



CITY COUNCIL AGENDA REPORT

Meeting Date: October 1, 2020

From: Clayton Holstine, City Manager

Subject: Resolution Imposing Assessments on Certain Specially Benefitted Property Owners in Sierra Point for Developing, Implementing and Maintaining a Utility Structure Monitoring Program

Community Goal/Result

Safe Community

Recommendation:

Following the public hearing, adopt the attached Resolution (Attachment 1) imposing assessments on certain property owners in Sierra Point for developing, implementing and maintaining a utility structure monitoring program that specially benefit their properties.

Background

In March 2018 the City of Brisbane received a letter from the Environmental Health Services Division of the San Mateo County Health System informing the City that a structure monitoring program is required for the utility structures situated on the closed Sierra Point Landfill site ("Landfill site") to prevent the accumulation of landfill decomposition gas and to protect public health and safety.

The structure monitoring program must comply with the requirements of Title 27 of the California Code of Regulations, sections 20921 et seq. The Regulations place the burden of submitting a monitoring program plan to the enforcement agency, implementing the program and continuously maintaining the program on the site operator. 27 CCR Sections 20921, 20931. For purposes of these Regulations, the site operator means "the landowner or other person who through a lease, franchise agreement or other arrangement with the landowner becomes legally responsible to the State for complying with all applicable federal, state and local requirements." 27 CCR, Section 20164.

Landowners of property that is benefitted by this structure monitoring program are "operators" responsible for the costs of developing, implementing and maintaining the structure monitoring program at the Landfill site. 27 CCR Sections 20923 (a)(1), 20931.

The City contacted a geotechnical engineering company that created a structure monitoring program at the Landfill site that complies with the requirements of 27 CCR Section 20931. The City will oversee the submission of program plans to the Environmental Health Services Division of the San Mateo County Health System (SMCEH) in its capacity as the local Cal Recycle enforcement agency. The City will also manage the implementation of the monitoring program at the Landfill site.

The utility structures on the Landfill site for which the structure monitoring program has been developed and, in the future, implemented and maintained, serve only a limited number of properties within the Sierra Point area. Accordingly, the cost to develop, implement, and maintain this program

falls only on those property owners who will specially benefit by this program. This list of such property owners is attached to the Resolution as Exhibit 1.

Because these charges are new assessments against these properties, in order to impose these assessment (the charges will be on the owners' respective water bills), the City must conduct a process under Proposition 218, providing notice to the affected property owners of the proposed assessments and providing the owners with an opportunity at a public hearing to protest imposing the assessments. If protests against the proposed assessments are presented by property owners who have a majority of the cost of the assessments, the assessments may not be imposed. Moreover, under Proposition 218, the costs for such a program must be allocated in a fair and reasonable way. The required notice under Proposition 218 was mailed to the affected property owners on July 29, 2020, more than 45 days prior to the date of the public hearing. In order to impose the assessments, the City Council must find that the affected property owners are specially benefitted.

Discussion

In order to impose these assessments, City Council must find that the property owners are specially benefitted by this program. For the following reasons they are:

Development over a closed municipal solid waste landfill requires special permits from multiple regulatory agencies; these permits typically require individualized construction and ongoing inspection that only benefits the properties overlying the closed landfill. In the case of this assessment, SMCEH requires the monitoring of buried utility structures in order to prevent the possible build-up and catastrophic ignition of explosive gases that might be generated from the underlying waste. No other utility vaults operated by the City of Brisbane are subject to this requirement; thus, the monitoring program at Sierra Point provides a unique and special benefit only to the identified property owners. In the absence of the developed properties at Sierra Point, there would be no utility structures and no structure monitoring program would be required.

The City's cost to develop the program was \$20,991 and the annual program costs since March 2019 have been \$41,717. Those costs have been allocated in a fair and reasonable way and in the same way that water capacity charges are calculated, i.e., based on the nominal size, service (e.g., potable or fire) and the number of water meters serving a parcel. For example, if a parcel were served by two 2" and 3" potable water meters and a 6" fire water meter, that parcel would have a 5% share. If the annual monitoring costs were \$40,000, the property owner would be assessed \$2000, 5% of \$40,000.

Using this formula, City staff determined that each property owner's share is as shown on the attached list of property owners. Attachment 2. A more detailed spread sheet showing the owners and their allocated percentages and costs is attached as Attachment 3.

As stated above, in order to impose this assessment on these owners' properties—which assessment will be assessed on their water bills—the law required that the City provide the owners with a notice that (1) sets forth the amount of the assessment to be imposed on each property, (2) the basis upon which the assessment to each property has been calculated (described above), (3) the reason for the assessment (described above) and (4) the date, time and location of a public hearing on the proposed charge. Such notices were mailed to all the affected property owners on July 29, 2020, more than 45 days prior to the public hearing.

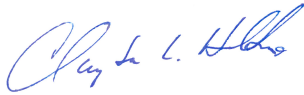
The property owners were notified that the City Council meeting and the public hearing would be conducted virtually and if written protests against the proposed assessment were presented by property owners who have a majority of the cost of the assessments, the assessments could not be imposed. As of the time this agenda report is being published, the City has received no protests.

