

City of Brisbane

Agenda Report

Date: City Council Meeting of September 6, 2018

To: Mayor Conway and Members of the City Council

From: Michael Roush, City Attorney

Subject: Resolution Establishing the Business License Tax for Liquid Storage Facilities for 2017 and 2018 as to Kinder Morgan/SFPP

City Council Goals

To provide for effective and efficient delivery of City services (1)
To develop management and fiscal systems to maximize effectiveness of City services and accountability to Brisbane taxpayers and citizens (11)

Purpose

To establish for calendar year 2017 and 2018 the amount of the business license tax charged to Kinder Morgan/SFPP for its liquid storage facilities in Brisbane under Section 5.20.011 of the Brisbane Municipal Code

Recommendation

Adopt Resolution 2018-33 imposing a business license tax in the amount of \$261,093 for 2017 and \$323,332 for 2018 for Kinder Morgan/SFPP.

Background

At the general election in November 2013 Brisbane voters approved an annual business license tax on persons engaged in the business of operating, leasing, supplying or providing a liquid storage facility in the City of Brisbane. The ballot measure added Section 5.20.011 to the Brisbane Municipal Code, allowing the City to impose up to a maximum business license tax of \$115.28 per year for each 1000 cubic feet of liquid storage capacity.

In 2014 and 2015, the City Council imposed by resolution a business license tax of \$38.91 for each 1000 cubic feet of storage capacity. In 2016 and 2017, the Council imposed by resolution a business license tax of \$115.28 for each 1000 cubic feet of storage capacity. As to Kinder Morgan/SFPP, LP, the owner of the only liquid storage facility currently in Brisbane, this rate translated to a tax of \$135,000 in 2014 and 2015 and to a tax of \$400,000 in 2016 and 2017. The company paid the \$135,000 for 2014 under protest in December 2014, paid the \$135,000 for 2015 in January 2016 under protest, and paid the \$400,000 in December 2016 under protest. The company did not pay the license tax for 2017 but filed a civil suit

against the City in the San Mateo County Superior Court seeking reimbursement for the taxes paid in 2014, 2015 and 2016.

The litigation was settled in 2017. Under the terms of the settlement agreement, the City and Kinder Morgan/SFPP agreed that for 2017, the liquid fuel storage tax rate would be set by the Brisbane City Council at an amount that is equivalent to 3.5 cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal (“over the rack”). The parties also agreed that for 2018, the tax rate would be equivalent to 4 and 1/3 cents per barrel.

Discussion

Kinder Morgan/SFPP has provided the City with bill of lading (“BOL”) reports for 2016 and 2017. These show that in 2016, there were 7,459,800 of barrels “over the rack” and for 2017, there were 7,467,230 of barrels “over the rack”. These numbers are consistent with the estimates that are reflected in the settlement agreement. Adoption of the attached resolution will impose a business license tax for Kinder Morgan/SFPP in the amount of \$261,093 for 2017 and \$323,332 for 2018. The resolution also rescinds Resolution No. 2017-11 that imposed a business license tax in a different amount for 2017 but which amount was never paid.

In addition, the settlement agreement provides that for 2019, the tax rate will be set at the equivalent of 5 and 1/3 cents per barrel over the rack. Assuming the number of such barrels were 7.5 million, the tax would be \$400,000. The settlement agreement also provides that at the November 2019 municipal election, Council will place before the voters a revision to the current business license tax concerning liquid storage facilities that would provide that the tax rate will be up to 6 cents per barrel, with the exact rate to be determined annually by the Council. If the voters so approve, that liquid storage tax formula would then be applied for subsequent years but in no event would the tax be greater than \$400,000.

Fiscal Impact

As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$261,093 for the 2017 calendar year and \$323,332 for the 2018 calendar year.

Attachment:

Resolution No. 2018-33.



Michael Roush, City Attorney



Clay Holstine, City Manager

RESOLUTION NO. 2018-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ESTABLISHING THE BUSINESS LICENSE TAX CHARGED TO KINDER MORGAN/SFPP LLC FOR CALENDAR YEARS 2017 AND 2018 UNDER SECTION 5.20.011 OF THE BRISBANE MUNICIPAL CODE

WHEREAS, Section 5.20.011 of the Brisbane Municipal Code imposes an annual business license tax on persons engaged in the business of operating, leasing, supplying or providing a liquid storage facility in the City; and

WHEREAS, Kinder Morgan/SFPP LLC, a business in Brisbane engaged in the business of operating, leasing, supplying or providing a liquid storage facility, and the City have agreed that for calendar year 2017 the liquid fuel storage tax will be set by the City Council based on a formula in an amount of 3.5 cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal ("over the rack") and, for calendar year 2018, in an amount of 4 and 1/3 cents per barrel over the rack.

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

1. The annual business license tax charged to Kinder Morgan/SFPP LLC for 2017 shall be \$261,093.
2. The annual business license tax charged to Kinder Morgan/SFPP LLC for 2018 shall be \$323,332.
3. Payment of the business license taxes for 2017 and 2018 shall be due and payable in full by December 31, 2018.
4. Resolution No. 2017-11 is hereby rescinded.

W. Clarke Conway, Mayor

I hereby certify that the foregoing Resolution No. 2018-33 was duly and regularly adopted at the regular meeting of the Brisbane City Council on September 6, 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk