



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: March 19, 2024
TO: Paul Buddenhagen, City Manager
FROM: Pedro Jimenez, Assistant City Manager
SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Approving The California Department Of Tax And Fee Administration (CDTFA) Notice Of Determination For The South Bayfront Pedestrian Bridge Project For An Amount Not To Exceed Ninety-Six Thousand Two Hundred Ninety-Seven And Thirty Cents (\$96,297.30) And Authorize The City Manager To Make Payment From Fund 237-16475006**

RECOMMENDATION

Staff recommends the approval of the above-titled Resolution.

BACKGROUND

The City submitted a fee waiver request concerning waste generated at three sites: Horton Landing Park Areas A-H, Horton Landing Park Area I, and the South Bayfront Site to the State Department of Toxic Substances Control (DTSC). At all three locations, the City asserted that the waste falls under an exemption from the generator fee pursuant to former Health & Safety Code section 25174.7 (in effect until December 31, 2021). That section specifies that "(t)he fees outlined in Sections 25174.1 and 25205.5 do not apply to certain instances, including hazardous wastes resulting from a government agency or its contractor addressing a hazardous waste release caused by another party within the state."

The Horton Landing Park and South Bayfront Pedestrian Bicycle Bridge Project ("Project") involved the construction of a pedestrian/bicycle bridge spanning the Union Pacific Railroad main line in Emeryville, connecting the east side of the main line, known as Horton Landing Park, with the west side of the main line, known as the Bay Street Project Area. Additionally, the Project included the remediation of hazardous materials located within the Horton Landing Park area and the bridge footings located on the Bay Street Project Area, as well as the construction and installation of park improvements to Horton Landing Park.

DISCUSSION

Following DTSC's evaluation of the fee exemption request, the City's application was partially accepted and partially declined. The waste produced at Horton Landing Park Areas A-H and Horton Landing Park Area I met the stipulated criteria. These areas were contaminated due to herbicide use by a previous property owner, aligning with the exemption criteria as the waste was externally caused.

However, the waste generated at the South Bayfront Site does not meet the exemption's eligibility criteria because the hazardous waste was created by the City. Remediated in 1999 under a DTSC-approved Voluntary Cleanup Agreement, the site involved capping contaminated soils with soil per management protocols in case of cap breach. Given the previous remediation of hazardous waste, the City is not remediating hazardous waste but rather acting as the waste generator by removing the capped waste.

As a result, the City of Emeryville is eligible for the hazardous waste removal exemption at the Horton Landing Park project areas but does not qualify for the exemption at the Bay Street project site.

Since the Horton Landing Park and South Bayfront Pedestrian Bicycle Bridge work at Bay Street Site A was done pursuant to access agreements that the City secured from the Bay Street Site A property owner for the City's Project, the Successor Agency had no involvement or responsibility for that Project.

FISCAL IMPACT

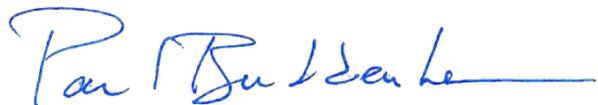
There are remaining funds from the South Bayfront Pedestrian Bridge project that can cover the fees totaling \$96,297.30. We intend to request a waiver of the penalties and interest due to DTSC's delayed response, because interest will continue to accrue during the waiver request process. Settling the outstanding amount promptly is advised, to avoid accruing additional interest, and if our request is approved we may receive a refund of some or all of the accrued interest which is currently \$14,919.30.

STAFF COMMUNICATION WITH THE PUBLIC

N/A

PREPARED BY: Pedro Jimenez, Assistant City Manager

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Paul Buddenhagen, City Manager

ATTACHMENTS

- Attachment A – DTSC Waiver Request Response
- Attachment B – CSTFA -Notice of Determination
- Draft Resolution