

ORDINANCE NO. 2533

AN ORDINANCE OF THE CITY OF CHULA VISTA, CALIFORNIA
ESTABLISHING THE TELEGRAPH CANYON SEWER DEVELOPMENT
IMPACT FEE TO PAY FOR PARALLEL SEWER IMPROVEMENTS AS A
CONDITION OF ISSUANCE OF BUILDING PERMITS FOR
CONSTRUCTION IN THE TELEGRAPH CANYON SEWER BASIN

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, the Telegraph Canyon Sewer Basin ("Basin") is that area of land within the City of Chula Vista on which wastewater, if deposited in sufficient quantities, would flow downstream to a common point, which area is shown on the map attached hereto as Exhibit "A"; and,

WHEREAS, on January 23, 1990 the City Council passed Resolution No. 15449 approving the Telegraph Canyon Basin Sewer Monitoring and Gravity Basin Usage Agreement, which required the City to prepare the Telegraph Canyon Basin Improvement and Financing Plan. Said Basin Plan was to include an estimate of ultimate sewer flows anticipated within the Basin; recommend improvements to handle the incremental increases of sewage flow anticipated within the Basin; and establish a fee payable by all dwelling units discharging into the Basin and benefiting from trunk sewer improvements; and,

WHEREAS, on July 24, 1990 the City Council passed Resolution No. 15760 approving an agreement between the City of Chula Vista and Willdan Associates for preparation of said Basin Plan; and,

WHEREAS, pursuant to said agreement, Willdan Associates have prepared said Basin Plan which is contained and more fully articulated in a document entitled: "Telegraph Canyon Sewer Basin Improvement and Financing Plan" dated July 31, 1992 ("Original Plan") and the subsequent addendum entitled "Addendum to Telegraph Canyon Sewer Basin Plan" dated September 25, 1992 ("Addendum"), which documents are incorporated herein by reference ("Basin Plan");

WHEREAS, the Basin Plan has determined that new development within the Telegraph Canyon Sewer Basin will create adverse impacts on the City's existing sewer facilities--to wit, that the sewage expected to be generated from new development within the Basin will exceed the capacity of the current sewer system to handle said additional sewage--which must be mitigated by the financing and construction of certain sewer facilities identified in this ordinance; and,

WHEREAS, sewer improvements and a fee to be levied on new development in the Telegraph Canyon Sewer Basin have been justified in the Basin Plan; and,

WHEREAS, developers of land within the City should be required to mitigate the burden created by development through the construction or improvement of sewer facilities within the boundaries of the development, the construction or improvement of sewer facilities outside the boundaries of the development which

are needed to provide service to the development in accordance with the City standards and the payment of a fee to finance a development's portion of the total cost of the public facilities; and,

WHEREAS, all development within the City contributes to the cumulative burden on various sewer facilities 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, on September 22, 1992 the City Council passed Resolution No. 16819 setting a public hearing to approve the Telegraph Canyon Sewer Basin Plan and establish the Telegraph Canyon Sewer Development Impact Fee; and,

WHEREAS, on October 20, 1992 City Council held a duly noticed hearing at which oral or written presentations could be made; and,

WHEREAS, the City Council determined, based upon the evidence presented at the hearing, including, but not limited to, the Basin Plan and the various reports and other information received by the City Council in the course of its business, that imposition of the sewer facilities development impact fee on all developments within the Telegraph Canyon Sewer Basin east of Interstate 805 in the City of Chula Vista for which building permits have not yet been issued is necessary in order to protect the public safety and welfare and to ensure effective implementation of the City's General Plan; and,

WHEREAS, the City Council has determined that the amount of the fee levied by this ordinance does not exceed the estimated cost of providing the public facilities.

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

SECTION I. Facilities.

The facilities which are the subject matter of the fee herein established are fully described in the Original Plan at page 13 thereof, and in the Addendum at page 1, and the locations at which they will be constructed as are more fully described in the Original Plan on file in the Office of the City Engineer at Plates 1 through 14 under the section thereof entitled "Improvement Locations", summarized on the attached Exhibit "A" for the purposes of convenience only, all of which facilities may be modified by the City Council from time to time by resolution ("Facilities"). The City Council may modify or amend the list of projects herein considered to be part of the Facilities 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 II. Territory to Which Fee Applicable.

The area of the City of Chula Vista to which the Fee herein established shall be applicable shall be within the Telegraph Canyon Sewer Basin east of Interstate 805. The Telegraph Canyon Sewer Basin is defined as that territory shown on a map on file in the Office of the City Engineer entitled "Telegraph Canyon Sewer Basin" and dated October 20, 1992, which area is shown for convenience only and without legal precision on the attached Exhibit "B" ("Territory").

SECTION III. Establishment of Fee.

A development impact fee ("Fee"), to be expressed on a per Equivalent Dwelling Unit ("EDU") basis, and payable on the issuance of a building permit for a development project within the Territory, is hereby established.

SECTION IV. Determination of Equivalent Development Units.

Each single family detached dwelling or single family attached dwelling shall be considered one EDU for purposes of this Fee. Each unit within a multi-family dwelling shall be considered .75 EDU. Every other commercial, industrial, non-profit, public or quasi-public, or other usage shall be charged at a rate calculated in accordance with the method for estimating EDUs set forth in the Master Fee Schedule for the purpose of estimated Sewer Capacity Charges currently located in Chapter XII ("Engineering - Sewer), Section A.3. or successor thereto, as same may from time to time be modified by the City Council.

SECTION V. Time to Determine Amount Due; Advance Payment Prohibited

The Fee for each development shall be calculated at the time of building permit issuance and shall be the amount as indicated at that time and not when the tentative map or final map was granted or applied for, or when the building permit plan check was conducted, or when application was made for the building permit.

SECTION VI. Purpose and Use of Fee.

The purpose of the Fee is to pay for the planning, design, construction, repair, maintenance, and/or financing (including the cost of interest and other financing costs as appropriate) of the Facilities, or reimbursement to the City or other third parties for advancing costs actually incurred for planning, designing, constructing, or financing the Facilities. Any use of

the Fee shall receive the advance consent of the City Council and be used in a manner consistent with the purpose of the Fee.

SECTION VII. Amount of Fee.

The initial amount of the Fee shall be \$184 per EDU. The City Council shall annually review the amount of the Fee. The City Council may adjust the amount of this Fee as necessary to reflect changes in the costs of the Facilities as may be reflected by such index as the Council deems appropriate, such as the Engineering-News Record Construction Index, or such other basis; or changes in the type, size, location or cost of the Facilities to be financed by the Fee, changes in land use on approved tentative maps or Specific Plan Amendments, and upon other sound engineering, financing and planning information. Adjustments to the above Fee may be made by resolution amending the Master Fee Schedule.

SECTION VIII. Authority for Accounting and Expenditures

The proceeds collected from the imposition of the Fee shall be deposited into a public facility financing fund ("Telegraph Canyon Sewer Basin Development Impact Fee Fund", or alternatively herein "Fund") which is hereby created and shall be expended only for the purposes set forth in this ordinance.

The Director of Finance is authorized to establish various accounts within the Fund for the Facilities identified in this ordinance and to periodically make expenditures from the Fund for the purposes set forth herein in accordance with the facilities phasing plan or capital improvement plan adopted by the City Council.

SECTION IX. Findings.

The City Council finds that collection of the Fees established by this ordinance at the time of the building permit is necessary to ensure that funds will be available for the construction of facilities concurrent with the need for these facilities and to ensure certainty in the capital facilities budgeting for growth impacted public facilities.

SECTION X. Fee Additional to other Fees and Charges.

The Fee established by this section is in addition to the requirements imposed by other City laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or developments.

SECTION XI. Mandatory Oversizing of Facility; Duty to Tender Reimbursement Offer.

Whenever a developer of a development project is required as a condition of approval of a development permit to cause a portion of the sewer system which is the subject matter of a Facilities enhancement planned for improvement under the Basin Plan ("Critical Sewage Constriction Work") to be enlarged to accommodate the sewage flow created by the development, the City may require the developer to install the Facilities according to design specifications approved by the City, that being with the supplemental size or capacity in order to accommodate estimated ultimate flow as indicated in the Basin Plan and subsequent amendments. If such a requirement is imposed, the City shall offer to reimburse the developer from the Fund either in cash or over time as Fees are collected, at the option of the City, for costs incurred by the developer for the design and construction of the Facility not to exceed the estimated cost of that particular Facility as included in the calculation and updating of the Fee. The City may update the Fee calculation as City deems appropriate prior to making such offer. This duty to offer reimbursement shall be independent of the developer's obligation to pay the Fee.

SECTION XII. Voluntary Construction of a Portion of the Facilities; Duty of City to Tender Reimbursement Offer.

If a developer proposes to design and construct a portion of the Facilities in conjunction with the prosecution of a development project within the Territory, or is required by Section 11 "Mandatory Oversizing" to design and construct a portion of the Facilities ("Work"), the City shall offer to reimburse the developer from the Fund either in cash or over time as Fees are collected, at the option of the City, for costs incurred by the developer for the design and construction of the Facility not to exceed the estimated cost of that particular Facility as included in the calculation and updating of the Fee.

SECTION XIII. Procedure for Entitlement to Reimbursement Offer.

The City's duty to extend a reimbursement offer to a developer pursuant to Section 11 or 12 above shall be conditioned on the developer complying with the terms and conditions of this section:

- a. Written authorization shall be requested by the developer from the City and issued by the City Council by written resolution before developer may incur any costs eligible for reimbursement relating to the Work.

- b. The request for authorization shall contain the following information, and such other information as may from time to time be requested by the City:
 - (1) Detailed descriptions of the Work with the preliminary cost estimate.
- c. If the Council grants authorization, it shall be by written agreement with the Developer, and on the following conditions among such other conditions as the Council may from time to time impose:
 - (1) Developer shall prepare all plans and specifications and submit same to the City for approval;
 - (2) Developer shall secure and dedicate any right-of-way required for the Work;
 - (3) Developer shall secure all required permits and environmental clearances necessary for construction of the project;
 - (4) Developer shall provide performance bonds in a form and amount, and with a surety satisfactory to the City;
 - (5) Developer shall pay all City fees and costs.
 - (6) The City shall be held harmless and indemnified, and upon tender by the City, defended by the developer for any of the costs and liabilities associated with the construction of the project.
 - (7) The developer shall advance all necessary funds to design and construct the project.
 - (8) The developer shall secure at least three (3) qualified bids for work to be done. The construction contract shall be granted to the lowest qualified bidder. Any claims for additional payment for extra work or charges during construction shall be justified and shall be documented to the satisfaction of the Director of Public Works.
 - (9) The developer shall provide a detailed cost estimate which itemizes those costs of the construction attributable to the Work. The estimate is preliminary and subject to final determination by the Director of Public Works upon completion of the Public Facility Project.
 - (10) The agreement may provide that upon determination of satisfactory incremental completion of a Facility, as approved and certified by the Director of Public Works,

the City may pay the developer progress payments in an amount not to exceed 75 percent of the estimated cost of the construction completed to the time of the progress payment but shall provide in such case for the retention of 25% of such costs until issuance by the City of a Notice of Completion.

- (11) The agreement may provide that any funds owed to the developer as reimbursements may be applied to the developer's obligations to pay the Fee for building permits to be applied for in the future.
- (12) When all work has been completed to the satisfaction of the City, the developer shall submit verification of payments made for the construction of the project to the City. The Director of Public Works shall make the final determination on expenditures which are eligible for reimbursement.
- (13) After final determination of expenditures eligible for reimbursement has been made by the Public Works Director, the parties may agree to offset the developer's duty to pay Fees required by this ordinance against the City's duty to reimburse the developer.
- (14) If, after offset if any, funds are due the developer under this section, the City shall reimburse the developer from the Fund either in cash or over time as Fees are collected, at the option of the City, for eligible costs incurred by the developer for the design and construction of the Facility not to exceed the estimated cost of that particular Facility as included in the calculation and updating of the Fee; or the developer may waive reimbursement and use the amount due them as credit against future Development Impact Fee obligations.

