



CITY COUNCIL AGENDA REPORT

Meeting Date: June 6, 2024
From: Director of Public Works/City Engineer
Subject: Public Hearing for Proposed Fee for Costs Associated with the National Pollutant Discharge Elimination System (NPDES)

This action is exempt from CEQA because it is not a project (CCR Title 14 §15378 (b) (2)).

Community Goal/Result: Ecological Sustainability, Fiscally Prudent

Purpose

To hold the public hearing required before considering approval of a resolution imposing new fees on commercial property owners to pay for costs associated with the city's compliance with NPDES.

Recommendation

1. Open the Public Hearing, receive comments from interested parties, and consider protests to imposing the fees.
2. In the absence of a majority protest, approve a resolution, "Imposing National Pollutant Discharge Elimination System Compliance Fees on Commercial Property Owners Within An Identified Study Area."

Background

The City of Brisbane is required to comply with all the conditions imposed under the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Region Water Quality Control Board ("Water Control Board"). The legal authority for the Water Control Board to issue a waste discharge permit under the NPDES is the majority of cities and counties in the Bay Area discharge stormwater into the San Francisco Bay. (The City and County of San Francisco is unique in this regard; in that it discharges stormwater and sewer into the same collection system where both are ultimately treated before discharge).

The Water Control Board has determined that stormwater discharges from urban areas are significant sources of pollutants that cause or may be causing water quality impairment in the Bay. The primary contribution to stormwater is the result of impervious materials (e.g., buildings, roads, parking lots) that prevent rain from percolating into the soil. The City's two most significant contributors to the square footage of impervious materials are one, the public roads, sidewalks, and public buildings, and two, the comparable contributors within the commercial areas of Crocker Industrial Park, Sierra Point, and a few smaller zoned commercial districts.

To prevent this degradation of water quality in the Bay, the Water Control Board issued an

updated Municipal Regional Permit effective July 21, 2022. The permit includes 22 provisions that the City must comply with or potentially face fines of up to \$10,000 per day. These provisions include detailed oversight of all development to ensure stormwater controls are implemented; regular inspections of industrial and commercial properties; implementation of an illicit discharge detection and elimination program; and trash load reduction.

The latter provision is one of the most expensive, as it requires placement of trash capture devices in nearly all of the City's storm drain inlets, and also includes at least annual cleaning and inspection of these storm drain inlets.

In order to comply with the conditions of the permit, the City necessarily incurs significant costs, including the cost (a) to inspect properties to ensure that the owners are demonstrating compliance with capturing trash, (b) to inspect for illegal storm water discharges and connections, (c) to monitor and protect the receiving storm water runoff (the Lagoon and the Bay), (d) for street sweeping, (e) to inspect and clean catch basins and (f) to pay additional fees imposed by the City/County Association of Governments of San Mateo County to comply with Water Control Board requirements.

The City's cost in FY 23-24 to meet all these provisions is \$582,377. Even with the input of \$52,000 collected from all Brisbane parcels for the local stormwater program, franchise fees from solid waste haulers, and funding sources such as San Mateo County Measure M, the City's General Fund backfilled the NPDES program budget with \$408,377.

Discussion

Staff Identified a "commercial study area" where the parcels in said area with impervious materials (e.g., building roofs, parking lots, etc.) would be subject to the proposed fee. Each parcel owner within the study area was sent correspondence dated March 25, 2024 requesting input on the proposed fee, and was later sent correspondence dated April 18, 2024 advising that the city had scheduled a public hearing on June 6, 2024 to consider protests to imposing the fees. As of the writing of this staff report, the city has received very little communication from the impacted parcel owners.

The referenced "commercial study area" is attached to the proposed resolution.

Fiscal Impact

Because commercial property owners benefit directly and significantly from the City's NPDES program, it is fair to allocate a certain percentage of the cost of the fees for this program to such owners. In an effort to allocate the costs in a fair way, the City has mapped all of the impermeable areas under its control and those under the control of commercial property owners. The summary of that mapping is as follows:

Private Building Footprint:	5,238,051 Sq Ft
Private Impervious (parking areas, etc.):	8,331,096 Sq Ft
Subtotal:	13,569,147 Sq Ft
Public Impervious (building and parking areas):	895,744 Sq Ft
Public Sidewalks and Roads:	5,768,354 Sq Ft
Subtotal:	6,664,098 Sq Ft
TOTAL:	20,223,245 Sq Ft

Private impervious commercial areas are approximately 2/3 of the impervious areas contributing to stormwater runoff when compared to public impervious areas.

To allocate the costs equitably and using by way of example this fiscal year’s backfill amount of \$408,377, that amount, when divided by 20,233,245, results in a square foot allocation of \$.02 per square foot of impervious area.

As the City is already backfilling the NPDES budget from the General Fund, the pending proposal is to charge an annual fee to commercial property owners based on square footage of impervious area. In this year, for example, the fee would have been \$.02 per square foot of impervious surface.

Measure of Success

An equitably funded NPDES division budget that allows the city to remain in compliance with the Municipal Regional Permit and that supports the important work of preventing pollutants from discharging into the San Francisco Bay.

Environmental Review

Adoption of this resolution does not need further environmental review under the California Environmental Quality Act (CEQA) as it is general policy and procedure making not applied to a specific instance and therefore it is not a “project”(California Code of Regulations, Title 14, Division 6, Chapter 3, Article 20, §15378 (b) (2)).

Attachments

1. Resolution Imposing National Pollutant Discharge Elimination System Compliance Fees on Commercial Property Owners Within An Identified Study Area

R.L. Breault
 Randy Breault, Public Works Director

Clay Holstine
 Clay Holstine, City Manager

RESOLUTION NO. 2024-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
IMPOSING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
COMPLIANCE FEES ON COMMERCIAL PROPERTY OWNERS WITHIN
AN IDENTIFIED STUDY AREA**

WHEREAS, the City of Brisbane is required to comply with all the conditions imposed under the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Region Water Quality Control Board (“Water Control Board”); and

WHEREAS, the legal authority for the Water Control Board to issue a waste discharge permit under the NPDES is the majority of cities and counties in the Bay Area discharge stormwater into the San Francisco Bay; and

WHEREAS, The Water Control Board has determined that stormwater discharges from urban areas are significant sources of pollutants that cause or may be causing water quality impairment in the Bay; and

WHEREAS, the primary contribution to stormwater is the result of impervious materials (e.g., buildings, roads, parking lots) that prevent rain from percolating into the soil; and

WHEREAS, The City’s two most significant contributors to the square footage of impervious materials are one, the public roads, sidewalks, and public buildings, and two, the comparable contributors within the commercial areas of Crocker Industrial Park, Sierra Point, and a few smaller zoned commercial districts; and

WHEREAS, to prevent this degradation of water quality in the Bay, the Water Control Board issued an updated Municipal Regional Permit effective July 21, 2022; the permit includes 22 provisions that the City must comply with or potentially face fines of up to \$10,000 per day; and

WHEREAS, these provisions include detailed oversight of all development to ensure stormwater controls are implemented; regular inspections of industrial and commercial properties; implementation of an illicit discharge detection and elimination program; and trash load reduction; and

WHEREAS, the latter provision is one of the most expensive, as it requires placement of trash capture devices in nearly all of the City’s storm drain inlets, and also includes at least annual cleaning and inspection of these storm drain inlets; and

WHEREAS, in order to comply with the conditions of the permit, the City necessarily incurs significant costs, including the cost (a) to inspect properties to ensure that the owners are demonstrating compliance with capturing trash, (b) to inspect for illegal storm water discharges and connections, (c) to monitor and protect the receiving

RESOLUTION NO. 2024-__

storm water runoff (the Lagoon and the Bay), (d) for street sweeping, (e) to inspect and clean catch basins and (f) to pay additional fees imposed by the City/County Association of Governments of San Mateo County to comply with Water Control Board requirements; and

WHEREAS, The City’s cost in FY 23-24 to meet all these provisions is \$582,377 and even with the input of \$52,000 collected from all Brisbane parcels for the local stormwater program, franchise fees from solid waste haulers, and funding sources such as San Mateo County Measure M, the City’s General Fund backfilled the NPDES program budget with \$408,377; and

WHEREAS, staff identified a “commercial study area” where the parcels in said area with impervious materials (e.g., building roofs, parking lots, etc.) would be subject to the proposed fee; each parcel owner within the study area was sent correspondence dated March 25, 2024 requesting input on the proposed fee, and was later sent correspondence dated April 18, 2024 advising that the city had scheduled a public hearing on June 6, 2024 to consider protests to imposing the fees; and

WHEREAS, because commercial property owners benefit directly and significantly from the City’s NPDES program, it is fair to allocate a certain percentage of the cost of the fees for this program to such owners; and

WHEREAS, in an effort to allocate the costs in a fair way, the City has mapped all of the impermeable areas under its control and those under the control of commercial property owners; and

WHEREAS, The summary of that mapping is as follows:

Private Building Footprint:	5,238,051 Sq Ft
Private Impervious (parking areas, etc.):	8,331,096 Sq Ft
Subtotal:	13,569,147 Sq Ft
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Subtotal:	6,664,098 Sq Ft
TOTAL:	20,223,245 Sq Ft

WHEREAS, private impervious commercial areas are approximately 2/3 of the impervious areas contributing to stormwater runoff when compared to public impervious areas.

WHEREAS, for the reasons expressed above, the City Council has determined that the increases in cost of complying with the NPDES Permit have made it necessary to impose new fees on commercial property owners within an identified study area; and

WHEREAS, a proposed schedule of fees and the identified study area were presented to the City Council, a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, as required by law, notice of the proposed new fees was given to the persons who are responsible for payment of such charges, as shown on the records of the City, which included notice of a public hearing to be conducted by the City Council at which time any protests to the proposed new fees would be considered, such notice having been given at least 45 days prior to the hearing; and

WHEREAS, on June 6, 2024, the City Council conducted a public hearing on the proposed new fees to be collected on the associated parcel's tax roll, at which time any person was given an opportunity to protest the same; and

WHEREAS, protests were not made by a majority of the persons who would be responsible for the new fees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. The schedule of fees for National Pollutant Discharge Elimination System compliance on commercial property owners within an identified study area attached hereto is approved (Attachment A).
2. The new fees shall be effective as of July 1, 2024 and shall be collected by the San Mateo County Tax Collector.

Terry O'Connell, Mayor

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the sixth day of June, 2024, by the following vote:

RESOLUTION NO. 2024-__

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

ATTACHMENT A to Resolution No. 2024-__

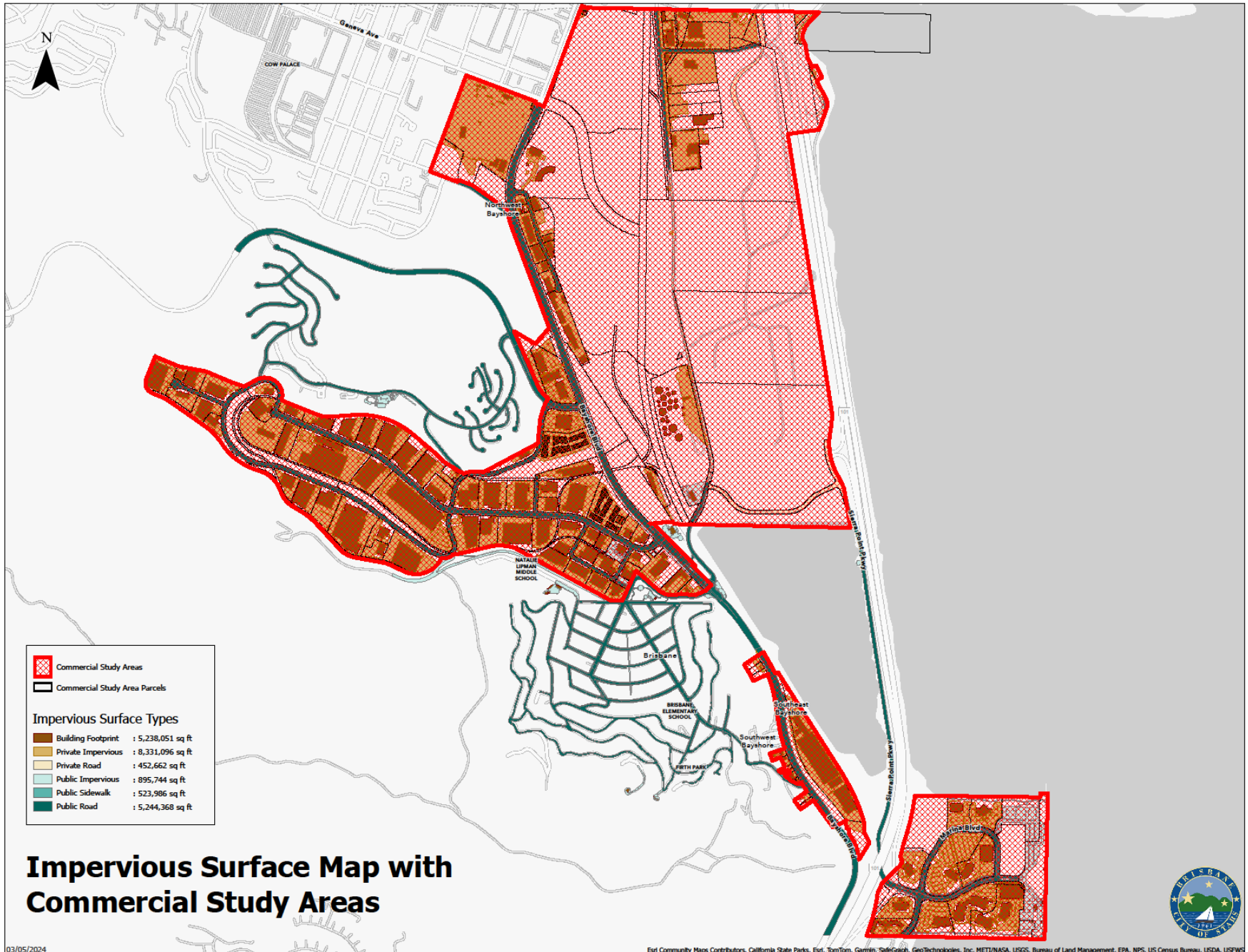
Schedule of Fees for National Pollutant Discharge Elimination System Compliance on
Commercial Businesses Within an Identified Study Area

Fees shall be calculated using the following methodology:

1. No later than May 31st of each calendar year, city staff shall confirm the total square footage of the public impervious areas (i.e., buildings footprints, parking areas, sidewalks and roads).
2. No later than May 31st of each calendar year, city staff shall review the private parcels identified on the attached “Impervious Surface Map with Commercial Study Areas” and calculate the total square footage of impervious areas (i.e., buildings footprints, parking areas, etc.) associated with each parcel.
3. No later than May 31st of each calendar year, city staff shall prepare a total budget for the NPDES division within the Public Works Department. From that budget, staff shall subtract all external funding sources other than fees to be calculated pursuant to this resolution.
4. City staff shall divide the dollar amount calculated in paragraph 3 above by the sum of all square footage calculated in paragraphs 1 and 2 above. The result of this final calculation shall be the per square foot fee charged to each commercial business parcel within the identified study area.

By example:

1. In 2024, the total of public impervious area is 6,664,098 square feet.
2. In 2024, the total of private commercial impervious area within the study area is 13,569,147 square feet.
3. The FY23-24 NPDES division budget, minus external funding sources, is \$408,377.
4. $\$408,377 \div (6,664,098 + 13,569,147) = \$.02/$ square foot.



03/05/2024

Esri Community Maps Contributors, California State Parks, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USFWS

