

ORDINANCE NO. 2384

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA, CALIFORNIA, ADOPTING TELEGRAPH CANYON DRAINAGE PLAN AND ESTABLISHING THE TELEGRAPH CANYON DRAINAGE FEE

The City Council of the City of Chula Vista, California does ordain as follows:

**SECTION I.** Findings and Determinations. The City Council of the City of Chula Vista, California, hereby makes the following legislative findings and determinations:

- A. Development in the Telegraph Canyon Drainage Basin requires the construction of drainage facilities which are additional to drainage facilities serving the area at the time of adoption of this ordinance.
- B. A report entitled, "City of Chula Vista, California, Telegraph Canyon Drainage Plan," dated June 6, 1990, and on file with the City Clerk, establishes the boundaries of the Telegraph Canyon Drainage Basin, the boundaries of the Telegraph Canyon Drainage Improvement District and the boundaries of the area of benefit of the Telegraph Canyon Drainage Improvements, the extent of the additional drainage facilities needed to accommodate new development in the Drainage District and a proposed allocation of fees to pay for the drainage facilities. The Telegraph Canyon Drainage Plan is hereby approved as the plan for construction of planned local drainage facilities for the Telegraph Canyon Drainage District, including the facilities identified in the "Telegraph Canyon Channel Nexus Study," dated November 24, 2015, ("Updated Nexus Study").
- C. The Telegraph Canyon Drainage Plan is consistent with the City's General Plan and will ensure that increased surface and storm water runoff resulting from or attributable to new development within the drainage basin will be removed in a manner which furthers the public health, safety and welfare. In addition to participation in the construction of the planned drainage facilities as set forth in the Drainage Plan, developers of property within the Drainage District will be required to construct other on and off site drainage facilities as a condition of development pursuant to existing laws and policies of the City.

The Updated Nexus Study is consistent with the City's General Plan and will ensure that increased surface and storm water runoff resulting from or attributable to new development within the drainage basin will be removed in a manner which furthers the public health, safety and welfare. In addition to participation in the construction of drainage facilities as set forth in the Study, developers of property within the benefit area will be required to construct other on and off site drainage facilities as a condition of development pursuant to existing laws and policies of the City.

- D. The development of property within the Telegraph Canyon Drainage Basin will require the construction of those drainage facilities described in the Telegraph Canyon Drainage Plan, [the Updated Nexus Study](#), and other on and off site drainage facilities. Properties within the Drainage District shown in the Drainage Plan benefit by construction of the drainage facilities set forth in the Plan to the extent that payment of the fee and construction of the drainage facilities will allow the properties to be developed according to the general plan.
- E. For the reasons set forth in the Telegraph Canyon Drainage Plan and in the reports relied upon and referenced in that Plan, [and the Updated Nexus Study](#), and based upon the City's General Plan, and the matters presented to the City Council at the public hearing at which this Ordinance was considered and the laws and policies of the City relating to development of property, the City Council makes the following additional legislative findings and determinations:
1. The Planned Drainage Facilities as described in the Telegraph Canyon Drainage Plan, [and the Updated Nexus Study](#), are required in order to accommodate the surface and storm water run off resulting from development of property within the Telegraph Canyon Drainage District. The estimated cost of the proposed facilities are based upon standard engineering practices and are reasonably determined. The Planned Drainage Facilities described in the Plan, [and the Updated Nexus Study](#), are necessary to allow development of properties within the District and to mitigate the impact resulting from the development of those properties. Therefore, each property should contribute to the cost of the facilities based upon a flat amount per gross acre as set forth in the Drainage Plan. The flat, per acre fee established by this Ordinance is reasonable and fairly apportioned based upon the benefit conferred upon each property or upon the need for the facilities created by the development of property within the Drainage Improvement Benefit Area.
  2. There is a reasonable relationship between the use of the fee for the construction of the Planned Drainage Facilities and the development of the property within the Drainage basin because development increases run off and retards the natural ability of the undeveloped land to absorb storm and surface waters.
  3. There is a reasonable relationship between the construction of the Planned Drainage Facility and the various land uses for the property set forth on the City's General Plan because the run off and surface water diversion resulting from development of the property as shown on the City's General Plan will on the average be the same for the various land uses permitted within the Plan area.

4. The amount of the fees to be collected pursuant to this Ordinance does not exceed the estimated cost of providing the facilities. If, at any time, it appears that the amount of the fees will exceed the estimated cost of the proposed facilities, including all administrative and incidental costs, then the fee shall be adjusted accordingly.

**SECTION II.** Determination of Costs. The City Council finds that the total cost of providing the planned drainage facility as estimated in 1990 is \$7,745,100.00. If the costs are apportioned uniformly on a per acre basis to the benefited properties as shown in the Telegraph Canyon Drainage Plan, the pro rata charge for each gross acre would be \$3,922.00.

**SECTION III.** Drainage Fees Established. A drainage fee in the amount of \$3,922.00 per gross benefit acre of undeveloped land is hereby established for each development project within the Telegraph Canyon Drainage Benefit area.

The fee is a requirement of each development project, tentative map, tentative parcel map, or building permit within the benefit area and shall be paid before the approval by the City of the development project. For any development for which a fee was not paid at the time of approval of the final map or parcel map, the fee shall be paid before the issuance of the first building permit for the development. Payment at the time established by this Section is necessary to assure that the drainage facilities identified in this Plan may be constructed concurrent with need.

For the purpose of determining fees, gross benefit acreage shall mean all land area within the outermost boundaries of a subdivision or development including all areas dedicated for public streets. The fees for fractional acreages shall be prorated. The Telegraph Canyon Road right-of-way and the Telegraph Canyon channel easement are excluded from the gross benefit acreage.

**SECTION IV.** Adjustment of Fees. The City Council shall periodically, but not less than once annually, review the amount of the fee established by this Ordinance. The City Council, by resolution, may adjust the amount of the fee as necessary to reflect changes in the Engineering News Record Construction Index, the cost of the drainage facilities, changes in land use designation and other sound engineering and financing information. The ENR Construction Index, for June, 1990, is \$4,734.77.

**SECTION V.** Use of Fees. The fees collected pursuant to this Ordinance shall be deposited in a separate fund as designated by the Finance Director and shall be expended only for the following purposes:

- A. To pay for the construction of facilities by the City, or to reimburse the City for facilities installed by the City with funds from other resources;
- B. To reimburse developers or subdividers of property who have installed all or a portion of the Planned Local Drainage Facilities;
- C. To repay indebtedness incurred by the City to construct the Planned Drainage Facilities should the City Council determine to incur such indebtedness;

- D. To reimburse the City for the cost of engineering and administrative services to form the district, establish the fee and construct the facilities.

**SECTION VI.** Construction of Facilities of Subdivider. The City may require, as a condition of approval of a subdivision, that the subdivider contract or finance the construction of all or a portion of the Planned Drainage Facilities. If such a requirement is imposed, the subdivider shall receive a credit against the fee imposed by this Ordinance in an amount equal to the actual cost of construction, including incidental expenses, of the facilities as verified and approved by the City Engineer. If the actual construction cost exceeds the amount of the fee which would otherwise be imposed, the Subdivider may request to be reimbursed for the difference from fees collected by the City. The reimbursement shall be made pursuant to a reimbursement agreement entered into between the City and Subdivider.

**SECTION VII.** Credit for Fees Previously Paid. Whenever a building permit is issued for a development project property for which the fees established by this Ordinance were paid at the time of receiving a parcel map or final map, or the Drainage Facilities were constructed by the developer or subdivider of the property, a full credit for such payment of construction shall be given against the fee due as a condition of the building permit.

**SECTION VIII.** Applicability to Land Within County. For those areas of the Drainage District within the County of San Diego, the following provisions shall apply:

- A. Upon annexation to the City, this Ordinance shall immediately become applicable to property located outside of the jurisdiction boundaries of the City on the date of adoption of this Ordinance.
- B. Pursuant to Section 66453 of the Government Code, the City Engineer shall file a map of the Telegraph Canyon Drainage District with the County of San Diego, and shall request that all subdivisions wholly or partially within the District be referred to the City Engineer for a recommendation. The City Engineer shall review each map for compliance with the Drainage Plan and shall recommend such conditions or exactions which will ensure that any subdivision approved by the County shall comply with the provisions of the Drainage Plan.
- C. The City shall work with and encourage the County of San Diego to adopt the Drainage Fee for the unincorporated area within the drainage basin.

**SECTION IX.** Exemptions. The following development project is exempt from the provisions of this Ordinance.

**SECTION X.** Definitions. For the purpose of this Ordinance, the following words or phrases shall be construed as defined in this Section, unless from the context, it appears that a different meaning is intended.

- A. "Building permit" means a permit required by and issued pursuant to the Uniform Building Code as adopted by reference by this City.

- B. "Development project or development" means any activity described in Section 66000(a) of the Government Code and includes, but is not limited to, any activity which results or may result in the physical alteration of land requiring a subdivision map, zoning permit or approval or permit to build.
- C. "Drainage District" means the Telegraph Canyon Drainage District as described in the Telegraph Canyon Drainage Plan, prepared by Willdan Associates and approved by this Ordinance.
- D. "Drainage Improvement Benefit Area" means the Telegraph Canyon Drainage Improvement Benefit Area described in the Telegraph Canyon Drainage Plan and the Updated Nexus Study.
- E. "Drainage Plan" means the Telegraph Canyon Drainage Plan.
- F. "Planned Drainage Improvement" means the specific drainage improvements described in the Drainage Plan.

**SECTION XI.** Procedure for Fee Waiver or Reduction. Any developer who, because of the nature or type of uses proposed for a development project, contends that application of the fee imposed by this Ordinance is unconstitutional, or unrelated to purposes for which the fee is imposed or to the burdens of the development, may apply to the City Council for a waiver or reduction of the fee. The application shall be made in writing and filed with the City Clerk not later than ten (10) days after notice of the public hearing on the development permit application for the project is given, or if no development permit is required, at the time of filing of the building permit application. The application shall state in detail the factual basis for the claim of waiver or reduction. The City Council shall consider the application within sixty (60) days after its filing. The decision of the City Council shall be final. If a reduction or waiver is granted, any change in use within the project shall subject the development to payment of the fee. The procedure provided by this Section is additional to any other procedure authorized by law for protesting or challenging the fee imposed by this Ordinance.

**SECTION XII.** Authority. This Ordinance is adopted pursuant to the City's constitutional and charter policy and taxing powers and pursuant to Government Code 66000, *et seq.*

This ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk shall cause this Ordinance to be published pursuant to the provisions of City Charter Section 312.