

CITY OF BRISBANE
AGENDA REPORT

To: Mayor and Members of the City Council

From: Clayton Holstine, City Manager

Date: July 20, 2017

Subject: Calling for an Election—Establish a Business License Tax—Soil Recycling Establishments

RECOMMENDATION

Adopt Resolution No. 2017-26 calling for a consolidated election on November 7, 2017 for the voters to consider approving a business license tax on soil recycling establishments,

Background

The City has adopted a business license tax in Chapter 5.20 of the Brisbane Municipal Code. Currently, this tax is imposed on certain “recycling establishments” but not on establishments primarily engaged in the recycling of soil, including the incidental recycling of rock, stone, concrete and rebar. See Section 5.20.100 A 4, Brisbane Municipal Code.

The City charges a truck haul fee of \$0.47 per cubic yard of material and soil recycling businesses currently pay this fee. For the soil recycling business at the Universal Paragon Corporation site, the City collects about \$600,000 annually in truck haul fees

In order to generate revenue for the City in the long term, City staff has discussed with the Council’s Infrastructure, Utilities and Franchise Committee imposing a business license tax on soil recycling establishments, at a rate of up to 20% of an establishment’s gross receipts or up to a set amount, (which amount would increase each year by the percentage change in the Consumer Price Index). whichever is greater. City staff has discussed this concept with Universal Paragon Corporation, the soil recycling establishment in the City.

Discussion

Because this tax is for general municipal purposes, under Proposition 218, adopted by the voters in 1996, any increase in the tax is subject to approval by a majority of the voters voting on the proposed tax at a regularly scheduled election at which members of the Brisbane City Council are elected. The next regularly scheduled election for Council members is November 7, 2017.

Attached is a resolution calling for a special election to be consolidated with the municipal election on November 7, 2017 to establish a business license tax for soil recycling establishments at a rate of 20% of

the establishment's gross receipts or \$200,000, whichever is greater. As mentioned above, the \$200,000 would increase annually by the percentage change in the CPI. Moreover, the Ordinance would authorize the City Council to set the amount of the business license tax in any given calendar year less than the maximum tax permitted under the Ordinance. If a majority of the voters voting on the ballot measure approve, the Ordinance will go into effect. If the voters approve the ballot measure, staff would provide City Council with options for implementation of the tax, meaning that Council may choose for gradual imposition of the tax.

The attached resolution outlines the procedures for drafting and submitting arguments, rebuttals and an impartial analysis and establishes time frames for so doing as follows:

Arguments in favor or against: August 1, 2017

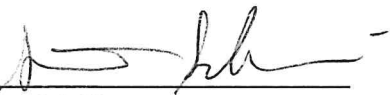
Rebuttal arguments: August 11, 2017

Impartial Analysis: August 1, 2017

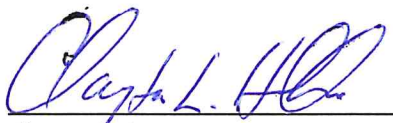
The attached resolution authorizes a Council committee to draft the "Argument for" the ballot measure. All five of the Council may sign the Argument. The resolution also authorizes the Council committee to draft a "Rebuttal" argument in the event there is an argument against the measure. Again, all five Council members could sign the Rebuttal. The resolution also authorizes the City Attorney to draft an impartial analysis of the measure.

Fiscal Impact

If this measure is passed by the voters, the City will have a steady revenue stream from soil recycling establishments. The amount of this revenue will be determined annually by the City Council. Based, however, on the current level of business in the City, staff anticipates this tax will generate \$300,000 to \$400,000 more revenue than currently is received in truck haul fees.



Stuart Schillinger
Finance Director



Clay Hofstine
City Manager

RESOLUTION NO. 2017-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA CALLING A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE GENERAL ELECTION ON NOVEMBER 7, 2017, FOR SUBMISSION TO THE VOTERS OF A PROPOSED ORDINANCE TO IMPOSE A BUSINESS LICENSE TAX ON SOIL RECYCLING ESTABLISHMENTS

WHEREAS, the City has established a business license tax, as set forth in Chapter 5.20 of the Brisbane Municipal Code but this tax, under Section 5.20. 100 A 4 of the Brisbane Municipal Code, is not imposed on establishments primarily engaged in soil recycling; and

WHEREAS, the City Council desires to place a ballot measure before the voters at the November 7, 2017 election to impose a tax on certain soil recycling establishments in order to provide additional revenue for general municipal expenses; and

WHEREAS, the City's business license tax is a general tax and any increase thereof is subject to approve of a majority of the voters voting upon the proposed increase at a regularly-scheduled election at which members of the Brisbane City Council will be elected and it is desirable to consolidate this special election with that general election;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA, AS FOLLOWS:

SECTION 1. ELECTION CALLED

The City Council of the City of Brisbane hereby calls a special municipal election, to be consolidated with the general election on Tuesday, November 7, 2017, at which there shall be submitted for approval by the voters of the City of Brisbane a proposed ordinance amending Chapter 5.20 of the Brisbane Municipal Code by adding Section 5.20.12 to impose a business license tax on soil recycling establishments.

SECTION 2. FULL TEXT OF PROPOSED ORDINANCE

The complete text of the propose ordinance shall read as follows:

“AN ORDINANCE OF THE CITY OF BRISBANE ADDING SECTION 5.20.12 OF THE BRISBANE MUNICIPAL CODE TO IMPOSE A BUSINESS LICENSE TAX ON SOIL RECYCLING ESTABLISHMENTS”

The People of the City of Brisbane hereby ordain as follows:

Section 1. A new section 5.20.12 is added to Chapter 5.20 of the Brisbane Municipal Code to read as follows:

“Section 5.20.12 Soil Recycling Establishment

- A. Definition of Soil Recycling Establishment. As used in this Section 5.20.12, the term “soil recycling establishment” means an establishment engaged primarily in the recycling of soil, including the incidental recycling of rock, stone, or rebar.
- B. Any soil recycling establishment shall pay an annual business license tax of twenty (20) percent of its gross receipts or two hundred thousand dollars (\$200,000), whichever is greater; provided, however, the City Council may by resolution impose a business license tax for a soil recycling establishment for any calendar year in an amount below the maximum tax that could be charged under this subsection. The business license tax shall be paid in two equal installments, due not later than January 1 and July 1 of each year.
- C. Beginning January 1, 2019 and on January 1 of each subsequent year (the “adjustment date”), the \$200,000 referred to in subsection B of this section 5.20.12 may be increased by multiplying the \$200,000 by a fraction, the numerator of which shall be the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, All Items, for the San Francisco-Oakland-Hayward Statistical Area (“CPI”) published nearest to the adjustment date and the denominator of which shall be the CPI published nearest to the date the business license tax was set at \$200,000 per year.”

SECTION 3. TAX OF BALLOT MEASURE

The proposed ordinance to impose a business license tax charged to certain soil recycling establishments shall be presented for approval by the voters as the following ballot measure:

To pay for general municipal expenses, shall the City impose an annual business license tax on a soil recycling establishment of up to twenty (20%) of its gross receipts or up to two hundred thousand dollars (\$200,000), whichever is greater?

The ballot measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code Section 13116.

SECTION 4. REQUEST TO CONSOLIDATE, CONDUCT ELECTION AND CANVASS RETURNS

The Board of Supervisors of the County of San Mateo is hereby requested to authorize the County Clerk;/Registrar of Voters to render all services necessary and proper for the conduct of the special municipal election called by the Resolution. Pursuant to California Elections Code Section 10403, the City Council hereby requests that the San Mateo County Board of Supervisors consolidate that election with the election to be held on November 7, 2017, and order the special municipal election to be conducted by the Registrar of Voters. The San Mateo County Elections Department is authorized to canvass the returns of the special election.

The City Clerk’s Office is authorized, instructed and directed to work with the County Elections Division as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in the form and content as required by law. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. REQUIRED VOTER APPROVAL AND EFFECTIVE DATE

If a majority of the voters voting upon the ballot measure vote in its favor, the proposed ordinance shall become a valid and binding ordinance of the City of Brisbane. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council and shall go into effect on that date or such other date as may be specified by the City Council.

SECTION 6. PROCEDURE FOR ARGUMENTS AND REBUTTALS

As provided in Elections Code, section 9285, the City Council authorizes, on behalf of the City Council, a committee of the City Council to file a written Argument For the measure, and a committee of the City Council to file a Rebuttal argument (should an Argument Against the measure be filed) and other Council members may sign such Argument/Rebuttal. Any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations may also submit a written argument for or against the measure. Such argument, whether For or Against, shall not exceed 300 words and be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, in accordance with Article 4, Chapter 3, Division 9 of the Election Code of the State of California. Primary arguments For or Against the measure must be submitted to the City Clerk by August 1, 2017. The Rebuttal arguments must be submitted to the City Clerk by August 11, 2017 and shall not exceed 250 words.

SECTION 7. IMPARTIAL ANALYSIS

Pursuant to Elections Code Section 9280, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The analysis shall be printed preceding the arguments For and Against the measure. The analysis shall not exceed 500 words in length. The impartial analysis shall be filed by the date set by this resolution for the filing of primary arguments.

SECTION 8. FULL TEXT OF ORDINANCE

The full text of the Ordinance shall be printed in the Voter Information Pamphlet.

SECTION 9. CONDUCT OF ELECTION

The election on said ballot measure shall be consolidated with the general municipal election to be held on November 7, 2017.

SECTION 10. CEQA

The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA," and 14 Cal Code Reg. Sections 15000 et seq., "CEQA Guidelines"). The tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section 15378(b)(4) the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, Guidelines Section 15060 review under CEQA is not required.

SECTION 11. PASSAGE OF THIS RESOLUTION

This business license tax is a general tax requiring the approval of a majority of qualified electors casting votes. This Resolution must be approved by a two-thirds vote of the Council.

Lori S. Liu, Mayor

I hereby certify that the foregoing Resolution No. 2017-26 was duly and regularly adopted at the meeting of the Brisbane City Council on July 20, 2017 by the following vote:

AYES: Councilmembers

NOES:

ABSENT:

Ingrid Padilla, City Clerk