Financial Impact

The Council's adoption of the attached Resolution will impose assessments for developing, implementing and maintaining a utility monitoring program in the Sierra Point area on those property owners who specially benefit by this program, rather than spreading the cost of this program on all water customers of the City. Because the City owns property in this area and will specially benefit by the program, its annual charge is estimated to be \$2,811.53

Attachments

1. Resolution imposing a charge on certain property owners in the Sierra Point area for developing, implementing and maintaining a utility structure monitoring program
2. List of Property Owners and their respective share of the cost
3. Detailed Spread Sheet showing property owners and the allocation of costs



Clayton Holstine, City Manager



Randy Breault, City Engineer



Stuart Schillinger, Finance Director



Thomas McMorrow, Interim City Attorney

ATTACHMENT 1

RESOLUTION NO. 2020-56

A Resolution of the City Council of the City of Brisbane Imposing Assessments on Certain Specially Benefitted Property Owners in the Sierra Point Area to Develop, Implement and Maintain a Utility Structure Monitoring Program

Whereas, in March 2018 the City of Brisbane received a letter from the Environmental Health Services Division of the San Mateo County Health System informing the City that a structure monitoring program is required for the utility structures situated on the closed Sierra Point Landfill site (“Landfill site”) to prevent the accumulation of landfill decomposition gas and to protect public health and safety; and

Whereas, the structure monitoring program must comply with the requirements of Title 27 of the California Code of Regulations, sections 20921 et seq.; the Regulations place the burden of submitting a monitoring program plan to the enforcement agency, implementing the program and continuously maintaining the program on the site operator (27 CCR Sections 20921, 20931); and for purposes of these Regulations, the site operator means “the landowner or other person who through a lease, franchise agreement or other arrangement with the landowner becomes legally responsible to the State for ...complying with all applicable federal, state and local requirements.” (27 CCR, Section 20164); and

Whereas, landowners of property that is benefitted by this structure monitoring program are “operators” responsible for the costs of developing, implementing and maintaining the structure monitoring program at the Landfill site (27 CCR Sections 20923 (a)(1), 20931); and

Whereas, the City contacted a geotechnical engineering company that created a structure monitoring program at the Landfill site that complies with the requirements of 27 CCR Section 20931; the City will oversee the submission of program plans to the Environmental Health Services Division of the San Mateo County Health System in its capacity as the local Cal Recycle enforcement agency; and the City will also manage the implementation of the monitoring program at the Landfill site; and

Whereas, the utility structures on the Landfill site for which the structure monitoring program has been developed and, in the future, implemented and maintained, serve only a limited number of properties within the Sierra Point area and therefore the cost to develop, implement, and maintain this program falls only on those property owners who will specially benefit by this program; and

Whereas, the list of the specially benefitted property owners is attached to this Resolution as Exhibit 1; and

Whereas, because these charges are new assessments, in order to impose these assessments (the assessments/charges will be on the owners’ respective water bills), the City has conducted the legally required process under Proposition 218, i.e., providing notice to the affected property owners of the proposed assessments, demonstrating that the costs for the program is allocated in a fair and reasonable way, and providing the owners with an opportunity at a public hearing to protest imposing the assessments; and

Whereas, if protests against the proposed assessments are presented by property owners who have a majority of the cost of the assessments, the assessments may not be imposed; and

Whereas, the required notice under Proposition 218 was mailed to the affected property owners on July 29, 2020, more than 45 days prior to the date of the public hearing; and

Whereas, on September 17, 2020, the Brisbane City Council continued the public hearing to October 1, 2020 and the City Clerk sent a notice to the affected property owners informing them that the public hearing had been continued to that date; and

Whereas, on October 1, 2020, the City Council conducted a public hearing concerning the assessments to be imposed on these property owners; and

Whereas, property owners who have a majority of the cost of the cost of the assessments did not protest; and

Whereas, the City Council finds and determines that the property owners on Exhibit 1 are specially benefitted by the utility structure monitoring program and that the costs for developing, implementing and maintaining the utility structure monitoring program have been allocated in a fair and reasonable way, as set forth in the City Council agenda report concerning this matter, the staff presentation and other information received during the public hearing; and

Whereas, based thereon, the City also finds and determines that each specially benefitted property owner's respective share of the cost of the program is as set forth on Exhibit 1.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE RESOLVES AS FOLLOWS:

Section 1. To the extent there are any protests to these assessments being imposed, the protests are overruled.

Section 2. The assessments to develop, implement, and maintain the utility structure monitoring program in the Sierra Point area are allocated to the specially benefitted property owners set forth on Exhibit 1 and their respective share of the costs is as set forth on Exhibit 1.

Section 3. This resolution shall take effect immediately upon its adoption.

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2020-56 was duly and regularly adopted at a regular meeting of the Brisbane City Council on October 1, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk