements.

7.5.2. Determination. There must be a quorum of the Commission in attendance to conduct the appeal hearing. A quorum will consist of a simple majority. Depending on the number of appointed members, a simple majority will consist of at least half of the number of appointed members plus one member. The motion must pass by a majority vote of the quorum present. The Commission may, but is not required to, provide brief comments, such as the basis for their determination. The brief comments will be included as part of the determination.

7.5.3 Reporting Determination. There will be no written decision, but the motion, votes and brief comments shall be documented by Staff Support and provided to the Director in writing within two (2) business days of the vote, business days do not include weekends or official County holidays. Staff Support shall also include the motion, vote and brief comments in the minutes.

Approved as to Form:  
Donna R Ziegler, County Counsel

DocuSigned by:  
  
By: \_\_\_\_\_  
Kathleen Pacheco, Senior Deputy County Counsel

Date: 6/6/2022  
\_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 15.18  
OF THE ALAMEDA COUNTY GENERAL ORDINANCE CODE  
REGARDING ONSITE WASTEWATER TREATMENT SYSTEMS

Chapter 15.18, of the Alameda County General Ordinance Code, section 15.18.140 Appeals, is deleted and replaced with the following:

**15.18.140 Appeals**

- A. **Appeal.** Any property owner or other person aggrieved by any decision made pursuant to this Chapter or any LAMP Documents (the Appellant) may request a hearing on the decision by appealing to the Director of the Department of Environmental Health (Director). The appeal must be in writing and must specify the grounds for appeal. The written appeal must be actually received by the Department no later than fifteen (15) days after actual receipt by the property owner or other person of the decision or fifteen (15) days after the date notice of the decision is mailed by the Department, whichever is sooner. The Director shall schedule an appeal hearing before the Alameda County Onsite Wastewater Treatment System (OWTS) Commission and a Notice of the Hearing on that appeal shall be mailed within fifteen (15) days after receipt by the Department of a timely appeal. The Director may resolve the issues with the Appellant, who can then withdraw the appeal.
- B. **Appeal to the Onsite Wastewater Treatment System Commission.**
1. The appeal hearing shall be conducted in accordance with the procedures set forth in the OWTS Commission Bylaws.
  2. After the appeal hearing, the Director shall consider the OWTS Commission determination and may revise the decision of the Department, in full or part, consistent with the OWTS Commission determination. The Director shall issue the final appeal decision within 20 days of the OWTS Commission determination, and it shall be the final Departmental decision.
- C. **Appeal to the Board of Supervisors.** If the Appellant is not satisfied with the final Departmental decision, the Appellant may file an appeal with the Alameda County Board of Supervisors. That appeal to the Board must be made in writing and must specify the grounds for appeal. That written appeal must be actually received by the Clerk of the Board no later than fifteen (15) days after the date of mailing by the Director of the final Departmental decision. Thereafter, following receipt by the Clerk of the Board of a timely appeal, the Board shall promptly schedule a Hearing on the appeal. The decision by the Board after the Hearing shall be final.

These provisions shall take effect and be in force thirty days from and after the date of passage. Before the expiration of fifteen days after its passage it shall be published once with the names of the members voting for and against the same in newspaper of general circulation published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the 12<sup>th</sup> day of July 2022, by the following called vote:

AYES: Supervisors Brown, Haubert, Miley, and Valle - 4  
NOES: none  
EXCUSED: Supervisor Carson




Keith Carson, President of the Board of Supervisors  
of the County of Alameda, State of California

Approved as to Form  
DONNA R. ZIEGLER, County Counsel

DocuSigned by:

By Kathleen Pacheco  
Kathleen Pacheco, SI, Deputy County Counsel



Clerk of the Board of Supervisors of the  
County of Alameda, State of California  
Deputy