



CITY OF POMONA COUNCIL REPORT

August 5, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Darron Poulsen, Water Resources Director

SUBJECT: PUBLIC HEARING ON A RESOLUTION TO ADOPT NEW NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) AND GREASE PRODUCING FACILITY INSPECTION (FOG) FEES AND INTRODUCTION OF AN ORDINANCE TO AMEND RELATIVE SECTIONS OF THE POMONA CITY CODE

RECOMMENDATION:

It is recommended that the City Council open the public hearing on adopting new NPDES inspection permit fees and establishing fees for inspecting grease producing facilities (FOG), and after receiving comments and testimony, conclude the public hearing and adopt the following resolution:

RESOLUTION NO. 2019-115 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, ADOPTING NEW NPDES INSPECTION FEES AND ESTABLISHING INSPECTION FEES FOR GREASE PRODUCING FACILITIES (FOG)

It is further recommended that the City Council introduce for first reading the following ordinance:

ORDINANCE NO. 4256 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING SECTIONS OF CHAPTERS 18, 50 AND 62 OF THE POMONA CITY CODE REGARDING TO INSPECTIONS OF GREASE PRODUCING FACILITIES AND PAYMENT OF FEES FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND GREASE PRODUCING FACILITY INSPECTIONS (FOG) AT THE TIME OF APPLICATION FOR ISSUANCE OF A BUSINESS LICENSE

EXECUTIVE SUMMARY:

The City is required by the State to conduct water discharge compliance inspections of commercial and industrial facilities, as well as inspect grease producing facilities. Staff is recommending adoption of new inspection fees to allow full cost recovery for administering the program and a new fee for inspecting grease producing facilities. The proposed ordinance establishes authority for annual inspections of grease producing facilities and provides for inspection fees to be collected in conjunction with business license yearly process. Requiring inspection fees to be paid at the time of business license application/renewal will allow an efficient method of collecting the funds needed to carry out the state-mandated inspection program.

FISCAL IMPACT:

The City's current fee for NPDES inspections recovers only a portion of the City's costs for inspections and reporting, and the City has no fee in place for grease producing facility inspections (FOG). The proposed resolution (Attachment No. 1), establishes the fees required for full cost recovery. Based on the current number of businesses in the City that require NPDES inspections and the number requiring fats, oils, and grease (FOG) inspections, anticipated revenue is projected to be approximately \$115,000 annually under the proposed billing plan, which will be allocated to the respective departments conducting the inspections and the billing efforts to compensate for the cost of conducting the program. Additionally, if approved, there will be one-time cost for setting up the NPDES/FOG annual fees in Business License Software. This one-time cost is included in the Fee Cost Analysis, Attachment 3.

PUBLIC NOTICING REQUIREMENTS:

Pursuant to Government Code Sections 6062a and 66016 *et seq.*, notice for the proposed NPDES and FOG inspection fees was published in the Inland Valley Daily Bulletin on July 26, 2019, and July 31, 2019 (Attachment No. 4). There is no public notice requirement for an ordinance amending the Pomona City Code that does not set fees or charges.

PREVIOUS RELATED ACTION:

On February 27, 2017, the City Council adopted Resolution No. 2017-23 establishing a service fee of \$80 per hour for industrial/commercial and construction inspections mandated by the NPDES permit. That hourly fee remains unchanged for construction site inspections, with the addition of an administrative fee.

ENVIRONMENTAL IMPACT:

Adoption of the proposed ordinance and fee resolution fall within a statutory exemption from environmental review pursuant to Sections 15273, 15060(c)(2) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15273 pertains to the establishment, modification, structuring, restructuring, or approval of rates and charges by public agencies, which the public agency finds, are for the purpose of meeting operating expenses. Sections 15060 (c)(2) and 15060(c)(3) pertain to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and are not defined as a project under

Section 15378. The attached ordinance and resolution have no potential for resulting in physical change to the environment, directly or indirectly, in that it involves only the collection of fees to conduct inspections.

DISCUSSION:

History (NPDES)

The 1972 Clean Water Act established the NPDES program to regulate the discharge of pollutants from point sources to waters of the United States. However, pollution from storm water and dry weather urban runoff was largely unabated for over a decade, so in 1987 amendments were made to the Act. In response to the amendments, in 1990 the United States Environmental Protection Agency (USEPA) developed Phase I of the NPDES storm water permitting program, which established a framework for regulating municipal and industrial discharges of storm water and non-storm water. The Phase I program addressed sources of storm water and dry-weather urban runoff that had the greatest potential to negatively impact water quality. In particular, under Phase I, USEPA required Municipal Separate Storm Sewer System (MS4) NPDES permit coverage for discharges from medium and large MS4, municipal flood control systems, with populations of 100,000 or more. Operators of MS4s are regulated under the Phase I NPDES Storm Water Program and are required to obtain permit coverage for municipal discharges of storm water and non-storm water to waters of the United States.

In 1990 the State Water Resources Control Board (Regional Board) started enforcing the requirements coming from the 1987 amendment and issued permits to agencies, including the Los Angeles County Flood Control District ("LACFCD"). Included within the LACFCD permit were participating agencies that were co-permittees, and were equally responsible for the mandated, and unfunded, requirements. Since that time, participating agencies, including the City of Pomona, have been issued their own permit by the Regional Board.

