

ORDINANCE NO. 1032

AN ORDINANCE AMENDING CHAPTER 26 OF THE CHULA VISTA CITY CODE BY ADDING THERETO A NEW ARTICLE VII, DIVISIONS 1 THROUGH 5, ENTITLED "DRAINAGE AND WATERCOURSES", RELATING TO THE CONTROL OF DRAINAGE AREAS AND WATERCOURSES

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

SECTION I: That Chapter 26 of the City Code of the City of Chula Vista be, and the same is hereby amended by adding thereto a new Article VII, Divisions 1 through 5, to read as follows:

ARTICLE VII. DRAINAGE AND WATERCOURSES.

Division 1. General Provisions.

Section 26.100. Purpose and Intent. It is the purpose of the City Council in establishing these regulations to protect persons and property against water damage and flood hazards by augmenting the regulations imposed by Sections 33.45.6, 33.45.7 and 33.45.8 of this Code, establishing flood plain zoning controls. It is the intent of the Council to afford greater security for said persons and property from damage resulting from the obstruction or diversion of drainage and watercourses or the construction of inadequate or improper facilities for carrying surface waters and storm waters which result in periods of storms, causing excessive run-off of waters through the various drainage ways and watercourses in the City of Chula Vista. In case of conflict between the regulations imposed by this Article and any other provision of law or of this Code, the more stringent regulation shall apply.

Section 26.101. Definitions. Whenever the following words are used in this Article they shall have the meaning ascribed to them in this Section:

(a) "Watercourse" means any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine, arroyo or wash, in which waters flow in a definite direction or course, either continuously or intermittently, and which has a definite channel and a bed or banks. A channel is not limited to land covered by minimal or ordinary flow but also includes land covered during times of high water. "Watercourse" does not include any surface drainage prior to its collection in a stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine, arroyo or wash.

Division 2. Permit Applications.

Section 26.104. Issuance of Permits--Liability. Permits required by this division shall be issued by the Director, subject to such conditions as may be imposed pursuant to this division or as may be required by law. Neither the issuance of a permit, nor compliance with the conditions thereof or with the provisions of this division, shall relieve any person from any responsibility otherwise imposed by law for damage to person or property, nor impose any liability on the City, its officers or employees for damage to persons or property.

Section 26.105. Application for Permit. A separate application for a permit shall be made for each act listed in Section 26.102; except that only one application need be made for two or more such acts which are done on the same parcel or lot and which are part of a unified plan of development or improvement. Plans and specifications shall be submitted with each such application, unless waived by the Director for small and unimportant work. Such plans and specifications shall be prepared or approved, and signed, by a registered civil engineer and shall show the following:

(a) The place where such construction, reconstruction, repair or alteration is to take place;

(b) The type of construction proposed to be used in such construction, reconstruction, repair or alteration, or the type of obstruction or fill proposed to be used, together with materials to be used shown on the accompanying diagram of the proposed work, and such other information as the Department of Public Works may require to carry out the purposes of this Article.

Section 26.106. Permit Fees. Before a permit is issued, an applicant shall pay the following fees, established for permits authorized by this division:

(a) Plan Check Fee. A plan check fee shall be paid at the time application is made for a permit. Where excavation or fill is proposed, the plan check fee shall be based upon the quantity of material involved in the proposed excavation or fill as set forth in the following table:

100 cubic yards or less.....	No fee
101 to 1000 cubic yards.....	\$15.00
1001 to 10,000 cubic yards.....	\$20.00
10,001 to 100,000 cubic yards....	\$20.00 for the first 10,000

cubic yards plus \$10.00 for each additional 10,000 cubic yards or fraction thereof.
 100,001 to 200,000 cubic yards....\$110.00 for the first 100,000 cubic yards plus \$6.00 for each additional 10,000 cubic yards or fraction thereof.
 200,001 cubic yards or more....\$170.00 for the first 200,000 cubic yards, plus \$3.00 for each additional 10,000 cubic yards or fraction thereof;
 otherwise, a plan check fee shall be paid in an amount equal to the amount of the permit fee required by subparagraph (b) hereof.

(b) Permit Fee. The following fee shall be paid before a permit required by this division shall be issued:

<u>Value of Work</u>	<u>Fee</u>
\$ 100.00 or less	\$10.00
101.00 to 750.00	15.00
751.00 to 1,250.00	20.00
1,251.00 to 2,500.00	31.00
2,501.00 to 5,000.00	44.00
5,001.00 to 10,000.00	58.00
10,001.00 to 20,000.00	71.00
20,001.00 to 30,000.00	84.00
30,001.00 to 50,000.00	98.00
50,001.00 to 100,000.00	127.00
Over 100,000.00	150.00 plus \$1.50 per each \$1,000.00 in excess of \$100,000.00

The "value of work" shall be established in the following manner: (1) where a building permit is required pursuant to the provisions of this Code, the "value of work" shall be established in accordance with said provisions; (2) otherwise, the "value of work" shall be determined by the Director.

(c) Renewal Fee. The fee for renewal of a previously issued permit is \$10.00 or an amount equal to 25% of the original permit fee, whichever is greater.

Section 26.107. Other Permits may be Required. A permit issued pursuant to this division does not relieve the permittee of the responsibility for securing the required permits for work to be done which is regulated by any other provision of this Code, and City ordinance or State law.

Division 3. Permit Conditions and Bonds.

Section 26.108. Permit--When Issued--Conditions. After the applicant has paid the required fees and complied with all conditions precedent, the Director shall issue the permit unless it appears to him that the work proposed would significantly restrict the carrying capacity of a watercourse or would create an unreasonable hazard of flood or inundation to persons or property; provided, however, that

Section 26.111. Changes. No changes may be made in the location, dimensions, materials or character of the work authorized in a permit, except upon written authorization of the Director.

Section 26.112. Transfer of Permits. A permit issued pursuant to this division is not transferable from person to person or from property to property, for any reason or in any manner whatsoever.

✓ Section 26.113. Bond Required.

(a) A permit shall not be issued where the value of the work is estimated by the Director to be \$1,000.00 or more, unless the permittee first posts with the Director a bond executed by the permittee and a corporate surety authorized to do business in this State as a surety. The bond shall be in a form approved by the City Attorney and in an amount of 30% of the estimated cost of the work authorized by the permit, except that the Director may waive all or part of the amount to the extent that he determines that the hazard or danger created by the work does not justify the full amount. The bond shall include penalty provisions for failure to complete the work on schedule.

(b) In lieu of a surety bond the applicant may file with the City a cash bond or an instrument of credit approved by the City Attorney in an amount equal to that which would be required for the surety bond.

(c) Every bond and instrument of credit shall include, and every cash deposit shall be made on, the conditions that the permittee shall:

1. Comply with all applicable laws, ordinances and Provisions of this Code.
2. Comply with all the terms and conditions of the permit, to the satisfaction of the Director; and
3. Complete all work contemplated under the permit within the time limit therein specified, or if no time limit is therein specified, then within the time limit specified in this division.

(d) Each bond, instrument of credit and cash deposit shall be made on and subject to the condition that no change, extension of time, alteration or addition to the terms of the permit or to the work contemplated thereunder, or the plans and specifications submitted in connection with the same, shall in any wise affect the obligation

of the surety on said bond, instrument of credit or cash deposit and, further, that the surety waives notice of any such change, extension of time, alteration or addition.

(e) Each bond and instrument of credit shall remain in effect until the completion of the work to the satisfaction of the Director.

(f) In the event of failure to complete the work, or failure to comply with all terms and conditions of the permit, the Director may order such work as in his opinion is necessary to eliminate any dangerous conditions and to leave the site in a safe condition, or may order that the work authorized by the permit be completed to a safe condition, to his satisfaction. The permittee, and the surety on the bond or the person issuing the instrument of credit or making the cash deposit, shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the City in causing any and all such work to be done. In case of a cash deposit, any unused portion thereof shall be refunded to the person posting the same following completion of the work.

(g) If the permit so provides, there may be a partial acceptance of the work by the Director from time to time, and a concomitant partial release of the security.

Division 4. Appeal.

Section 26.114. Appeal. Any person aggrieved by the refusal of the Director to grant a permit pursuant to this division or by the imposition of a condition on such permit may appeal to the City Council. The appeal shall be filed in duplicate, one copy with the Director and one copy with the City Clerk. The City Clerk shall then set the appeal for public hearing in the manner provided in this Code relating to appeals on zoning matters as contained in Chapter 33 of this Code.

Section 26.115. Necessary Findings. The City Council shall grant the permit or modify or delete the condition, as sought for by

said appeal, only if it finds all of the following to be true:

(a) That the applicant would suffer substantial injury or detriment by the refusal to grant the permit or modify or delete the conditions;

(b) That no other method of obtaining the desired results is more reasonable or less likely to be dangerous than that proposed by the applicant; and

(c) That the granting of the permit or the modifying or deleting of conditions would not be materially detrimental to the public interest, safety, health and welfare, would not significantly restrict the carrying capacity of a watercourse, and would not create an unreasonable hazard of flood or inundation to persons or property.

The permit shall also be granted, or the condition complained of deleted or modified if the requirements of subparagraphs (a), (b), and (c) above can be satisfied by the imposition of reasonable conditions.

Division 5. Abatement of Nuisance.

Section 26.116. Violation is a Nuisance. A violation of any provision of Section 26.102 or the failure of the owner of property over which there exists a natural drainage course to keep and maintain the portion of said drainage course located on his property free of obstructions to the free flow of drainage water is hereby declared to constitute and be a public nuisance, provided, however, that existing drainage facilities constructed prior to the enactment of this ordinance which have not decreased the capacity of the natural drainage channel or watercourse shall not be construed as a nuisance for purposes of this Article.

Section 26.117. Abatement of Nuisance.

(a) Notice of Violation. In addition to any other procedures or penalties established by law, in the event of a violation of Section 26.102 or 26.116, the Director may serve a written notice on the violator personally, or mail such notice, postage prepaid and return receipt requested, to the address at which, in the opinion of the Director, such notice is most likely to be received by the violator, which notice states the nature of the violation; that the violator is required to abate the condition constituting the violation within ten (10) days after the notice is received; and that if the violator fails to so abate the violation the Director may do so, in which event the violator shall be liable for all costs of such abatement including

but not limited to reasonable attorneys' fees. If the owner of the property on which the violation occurred is the violator, the notice shall be sent to the address of the said owner as it appears on the last equalized assessment roll or, alternatively, as it appears from such other records of the assessor or tax collector that contain more recent addresses in the opinion of the Director.

(b) Abatement by City. If the condition is not abated by the violator in accordance with the notice, the Director shall so report to the City Council and, if it so directs, abate the condition; the violator shall be liable to the City for all costs incurred in such abatement including but not limited to reasonable attorneys' fees and the expense of abatement shall be a lien against the property on which it is maintained and a personal obligation against the property owner.

Section 26.118. Emergency Abatement. If it appears to the Director that an emergency exists because of a violation of Sections 26.102 and 26.116, then, without following the procedure established by Section 26.117, the Director may order all work done necessary to remove, abate or mitigate the condition creating such emergency. The Director may do the work with his own employees or may contract to have the work done; in either event the Director shall keep a record of the cost of the work and charge the cost of the work to the violator, who shall repay the City for the cost thereof.

Section 26.119. Payment of Costs--Lien. The cost of any work done by the City pursuant to Sections 26.117 and 26.118 shall be repaid to the City by the person required to do so by the terms of the respective section. If the owner of the property on which the work is done is responsible for such costs, the sums expended by the City in doing the work may be made a lien upon such property in the manner prescribed in Section 26.120.

Section 26.120. Assessment for Costs--Lien--Payment. The cost of abating a nuisance within the meaning of this division shall be a special assessment against the land on which such abatement was done. The procedure established for the abatement of abandoned excavations by Sections 50244 through 50256, both inclusive, of the Government Code, is hereby incorporated herein as though fully set forth at this point and, pursuant to Government Code Section 25845 is hereby adopted as the procedure for making the cost of the abatement of such nuisances a special assessment against the land involved;

provided, that for the purposes of said Sections 50244 through 50256, the Director is the "superintendent", the City Council is the "legislative body", and the City is "local agency"; and further provided that at the hearing on the superintendent's report, the property owner may raise, and the City Council shall consider, as a complete or partial defense to the imposition of the assessment, questions as to the necessity of the abatement and the manner in which it was accomplished.

SECTION II: This ordinance shall take effect and be in force on the thirty-first day from and after its passage and approval.

Presented by



Lane Cole, City Engineer

Approved as to form by



George D. Lindberg, City Attorney

ADOPTED AND APPROVED by the CITY COUNCIL of the CITY OF CHULA VISTA,
CALIFORNIA, this 17th day of January, 1967, by the following vote,
to-wit:

AYES: Councilmen Sparling, Sylvester, Anderson, McAllister, McCorquodale

NAYES: Councilmen None

ABSENT: Councilmen None


Mayor of the City of Chula Vista

ATTEST Kenneth P. Campbell
City Clerk

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

I, KENNETH P. CAMPBELL, City Clerk of the City of Chula Vista, California,
DO HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
_____, and that the same has not been amended
or repealed.

