

Chapter 6.32 - WATERCOURSE PROTECTION REGULATIONS

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6.32.010 - Purposes.

The public peace, health, safety, and general welfare require that:

- A. Creeks be protected from the detrimental effects of urbanization, disturbance of natural conditions, excessive stormwater runoff, sedimentation, and erosion;
- B. Wildlife habitat and trees within the setbacks provided by this chapter be protected from destruction and adverse intrusion from the activities of persons for the public enjoyment of the natural riparian setting;
- C. Properties adjacent to creeks should be protected from flooding; and
- D. A public pathway should be established along or near Adobe Creek between Shoup Park and O'Keefe Lane in the general location shown on Exhibit A attached to Ordinance No. 86-155, on file in the office of the city clerk.

(Prior code § 5-8.01)

6.32.020 - Definitions.

Definitions for the purposes of this chapter shall be the same as in [Section 10.08.020](#) of this code.

(Prior code § 5-8.02)

6.32.030 - Watercourse protection.

- A. Watercourse protection requirements. Except as provided in [Section 6.32.050](#), every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank

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vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.

- B. Acts requiring permit. No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the appropriate agency or department.
1. Discharge into or connect any pipe or channel to a watercourse;
 2. Modify the natural flow of water in a watercourse;
 3. Carry out development of permanent structures, major earthmoving or construction of fences within a setback designated in whole or in part to protect a watercourse;
 4. Deposit in, plant in, or remove any material from, a watercourse, including its banks, except as required for necessary maintenance;
 5. Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or
 6. Place any loose or unconsolidated material along the sides of or within a watercourse or so close to a side as to cause a diversion of the flow, or to cause a probability of such material being carried away by stormwater passing through such watercourse.

(Prior code § 5-8.03)

6.32.040 - Setbacks along Adobe Creek.

Every parcel adjacent to Adobe Creek from Shoup Park to O'Keefe Lane, and subdivided after August 13, 1985, shall be subject to a setback of (A) forty (40) feet, if three acres in size or less, or eighty (80) feet, if larger, from the top of the nearest bank thereof; or (B) the distance of any easement owned or controlled by the Santa Clara Valley Water District, or (C) the 100-year flood plain, whichever is greater, (A), (B), or (C). The location of the bank shall be determined and approved at the time of the application by the city engineer. If the location of the top of the bank is vague or ill-defined, the city engineer may determine the point from which the setback is measured as a specified distance from the center line of Adobe Creek. Subsequent changes in the actual location of the top of the bank shall not result in the relocation of a previously-approved setback line.

(Prior code § 5-8.04)

6.32.050 - Permitted and prohibited activities in Adobe Creek and setbacks—Offers of dedication.

- A. All parcels. No structure, grading, paved area, fence, water-containing facility, disturbance of subsoil, or any other manmade construction, nor any dumping, use of herbicides or pesticides, or removal of vegetation, except by permission from the planning department, shall be permitted within Adobe Creek and the setback required by this chapter, except pathways, access roads, utilities, bridges, and fire and flood control measures.

All construction within Adobe Creek and the setbacks shall be subject to review by the architecture and site control committee as provided in [Chapter 14.76](#) of [Title 14](#). Structures existing on July 24, 1986, shall be deemed lawful nonconforming structures (see Sections [14.66.050](#) through [14.66.070](#)).

On parcels where a public pathway is proposed as shown on Exhibit A attached to Ordinance No. 86-155, on file in the office of the city clerk, applicants for divisions of land shall offer for dedication a conservation easement over the entire area restricted by [Section 6.32.020](#) of this chapter in a form satisfactory to the city. Such offer, and all other offers of access, trails, and other features to be located at grade, shall be by deed before the final map approval.

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- B. Removal of vegetation on parcels three acres or less in size.
1. On parcels three acres or less in size within the area fifteen (15) feet from the top of the bank (refer to Area 1 on Exhibit B attached to Ordinance No. 86-155, on file in the office of the city clerk), no vegetation may be removed, except poison oak provided no herbicides are used, and as required by the fire department.
 2. On parcels three acres or less in size within the area fifteen (15) feet to forty (40) feet from the top of the bank (refer to Area 2 on said Exhibit B):
 - a. The removal of riparian and indigenous vegetation, including redwoods, shall be allowed by right for trees less than twelve (12) inches in circumference measured four and one-half feet from the ground, and up to fifty (50) percent of shrubs and lesser vegetation, for the purpose of thinning or fire control;
 - b. The removal of non-riparian or non-indigenous vegetation (except redwoods) shall be permitted provided the root systems of trees and shrubs are left for stabilization; and
 - c. The removal of vegetation otherwise prohibited by this section shall require approval by the fire department and planning department.

(Prior code § 5-8.05)

6.32.060 - Exceptions.

Any owner or his representative may seek an exception to any provision of Sections [6.32.020](#) or [6.32.030](#) of this chapter by filing an application with the planning department, and shall otherwise comply with and be subject to the fees and procedures for a use permit as provided in [Chapter 14.80](#), except that the standards for granting or denying an application and findings which shall be made shall be the following:

- A. That exceptions from the provisions of this chapter shall be granted only when, because of special circumstances applicable to the property and/or the setback provided by this chapter, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter deprives such property of substantially similar privileges enjoyed by other property in the vicinity;
- B. That the granting of the exception will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity;
- C. That the proposed location of the exception is desirable or essential to the public health, safety, comfort, convenience, prosperity, or welfare; and
- D. That the granting of the exception will be consistent with the purposes of the setbacks as provided in [Section 6.32.010](#) of this chapter. All applications shall be referred to the parks and recreation commission to make the findings required by this subsection.

(Prior code § 5-8.06)

6.32.070 - Obstruction of streams unlawful.

It shall be unlawful for any person to place or throw, or cause to be placed or thrown, into any stream or creek within the city, or into the bed or upon the banks thereof, any brush, timber, lumber, junk, cans, bottles, or carcasses of any dead animals, or any material potentially harmful to stormwater quality or wildlife; provided, however, this section shall not apply to brush, timber, lumber, or other materials placed for the protection of the banks of streams and properly secured so as not to be carried away by the water.

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(Prior code § 5-8.07)