

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
THE SALT CREEK SEWER BASIN DEVELOPMENT IMPACT
FEE

WHEREAS, the City's General Plan Land Use and Public Facilities Elements require that adequate public facilities be available to accommodate increased population created by new development; and

WHEREAS, new development within the City of Chula Vista creates adverse impacts and places additional burdens on certain existing public facilities; and

WHEREAS, land developers within the City are required to mitigate the impacts created by their development by the construction of new facilities or improvement of existing facilities needed to provide service to their respective developments or by the payment of a fee to finance their fair share portion of the total cost of such new facilities or improvements; and

WHEREAS, sewer facilities are one of the many types of facilities that are impacted by new development; and

WHEREAS, the impact on sewer facilities has been determined to be in direct relationship to the amount of population generated by the development or the gross acreage of the commercial or industrial land in the development; and

WHEREAS, the Salt Creek Sewer Basin (Basin) is that area of land through which wastewater will flow by gravity from just west of the Upper Otay Reservoir into the Otay River Valley (which also includes the portion land referred to as "Wolf Canyon Basin"); and

WHEREAS, on December 6, 1994, City Council, by Ordinance No. 2617, approved the establishment of the Development Impact Fee to pay for sewer improvements within the Basin as a condition of issuance of building permits; and

WHEREAS, on August 24, 2004, City Council, by Ordinance No. 2974, increased the Development Impact Fee to \$1,330 to cover the costs associated with the financing and construction of sewer improvements identified in this ordinance; and

WHEREAS, the modification of the Development Impact Fee, applicable to all new sewer connections, is proposed as a means of funding the necessary sewer improvements that will benefit properties within the Basin; and

WHEREAS, consistent with California Government Code Sections 66000, *et seq.*, the City Council recently caused a study to be conducted to reanalyze and reevaluate the adequacy of the existing and future Salt Creek sewer facilities to sustain the long-term growth of the Basin, and further reevaluate and reanalyze the fee necessary to pay for the sewer facilities, which study

was prepared by Bartle Wells Associates, Inc. and is entitled “Salt Creek Sewer Basin Development Impact Fee Study” (the “Report”) dated June 2015; and

WHEREAS, the Report has determined that new development within the Basin will create adverse impacts on the City's existing sewer facilities, to wit: there are no existing sewers which can serve gravity sewage flows expected to be generated from new development within the Basin. This impact must be mitigated by the financing and construction of certain sewer facilities identified in this ordinance; and

WHEREAS, the Report includes an estimate of ultimate sewer flows anticipated from the Basin; recommends sewer facilities needed to transport these flows, including additional facilities known as Rock Mountain Road/Main Street Trunk Sewer, Heritage Road Trunk Sewer, and Hunte Parkway Extension; and establishes a fee payable by persons obtaining building permits for developments within the Basin benefiting from the construction of these facilities; and

WHEREAS, the Report supports, and staff recommends, the modification of the Development Impact Fee to require new users within the Basin to fully fund the sewer facilities required to mitigate their impacts without imposing a burden on existing customers; and

WHEREAS, City staff recommends and this ordinance establishes, in accordance with the Report, annual adjustments to the fee occurring each October 1st, based on the July to July annual change in the Engineering News-Record Construction Cost Index, for the Los Angeles area to ensure that the Development Impact Fee is adjusted as new facility construction costs increase; and

WHEREAS, the Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the proposed ordinance is not a “Project” as defined under Section 15378(b)(4) of the CEQA Guidelines because the activity consists of modifying a Development Impact Fee program in accordance with the Report. Although no environmental review is necessary at this time, when projects covered by the DIF are further defined, environmental review will be necessary prior to the commencement of any of the improvements identified in the DIF Program.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I.

The City Council finds after consideration of the evidence presented to it at the hearing, including documents, testimony and reports, that:

1. The legislative findings and determinations set forth in the ordinances referred to in the above recitals continue to be true and correct; and
2. Developers of land within the City should be required to mitigate the burden created by development through the payment of a fee to finance a development's fair share of the total cost of the sewer improvements; and

3. The imposition of the Development Impact Fee on all future developments within the Basin for which building permits have not been issued is necessary in order to protect the public health, safety and welfare; and
4. The amount of the fee levied by this ordinance does not exceed the estimated reasonable cost of providing the sewer facilities and service for which the fee is established (i.e. facilities serving developments within the Basin) in accordance with California Government Code Section 66005; and
5. Including an annual, indexed adjustment to the impact fee is necessary to ensure that the costs of the improvements at the time of construction are more accurately represented and calculated and that the ENR Construction Cost Index for the Los Angeles Area is an appropriate index to use to estimate the increased costs of construction; and
6. The collection of the Development Impact Fee, established by Ordinance No. 2617, at the time the building permit is issued is necessary and will ensure that funds will be available to pay for the financing and construction costs of sewer improvements required within the Basin; and

Section II. California Environmental Quality Act (CEQA) Findings for Statutory Exemption

The City Council of the City of Chula Vista does hereby find that the Development Impact Fee herein imposed is for the purpose of mitigating the financing and construction costs of those facilities necessary to maintain service within the Basin. The proposed activity does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. Therefore, the City finds that the adoption of this ordinance is statutorily exempt under the provisions of CEQA Guidelines Section 15060(c)(3).

Section III. "Facilities"

The City Council of the City of Chula Vista does hereby find that the facilities which are subject matter of the impact Fee are fully described in Table 2 of the Report on page 11, attached as Exhibit 1, and incorporated herein by this reference, (Facilities). The locations at which the Facilities will be constructed are shown on Figure 1, which is included in the Report. The City Council may modify or amend the list of projects herein considered to be part of the Facilities from time to time by written resolution in order to maintain compliance with the City's Capital Improvement Program or to reflect changes in land development and estimated and actual wastewater flow.

Section IV. Territory to Which Fee is Applicable

The City Council of the City of Chula Vista does hereby find that the area of the City of Chula Vista to which the Impact Fee herein established shall be applicable is set forth on Figure 2 of the Report.

Section V. Adjusting the Development Impact Fee

The City Council of the City of Chula Vista does hereby find that the amount of the Development Impact Fee shall be adjusted, starting on October 1, 2015 and on each October 1st thereafter, based on the one-year change (from July to July) in the Los Angeles Construction Cost Index as published monthly in the Engineering News Record. Adjustments to the above fee based upon the Construction Cost Index shall be automatic and shall not require further action of the City Council.

Section VI. Time Limit for Protest and Judicial Action

Any judicial action or proceeding to attack, review, set aside, void or annul this Ordinance shall be brought within the period as established by law.

In accordance with Government Code Section 66022, the 120 period to attack, review, set aside, void or annul this ordinance shall commence on the effective date of this Ordinance.

Section VII. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section VIII. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IX. Effective Date

This Ordinance shall become effective sixty (60) days after its second reading and adoption.

Section X. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Richard A. Hopkins
Director of Public Works

Glen R. Googins
City Attorney