

May 3, 2017

To: Infrastructure Subcommittee
From: City Manager
Subject: Potential Ballot Measures for November 2017

Background:

Attached are two resolutions to place ballot measures on November 2017 election. (Draft staff reports to be presented to the full City Council are also included).

First item is an update to the ballot measure passed several years ago to establish a **Business License Tax on Recycling establishments**. If passed the City could establish a tax up to 4m versus the current limitation of 3m. The new tax would also be subject to annual inflation of 3% or CPI at the discretion of the City.

Staff has discussed this with the business currently impacted by this tax, Recology of San Francisco. Currently the City of Brisbane does not assess the full 3m fee nor would we anticipate assessing the full 4m fee immediately upon passage of this ballot measure. The purpose of this is to provide more growth potential for this revenue source and to not have a dollar cap.

Second item is a proposal for a new category of **Business License Tax for Soil Recycling Establishments** (this definition of business was specifically excluded from the Recycling Business License Tax when it was approved by the voters several years ago.) Currently the City charges a Truck Haul Fee for this type of business. The current rate is .47 cents a cubic yard and would be adjusted to .49 cents in the adoption of Fees for fiscal 2018. Historically the rate was around .9 cents (up until approximately 2004) and was increased threefold at that time to .27 cents. A few years ago we increased it again to .45 cents and then annually applied an inflation rate as we do with all our other fees.

The resolution to be sent to the voters proposes to establish a fee ranging up to \$1.50 a cubic yard. The actual fee in any one year would be established by City Council resolution.

During last year's budget deliberations, staff was asked if the Soils Processing business could be subject to the current Business License Tax on Recycling Establishments, which is triggered by 100,000 tons of material. The answer is no as Soils Processing was specifically excluded from this tax by the language approved by the voters. The follow up question is whether it would be appropriate to attempt to strike the exclusion in the Recycling Tax or it would be better to establish a separate category.

The legal issue revolved around the concern over establishing a "confiscatory tax". While the volumes of material for a Recycling establishment, such as the one impacted by our ordinance are fairly stable even in bad economic times, the belief is that soils processing is much more susceptible to vagaries in the economy especially as downturns impact development. For that reason staff, including the City Attorney, believe that a Tax on actual material being handled is preferable.