

Ballot Measure—Soil recycling

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 does impose a “truck hauling fee” on this type of business.)

In order to generate revenue for the City, City staff has discussed with the Council’s Finance and Administrative Committee imposing a business license tax on soil recycling establishments at a rate of up to \$1.50 per cubic yard of material brought to a site, with a threshold of 30,000 cubic yards of soil, in order that typical “backyard” projects would not be subject to the tax. The Committee agrees. City staff has also informed Universal Paragon Corporation of this proposal.

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 increase 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 increase the business license tax for soil recycling establishments at a rate of up to \$1.50 per cubic yard. If a majority of the voters voting on the ballot measure approve it, it 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 or the committee members and three members of the community, as chosen by the committee could sign the Argument. The resolution also authorizes a separate 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 or the committee members, along with three members of the community could sign. The resolution also authorizes the City Attorney to draft an impartial analysis of the measure.

Fiscal Impact

In 2016, the two companies processed 1,150,000 cubic yards of dirt. For every \$0.10 taxed per cubic yard it would produce \$115,000.

Clay Holstine
City Manager

RESOLUTION NO. 2017-XX

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 THE 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 Establishments

A. Definition of Soil Recycling Establishments. 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, concrete or rebar.

B. Any soil recycling establishment that recycles 30,000 or more cubic yards of soil during any single calendar year shall pay an annual business license tax of up to one dollar fifty cents (\$1.50) for each cubic yard of recycled soil. The business license tax imposed by this section shall become effective in an amount as determined by City Council up to the authorized ceiling amount on such date as established by City Council resolution. 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, 2018 and on January 1 of each subsequent year (the "adjustment date"), the business license tax payable under subsection B of this section 5.20.12 may be increased to any amount within the authorized ceiling of one dollar fifty cents (\$1.50) for each cubic yard of recycled soil. On any adjustment date, after the business license tax has been set at the authorized ceiling of one dollar fifty cents (\$1.50) for each cubic yard of recycled soil, the business license tax payable under subsection B of this section 5.20.12 shall be whichever of the following is the greater: (1) the tax charged for the immediately preceding year plus three percent (3%) of such tax or (2) One dollar fifty cents (\$1.50) plus an amount obtained by multiplying one dollar fifty cents (\$1.50) 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 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 one dollar fifty cents (\$1.50) for each cubic yard of recycled soil. The City Council may, by resolution, adopt a business license tax for any calendar year in an amount below the maximum tax that could be charged under the three percent (3%) or CPI adjustment provided in this subsection C.

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 soil recycling establishments up to one dollar fifty cents (\$1.50) (plus adjustments) for each cubic yard of recycled soil?

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 comprised of ----- and ----- to file a written Argument For the measure, and a committee of the City Council comprised of ----- and ----- to file a Rebuttal argument (should an Argument Against the measure be filed) and other Council members may sign such Argument/Rebuttal or the committees may add additional signatories to the 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, and shall be conducted in accordance with the provisions of Resolution No. 2013-03 adopted by the City Council on February 19, 2013.

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 Liu, Mayor

I hereby certify that the foregoing Resolution No. 2017-XX was duly and regularly adopted at the meeting of the Brisbane City Council on May 18, 2017 by the following vote:

AYES: Councilmembers

NOES: None

ABSENT: None

Ingrid Padilla, City Clerk