

# CITY OF BRISBANE

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## Final Report

## Parks and Recreation Impact Fee Study

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# Executive Summary

The City of Brisbane has retained NBS Government Finance Group to prepare this study to analyze the impacts of new development on the City's parks, recreation facilities, open space and trails and to calculate impact fees based on that analysis. The methods used in this study are intended to satisfy all legal requirements of the U. S. Constitution, the California Constitution and the California Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

## Organization of the Report

Chapter 1 of this report provides an overview of the legal requirements for establishing and imposing such fees, and methods that can be used to calculate impact fees.

Chapter 2 contains data on existing and future development that is used in this report.

Chapters 3 through 5 analyze the impacts of development on specific types of facilities and calculate impact fees for those facilities. The facilities addressed in this report are listed by chapter below:

Chapter 3. Park Land and Park Improvements

Chapter 4. Recreation Facilities

Chapter 5. Open Space and Trails

Chapter 6 contains recommendations for adopting and implementing impact fees, including suggested findings to satisfy the requirements of the Mitigation Fee Act.

## Development Data

Chapter 2 of this report presents estimates of existing development in Brisbane and projections of future development in the City out to 2040. Brisbane is largely built-out except for an area known as the Baylands, a 700-acre former landfill and industrial site which is being planned for development as a mixed-use neighborhood with the potential to more than double the City's population and employment.

Table 2.1 in Chapter 2 shows the population per unit for residential development and employees per unit for various types of non-residential development. Table 2.2 shows estimates of existing development in terms of units, population and employees. Table 2.3 shows a forecast of future development to buildout, and Table 2.4 shows a forecast of total development at buildout. The data in those tables is used to calculate impact fees and to project potential revenue for impact fees calculated in this report.

It should be noted that to comply with recent amendments to the Mitigation Fee Act, residential impact fees are calculated in this study for unit size ranges in square feet, rather than by unit type (e.g., single-family or multi-family) which was common practice in the past.

## Impact Fee Analysis

The impact fee analysis for each type of facility addressed in this report is presented in a separate chapter of this report. In each case, the relationship between development and the need for a particular type of facility is defined in a way that allows the impact of additional development on facility needs to be quantified. The impact fees are based on the cost of facilities and other capital assets needed to mitigate the impacts of additional development.

All of the fees calculated in this report are based on capital costs and may be spent only for land and capital improvements of the types identified in this report. The following paragraphs briefly discuss the approach used to calculate impact fees for each type of facility addressed in this study.

**Chapter 3 - Impact Fees for Park Land and Park Improvements.** Chapter 3 of this report calculates impact fees for both park land acquisition and park improvements. It is important to clarify when the park land impact fees calculated in this study would apply to residential development.

The City has an existing Quimby Act ordinance that requires dedication of park land or payment of fees in lieu of dedication by residential subdivisions. That means the park land acquisition impact fees calculated in Chapter 3 would not apply to residential subdivisions but would apply to new residential development that does not involve a subdivision or parcel map. The park land impact fees would also apply to all new non-residential (e.g., commercial and industrial) development in Brisbane. Unlike the impact fees for park land acquisition, the impact fees for park improvements calculated in Chapter 3 are intended to apply to all new residential and non-residential development in the City, including residential subdivisions.

Impact fees for park land and park improvements calculated in this report are based on the existing level of service as required by recent amendments to the Mitigation Fee Act. For park land and park improvements, that level of service is defined in terms of acres of existing parks per capita of existing service population. For purposes of the impact fee calculations, that level of service is converted into per-capita costs for park land and park improvements using estimates of per-acre costs for park land acquisition and park improvements.

Service population is used in impact fee calculations in this study to represent the impact of development on the need for parks, recreation facilities, open space and trails. Service population is a weighted composite of resident population and employees working in Brisbane. Residents are included to represent the demand created by residential development and employees are included to represent the demand created by non-residential development.

Residents are given a weight of 1.0 and employees are given different weights for different types of facilities in this study. For parks, employees are given a weight of 0.25, meaning that one employee represents 25% as much demand as one resident.

See Chapter 3 for detailed analysis and calculation of impact fees for park land and park improvements. Table S.1, later in this Executive Summary shows the amounts of the impact fees calculated in this report.

**Chapter 4 – Impact Fees for Recreation Facilities.** Chapter 4 calculates impact fees for Brisbane’s recreation facilities. Impact fees for recreation facilities calculated in this report are based on the existing level of service as required by recent amendments to the Mitigation Fee Act. For recreation facilities, that level of service is defined in terms of the replacement cost of existing facilities per capita of existing service population.

As discussed in the previous section, service population is a weighted composite of resident population and employees working in Brisbane. Residents are included to represent the demand created by residential development and employees are included to represent the demand created by non-residential development.

Residents are given a weight of 1.0 and employees are given different weights for different types of facilities in this study. For recreation facilities, employees are given a weight of 0.1, meaning that one employee represents 10% as much demand as one resident.

See Chapter 4 for more detail on the calculation of impact fees for recreation facilities. Table S.1, later in this Executive Summary shows the amounts of the impact fees calculated in this report.

**Chapter 5 - Impact Fees for Open Space and Trails.** Chapter 5 of this report calculates impact fees for both open space land acquisition and trail improvements. Impact fees for open space and trails calculated in this report are based on the existing level of service as required by recent amendments to the Mitigation Fee Act. For open space land acquisition and trail improvements, that level of service is defined in terms of the replacement cost of existing facilities per capita of existing service population.

As discussed in previous sections, service population is a weighted composite of resident population and employees working in Brisbane. Residents are included to represent the demand created by residential development and employees are included to represent the demand created by non-residential development.

Residents are given a weight of 1.0 and employees are given different weights for different types of facilities in this study. For open space and trails, employees are given a weight of 0.25, meaning that one employee represents 25% as much demand as one resident.

See Chapter 5 for detailed analysis and calculation of impact fees for open space and trails. Table S.1, later in this Executive Summary shows the amounts of the impact fees calculated in this report.

## Recovery of Administrative Costs

In the next section, following Table S.1, an administrative charge is calculated to recover the City's costs for complying with administrative and reporting requirements of the Mitigation Fee Act and for periodic updates to this impact fee study. That administrative charge is added to the impact fees in Table S.2.

## Impact Fee Summary

Impact fees per unit calculated in this report are summarized in Table S.1, below.

**Table S.1: Summary of Parks, Recreation, Open Space and Trails Impact Fees**

Development Type	Units <sup>1</sup>	Park Land	Park Imprvmts	Recreation Facilities	Open Sp/ Trails	Total
Residential <800 Sq. Ft. Unit	DU	\$ 14,842	\$ 2,438	\$ 5,096	\$ 1,499	\$ <b>23,875</b>
Residential 800-1,200 Sq. Ft. Unit	DU	\$ 15,479	\$ 2,543	\$ 5,315	\$ 1,563	\$ <b>24,900</b>
Residential 1,200-2,100 Sq. Ft. Unit	DU	\$ 16,116	\$ 2,648	\$ 5,533	\$ 1,627	\$ <b>25,925</b>
Residential >2,100 Sq. Ft. Unit	DU	\$ 16,753	\$ 2,752	\$ 5,752	\$ 1,692	\$ <b>26,949</b>
Commercial	KSF	\$ 3,185	\$ 523	\$ 437	\$ 322	\$ <b>4,467</b>
Lodging	Room	\$ 557	\$ 92	\$ 77	\$ 56	\$ <b>782</b>
Office	KSF	\$ 4,778	\$ 785	\$ 656	\$ 482	\$ <b>6,701</b>
Industrial	KSF	\$ 1,752	\$ 288	\$ 241	\$ 177	\$ <b>2,457</b>
Public Facilities	KSF	\$ 4,778	\$ 785	\$ 656	\$ 482	\$ <b>6,701</b>

<sup>1</sup> DU = dwelling unit; KSF = 1,000 gross square feet of building area; Room = guest room or suite

Table S.2 on the next page shows the proposed impact fees from Table S.1 with the addition of a 0.55% administrative fee to cover annual administrative costs and periodic impact fee update studies. That percentage is calculated as the estimated annual administrative cost (\$3,500) plus the average annual cost of preparing an impact fee update study every five years (\$5,600) divided by the projected annual revenue from impact fees calculated in this report (\$1,665,491). The annual revenue estimate assumes that total revenue of \$33,309,816 will be collected over 20 years. Potential revenue from impact fees calculated in this report is shown in Chapters 3, 4 and 5. No revenue is projected for the park land impact fees because it isn't possible to know how much future residential development will pay Quimby Act fees in lieu of park land dedication instead of the park land impact fees calculated in this study. The administrative charge proposed in this section should not be applied to any in-lieu fees collected pursuant to the City's park land dedication ordinance, since those fees are not addressed here.

**Table S.2: Summary of Parks, Rec, Open Space and Trails Impact Fees Incl 0.55% Admin Charge**

Development Type	Units <sup>1</sup>	Park Land	Park Imprvmts	Recreation Facilities	Open Sp/ Trails	Total
Residential <800 Sq. Ft. Unit	DU	\$ 14,924	\$ 2,452	\$ 5,124	\$ 1,507	\$ <b>24,006</b>
Residential 800-1,200 Sq. Ft. Unit	DU	\$ 15,564	\$ 2,557	\$ 5,344	\$ 1,572	\$ <b>25,037</b>
Residential 1,200-2,100 Sq. Ft. Unit	DU	\$ 16,205	\$ 2,662	\$ 5,564	\$ 1,636	\$ <b>26,067</b>
Residential >2,100 Sq. Ft. Unit	DU	\$ 16,845	\$ 2,767	\$ 5,784	\$ 1,701	\$ <b>27,097</b>
Commercial	KSF	\$ 3,203	\$ 526	\$ 440	\$ 323	\$ <b>4,492</b>
Lodging	Room	\$ 560	\$ 92	\$ 77	\$ 57	\$ <b>786</b>
Office	KSF	\$ 4,804	\$ 789	\$ 660	\$ 485	\$ <b>6,738</b>
Industrial	KSF	\$ 1,761	\$ 289	\$ 242	\$ 178	\$ <b>2,471</b>
Public Facilities	KSF	\$ 4,804	\$ 789	\$ 660	\$ 485	\$ <b>6,738</b>

<sup>1</sup> DU = dwelling unit; KSF = 1,000 gross square feet of building area; Room = guest room or suite

The impact fees calculated in this report are intended to represent the maximum amounts justified by the data and analysis presented in this report. The City Council may choose to adopt no fees, or any fees up to the amounts shown in the tables above, and may choose to adopt those fees with or without the administrative charge reflected in Table S.2.



# Chapter 1. Introduction

## Purpose

The purpose of this study is to analyze the impacts of development on the need for parks and recreation facilities provided by the City of Brisbane and to calculate impact fees based on that analysis. This report documents the approach, data and methodology used in this study to calculate impact fees.

The methods used to calculate impact fees and in-lieu fees in this report are intended to satisfy all legal requirements governing such fees, including provisions of the U. S. Constitution, the California Constitution and the California Mitigation Fee Act (Government Code Sections 66000-66025).

## Legal Framework for Developer Fees

This brief summary of the legal framework for development fees is intended as a general overview. It was not prepared by an attorney and should not be treated as legal advice.

**U. S. Constitution.** Like all land use regulations, development exactions, including impact fees, are subject to the 5th Amendment prohibition on taking of private property for public use without just compensation. Both state and federal courts have recognized the imposition of impact fees on development as a legitimate form of land use regulation, provided the fees meet standards intended to protect against “regulatory takings.” A regulatory taking occurs when regulations unreasonably deprive landowners of property rights protected by the Constitution.

In two landmark cases dealing with exactions, the U. S. Supreme Court has held that when a government agency requires the dedication of land or an interest in land as a condition of development approval or imposes ad hoc exactions as a condition of approval on a single development project that do not apply to development generally, a higher standard of judicial scrutiny applies. To meet that standard, the agency must demonstrate an "essential nexus" between such exactions and the interest being protected (See *Nollan v. California Coastal Commission*, 1987) and make an “individualized determination” that the exaction imposed is "roughly proportional" to the burden created by development (See *Dolan v. City of Tigard*, 1994).

Until recently, it was widely accepted that legislatively enacted impact fees that apply to all development in a jurisdiction are not subject to the higher standard of judicial scrutiny flowing from the Nollan and Dolan decisions. But after the U. S. Supreme Court decision in *Koontz v. St. Johns Water Management District* (2013), state courts have reached conflicting conclusions on that issue.

In light of that uncertainty, any agency enacting or imposing impact fees would be wise to demonstrate a nexus and ensure proportionality in the calculation of those fees.

**Defining the “Nexus.”** While courts have not been entirely consistent in defining the nexus required to justify exactions and impact fees, that term can be thought of as having the three elements discussed below. We think proportionality is logically included as one element of that nexus, even though it was discussed separately in *Dolan v. Tigard*. The elements of the nexus discussed below mirror the three “reasonable relationship” findings required by the Mitigation Fee Act for establishment and imposition of impact fees.

**Need or Impact.** Development must create a need for the facilities to be funded by impact fees. All new development in a community creates additional demands on some or all public facilities provided by local government. If the capacity of facilities is not increased to satisfy the additional demand, the quality or availability of public services for the entire community will deteriorate. Impact fees may be used to recover the cost of development-related facilities, but only to the extent that the need for facilities is related to the development project subject to the fees.

The *Nollan* decision reinforced the principle that development exactions may be used only to mitigate impacts created by the development projects upon which they are imposed. In this study, the impact of development on facility needs is analyzed in terms of quantifiable relationships between various types of development and the demand for public facilities based on applicable level-of-service standards. This report contains all of the information needed to demonstrate compliance with this element of the nexus.

**Benefit.** Development must benefit from facilities funded by impact fees. With respect to the benefit relationship, the most basic requirement is that facilities funded by impact fees be available to serve the development paying the fees. A sufficient benefit relationship also requires that impact fee revenues be segregated from other funds and expended in a timely manner on the facilities for which the fees were charged. Nothing in the U.S. Constitution or California law requires that facilities paid for with impact fee revenues be available exclusively to development projects paying the fees.

Procedures for earmarking and expenditure of fee revenues are mandated by the Mitigation Fee Act, as are procedures to ensure that the fees are either expended in a timely manner or refunded. Those requirements are intended to ensure that developments benefit from the impact fees they are required to pay. Thus, over time, procedural issues as well as substantive issues can come into play with respect to the benefit element of the nexus.

**Proportionality.** Impact fees must be proportional to the impact created by a particular development project. Proportionality in impact fees depends on properly identifying development-related facility costs and calculating the fees in such a way that those costs are allocated in proportion to the facility needs created by different types and amounts of development. The section on impact fee methodology, below, describes methods used to allocate facility costs and calculate impact fees that meet the proportionality standard.

**California Constitution.** The California Constitution grants broad police power to local governments, including the authority to regulate land use and development. That police

power is the source of authority for local governments in California to impose impact fees on development. Some impact fees have been challenged on grounds that they are special taxes imposed without voter approval in violation of Article XIII A. However, that objection is valid only if the fees charged to a project exceed the cost of providing facilities needed to serve the project. In that case, the fees would also run afoul of the U. S. Constitution and the Mitigation Fee Act.

Articles XIII C and XIII D, added to the California Constitution by Proposition 218 in 1996, require voter approval for some “property-related fees,” but exempt “the imposition of fees or charges, as a condition of property development.” Thus, impact fees are exempt from those requirements.

**The Mitigation Fee Act.** California’s impact fee statute originated in Assembly Bill 1600 during the 1987 session of the Legislature and took effect in January 1989. AB 1600 added several sections to the Government Code, beginning with Section 66000. Since that time, the impact fee statute has been amended from time to time, and in 1997 was officially titled the “Mitigation Fee Act.” Unless otherwise noted, code sections referenced in this report are from the Government Code.

The Mitigation Fee Act does not limit the types of capital improvements for which impact fees may be charged. It defines public facilities very broadly to include “public improvements, public services and community amenities.” Although the issue is not specifically addressed in the Mitigation Fee Act, it is clear both in case law and statute (see Government Code Section 65913.8) that impact fees may not be used to pay for maintenance or operating costs. Consequently, the fees calculated in this report are based on the cost of capital assets only.

The Mitigation Fee Act does not use the term “mitigation fee” except in its official title. Nor does it use the more common term “impact fee.” The Act simply uses the word “fee,” which is defined as “a monetary exaction, other than a tax or special assessment...that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project ....”

To avoid confusion with other types of fees, this report uses the widely accepted terms “impact fee” and “development impact fee” which both should be understood to mean “fee” as defined in the Mitigation Fee Act.

The Mitigation Fee Act contains requirements for establishing, increasing and imposing impact fees. They are summarized below. It also contains provisions that govern the collection and expenditure of fees and requires annual reports and periodic re-evaluation of impact fee programs. Those administrative requirements are discussed in the implementation chapter of this report.

**Required Findings.** Section 66001 (a) requires that an agency establishing, increasing or imposing impact fees, must make findings to:

1. Identify the purpose of the fee

2. Identify the use of the fee; and
3. Determine that there is a reasonable relationship between the use of the fee and the development type on which it is imposed
4. Determine that there is a reasonable relationship between the need for the facility and the type of development on which the fee is imposed

In addition, Section 66001 (b) requires that in any action imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

Some legal experts are of the opinion that the requirements of Section 66001 (a) apply when impact fees are based on a legislatively adopted fee schedule, while the requirements of Section 66001 (b) apply when impact fees are based on an administratively imposed (ad hoc) assessment.<sup>1</sup>

The requirements outlined above are discussed in more detail below.

Identifying the Purpose of the Fees. The broad purpose of impact fees is to protect public health, safety and general welfare by providing for adequate public facilities. The specific purpose of the fees calculated in this study is to fund construction of certain capital improvements that will be needed to mitigate the impacts of planned new development on City facilities, and to maintain an acceptable level of public services as the City grows.

This report recommends that findings regarding the purpose of an impact fee should define the purpose broadly, as providing for the funding of adequate public facilities to serve additional development.

Identifying the Use of the Fees. According to Section 66001(a)(2), if a fee is used to finance public facilities, those facilities must be identified. A capital improvement plan may be used for that purpose but is not mandatory if the facilities are identified in a General Plan, a Specific Plan, or in other public documents. Section 66002 (b) requires that such capital improvement plans must be updated annually.

However, a new provision in Section 66016.5, which was added by AB 602 in 2021, requires that large jurisdictions adopt a capital improvement plan as part of an impact fee study. That requirement applies to impact fee studies adopted after January 1, 2022. "Large jurisdiction" means a county of 250,000 or more or any city within that county. The statute does not provide any detail about what must be included in the capital improvement plan or how it should relate to the impact fee study. And, that new

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<sup>1</sup> See "The Mitigation Fee Act's Five-Year Findings Requirement: Beware Costly Pitfalls" by Glen Hansen, Senior Council, Abbott and Kindermann and Rick Jarvis, Managing Partner, Jarvis, Fay and Gibson, presented at the 2022 League of California Cities City Attorneys Spring Conference

requirement is inconsistent with the original language of Section 66001(a)(2), so it is unclear whether the annual update requirement in Section 66002(b) applies.

Reasonable Relationship Requirement. As discussed above, Section 66001 requires that, for fees subject to its provisions, a "reasonable relationship" must be demonstrated between:

1. the use of the fee and the type of development on which it is imposed;
2. the need for a public facility and the type of development on which a fee is imposed; and,
3. the amount of the fee and the facility cost attributable to the development on which the fee is imposed.

Although some legal experts contend that the third of these only pertains to "ad hoc" fees that are not part of a legislatively adopted fee schedule, we believe that all three are part of a complete "nexus" or "reasonable relationship" framework as discussed earlier. These three reasonable relationship requirements address the nexus and proportionality requirements often cited in court decisions as the standard for defensible impact fees. The term "dual rational nexus" is often used to characterize the standard used by courts in evaluating the legitimacy of impact fees. The "duality" of the nexus refers to (1) an impact or need created by a development project subject to impact fees, and (2) a benefit to the project from the expenditure of the fees.

However, although proportionality is reasonably implied in the dual rational nexus formulation, it was explicitly required by the Supreme Court in the *Dolan* case, and we prefer to list it as the third element of a complete nexus.

Development Agreements and Reimbursement Agreements. The requirements of the Mitigation Fee Act do not apply to fees collected under development agreements (see Govt. Code Section 66000) or reimbursement agreements (see Govt. Code Section 66003). The same is true of fees in lieu of park land dedication imposed under the Quimby Act (see Govt. Code Section 66477).

Existing Deficiencies. In 2006, Section 66001(g) was added to the Mitigation Fee Act (by AB 2751) to clarify that impact fees "shall not include costs attributable to existing deficiencies in public facilities,..." The legislature's intent in adopting this amendment, as stated in the bill, was to codify the holdings of *Bixel v. City of Los Angeles* (1989), *Rohn v. City of Visalia* (1989), and *Shapell Industries Inc. v. Governing Board* (1991).

That amendment does not appear to be a substantive change. It is widely understood that other provisions of law make it improper for impact fees to include costs for correcting existing deficiencies.

However, Section 66001(g) also states that impact fees "may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) *refurbish existing facilities to maintain the existing*

*level of service or (2) achieve an adopted level of service that is consistent with the general plan.” (Emphasis added.)*

**Impact Fees for Existing Facilities.** Impact fees may be used to recover costs for existing facilities to the extent that those facilities are needed to serve additional development and have the capacity to do so. In other words, it must be possible to show that fees used to pay for existing facilities meet the need and benefit elements of the nexus.

## **Recent Legislation**

Several new laws enacted by the State of California in 2019 to facilitate development of affordable housing will affect the implementation of in-lieu fees and impact fees calculated in this study. Below are brief overviews of some key bills passed in 2019.

**SB 330 – The Housing Crisis Act of 2019.** Amendments to existing law contained in SB 330 prohibit the imposition of new approval requirements on a housing development project once a preliminary application has been submitted. That provision applies to increases in impact fees and in-lieu fees, except when the resolution or ordinance establishing the fee authorizes automatic, inflationary adjustments to the fee or exaction.

**AB 1483 – Housing Data: Collection and Reporting.** AB 1483 requires that a city, county or special district must post on its website a current schedule of its fees and exactions, as well as associated nexus studies and annual reports. Updates must be posted within 30 days.

**SB 13 – Accessory Dwelling Units.** SB 13 prohibits the imposition of impact fees on accessory dwelling units (ADUs) smaller than 750 square feet and provides that impact fees for ADUs of 750 square feet or more must be proportional to the square footage of the primary dwelling unit. The proportionality requirement means that impact fees for ADUs of 750 square feet or more must be calculated on a case-by-case basis during the approval process.

Existing law requires a water or sewer connection fee or capacity charge for an accessory dwelling unit requiring a new or separate utility connection to be based on either the accessory dwelling unit’s size or the number of its plumbing fixtures. SB 13 revises the basis for calculating the connection fee or capacity charge to either the accessory dwelling unit’s square feet or the number of its drainage fixture units.

**AB 602 – Amendments to the Planning and Land Use Law and the Mitigation Fee Act.** AB 602, which was passed and signed in 2021, adds section 65940.1 to the Planning and Land Use Law requiring cities, counties and special districts that have internet websites to post schedules of fees, exactions and affordability requirements, annual fee reports, and an archive of nexus studies on that website, and to update that information within 30 days after any changes.

AB 602 also adds Section 66016.5 to the Mitigation Fee Act imposing several new requirements for impact fees that go into effect on January 1, 2022, including:

- A nexus study must identify the existing level of service for each facility, identify the proposed new level of service (if any), and explain why the new level of service is appropriate.
- If a nexus study supports an increase in an existing fee the local agency shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of the fees collected under the original fee.
- Large jurisdictions (counties over 250,000 and cities within those counties) must adopt a capital improvement plan as part of the nexus study.
- All impact fee nexus studies shall be adopted at a public hearing with at least 30 days' notice, and the local agency shall notify any member of the public that requests notice of intent to begin and impact fee nexus study of the date of the hearing.
- Nexus studies shall be updated at least every eight years, from the period beginning on January 1, 2022.
- A nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of proposed units in the development. A nexus study is not required to comply with this requirement if the local agency makes certain findings specified in the law. A local agency that imposes a fee proportionately to the square footage of units in the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development.
- Authorizes any member of the public, including an applicant for a development project, to submit evidence that impact fees proposed by an agency fail to comply with the Mitigation Fee Act, and requires the legislative body of the agency to consider such evidence and adjust the proposed fee if deemed necessary.

**SB 9, the California Housing Opportunity and More Efficiency (“HOME”) Act.** SB 9 facilitates the subdivision of existing residential lots and allows for ministerial approval (without discretionary review or hearings) of no more than two dwelling units, including duplexes, on parcels zoned for single-family dwellings if the property satisfies certain requirements. To qualify under SB 9 the property must be located within either an urbanized area or urban cluster, as designated by the United States Census Bureau, or for unincorporated areas, within the boundaries of an urbanized area or urban cluster.

The law allows for qualifying lot splits to be approved ministerially upon meeting certain requirements. Each parcel may not be smaller than forty (40%) percent of the original parcel size and each parcel must be at least one thousand two hundred (1,200) square feet in size unless permitted by local ordinance. The parcel must be limited to residential use.

The law does not allow demolition or alteration of certain types of dwellings, including: (a) housing that is subject to a recorded covenant, ordinance, or law that restricts rents to

affordable levels; (b) housing subject to rent control; (c) housing that has been tenant-occupied in the last three years; or (d) housing located in a historic district. In addition, the proposed development may not demolish more than 25% of the exterior structural walls of an existing unit, unless expressly permitted by a local ordinance.

A local agency may impose objective zoning standards, subdivision standards, and design standards unless they would preclude either of the two units from being at least 800 square feet in floor area.

No setback may be required for an existing structure, or a structure constructed in the same location and dimensions as an existing structure. Otherwise, a local agency may require a setback of up to four feet from the side and rear lot lines. Off-street parking of up to one space per unit may be required by the local agency, unless the project is located within a half-mile walking distance of a high-quality transit corridor or a major transit stop, or if there is a car share vehicle within one block of the parcel. If a local agency makes a written finding that a project would create a specific, adverse impact upon public health and safety or the environment without a feasible way to mitigate such impact, the agency still may deny the project.

It is impossible to predict how much SB 9 will affect the number of future residential units constructed in the City. Unlike recent laws dealing with accessory dwelling units, SB 9 does not address the imposition of impact fees on the new dwelling units it allows, and it appears at this point that such units would be subject to the same impact fees as other new residential development.

## **Impact Fee Calculation Methodology**

Any one of several legitimate methods may be used to calculate impact fees. The choice of a particular method depends primarily on the service characteristics of, and planning requirements for, the facility type being addressed. To some extent they are interchangeable, because they all allocate facility costs in proportion to the needs created by development.

Allocating facility costs to various types and amounts of development is central to all methods of impact fee calculation. Costs are allocated by means of formulas that quantify the relationship between development and the need for facilities. In a cost allocation formula, the impact of development represented by some attribute of development such as added population or added vehicle trips that represent the impacts created by different types and amounts of development.

**Plan-Based or Improvements-Driven Method.** Plan-based impact fee calculations are based on the relationship between a specified set of improvements and a specified increment of development. The improvements are typically identified in a facility plan, while the development is identified in a land use plan that forecasts potential development by type and quantity.

Using this method, facility costs are allocated to various categories of development in proportion to the service demand created by each type of development. To calculate



plan-based impact fees, it is necessary to determine what facilities will be needed to serve a particular increment of new development.

With this method, the total cost of eligible facilities is divided by total units of additional demand to calculate a cost per unit of demand (e.g. a cost per capita for parks). Then, the cost per unit of demand is multiplied by factors representing the demand per unit of development (e.g. population per unit) to arrive at a cost per unit of development.

This method is somewhat inflexible in that it is based on the relationship between a specific facility plan and a specific land use plan. If either plan changes significantly the fees will have to be recalculated.

**Capacity-Based or Consumption-Driven Method.** This method calculates a cost per unit of capacity based on the relationship between total cost and total capacity of a system. It can be applied to any type of development, provided the capacity required to serve each increment of development can be estimated and the facility has adequate capacity available to serve the development. Since the cost per unit of demand does not depend on the particular type or quantity of development to be served, this method is flexible with respect to changing development plans.

In this method, the cost of unused capacity is not allocated to development. Capacity-based fees are most commonly used for water and wastewater systems, where the cost of a system component is divided by the capacity of that component to derive a unit cost. However, a similar analysis can be applied to other types of facilities. To produce a schedule of impact fees based on standardized units of development (e.g. dwelling units or square feet of non-residential building area), the cost per unit of capacity is multiplied by the amount of capacity required to serve a typical unit of development in each of several land use categories.

**Standard-Based or Incremental Expansion Method.** Standard-based fees are calculated using a specified relationship or standard that determines the number of service units to be provided for each unit of development. The standard can be established as a matter of policy or it can be based on the level of service being provided to existing development in the study area.

Using the standard-based method, costs are defined on a generic unit-cost basis and then applied to development according to a standard that sets the number of service units to be provided for each unit of development.

Park in-lieu and impact fees are commonly calculated this way. The level of service standard for parks is typically stated in terms of acres of parks per thousand residents. A cost-per-acre for park land or park improvements can usually be estimated without knowing the exact size or location of a particular park. The ratio of park acreage to population and the cost per acre for parks is used to calculate a cost per capita. The cost per capita can then be converted into a cost per unit of development based on the average population per dwelling unit for various types of residential development.

## **Facilities Addressed in this Study**

Impact/in-lieu fees for the following types of facilities are addressed in this report:

- Park Land and Park Improvements
- Recreation Facilities
- Open Space and Trails

Each of those facilities is addressed in a separate chapter of this report, beginning with Chapter 3. Chapter 2 contains data on existing and future development used in the impact fee analysis.

## Chapter 2. Development Data

This chapter presents data on existing and future development that will be used to calculate impact fees in subsequent chapters of this report.

The information in this chapter may be used to establish levels of service, analyze facility needs, and allocate the cost of capital facilities among various types of development.

Land use and development data in this chapter are based on information from the U.S. Census Bureau's American Community Survey (ACS), the California Department of Finance (DOF) Demographic Research Unit, the City of Brisbane Community Development Department and other sources as noted in this chapter.

### Setting

Brisbane is located in northern San Mateo County adjacent to San Francisco Bay about 10 miles south of San Francisco. Most of Brisbane lies west of the Bayshore Freeway (U. S. Highway 101), which closely borders the Bay through much of the City. Brisbane is largely built-out except for an area known as the Baylands, a 700-acre former landfill and industrial site which is being planned for development as a mixed-use neighborhood with the potential to more than double the City's population and employment.

### Study Area and Time Frame

The study area for this study is the area within Brisbane's city limits. The timeframe for this study extends from the present time to 2040. By which time Brisbane is expected to be fully built out. However, the time required for buildout will depend on the rate at which development occurs, and although buildout is expected to occur by 2040, the impact fee calculations do not depend on the rate or timing of development.

### Development Types

Traditionally, impact fees for residential development are based on unit types such as single-family, multi-family and mobile home units. However, AB 602, enacted in 2021, added Section 66016.5 to the Government Code. That section requires that, "[a] nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of proposed units of the development." It further states that "[a] local agency that imposes a fee proportionately to the square footage of the proposed units of the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development."

Consequently, the residential development categories used in this study are based on unit size rather than the type of unit. The complete list of development categories used in this study is shown below.

- Residential: < 800 Sq. Ft.

- Residential: 800 – 1,200 Sq. Ft.
- Residential: >1,200 – 2,100 Sq. Ft.
- Residential: > 2,100 Sq. Ft.
- Commercial
- Lodging
- Office
- Industrial
- Public Facilities

**Residential.** As discussed above, the residential development categories used in this study are based on unit size and do not distinguish by unit type (e.g., single-family or multi-family). Residential development is any development made up primarily of dwelling units intended for long-term occupancy.

**Commercial.** As defined in this study, the Commercial category includes development intended primarily to accommodate retail commercial and service commercial uses and may include restaurants, service stations, banks, and similar or related uses.

**Lodging.** This category includes hotels, motels, bed and breakfast establishments and similar lodging uses.

**Office.** The Office category includes development intended for general office or medical office uses.

**Industrial.** This category includes development intended to accommodate research, manufacturing, warehouse and business park uses.

**Public Facilities.** This category includes government buildings and other public or quasi-public facilities including public schools. Parks are excluded because they do not create impacts on the types of facilities addressed in this report. In many cases, the City may lack authority to charge impact fees to development in this category, or in the case of City facilities, it would be impractical to do so.

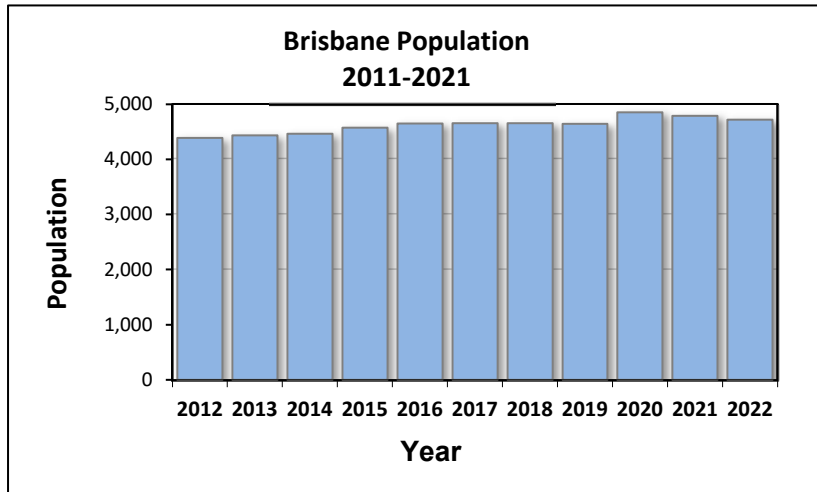
## **Residential Development and Population**

The chart on the next page shows the California Department of Finance (DOF) official January 1 population estimates for the City of Brisbane for the years from 2012 through 2022 except that the 2020 population is based on the 2020 Census count.

The population chart shows essentially no population growth from 2014 to 2019 and then bumps up in 2020 indicating that DOF estimates for the years prior to 2020 were low. The DOF numbers for 2021 and 2022 are slightly below the 2020 Census figure.

According to the official 2010 and 2020 Census population counts, Brisbane has grown a total of 13.3% from 4,282 in 2010 to 4,851 in 2020.

This study uses data from the U. S. Census Bureau’s 2020 American Community Survey to calculate the population per dwelling unit factors for each category of residential development defined in this study. Those factors are shown in Table 2.1.



## Units of Development

In this study, quantities of existing and planned development are measured in terms of certain units of development. Those units are discussed below.

**Dwelling Units.** Dwelling units (DUs) are the most commonly used measure of residential development. The dwelling unit is the standard unit for residential development in this study.

**Building Area.** For non-residential development other than lodging, gross building area in thousands of square feet (KSF) is used as the standard unit of development.

**Lodging.** For the Lodging category, the standard unit of development is a room, meaning a guest room or suite.

## Demand Variables

In calculating impact fees, the relationship between facility needs and development must be quantified in cost allocation formulas. Some measurable attribute of development (e.g., population) is used in those formulas to reflect the impact of different types and amounts of development on the demand for specific public services and the facilities that support those services.

Those attributes are referred to in this study as “demand variables.” Demand variables are selected either because they directly measure service demand created by various types of development, or because they are reasonably correlated with that demand.

**Service Population.** In this study, service population is used to represent the demand created by development for parks, recreation facilities and trails. Service population is a weighted composite of population and employees working in the City. Resident population is included to represent the impacts of residential development and

employees of businesses in the City are included to represent the impacts of non-residential uses, such as commercial, office and industrial development.

Because the impact of one new resident is not necessarily the same as the impact of one new employee, the employee component is weighted relative to the population component to reflect their relative impacts on the demand for certain types of facilities.

In this study, residents (population) are assigned a weight of 1.0. The weight assigned to employees varies depending on how much employees are expected to use a certain type of facility. Based on discussions with City staff regarding expected use of parks and recreation facilities by non-resident employees, employees are given a weight of 0.25 for parks, open space and trails. For other recreation facilities, employees are given a weight of 0.1.

Tables 2.2 through 2.4 later in this chapter show the existing and future population and employee numbers used in this study. Since service population weights differ by the type of facility being analyzed, those weights are applied in Chapters 3 through 5 where the impact fees are calculated.

### **Impact Fees for Accessory Dwelling Units (ADUs)**

Recent amendments to Section 65852.2 of the Government Code provide that impact fees may not be imposed on ADUs smaller than 750 square feet. It also establishes the following requirement for impact fees imposed on ADUs of 750 square feet or more:

*“Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.”*

The effect of that requirement is that impact fees for ADUs must be calculated on a case-by-case basis, considering the size of both the primary unit and the ADU.

Although it is not spelled out in Section 65852.2, we think it is obvious that when calculating ADU impact fees in cases where the primary unit is a single-family detached unit, the starting point for the proportionality calculation is the fee that applies to the single-family unit. The law also allows for ADUs on lots or parcels where the primary unit is a multi-family unit. In that situation, it seems logical that the ADU impact fee should be proportional to the impact fee that applies to the multi-family unit, but we think ADUs within multi-family developments are likely to be rare and we don't address them further.

The formula for calculating proportional ADU impact fees would be:

$$\text{Primary unit impact fee} \times \left( \frac{\text{ADU square feet}}{\text{Primary unit square feet}} \right)$$

One implication of that formula is that, for an ADU of a particular size, a larger primary unit results in lower impact fees for the ADU.

For example, if the ADU is 1,000 square feet and the primary unit is 2,000 square feet, the proportional impact fee for the ADU would be 50% of the impact fee that would apply to the primary unit. But if the primary unit is 1,200 square feet, the impact fee for the same-sized ADU would be 83.33% of the primary unit fee.

It seems likely that discrepancy is an unintended consequence of language in Section 65852.2 that was not thoroughly considered before adoption. As noted previously, for impact fee studies adopted after July 1, 2022, AB 602 requires impact fees for all types of residential units to be proportional to the square footage of a unit. Impact fees based on square footage for primary units will tend to reduce the inequity created by the proportionality language of Section 65852.2 because the fees that apply to a smaller primary unit would be less than the fees that apply to a larger primary unit. However, it may be a number of years before most cities in California adopt residential impact fees based on square footage. Based on surveys NBS has conducted, it appears that most California cities and counties are applying the proportionality requirement as written.

## Population and Employees per Unit

Table 2.1 shows the population-and-employees-per-unit factors for various types of development as used in this study.

**Table 2.1: Population and Employees per Unit**

Development Type	Dev Units <sup>1</sup>	Pop per Unit <sup>2</sup>	Employees per Unit <sup>3</sup>
Residential <800 Sq. Ft. Unit	DU	2.33	
Residential 800-1,200 Sq. Ft. Unit	DU	2.43	
Residential 1,200-2,100 Sq. Ft. Unit	DU	2.53	
Residential >2,100 Sq. Ft. Unit	DU	2.63	
Commercial	KSF		2.00
Lodging	Room		0.35
Office	KSF		3.00
Industrial	KSF		1.10
Public Facilities	KSF		3.00

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 gross square feet of building area; Room = guest room or suite

<sup>2</sup> Population per unit for residential development estimated by NBS based on American Community Survey (ACS) 2020 5-year estimates for distribution of units by number of bedrooms (Table B25041)

<sup>3</sup> Employees per unit estimated by NBS

## Existing and Future Development

Tables 2.2 through 2.4 present data on existing and future development in Brisbane. Data from those tables will be used throughout this report. Table 2.2 shows existing development as of January 2022.

It should be noted that existing and future residential development figures are not shown for each unit size category. Because no data are available on the mix of unit sizes for existing or future development, residential units and population for all unit size categories are grouped into the “all residential” category in these tables.

**Table 2.2: Existing Development as of January 2022**

Development Types	Dev Units <sup>1</sup>	Existing Units <sup>2</sup>	Existing Pop <sup>3</sup>	Existing Empl <sup>4</sup>
All Residential	DU	2,039	4,851	
Commercial	KSF	890.0		1,780
Lodging	Room	387		135
Office	KSF	356.3		1,069
Industrial	KSF	3,209.1		3,530
Public Facilities	KSF	85.3		256
<b>Total</b>			<b>4,851</b>	<b>6,770</b>

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 gross square feet of building area; Room = guest room or suite;

<sup>2</sup> Existing residential units from the California Department of Finance (DOF) 2022 E-5 report

<sup>3</sup> Existing population based on the 2020 Census and assumes no growth from 2020 to 2022 as reported by the Brisbane Community Development Department

<sup>4</sup> Total existing employees estimated by the Brisbane Community Development Department; the breakdown of jobs by development type based on the 2021 ESRI Business Summary for Brisbane

Table 2.3 on the next page presents a forecast of future development in the City.



**Table 2.3: Forecasted Future Development to Buildout**

Development Types	Dev Units <sup>1</sup>	Future Units <sup>2</sup>	Future Pop <sup>3</sup>	Future Empl <sup>4</sup>
All Residential	DU	2,637.0	6,460	
Commercial	KSF	1,897.5		3,795
Lodging	Room	600.0		210
Office	KSF	4,262.7		12,788
Industrial	KSF	5,601.8		6,162
Public Facilities	KSF	150.0		450
<b>Total</b>			<b>6,460</b>	<b>23,405</b>

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 gross square feet of building area; Room = guest room or suite;

<sup>2</sup> Future units estimated by the Brisbane Community Development Dept.; estimates include buildout of the Baylands Specific Plan Area

<sup>3</sup> Future population = residential units X pop. per unit from Table 2.1

<sup>4</sup> Future employees = non-residential units X empl. per unit from Table 2.1

Table 2.4 shows forecasted buildout development in the City. The numbers in that table sum the existing development from Table 2.2 and forecasted future development from Table 2.3.

**Table 2.4: Buildout Development**

Development Types	Dev Units <sup>1</sup>	Buildout Units	Buildout Population	Buildout Employees
All Residential	DU	4,676	11,311	
Commercial	KSF	2,788		5,575
Lodging	Room	987		345
Office	KSF	4,619		13,857
Industrial	KSF	8,811		9,692
Public Facilities	KSF	235		706
<b>Total</b>			<b>11,311</b>	<b>30,175</b>

Note: Buildout development in Table 2.4 = existing development from Table 2.2 plus forecasted future development from Table 2.3

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 gross square feet of building area; Room = guest room or suite;

## Growth Potential

The numbers in the foregoing tables indicate that between 2022 and buildout, the City's population could increase by 133% while the number of employees working in the City could increase by 345%. The impact fees calculated in this report are intended to provide the City with the means to provide the parks, recreation facilities and trails needed to serve that growth.

## Chapter 3. Park Land and Park Improvements

This chapter calculates impact fees for both park land acquisition and park improvements. Chapter 16.24 of the Brisbane Municipal Code requires that residential subdivisions dedicate land for parks or pay fees in lieu of dedication pursuant to the Quimby Act (Govt. Code Section 66477) which is part of the Subdivision Map Act. Consequently, the park land impact fees calculated in this chapter would not apply to any residential subdivision that dedicates park land or pays in-lieu fees required by Chapter 16.24.

Since in-lieu fees and impact fees for park land acquisition are based only on the cost of land and do not cover the cost of park improvements, this chapter calculates a separate impact fee for park improvements. Impact fees for park land and park improvements, as well as for other facilities addressed in this report are governed by the Mitigation Fee Act.

To be clear, the park improvement impact fees calculated in this chapter are intended to be charged in addition to any dedication of park land or payment of park land in-lieu fees or impact fees by a development project. Park improvement impact fees, if enacted by the City, would apply to all new development in Brisbane, separately from contributions toward acquisition of park land.

### Service Area

Impact fees calculated in this chapter are intended to apply to all new development in the City, except that impact fees for park land acquisition would not apply to any development project that dedicates park land or pays fees in lieu of dedication pursuant to the Quimby Act.

### Methodology

This chapter calculates impact fees using the standard-based method discussed in Chapter 1. Standard-based fees are calculated using a specified relationship or standard that determines the number of service units to be provided for each unit of development. In this case, the standard used to calculate impact fees for park land and park improvements is the existing level of service, which is defined as the City's current ratio of park acres to service population. That level of service is shown in Table 3.2 later in this chapter. The makeup of the service population used in this report is discussed in Chapter 2 and in the next section.

### Demand Variable

A "demand variable" is a quantifiable attribute of development that is used in impact fee calculation formulas to represent the impact of development. The demand variable used to calculate park impact fees in this chapter is service population.

As discussed in Chapter 2, service population is a weighted composite variable made up of resident population and employees working in Brisbane. Residents are included in the

service population to represent the demand created by residential development and employees are included to represent the demand created by non-residential development.

In all cases, residents are assigned a weight of 1.0, but the weighting of employees varies for different types of facilities in this report. For purposes of calculating park impact fees, employees are assigned a weight of 0.25, meaning that the demand created by an employee of a business in Brisbane equals one-quarter of the demand created by a resident of the City.

### Existing Level of Service

In 2021, AB 602 added Section 66016.5 to the Mitigation Fee Act. That section requires, after January 1, 2022, that the level of service used in an impact fee study must be compared with the existing level of service. If the level used in the impact fee study exceeds the existing level of service, an explanation is required. The impact fees calculated in this chapter are based on the existing level of service as shown in Table 3.2 on the next page, so there is no level-of-service issue in the calculation of impact fees in this chapter with respect to Section 66016.5.

Table 3.1 lists the City’s existing parks and shows City-owned park acreage and acres of parks improved by the City.

**Table 3.1: Existing Parks**

Park Name	Location	City-Owned Park Acres <sup>1</sup>	Improved Park Acres
Community Center Park	250 Visitacion Avenue	0.12	0.12
Community Park	5 Old County Road	2.82	2.82
Brisbane Dog Park	50 Park Place	0.54	0.54
Firth Park and Canyon	201 Glen Park Way	0.27	0.27
Fisherman's Park	@ Brisbane Lagoon	0.25	0.25
Mission Blue Complex	475 Mission Blue Drive	4.95	3.85
Quarry Road Park	399 San Francisco Ave	0.20	0.20
Tot Lot Playground/Park	4 Solano Street	0.25	0.25
Marina Park	Sierra Point Parkway	3.00	3.00
Skatepark	Old County Rd & Park Ln	0.12	0.12
Basketball Courts (2)	Old County Rd & Park Ln	0.16	0.16
Tennis Courts (2)	1 Solano St	School Land	0.34
<b>Total</b>		<b>12.67</b>	<b>11.91</b>

Source: City of Brisbane Parks and Recreation Department; acreage shown for the Mission Blue Complex excludes the site of the Mission Blue Center

<sup>1</sup> "School land" means that a facility was constructed by the City on land owned by a school district

Table 3.2 calculates the existing level of service in terms of acres per capita of service population for improved park land in the City. The level of service used in this chapter is based on improved park acres because a 2019 decision by the California Court of Appeal in *Boatworks, LLC v. City of Alameda* found that parks not yet open to the public could not be used as the basis for establishing the existing level of service used to calculate park impact fees.

**Table 3.2: Existing Level of Service - Parks**

Total Improved Park Acres <sup>1</sup>	Existing Service Population <sup>2</sup>	Existing Acres per Capita <sup>3</sup>
11.29	6,544	0.00172

<sup>1</sup> See Table 3.1

<sup>2</sup> Existing service population for parks = existing population +  
(existing employees X 0.25)

<sup>3</sup> Existing acres per capita of service population = existing acres /  
existing service population

## Cost Per Capita

Table 3.3 calculates the cost per capita for park land acquisition and park improvements based on the existing acres per capita from Table 3.2 and the estimated cost per acre for park land and park improvements.

**Table 3.3: Cost per Capita - Park Land and Park Improvements**

Fee Type	Acres per Capita <sup>1</sup>	Cost per Acre <sup>2</sup>	Cost per Capita <sup>3</sup>
Park Land Acquisition	0.00182	\$ 3,500,000	\$ 6,370.00
Park Improvements	0.00182	\$ 575,000	\$ 1,046.50

<sup>1</sup> See Table 3.2

<sup>2</sup> Park land acquisition cost per acre based on recent land purchase  
by the City; park improvement cost per acre estimated by the City

<sup>3</sup> Cost per capita = acres per capita X cost per acre

In the next section, the per-capita costs from Table 3.3 are used to calculate impact fees per unit of development.

## Impact Fees per Unit

**Park Land Acquisition.** Table 3.4 on the next page shows the calculation of park land impact fees per unit of development, by development type. Those fees are calculated using per-capita costs for park land acquisition from Table 3.3 and service population per unit. Service population per unit for residential development = population per unit from

Table 2.1. Service population per unit for non-residential development = 0.25 X employees per unit from Table 2.1.

**Table 3.4: Impact Fees per Unit - Park Land Acquisition**

Development Type	Units <sup>1</sup>	Cost per Capita <sup>2</sup>	Service Pop per Unit <sup>3</sup>	Impact Fee per Unit <sup>4</sup>
Residential <800 Sq. Ft. Unit	DU	\$6,370.00	2.330	\$ 14,842.10
Residential 800-1,200 Sq. Ft. Unit	DU	\$6,370.00	2.430	\$ 15,479.10
Residential 1,200-2,100 Sq. Ft. Unit	DU	\$6,370.00	2.530	\$ 16,116.10
Residential >2,100 Sq. Ft. Unit	DU	\$6,370.00	2.630	\$ 16,753.10
Commercial	KSF	\$6,370.00	0.500	\$ 3,185.00
Lodging	Room	\$6,370.00	0.088	\$ 557.38
Office	KSF	\$6,370.00	0.750	\$ 4,777.50
Industrial	KSF	\$6,370.00	0.275	\$ 1,751.75
Public Facilities	KSF	\$6,370.00	0.750	\$ 4,777.50

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 square gross square feet of building area; Room = guest room or suite

<sup>2</sup> See Table 3.3

<sup>3</sup> Service population per unit for residential development = population per unit from Table 2.1; service population per unit for non-residential development = 0.25 X employees per unit from Table 2.1

<sup>4</sup> Impact fee per unit = cost per capita X service population per unit

**Park Improvements.** Table 3.5 on the next page shows the calculation of park improvement impact fees per unit of development, by development type. Those fees are calculated using per-capita costs for park improvements from Table 3.3 and service population per unit. Service population per unit for residential development = population per unit from Table 2.1. Service population per unit for non-residential development = 0.25 X employees per unit from Table 2.1.

**Table 3.5: Impact Fees per Unit - Park Improvements**

Development Type	Units <sup>1</sup>	Cost per Capita <sup>2</sup>	Service Pop per Unit <sup>3</sup>	Impact Fee per Unit <sup>4</sup>
Residential <800 Sq. Ft. Unit	DU	\$1,046.50	2.330	\$ 2,438.35
Residential 800-1,200 Sq. Ft. Unit	DU	\$1,046.50	2.430	\$ 2,543.00
Residential 1,200-2,100 Sq. Ft. Unit	DU	\$1,046.50	2.530	\$ 2,647.65
Residential >2,100 Sq. Ft. Unit	DU	\$1,046.50	2.630	\$ 2,752.30
Commercial	KSF	\$1,046.50	0.500	\$ 523.25
Lodging	Room	\$1,046.50	0.088	\$ 91.57
Office	KSF	\$1,046.50	0.750	\$ 784.88
Industrial	KSF	\$1,046.50	0.275	\$ 287.79
Public Facilities	KSF	\$1,046.50	0.750	\$ 784.88

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 square gross square feet of building area; Room = guest room or suite

<sup>2</sup> See Table 3.3

<sup>3</sup> Service population per unit for residential development = population per unit from Table 2.1; service population per unit for non-residential development = 0.25 X employees per unit from Table 2.1

<sup>4</sup> Impact fee per unit = cost per capita X service population per unit

## Projected Revenue

This report does not estimate potential revenue from park land acquisition impact fees because many new residential units may be in subdivisions which are subject to City's Quimby Act park land dedication or in-lieu fee requirements rather than the park land impact fees which would apply to non-subdivision projects. We have no way of forecasting how many future residential units would be subject to the park land impact fees calculated in this chapter, so we do not project potential revenue from those fees.

However, since the park improvement impact fees would apply to all new residential development in the City, potential revenue from those impact fees is projected in Table 3.6. Because we are unable to forecast the number of new units that will be constructed in each residential unit size category, potential revenue is projected in Table 3.6 on the basis of added service population and the cost per capita of service population.

**Table 3.6: Projected Revenue - Park Improvement Impact Fees**

Development Type	Added Service Pop <sup>1</sup>	Cost per Capita <sup>2</sup>	Projected Revenue <sup>3</sup>
All Residential	6,460	\$1,046.50	\$ 6,760,390
Commercial	949	\$1,046.50	\$ 993,129
Lodging	53	\$1,046.50	\$ 55,465
Office	3,197	\$1,046.50	\$ 3,345,661
Industrial	1,541	\$1,046.50	\$ 1,612,657
<b>Total</b>			<b>\$ 12,767,300</b>

<sup>1</sup> See Table 2.3; added service population for residential development = added population; added service population for non-residential development = 0.25 X added employees

<sup>2</sup> See Table 3.5

<sup>3</sup> Projected revenue = added service population X cost per capita

## Updating the Fees

The impact fees calculated in this chapter are based the current estimated cost of park land and improvements. We recommend that the fees be reviewed annually and adjusted as needed using local cost data or an index such as the *Engineering News Record* Construction Cost Index (CCI). See the Implementation Chapter for more on indexing of fees.

## Nexus Summary

As discussed in Chapter 1 of this report, Section 66001 of the Mitigation Fee Act requires that an agency establishing, increasing or imposing impact fees, must make findings to:

Identify the purpose of the fee;

Identify the use of the fee; and,

Determine that there is a reasonable relationship between:

- a. The use of the fee and the development type on which it is imposed;
- b. The need for the facility and the type of development on which the fee is imposed; and
- c. The amount of the fee and the facility cost attributable to the development project.

Satisfying those requirements also ensures that the fees meet the “rational nexus” and “rough proportionality” standards enunciated in leading court decisions bearing on impact fees and other exactions. (For more detail, see “Legal Framework for Impact Fees” in Chapter 1.) The following paragraphs explain how the impact fees calculated in this chapter satisfy those requirements.

**Purpose of the Fee:** The purpose of the impact fees calculated in this chapter is to mitigate the impact of new development on the need for parks in Brisbane.

**Use of the Fee.** Impact fees calculated in this chapter will be used to provide additional parks to mitigate the impacts of new development in the City.

As provided by the Mitigation Fee Act, revenue from impact fees may also be used for temporary loans from one impact fee fund or account to another.

**Reasonable Relationship between the Use of the Fee and the Development Type on Which It Is Imposed.** The impact fees calculated in this chapter will be used to provide additional parks to serve the needs of added service population associated with new development in Brisbane.

**Reasonable Relationship between the Need for the Facilities and the Type of Development on Which the Fee Is Imposed.** New development will increase the need for parks to maintain the existing level of service, as described earlier in this chapter. Without additional parks, the increase in service population associated with new development in the City would result in a reduction in the level of service provided to the entire City.

**Reasonable Relationship between the Amount of the Fee and the Facility Cost Attributable to the Development Project.** The amount of the park impact fees charged to a development project will depend on the increase in service population associated with that project. The fees per unit of development calculated in this chapter for each type of development are based on the estimated average service population per unit for that type of development in Brisbane. Thus, the fee charged to a development project reflects the impact of that project on the need for parks in the City.



## Chapter 4. Recreation Facilities

This chapter calculates impact fees for recreation facilities needed to maintain the existing level of service in Brisbane as the City grows.

### Service Area

Impact fees calculated in this chapter are intended to apply to all new development in the City.

### Methodology

This chapter calculates impact fees using the standard-based method discussed in Chapter 1. Standard-based fees are calculated using a specified relationship or standard that determines the number of service units to be provided for each unit of development. In this case, the standard used to calculate impact fees for recreation facilities is the existing level of service, which is defined as the current relationship between the replacement cost of existing recreation facilities and the existing service population. That level of service is shown in Table 4.2 later in this chapter. The makeup of the service population used in this report is discussed in Chapter 2 and in the next section.

### Demand Variable

A “demand variable” is a quantifiable attribute of development that is used in impact fee calculation formulas to represent the impact of development. The demand variable used to calculate recreation facilities impact fees in this chapter is service population.

As discussed in Chapter 2, service population is a weighted composite variable made up of resident population and employees working in Brisbane. Residents are included in the service population to represent the demand created by residential development and employees are included to represent the demand created by non-residential development.

In all cases, residents are assigned a weight of 1.0 but the weighting of employees varies for different types of facilities in this report. For purposes of calculating impact fees for recreation facilities, employees are assigned a weight of 0.1, meaning that the demand created by one employee is one-tenth of the demand created by one resident of the City. That weight is lower than the employee weight used in Chapter 3 for park land and park improvements and in Chapter 5 for Open Space and Trails because the experience of City staff indicates that employees of businesses in the City place substantially less demand on the types of recreation facilities addressed in this Chapter substantially than they do on parks, open space and trails.

## Existing Level of Service

In 2021, AB 602 added Section 66016.5 to the Mitigation Fee Act. That section requires that, after January 1, 2022, the level of service used in an impact fee study must be compared with the existing level of service. If the level used in the impact fee study exceeds the existing level of service, an explanation is required. The impact fees calculated in this chapter are based on the existing level of service as shown in Table 4.2 below, so there is no level-of-service issue with respect to Section 66016.5.

Table 4.1 lists the City's existing recreation facilities with their replacement cost, including land. Replacement cost is used here as an indicator of the cost of constructing additional facilities to serve new development.

**Table 4.1: Existing Recreation Facilities**

Park Name	Location	Site Acres <sup>1</sup>	Land Value <sup>2</sup>	Building Sq Feet <sup>3</sup>	Facility Repl Cost <sup>4</sup>	Impact Fee Cost Basis <sup>5</sup>
Brisbane Community Pool	2 Solano St	0.62	\$ 2,169,421	3,066	\$ 2,085,698	\$ 4,255,119
Childcare Modular	500 San Bruno Av	School Land	\$ 0	1,920	\$ 400,000	\$ 400,000
Community Center/Library	250 Visitacion Av	0.11	\$ 385,675	5,449	\$ 2,077,660	\$ 2,463,335
Mission Blue Center	475 Mission Blue Dr	0.65	\$ 2,275,000	7,200	\$ 1,981,290	\$ 4,256,290
Silverspot Cooperative	4 Solano St	0.06	\$ 216,942	2,700	\$ 498,582	\$ 715,524
<b>Total</b>		<b>1.44</b>	<b>\$ 5,047,039</b>	<b>17,269</b>	<b>\$ 7,043,230</b>	<b>\$ 12,090,269</b>

<sup>1</sup> Site acres provided by the City of Brisbane Parks and Recreation Department; "In Park" means the facility is located in a park on acreage already covered by the park land impact fees; "School Land" means the facility was constructed by the City on land owned by a school district

<sup>2</sup> Site value = site acres X park land acquisition cost per acre from Table 3.3 in Chapter 3

<sup>3</sup> Building square feet from the City's insured property schedule or the Parks and Recreation Department

<sup>4</sup> Facility replacement cost includes both the fixed asset value and furniture, fixtures and equipment from the City's insured property schedule, where applicable

<sup>5</sup> Impact fee cost basis is the sum of the land value and the facility replacement cost

## Existing Level of Service - Cost Per Capita

Table 4.2 calculates the existing level of service in terms of a cost per capita of service population for the City's existing recreation facilities.

**Table 4.2: Existing Level of Service - Recreation Facilities**

Impact Fee Cost Basis <sup>1</sup>	Existing Service Population <sup>2</sup>	Cost per Capita <sup>3</sup>
\$12,090,269	5,528	\$2,187.10

<sup>1</sup> See Table 4.1

<sup>2</sup> Existing service population for parks = existing population + (0.1 X existing employees)

<sup>3</sup> Cost per capita = impact fee cost basis / existing service population

In the next section, the per-capita costs from Table 4.2 are used to calculate impact fees per unit of development.

## Impact Fees per Unit

Table 4.3 shows the calculation of recreation facilities impact fees per unit of development, by development type. Those fees are calculated using per-capita costs from Table 4.2 and service population per unit. Service population per unit for residential development = population per unit from Table 2.1. Service population per unit for non-residential development = 0.1 X employees per unit from Table 2.1.

**Table 4.3: Impact Fees per Unit - Recreation Facilities**

Development Type	Units <sup>1</sup>	Cost per Capita <sup>2</sup>	Service Pop per Unit <sup>3</sup>	Impact Fee per Unit <sup>4</sup>
Residential <800 Sq. Ft. Unit	DU	\$2,187.10	2.330	\$ 5,095.93
Residential 800-1,200 Sq. Ft. Unit	DU	\$2,187.10	2.430	\$ 5,314.64
Residential 1,200-2,100 Sq. Ft. Unit	DU	\$2,187.10	2.530	\$ 5,533.35
Residential >2,100 Sq. Ft. Unit	DU	\$2,187.10	2.630	\$ 5,752.06
Commercial	KSF	\$2,187.10	0.200	\$ 437.42
Lodging	Room	\$2,187.10	0.035	\$ 76.55
Office	KSF	\$2,187.10	0.300	\$ 656.13
Industrial	KSF	\$2,187.10	0.110	\$ 240.58
Public Facilities	KSF	\$2,187.10	0.300	\$ 656.13

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 gross square feet of building area; Room = guest room or suite

<sup>2</sup> See Table 4.2

<sup>3</sup> Service population per unit for residential development = population per unit from Table 2.1; service population per unit for non-residential development = 0.1 X employees per unit from Table 2.1

<sup>4</sup> Impact fee per unit = cost per capita X service population per unit

## Projected Revenue

Table 4.4. projects potential revenue from the recreation facilities impact fees based on the cost per capita of service population and service population per unit.

**Table 4.4: Projected Revenue - Recreation Facilities Impact Fees**

Development Type	Added Service Pop <sup>1</sup>	Cost per Capita <sup>2</sup>	Projected Revenue <sup>3</sup>
All Residential	6,460	\$2,187.10	\$ 14,128,642
Commercial	380	\$2,187.10	\$ 831,097
Lodging	21	\$2,187.10	\$ 45,929
Office	1,279	\$2,187.10	\$ 2,797,296
Industrial	616	\$2,187.10	\$ 1,347,251
<b>Total</b>			<b>\$ 19,150,216</b>

<sup>1</sup> See Table 2.3; added service population for residential development = added population; added service population for non-residential development = 0.1 X added employees

<sup>2</sup> See Table 4.3

<sup>3</sup> Projected revenue = added service population X cost per capita

## Updating the Fees

The impact fees calculated in this chapter are based the current estimated cost of recreation facilities. We recommend that the fees be reviewed annually and adjusted as needed using local cost data or an index such as the *Engineering News Record* Construction Cost Index (CCI). See the Implementation Chapter for more on indexing of fees.

## Nexus Summary

As discussed in Chapter 1 of this report, Section 66001 of the Mitigation Fee Act requires that an agency establishing, increasing or imposing impact fees, must make findings to:

Identify the purpose of the fee;

Identify the use of the fee; and,

Determine that there is a reasonable relationship between:

- a. The use of the fee and the development type on which it is imposed;
- b. The need for the facility and the type of development on which the fee is imposed; and
- c. The amount of the fee and the facility cost attributable to the development project.

Satisfying those requirements also ensures that the fees meet the “rational nexus” and “rough proportionality” standards enunciated in leading court decisions bearing on impact fees and other exactions. (For more detail, see “Legal Framework for Impact Fees” in Chapter 1.) The following paragraphs explain how the impact fees calculated in this chapter satisfy those requirements.

**Purpose of the Fee:** The purpose of the impact fees calculated in this chapter is to mitigate the impact of new development on the need for recreation facilities in Brisbane.

**Use of the Fee.** Impact fees calculated in this chapter will be used to provide additional recreation facilities to mitigate the impacts of new development in the City.

As provided by the Mitigation Fee Act, revenue from impact fees may also be used for temporary loans from one impact fee fund or account to another.

**Reasonable Relationship between the Use of the Fee and the Development Type on Which It Is Imposed.** The impact fees calculated in this chapter will be used to provide additional recreation facilities to serve the needs of added service population associated with new development in Brisbane.

**Reasonable Relationship between the Need for the Facilities and the Type of Development on Which the Fee Is Imposed.** New development will increase the need for recreation facilities to maintain the existing level of service, as described earlier in this chapter. Without additional recreation facilities, the increase in service population associated with new development in the City would result in a reduction in the level of service provided to the entire City.

**Reasonable Relationship between the Amount of the Fee and the Facility Cost Attributable to the Development Project.** The amount of the recreation facilities impact fees charged to a development project will depend on the increase in service population associated with that project. The fees per unit of development calculated in this chapter for each type of development are based on the estimated average service population per unit for that type of development in Brisbane. Thus, the fee charged to a development project reflects the impact of that project on the need for recreation facilities in the City.

## Chapter 5. Open Space and Trails

This chapter calculates impact fees for open space land acquisition and trail improvements needed to maintain the existing level of service in Brisbane as the City grows.

### Service Area

Impact fees calculated in this chapter are intended to apply to all new development in the City.

### Methodology

This chapter calculates impact fees using the standard-based method discussed in Chapter 1. Standard-based fees are calculated using a specified relationship or standard that determines the number of service units to be provided for each unit of development. In this case, the standard used to calculate impact fees for open space and trails is the existing level of service. The existing level of service for open space land is defined as the current relationship between the value of the existing City-owned open space land and the existing service population. The existing level of service for trail improvements is defined as the current relationship between the replacement cost of the City's existing trails and the existing service population. Those levels of service are shown in Table 5.2 later in this chapter. The makeup of the service population used in this report is discussed in Chapter 2 and in the next section.

### Demand Variable

A “demand variable” is a quantifiable attribute of development that is used in impact fee calculation formulas to represent the impact of development. The demand variable used to calculate impact fees for open space and trails in this chapter is service population.

As discussed in Chapter 2, service population is a weighted composite variable made up of resident population and employees working in Brisbane. Residents are included in the service population to represent the demand created by residential development and employees are included to represent the demand created by non-residential development.

In all cases, residents are assigned a weight of 1.0 but the weighting of employees varies for different types of facilities in this report. For purposes of calculating impact fees for open space and trails, employees are assigned a weight of 0.25, meaning that the demand created by an employee is one-quarter of the demand created by a resident of the City. That is the same employee weight used in Chapter 3 to calculate impact fees for park land and park improvements.

## Existing Level of Service

In 2021, AB 602 added Section 66016.5 to the Mitigation Fee Act. That section requires, after January 1, 2022, that the level of service used in an impact fee study must be compared with the existing level of service. If the level used in the impact fee study exceeds the existing level of service, an explanation is required. The impact fees calculated in this chapter are based on the existing level of service as shown in Table 5.2 below, so there is no level-of-service issue with respect to Section 66016.5.

Table 5.1 lists the acreage and estimated value of the City's existing open space parcels and the estimated replacement cost of trail improvements. Replacement cost is used here as an indicator of the cost of constructing additional facilities to serve new development.

**Table 5.1: Existing Open Space and Trails**

Park Name	Open Space Acres <sup>1</sup>	Open Space Land Value <sup>2</sup>	Trail Length (LF) <sup>3</sup>	Trail Width (Ft) <sup>4</sup>	Trail Square Feet <sup>5</sup>	Trail Impr Cost <sup>6</sup>
Costaños Canyon	1.01	\$ 80,800	416	10.0	4,160	\$ 83,200
Crocker Trail	5.45	\$ 436,364	11,880	12.0	142,560	\$2,851,200
Firth Canyon	1.68	\$ 134,400				\$ 0
Quarry Road Trail	1.19	\$ 95,200	2,640	10.0	26,400	\$ 528,000
<b>Total</b>	<b>9.33</b>	<b>\$ 746,764</b>				<b>\$3,462,400</b>

<sup>1</sup> Open space acres provided by the City of Brisbane Parks and Recreation Department

<sup>2</sup> Open space land based on \$80,000 per acre

<sup>3</sup> Trail length in linear feet

<sup>4</sup> Trail width in feet

<sup>5</sup> Trail improvements in square feet provided by the Brisbane Parks and Recreation Department

<sup>6</sup> Trail improvement cost = square feet of trail improvements X \$20.00 per square foot

## Existing Level of Service - Cost Per Capita

Table 5.2 calculates the existing level of service in terms of a cost per capita of service population for the City's existing open space land and improved trails.

**Table 5.2: Existing Level of Service - Open Space and Trails**

Cost Component	Impact Fee Cost Basis <sup>1</sup>	Existing Service Population <sup>2</sup>	Cost per Capita <sup>3</sup>
Open Space Land	\$ 746,764	6,544	\$114.12
Trail Improvements	\$ 3,462,400	6,544	\$529.14

<sup>1</sup> See Table 5.1; impact fee cost basis = existing land value for open space land and trail improvement cost for trails

<sup>2</sup> Existing service population for parks = existing population + (0.25 X existing employees)

<sup>3</sup> Cost per capita = impact fee cost basis / existing service population

In the next section, the per-capita costs from Table 5.2 are used to calculate impact fees per unit of development.

### Impact Fees per Unit

**Impact Fees per Unit – Open Space Land Acquisition.** Table 5.3 shows the calculation of open space land acquisition impact fees per unit of development, by development type. Those fees are calculated using per-capita costs from Table 5.2 and service population per unit. Service population per unit for residential development = population per unit from Table 2.1. Service population per unit for non-residential development = 0.25 X employees per unit from Table 2.1.

**Table 5.3: Impact Fees per Unit - Open Space Land Acquisition**

Development Type	Units <sup>1</sup>	Cost per Capita <sup>2</sup>	Service Pop per Unit <sup>3</sup>	Impact Fee per Unit <sup>4</sup>
Residential <800 Sq. Ft. Unit	DU	\$114.12	2.330	\$ 265.91
Residential 800-1,200 Sq. Ft. Unit	DU	\$114.12	2.430	\$ 277.32
Residential 1,200-2,100 Sq. Ft. Unit	DU	\$114.12	2.530	\$ 288.73
Residential >2,100 Sq. Ft. Unit	DU	\$114.12	2.630	\$ 300.14
Commercial	KSF	\$114.12	0.500	\$ 57.06
Lodging	Room	\$114.12	0.088	\$ 9.99
Office	KSF	\$114.12	0.750	\$ 85.59
Industrial	KSF	\$114.12	0.275	\$ 31.38
Public Facilities	KSF	\$114.12	0.750	\$ 85.59

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 square gross square feet of building area; Room = guest room or suite

<sup>2</sup> See Table 5.2

<sup>3</sup> Service population per unit for residential development = population per unit from Table 2.1; service population per unit for non-residential development = 0.25 X employees per unit from Table 2.1

<sup>4</sup> Impact fee per unit = cost per capita X service population per unit



**Impact Fees per Unit – Trail Improvements.** Table 5.4 shows the calculation of trail improvement impact fees per unit of development, by development type. Those fees are calculated using per-capita costs from Table 5.2 and service population per unit. Service population per unit for trail improvement impact fees is identical to the service population per unit for open space land acquisition.

**Table 5.4: Impact Fees per Unit - Trail Improvements**

Development Type	Units <sup>1</sup>	Cost per Capita <sup>2</sup>	Service Pop per Unit <sup>3</sup>	Impact Fee per Unit <sup>4</sup>
Residential <800 Sq. Ft. Unit	DU	\$529.14	2.330	\$ 1,232.89
Residential 800-1,200 Sq. Ft. Unit	DU	\$529.14	2.430	\$ 1,285.80
Residential 1,200-2,100 Sq. Ft. Unit	DU	\$529.14	2.530	\$ 1,338.71
Residential >2,100 Sq. Ft. Unit	DU	\$529.14	2.630	\$ 1,391.63
Commercial	KSF	\$529.14	0.500	\$ 264.57
Lodging	Room	\$529.14	0.088	\$ 46.30
Office	KSF	\$529.14	0.750	\$ 396.85
Industrial	KSF	\$529.14	0.275	\$ 145.51
Public Facilities	KSF	\$529.14	0.750	\$ 396.85

<sup>1</sup> Units of development: DU = dwelling unit; KSF = 1,000 square gross square feet of building area; Room = guest room or suite

<sup>2</sup> See Table 5.2

<sup>3</sup> Service population per unit for residential development = population per unit from Table 2.1; service population per unit for non-residential development = 0.25 X employees per unit from Table 2.1

<sup>4</sup> Impact fee per unit = cost per capita X service population per unit

## Projected Revenue

**Projected Revenue – Open Space Land Acquisition Impact Fees.** Table 5.5. projects potential revenue from the open space land acquisition impact fees based on the cost per capita of service population and service population per unit.

**Table 5.5: Projected Revenue - Open Space Land Impact Fees**

Development Type	Added Service Pop <sup>1</sup>	Cost per Capita <sup>2</sup>	Projected Revenue <sup>3</sup>
All Residential	6,460	\$114.12	\$ 737,234
Commercial	949	\$114.12	\$ 108,303
Lodging	53	\$114.12	\$ 6,049
Office	3,197	\$114.12	\$ 364,851
Industrial	1,541	\$114.12	\$ 175,863
<b>Total</b>			<b>\$ 1,392,300</b>

<sup>1</sup> See Table 2.3; added service population for residential development = added population; added service population for non-residential development = 0.25 X added employees from Table 2.3

<sup>2</sup> See Table 5.2

<sup>3</sup> Projected revenue = added service population X cost per capita

**Projected Revenue – Trail Improvement Impact Fees.** Table 5.6. projects potential revenue from the open space land acquisition impact fees based on the cost per capita of service population and service population per unit.

**Table 5.6: Projected Revenue - Trail Improvement Impact Fees**

Development Type	Added Service Pop <sup>1</sup>	Cost per Capita <sup>2</sup>	Projected Revenue <sup>3</sup>
All Residential	6,460	\$529.14	\$ 3,418,217
Commercial	949	\$529.14	\$ 502,150
Lodging	53	\$529.14	\$ 28,044
Office	3,197	\$529.14	\$ 1,691,647
Industrial	1,541	\$529.14	\$ 815,398
<b>Total</b>			<b>\$ 6,455,457</b>

<sup>1</sup> See Table 2.3; added service population for residential development = added population; added service population for non-residential development = 0.25 X added employees from Table 2.3

<sup>2</sup> See Table 5.2

<sup>3</sup> Projected revenue = added service population X cost per capita

## Updating the Fees

The impact fees calculated in this chapter are based on the current estimated cost of value of the City's existing open space parcels and the current estimated replacement cost for trail improvements. We recommend that the fees be reviewed annually and adjusted as needed using local cost data or an index such as the *Engineering News Record* Construction Cost Index (CCI). See the Implementation Chapter for more on indexing of fees.

## Nexus Summary

As discussed in Chapter 1 of this report, Section 66001 of the Mitigation Fee Act requires that an agency establishing, increasing or imposing impact fees, must make findings to:

Identify the purpose of the fee;

Identify the use of the fee; and,

Determine that there is a reasonable relationship between:

- a. The use of the fee and the development type on which it is imposed;
- b. The need for the facility and the type of development on which the fee is imposed; and
- c. The amount of the fee and the facility cost attributable to the development project.

Satisfying those requirements also ensures that the fees meet the “rational nexus” and “rough proportionality” standards enunciated in leading court decisions bearing on impact fees and other exactions. (For more detail, see “Legal Framework for Impact Fees” in Chapter 1.) The following paragraphs explain how the impact fees calculated in this chapter satisfy those requirements.

**Purpose of the Fee:** The purpose of the impact fees calculated in this chapter is to mitigate the impact of new development on the need for open space and trails in Brisbane.

**Use of the Fee.** Impact fees calculated in this chapter will be used to provide additional open space and trails to mitigate the impacts of new development in the City.

As provided by the Mitigation Fee Act, revenue from impact fees may also be used for temporary loans from one impact fee fund or account to another.

**Reasonable Relationship between the Use of the Fee and the Development Type on Which It Is Imposed.** The impact fees calculated in this chapter will be used to provide additional open space and trails to serve the needs of added service population associated with new development in Brisbane.

**Reasonable Relationship between the Need for the Facilities and the Type of Development on Which the Fee Is Imposed.** New development will increase the need for open space and trails to maintain the existing level of service, as described earlier in this chapter. Without additional open space and trails, the increase in service population associated with new development in the City would result in a reduction in the level of service provided to the entire City.

**Reasonable Relationship between the Amount of the Fee and the Facility Cost Attributable to the Development Project.** The amount of the open space and trails impact fees charged to a development project will depend on the increase in service population associated with that project. The fees per unit of development calculated in this chapter for each type of development are based on the estimated average service

population per unit for that type of development in Brisbane. Thus, the fee charged to a development project reflects the impact of that project on the need for open space and trails in the City.

## Chapter 6. Implementation

This chapter of the report contains recommendations for adoption and administration of impact fees, and for the interpretation and application of the development impact fees and in-lieu fees calculated in this study. It was not prepared by an attorney and is not intended as legal advice.

Statutory requirements for the adoption and administration of fees imposed as a condition of development approval (impact fees) are found in the Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

### Adoption

The form in which development impact fees are enacted should be determined by the City attorney. The specific requirements are different for impact fees under the Mitigation Fee Act, and for park land dedication and in-lieu fees under the Quimby Act. The latter requirements must be adopted by ordinance and are subject to the same noticing and public hearing procedures as any ordinance.

Procedures for adoption of fees subject to the Mitigation Fee Act, including notice and public-hearing requirements, are specified in Government Code Sections 66016 and 66018. It should be noted that Section 66018 refers to Government Code Section 6062a, which requires that the public hearing notice be published at least twice during the 10-day notice period. **However, Section 66016.5 added by AB 602 in 2021 requires that impact fee nexus studies be adopted at a public hearing with at least 30-days' notice.**

Government Code Section 66017 provides that fees subject to the Mitigation Fee Act do not become effective until 60 days after final action by the governing body.

Actions establishing or increasing fees subject to the Mitigation Act require certain findings, as set forth in Government Code Section 66001 and discussed in Chapter 1 of this report.

Examples of findings that could be used for impact fees calculated in this study are shown below. The specific language of such findings should be provided by the City Attorney. A more complete discussion of the nexus for each fee can be found in individual chapters of this report.

**Sample Finding: Purpose of the Fee.** The City Council finds that the purpose of the impact fees hereby enacted is to protect the public health, safety and welfare by requiring new development to contribute to the cost of public facilities needed to mitigate the impacts of new development.

**Sample Finding: Use of the Fee.** The City Council finds that revenue from the impact fees hereby enacted will be used to provide public facilities needed to

mitigate the impacts of new development in the City and identified in the 2022 City of Brisbane Parks and Recreation Impact Fee Study by NBS.<sup>2</sup>

**Sample Finding: Reasonable Relationship:** Based on analysis presented in the 2022 City of Brisbane Parks and Recreation Impact Fee Study by NBS, the City Council finds that there is a reasonable relationship between:

- a. The use of the fees and the types of development projects on which they are imposed; and,
- b. The need for facilities and the types of development projects on which the fees are imposed.

## Administration

The California Mitigation Fee Act (Government Code Sections 66000 et seq.) mandates procedures for administration of impact fee programs, including collection and accounting, reporting, and refunds. References to code sections in the following paragraphs pertain to the California Government Code.

**Notices and Statute of Limitations.** Section 66006 (f) provides that a local agency, at the time it imposes a fee for public improvements on a specific development project, "... shall identify the public improvement that the fee will be used to finance." The required notification could refer to the improvements identified in this study or to a capital improvement plan.

Section 66020 (d) (1) requires that the agency, at the time it imposes an impact fee, provide a written statement of the amount of the fee and written notice of a 90-day period during which the imposition of the fee can be protested. Failure to protest imposition of the fee during that period may deprive the fee payer of the right to subsequent legal challenge.

Section 66022 (a) provides a separate procedure for challenging the establishment of an impact fee. Such challenges must be filed within 120 days of enactment.

**Collection of Fees.** Section 66007(a) provides that a local agency shall not require payment of fees by developers of residential projects prior to the date of final inspection, or issuance of a certificate of occupancy, whichever occurs first.

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<sup>2</sup> According to Gov't Code Section 66001 (a) (2), the use of the fee may be specified in a capital improvement plan, the General Plan, or other public documents that identify the public facilities for which the fee is charged. The findings recommended here identify this impact fee study as the source of that information. Also note that Section 66016.5 (a)(6) requires that large jurisdictions adopt a capital improvement plan as part of an impact fee nexus study. That requirement applies in counties of 250,000 or more and cities in those counties, so it does apply to Brisbane.

However, "utility service fees" (not defined, but likely referring to water and sewer connections) may be collected upon application for utility service. In a residential development project of more than one dwelling unit, Section 66007 (a) allows the agency to choose to collect fees either for individual units or for phases upon final inspection, or for the entire project upon final inspection of the first dwelling unit completed.

Section 66007 (b) provides two exceptions when the local agency may require the payment of fees from developers of residential projects at an earlier time: (1) when the local agency determines that the fees "will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy" or (2) the fees are "to reimburse the local agency for expenditures previously made."

Statutory restrictions on the time at which fees may be collected do not apply to non-residential development.

Notwithstanding the foregoing restrictions, some cities collect impact fees for all facilities at the time building or grading permits are issued, and builders may find it convenient to pay the fees at that time.

In cases where the fees are not collected upon issuance of building permits, Sections 66007 (c) (1) and (2) provide that the City may require the property owner to execute a contract to pay the fee, and to record that contract as a lien against the property until the fees are paid.

**Earmarking and Expenditure of Fee Revenue.** Section 66006 (a) mandates that fees be deposited "with other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected." Section 66006 (a) also requires that interest earned on the fee revenues be placed in the capital account and used for the same purpose.

The language of the law is not clear as to whether depositing fees "with other fees for the improvement" refers to a specific capital improvement or a class of improvements (e.g., street improvements).

We are not aware of any municipality that has interpreted that language to mean that funds must be segregated by individual projects. And, as a practical matter, that approach would be unworkable because it would mean that no pay-as-you-go project could be constructed until all benefiting development had paid the fees. Common practice is to maintain separate funds or accounts for impact fee revenues by facility category (i.e., streets, park improvements), but not for individual projects.

**Impact Fee Exemptions, Reductions, and Waivers.** In the event that a development project is found to have no impact on facilities for which impact fees are charged, such project must be exempted from the fees.

If a project has characteristics that will make its impacts on a particular public facility or infrastructure system significantly and permanently smaller than the average impact used to calculate impact fees in this study, the fees should be reduced accordingly to meet the requirement that there must be a reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed. The fee reduction is required if the fee is not proportional to the impact of the development on relevant public facilities.

In some cases, an agency may desire to voluntarily waive or reduce impact fees that would otherwise apply to a project as a way of promoting goals such as affordable housing or economic development. Such a waiver or reduction is within the discretion of the governing body but may not result in increased costs to other development projects. So, the effect of such policies is that the lost revenue must be made up from sources other than impact fees.

**Credit for Improvements Provided by Developers.** If the City requires a developer, as a condition of project approval, to dedicate land or construct facilities or improvements for which impact fees are charged, the City should ensure that the impact fees are adjusted so that the overall contribution by the developer does not exceed the impact created by the development.

In the event that a developer voluntarily offers to dedicate land, or construct facilities or improvements in lieu of paying impact fees, the City may accept or reject such offers, and may negotiate the terms under which such an offer would be accepted. Excess contributions by a developer may be offset by reimbursement agreements.

**Credit for Existing Development.** If a project involves replacement, redevelopment or intensification of previously existing development, impact fees should be applied only to the portion of the project that represents a net increase in demand for relevant City facilities, applying the measure of demand used in this study to calculate that impact fee.

**Annual Report.** Section 66006 (b) (1) requires that once each year, within 180 days of the close of the fiscal year, the local agency must make available to the public the following information for each separate account established to receive impact fee revenues:

1. A brief description of the type of fee in the account or fund;
2. The amount of the fee;
3. The beginning and ending balance of the account or fund;
4. The amount of the fees collected and interest earned;
5. Identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the percentage of the cost of the public improvement that was funded with fees;
6. Identification of the approximate date by which the construction of a public improvement will commence, if the City determines sufficient funds have been collected to complete financing of an incomplete public improvement;



7. A description of each inter-fund transfer or loan made from the account or fund, including interest rates, repayment dates, and a description of the improvement on which the transfer or loan will be expended;
8. The amount of any refunds or allocations made pursuant to Section 66001, paragraphs (e) and (f).

The annual report must be reviewed by the City Council at its next regularly scheduled public meeting, but not less than 15 days after the statements are made public, per Section 66006 (b) (2).

**Five-Year Findings and Refunds under the Mitigation Fee Act.** Prior to 1996, The Mitigation Fee Act required that a local agency collecting impact fees was required to expend or commit impact fee revenue within five years or make findings to justify a continued need for the money. Otherwise, those funds had to be refunded. SB 1693, adopted in 1996 as an amendment to the Mitigation Fee Act, changed that requirement in material ways.

Now, Section 66001 (d) requires that, for the fifth fiscal year following the first deposit of any impact fee revenue into an account or fund as required by Section 66006 (b), and every five years thereafter, the local agency shall make all of the following findings for any fee revenue that remains unexpended, whether committed or uncommitted:

1. Identify the purpose to which the fee will be put;
2. Demonstrate the reasonable relationship between the fee and the purpose for which it is charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements for which impact fees are to be used;
4. Designate the approximate dates on which the funding necessary to complete financing of those improvements will be deposited into the appropriate account or fund.

Those findings are to be made in conjunction with the annual reports discussed above. If such findings are not made as required by Section 66001, the local agency could be required to refund the moneys in the account or fund, per Section 66001 (d).

Once the agency determines that sufficient funds have been collected to complete financing on incomplete improvements for which impact fee revenue is to be used, it must, within 180 days of that determination, identify an approximate date by which construction of the public improvement will be commenced (Section 66001 (e)). If the agency fails to comply with that requirement, it must refund impact fee revenue in the account according to procedures specified in Section 66001 (d).

For a useful discussion of the foregoing requirements, see “The Mitigation Fee Act’s Five-Year Findings Requirement: Beware Costly Pitfalls” by Glen Hansen, Senior Counsel,

Abbott and Kindermann, and Rick Jarvis, Managing Partner, Jarvis, Fay and Gibson, presented at the 2022 League of California Cities City Attorneys Spring Conference.

**Indexing of In-Lieu/Impact Fees.** In-lieu fees and impact fees calculated in this report are based on current costs and should be adjusted periodically to account for changes in the cost of facilities or other capital assets that will be funded by those fees. That adjustment is intended to account for escalation in costs for land, construction, vehicles and other relevant capital assets. The *Engineering News Record* Building Cost Index (BCI) and Construction Cost Index (CCI) are useful for indexing construction costs. Where land costs are covered by an impact fee or in-lieu fee, land costs should be adjusted based on changes in local land prices.

## **Requirements Imposed by AB 602**

In 2021, the California Legislature passed AB 602 and the Governor signed it into law. AB 602 creates some new requirements for impact fees that will go into effect in 2022. The new law amends Government Code Section 65940.1 and adds Section 66016.5 to impose the following requirements:

- 1) A city, county or special district that has an internet website shall post on its website:
  - a) A current written schedule of fees, exactions and affordability requirements applicable to a proposed housing development project, and shall present that information in a manner that identifies the fees, exactions and affordability requirements that apply to each parcel and the fees that apply to each new water and sewer utility connection
  - b) All zoning ordinances and development standards and specifying the zoning, design and development standards that apply to each parcel
  - c) A list of the information that will be required from any applicant for a development project, as specified in Government Code Section 69540
  - d) The current and five previous annual fee reports required by Government Code Section 66006 and Subsection 66013 (d).
  - e) An archive of impact fee nexus studies, cost of service studies or equivalent conducted on or after January 1, 2018.
- 2) The above information shall be updated within 30 days of any changes
- 3) A City or County shall request from a development proponent, upon issuance of a certificate of occupancy or final inspection, the total amount of fees and exactions associated with the project for which the certificate it issued. That information must be posted on the website and updated at least twice a year.
- 4) Before adoption of an impact fee, an impact fee nexus study shall be adopted.

- 5) When applicable, the nexus study shall identify the existing level of service for each public facility, identify the proposed new level of service and explain why the new level of service is appropriate
- 6) If a nexus study supports the increase of an existing fee, the local agency shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of the fees collected under the original fee.
- 7) A nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units of the development. A local agency that imposes a fee proportionately to the square footage if the proposed units of the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development. A nexus study is not required to comply with this requirement if the agency makes certain findings outlined in the statute.
- 8) Large jurisdictions as defined in Section 53559.1 (d) of the Health and Safety Code (counties of 250,000 or more and cities in those counties) shall adopt a capital improvement plan as part of a nexus study.
- 9) All studies shall be adopted at a public hearing with at least 30-days' notice, and the local agency shall notify any member of the public that requests notice of intent to begin an impact fee nexus study of the date of the hearing.
- 10) Studies shall be updated at least every eight years, beginning on January 1, 2022.

### **Training and Public Information**

Effective administration of an impact fee program requires considerable preparation and training. It is important that those responsible for collecting the fees, and for explaining them to the public, understand both the details of the fee program and its supporting rationale.

It is also useful to pay close attention to handouts that provide information to the public regarding impact fees. Impact fees should be clearly distinguished from other fees, such as user fees for application processing, and the purpose and use of particular impact fees should be made clear.

Finally, anyone responsible for accounting, capital budgeting, or project management for projects involving impact fees must be fully aware of the restrictions placed on the expenditure of impact fee revenues. Fees must be expended for the purposes identified in the impact fee nexus study in which they were calculated, and the City must be able to show that funds have been properly expended.

### **Recovery of Administrative Costs**

To recover the cost of periodic impact fee update studies and ongoing staff costs for capital budgeting, annual reports, five-year updates and other requirements of the

Mitigation Fee Act, an administrative charge may be added to the impact fees calculated in this report. See the Executive Summary for a discussion of an administrative charge to recover some costs for administration and updating of impact fees.

# **APPENDIX A**

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## ***Fee Comparison***

## City of Brisbane - Parks and Recreation Impact Fee Comparison

Type of Impact Fee	Units	Brisbane		Burlingame <sup>3</sup>	Foster City <sup>4</sup>	Redwood City <sup>5</sup>	San Carlos <sup>6</sup>	South San Francisco <sup>7</sup>
		Proposed <sup>1</sup>	Belmont <sup>2</sup>					
<b>Residential - Single-Family (Brisbane 800-1,200 Square Feet)</b>								
Park Land	DU	\$ 16,753	\$ 41,043		See Footnote	\$ 30,826	See Footnote	\$ 2,976
Park Improvements	DU	\$ 2,752	\$ 17,590	\$ 590	\$ 14,926	\$ 15,950	\$ 7,953	\$ 26,148
Recreation Facilities	DU	\$ 5,752			Included			
Open Space/Trails	DU	\$ 1,692	Included			Included		
<b>Total</b>		<b>\$ 26,949</b>	<b>\$ 58,633</b>	<b>\$ 590</b>	<b>\$ 14,926</b>	<b>\$ 46,776</b>	<b>\$ 7,953</b>	<b>\$ 29,124</b>
<b>Residential - Multi-Family (Brisbane &gt;2,100 Square Feet)</b>								
Park Land	DU	\$ 15,479	\$ 27,362		See Footnote	\$ 26,468	See Footnote	\$ 1,759
Park Improvements	DU	\$ 2,543	\$ 11,660	\$ 350	\$ 11,639	\$ 13,695	\$ 3,977	\$ 15,462
Recreation Facilities	DU	\$ 5,315			Included	Included		
Open Space/Trails	DU	\$ 1,563	Included			Included		
<b>Total</b>		<b>\$ 24,900</b>	<b>\$ 39,022</b>	<b>\$ 350</b>	<b>\$ 11,639</b>	<b>\$ 40,163</b>	<b>\$ 3,977</b>	<b>\$ 17,221</b>
<b>Lodging</b>								
Park Land	Room	\$ 557				\$ 2,162		\$ 3,795
Park Improvements	Room	\$ 92	\$ 427		\$ 910	\$ 1,119		\$ 6,571
Recreation Facilities	Room	\$ 77			Included	Included		
Open Space/Trails	Room	\$ 56	Included			Included		
<b>Total</b>		<b>\$ 782</b>	<b>\$ 427</b>	<b>\$ 0</b>	<b>\$ 910</b>	<b>\$ 3,281</b>	<b>\$ 0</b>	<b>\$ 10,366</b>
<b>Commercial</b>								
Park Land	KSF	\$ 3,185				\$ 3,510		\$ 938
Park Improvements	KSF	\$ 523	\$ 710	\$ 118	\$ 2,350	\$ 1,820		\$ 3,158
Recreation Facilities	KSF	\$ 437			Included	Included		
Open Space/Trails	KSF	\$ 322	Included			Included		
<b>Total</b>		<b>\$ 4,467</b>	<b>\$ 710</b>	<b>\$ 118</b>	<b>\$ 2,350</b>	<b>\$ 5,330</b>	<b>\$ 0</b>	<b>\$ 4,096</b>
<b>Office</b>								
Park Land	KSF	\$ 4,778				\$ 5,110		\$ 833
Park Improvements	KSF	\$ 785	\$ 2,370	\$ 172	\$ 6,240	\$ 2,640		\$ 2,957
Recreation Facilities	KSF	\$ 656			Included	Included		
Trails	KSF	\$ 482	Included			Included		
<b>Total</b>		<b>\$ 6,701</b>	<b>\$ 2,370</b>	<b>\$ 172</b>	<b>\$ 6,240</b>	<b>\$ 7,750</b>	<b>\$ 0</b>	<b>\$ 3,790</b>
<b>Industrial</b>								
Park Land	KSF	\$ 1,752				\$ 1,650		\$ 394
Park Improvements	KSF	\$ 288	\$ 950	\$ 56	\$ 3,510	\$ 860		\$ 1,398
Recreation Facilities	KSF	\$ 241			Included	Included		
Trails	KSF	\$ 177	Included			Included		
<b>Total</b>		<b>\$ 2,457</b>	<b>\$ 950</b>	<b>\$ 56</b>	<b>\$ 3,510</b>	<b>\$ 2,510</b>	<b>\$ 0</b>	<b>\$ 1,792</b>

General Note: Cities other than Brisbane shown in this comparison table do not have specific impact fees for either recreation facilities or trails; where the cells for those fees show the notation "included," it means that documentation reviewed for this comparison indicated that it was the city's intent to include those uses within the meaning of "park improvements"; however, other cities may also include recreation facilities and/or trails within the meaning of park improvements

<sup>1</sup> Brisbane park land fee is based on the park land impact fee for non-subdivision projects; Brisbane Quimby in-lieu fee is determined case-by-case

<sup>2</sup> Belmont park land fee is based on the Quimby Act fee in-lieu of park land dedication

<sup>3</sup> Burlingame has no impact fees or in-lieu fees for park land acquisition

<sup>4</sup> Foster City has a Quimby Act ordinance that requires dedication of park land or payment of fees in lieu of dedication for residential development; in-lieu fees are determined case-by-case; the City has no park land impact fees for non-residential development; park impact fees for lodging are based on square footage; this comparison assumes an average overall building area of 425 square feet per hotel room

<sup>5</sup> Redwood City has adopted park land in-lieu fees for residential subdivisions and park land impact fees for residential development not involving a subdivision in the same amount

<sup>6</sup> San Carlos has a Quimby Act ordinance that requires dedication of park land or payment of fees in lieu of dedication for residential development; in-lieu fees are determined case-by-case; the City has no park land or park improvement impact fees for non-residential development; San Carlos adds a \$700 administrative fee to the amounts shown in the table

<sup>7</sup> South San Francisco charges multi-family residential impact fees for park land acquisition and park improvements based on the number of units in a building; multi-family impact fees shown in this table are for the 20-49 unit category