Also regulated by the Regional Board are sewer collection systems. In May 2006 the Regional Board adopted a water quality order requiring, among other things, inspections of grease producing facilities. These inspections are to ensure devices used to capture and control FOG are installed and being maintained. When FOG is allowed to enter the City's sewer system, it can build up and cause sewer system overflows.

NPDES Permit Requirements

As part of the City's NPDES permit requirements, commercial and industrial businesses are required to be inspected twice every five years. Business activities that have the potential to pollute must have their facilities inspected for compliance with best management practices ("BMPs"), and must be brought into compliance where necessary. Additionally, the City is required to track, educate, and ensure compliance. Certain types of construction sites also require inspection.

FOG Regulatory Requirements

To comply with the Regional Board's waste discharge requirements, the City completed a FOG characterization study, which includes an analysis to determine the source and nature of FOG, and determine if FOG inspections are necessary. Based on the results of the analysis performed, the City is implementing a FOG compliance program to reduce the potential for sewer system overflows.

NPDES and FOG Inspections

There are approximately 285 grease producing facilities currently, which require an annual FOG inspection and 920 businesses that require an NPDES inspection twice every five years. Staff is recommending the inspections be conducted concurrently, when applicable, and for NPDES inspection fees to be collected annually, instead of twice during a five- year cycle.

Currently, Staff invoices the businesses for payment of the inspection fees. Frequently, follow-up efforts are required before payment is received. Collecting the inspection fees at the time of business license application/renewal, along with the proposed annual payment plan for NPDES inspections, allows for a reduction in the administrative costs portion of the fees and will ensure payment is received for the inspections. Those businesses required to have NPDES and FOG inspections, will realize a savings of \$26.52 in administrative costs as a result of having both inspections conducted at the same time. The complete analysis and calculations of the fees is provided as Attachment No. 3 to this report and was made available for public review beginning July 24, 2019, in the City Clerk's Office. Each fee proposed for adoption is set forth in Section 3 of the resolution (Attachment No. 1).

Finally, as construction permits are issued at various times throughout the years and often require monthly re-inspection of construction sites. These fees will be collected on a monthly basis and will be based on the inspection efforts required.

Proposed Ordinance

The proposed ordinance (Attachment No. 2) amends sections within three chapters of the City Code, to provide for implementation of the regulatory fees and the manner for collecting the fees. There are also minor revisions to existing sections to delete outdated provisions. In the attached ordinance, added language is bold and underlined. Deletions are shown in bold with a strikethrough. The primary amendments for implementation of the program are as follows:

Adds new section to the Storm Water Management Article of Chapter 18 to establish inspection fees.

Sec. 18-496. Business inspection fees.

NPDES Program regulatory inspection fees shall be collected on an annual basis along with the city's business license tax for those businesses requiring regular compliance inspections pursuant to this Division and the California NPDES Permit. Affected businesses shall include commercial and industrial businesses subject to the NPDES permit for storm water discharges associated with commercial and/or industrial activities that the State or city determine may contribute a significant pollutant load to the municipal separate storm sewer system.

The NPDES Program regulatory fee shall be established in an amount to pay for the city's costs of inspection time, and for preparation of inspection reports, review of written storm water pollution prevention plans, storm water sampling activities, general program compliance, education and enforcement response and follow-up as needed. The NPDES Program regulatory fee shall be established by resolution of the city council and shall be subject to periodic review and revision by city council resolution.

Adds two new subsections to the Business License provisions that require payment of business licenses fees to include collection of the inspection fees.

Sec. 50-337. Application for license fees.

(c) At the time of filing an application for issuance of a business license, every person or business subject to National Pollutant Discharge Elimination System (NPDES) permit inspections, pursuant to the California NPDES permit and Section 18-527 of this Code, shall also pay the NPDES program inspection fee established by resolution of the city council.

(d) At the time of filing an application for issuance of a business license, every person or business subject to an annual inspection of grease producing facilities, as required by State Water Resource Board Regulations and Sections 62-478 and 62-479 of this Code, shall also pay the annual inspection fee established by resolution of the city council.

Adds two new sections to the portion of Chapter 62 that sets forth regulations for facilities that must have sand and grease traps.

Sec. 62-478. Inspection authority and enforcement.

Inspection authority for grease producing facilities shall be conducted by an authorized City official. Inspection and enforcement authority for compliance with this division shall be in accordance with Chapter 18, Article X, Division 2.

Sec. 62-479. Method of cost recovery.

A grease producing facility inspection fee shall be established by resolution of the city council and collected on an annual basis at the time of application for issuance or renewal of a business license. Affected businesses shall include grease producing facilities subject to the provisions of this Division and State Water Resources Control Board regulations.

CONCLUSION:

If the proposed fee resolution is adopted and the ordinance is introduced for first reading, staff will bring the ordinance back for second reading and adoption on September 9, 2019. The ordinance will become effective 30 days after its adoption. The inspection fees and annual billing plan will be implemented beginning October 9, 2019 for all new businesses subject to the inspections and at the quarterly renewal period beginning January 1, 2020, for existing businesses. The attached fees will be revised and updated on an annual basis, and brought to Council for its consideration.

Prepared by:

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Water Resources Manager

ATTACHMENTS:

Attachment 1 – Resolution No. 2019-115

Attachment 2 – Ordinance No. 4256

Attachment 3 – Cost Recovery Fee Analysis

Attachment 4 – Public Hearing Notice