SECTION XIV. Procedure for Fee Modification

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 mitigation of the burdens of the development, may apply to the City Council for a modification of the Fee and the manner in which it is calculated. The application shall be made in writing and filed with the City Clerk not later than ten (10) days after notice is given of the public hearing on the development permit application for the project, or if no development permit is required, at the time of the filing of the building permit application. The application shall state in detail the factual basis for the claim of modification, and shall provide an engineering and accounting report showing the overall impact on

the DIF and the ability of the City to complete construction of the Facilities by making the modification requested by the applicant. The City Council shall make reasonable efforts to consider the application within sixty (60) days after its filing. The decision of the City Council shall be final. The procedure provided by this section is additional to any other procedure authorized by law for protection or challenging the Fee imposed by this ordinance.

SECTION XV. Fee Applicable to Public Agencies

Development projects by public agencies, including schools, shall not be exempt from the provisions of the Fee.

SECTION XVI. Assessment District.

If any assessment or special taxing district is established to design, construct and pay for any or all of the Facilities ("Work Alternatively Financed"), the owner or developer of a project may apply to the City Council for reimbursement from the Fund in an amount equal to that portion of the cost included in the calculation of the Fee attributable to the Work Alternatively Financed. In this regard, the amount of the reimbursement shall be based on the costs included in the Basin Plan, as amended from time to time, and therefore, will not include any portion of the financing costs associated with the formation of the assessment or other special taxing district.

SECTION XVII. Expiration of this Ordinance.

This ordinance shall be of no further force and effect when the City Council determines that the amount of Fees which have been collected reaches an amount equal to the cost of the Facilities.

SECTION XVIII. Time Limit for Judicial Action.

Any judicial action or proceeding to attack, review, set aside, void or annul this ordinance shall be brought within the time period as established by Government Code Section 54995 after the effective date of this ordinance.

SECTION XIX. CEQA Findings for Statutory Exemption.

The City Council does hereby find that the Fee herein imposed is for the purpose of obtaining funds for capital projects necessary to maintain service within existing service areas. The Council finds that the proposed Facilities are in existing rights of way

parallel to or replacing existing sewer lines. Therefore, the City finds that the adoption of this Ordinance is statutorily exempt under the provisions of Public Resources Code Section 21080 (b) (8) and CEQA Guidelines Section 15273.

SECTION XX. Other Not Previously Defined Terms.

For the purposes 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.

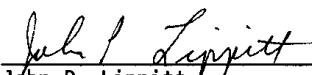
- (a) "Building Permit" means a permit required by and issued pursuant to the Uniform Building Code as adopted by reference by this City.
- (b) "Developer" means the owner or developer of a development.
- (c) "Development Permit" means any discretionary permit, entitlement or approval for a development project issued under any zoning or subdivision ordinance of the City.
- (d) "Development Project" or "Development" means any activity described in Section 65927 and 65928 of the State Government Code.

SECTION XXI. Effective Date.

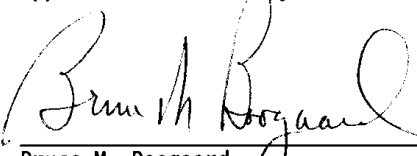
This ordinance shall become effective sixty (60) days after its second reading and adoption.

Presented by

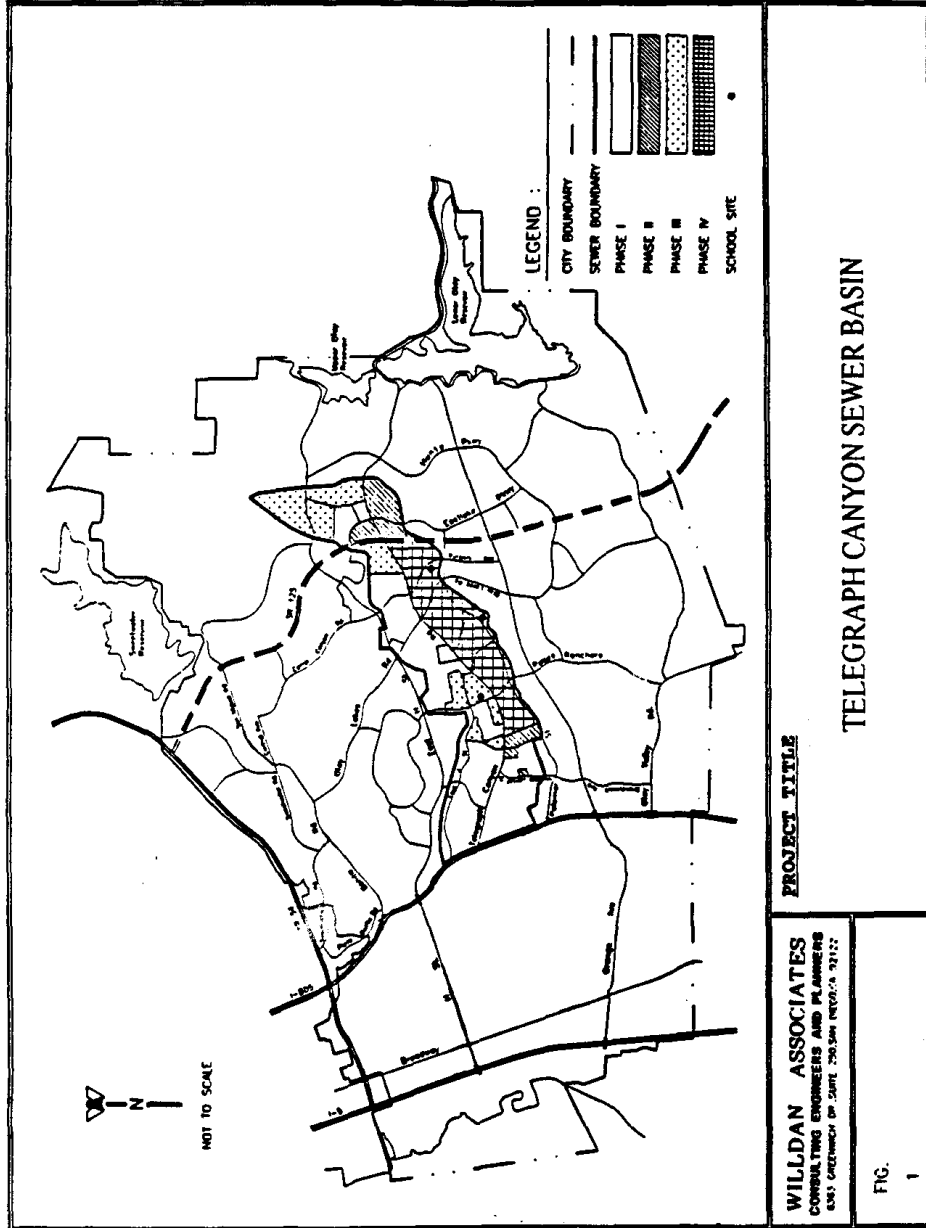
Approved as to form by



John P. Lippitt
Director of Public Works



Bruce M. Boogaard
City Attorney



PASSED, APPROVED and ADOPTED by the City Council of the City of Chula Vista, California, this 10th day of November, 1992, by the following vote:

AYES: Councilmembers: Horton, Malcolm, Moore, Rindone, Nader
NOES: Councilmembers: None
ABSENT: Councilmembers: None
ABSTAIN: Councilmembers: None



Tim Nader, Mayor

ATTEST:

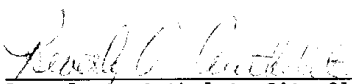


Beverly A. Authelet, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, Beverly A. Authelet, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2533 had its first reading on November 3, 1992, and its second reading and adoption at a regular meeting of said City Council held on the 10th day of November, 1992.

Executed this 10th day of November, 1992.



Beverly A. Authelet, City Clerk