DATED: _____

City Clerk



City of Chula Vista
CALIFORNIA

OFFICE OF THE
CITY ATTORNEY

January 6, 1967

OPINION OF THE CITY ATTORNEY

TO: The Honorable Mayor and City Council of the City
of Chula Vista, and the Chief Administrative
Officer

FROM: George D. Lindberg, City Attorney

SUBJECT: Suggested changes - Drainage Control Ordinance

Background

On December 20, 1966, the City Council considered an ordinance, for a second reading and adoption, which would authorize the control and regulation of drainage channels and watercourses located across and over private property. For nearly two years the City Council has expressed concern over the problem of unrestricted obstructions or construction in the various watercourses and drainage channels throughout the City.

There are two aspects of the problem of handling surface waters. The first is related to the matter of disposition of surface waters, per se, and the second, the matter of flood waters creating problems during storm periods. The Council has heretofore adopted a flood control zoning ordinance intended to cope with the major problem of protection of the public health, safety and general welfare in flood plain areas. In order to clearly point out that the Council is also concerned with the general problem of surface water in addition to the flood situations, it is suggested that the purpose and intent section of the drainage control ordinance referred to above be amended by inserting the terms "water damage" and "surface waters" so that it is understood that the drainage control ordinance presently under consideration is supplementary to the ordinance regulating flood plains.

The delay in proposing an ordinance which would control drainage channels and watercourses on private property where no easement has been granted to the City has been engendered by the concern of possible liability to the City in the event that structures

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permitted in, or modifications of watercourses authorized by the City should prove to be inadequate and result in damage to private property. However, this concern is outweighed by the obvious necessity to provide a means of proper control and regulation, aside from the threat of civil liability to property owners who create obstructions in watercourses resulting in damage to upper or lower property owners.

The two aspects of this problem that have concerned the City Council are as follows:

1. What is the responsibility of the private owner to maintain and repair private drainage courses, and in conjunction therewith, how can the City of Chula Vista, through the passage of proper ordinances, require that private drainage ways be maintained free of obstructions?, and
2. What is the responsibility of the City for the establishment of drainage easements which may affect private properties by negligence or faulty construction, and in conjunction therewith, what is the responsibility of the City in regulating private watercourses by requiring permits for the construction of facilities or the diversion or obstruction of private watercourse which may result in damage to adjacent properties or to the subject property?

General Legal Principles

First of all, a number of general principles of law may be stated. Water flowing in a stream in a natural watercourse through or adjoining a person's land may not be diverted so as to cause damage to lower riparian owners. Voight vs. Southern Pacific Company, 194 CA2d Sup. 907. The lower riparian owner may not obstruct channels so as to cause water which naturally flows through them to back up and flood the upper riparian owners' property. Smith vs. City of Los Angeles, 66 CA2d 562.

These principles are equally applicable to municipal corporations. In order to protect the public health, safety and general welfare, the municipality may, in the exercise of its police power, require that all work in watercourses be subject to the issuance of permits, such as has been provided in the drainage control ordinance amending Chapter 26 of the City Code by adding a new Article VII.

In approving the construction of drainage facilities, either as an adjunct of the approval of a subdivision or pursuant to the terms of said ordinance, it is essential that the City take great care to avoid any acts which would constitute

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violations of these general law principles. In addition, it is necessary to avoid acts which would result in the increase of surface water flows over the lower riparian properties. Steiger vs. City of San Diego, 163 CA2d, 110. "Surface waters are waters that are precipitated by rains and snows on the land, and those that arise from the land through springs and marshes, and flow over the surface of the ground without being gathered into watercourses or other bodies of water." 52 Cal. Jur.2d, 364, Sec. 724.

In the Steiger case, the City of San Diego, by virtue of the construction of certain drainage facilities, caused an increase in the flow of surface waters across the plaintiff's land, which resulted in an actual taking of the property. The City of San Diego argued that there is no liability for consequential damages resulting from improvements made in watercourses in the absence of negligence, although there is a liability where a public improvement obstructs a watercourse. Stone vs. Los Angeles County Flood Control District, 81 Cal. Ap. 2d, 902. Further, there is no liability for damage to private premises due to the overflow of a natural stream because of the construction of artificial conduits and hard surface streets which cause an increase in the waters passing into a stream and overflowing because of the insufficient capacity of the natural channel.

However, the Court pointed out that it was not a question of creating a flooding condition in a well-defined stream, which is the definition of a watercourse as used in the ordinance in question, but of an increase in the flow of surface waters across plaintiff's property which had never been contained in a well-defined stream. Therefore, the City was held liable.

In line with the Steiger case is the case of Frustuck vs. City of Fairfax, 230 CA2d 412, which imposed a similar liability upon the city, but involved an excess of water being diverted to plaintiff's property, which could not be handled by an existing culvert. While that case seems to be exceptionally severe, it does seem reasonable that the city, in approving a drainage system within a subdivision, should take reasonable precautions to ascertain that the system is capable of handling the predictable increase in the volume of water. This increased flow was not simply the result of the construction of the subdivision, including hard surface streets and drainage facilities which prevented the absorption of waters as in the Steiger case, but was a diversion of waters which normally flowed to other lowlands and is, I believe, distinguishable upon that basis.

This basic rule, as reiterated in the case of Inns vs. San Juan School District, 22 CA2d, 174, is that the upper owner, or the

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city if the drainage system be approved by the city, may not increase the volume or velocity of the flow of surface water over the property of the lower land owner, nor may he divert waters so as to increase the flow beyond the existing capacity of a natural watercourse.

Specific Objection to Retroactive Feature of Drainage Ordinance

At the Council meeting of December 20th, Mr. Wilson Weid appeared to oppose the ordinance in its present form because of what he construed to be vague and ambiguous language regarding the nuisance abatement sections thereof. Specifically, he was concerned with the possibility that the ordinance would have a retroactive effect in requiring the removal of certain drainage facilities installed by his clients, which might be rendered inadequate by the urban development in the nature of building construction and hard surface streets in the upper drainage basin, and impose upon his clients the requirement of enlarging these facilities because of such construction.

First of all, it should be noted that the ordinance does have a retroactive effect in that it is intended to require property owners to remove obstacles or enlarge drainage facilities imposed or constructed prior to the adoption of the ordinance. If this were not the case, we would not be solving the problem of existing drainage complaints and would be lacking the proper tools to rectify serious drainage problems that cause damage and inconvenience to property owners. However, the ordinance may not be used to require the improvement of natural drainage to increase their natural capacity, and likewise, could not impose a requirement for modifying or increasing manmade drainage structures constructed in natural channels which do not limit or decrease the capacity of the natural channel.

As pointed out in the case of Voight vs. Southern Pacific Company, 194 CA2d Sup. 907, there is no liability on the part of the defendant to increase the size of existing drainage facilities which become inadequate as a result of urbanization subsequent to the time of the defendant's construction of said facilities. In that case, the owner had properly developed his property in the interests of the whole community. However, as a result of progress, there was an increased flow of surface waters to those facilities constructed by the defendant. In the absence of an obstruction and negligence on the part of the defendant in allowing the facility to become clogged, there was no liability in the failure to accommodate the increased flow.

In the same sense, it is not reasonable to require Mr. Weid's clients in this particular case to improve the capacity of the drainage facility which they established if, in fact, it did

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not decrease the capacity possessed by the natural channel prior the construction, and which may only become inadequate as a result of the urban development of the upper properties. It is true that the City Engineer, in a letter dated April 21, 1964, objected both to the method of construction of this particular facility and its adequacy to handle a fifty-year storm. However, in the absence of an ordinance such as the one under consideration, it was not possible to impose such requirements on the property owner, and it may be that the natural channel, prior to the construction, would not have been capable of handling such capacity.

Conclusion

Therefore, it does not appear that the ordinance would impose any burden upon Mr. Weid's clients to increase the capacity of the drainage facility or to improve the construction techniques. However, to clarify this point, I am suggesting one additional amendment to the drainage ordinance.

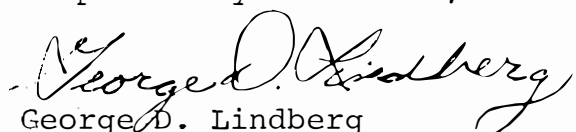
Recommendation

I would suggest an addition to Section 26.116, Division 5, Abatement of Nuisance:

Section 26.116. Violation is a Nuisance. A violation of any provision of Section 26.102 or the failure of the owner of property over which there exists a natural drainage course to keep and maintain the portion of said drainage course located on his property free of obstructions to the free flow of drainage water is hereby declared to constitute and be a public nuisance, provided, however, that existing drainage facilities constructed prior to the enactment of this ordinance which have not decreased the capacity of the natural drainage channel or water-course shall not be construed as a nuisance for purposes of this Article.

If the additions are acceptable to the Council, the ordinance should be placed upon its first reading again and adopted the following week.

Respectfully submitted,


George D. Lindberg
City Attorney

GDL:bjs