



CITY COUNCIL AGENDA REPORT

Meeting Date: June 6, 2019

From: Clay Holstine, City Manager

Subject: Resolution Establishing the Business License Tax for Liquid Storage Facilities for 2019 as to Kinder Morgan/SFPP

Community Goal/Results

Fiscally Prudent

Purpose

Create a diverse revenue base to ensure City services are provided during all economic cycles.

Recommendation

Adopt Resolution 2019-12 imposing a business license tax in the amount of \$365,458 as to 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”), that for 2018, the tax rate would be equivalent to 4 and 1/3 cents per barrel and for 2019, the tax rate would be 5 and 1/3 cents per barrel.

Discussion

Kinder Morgan/SFPP has provided the City with bill of lading (“BOL”) reports for 2018. These show that in 2018 there were 6,852,769 of barrels “over the rack”. These numbers are generally 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 \$365,458.

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

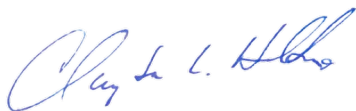
As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$365,458 for calendar year 2019.

Measure of Success

Kinder Morgan’s/SFPP’s payment of \$365,458 to the City, which is expected.

Attachment:

Resolution No. 2019-12.



Clay Holstine, City Manager

ATTACHMENT 1

RESOLUTION NO. 2019-12

**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 2019 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 2019 the liquid fuel storage tax will be set by the City Council based on a formula in an amount of 5 and 1/3 cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal (“over the rack”) during calendar year 2018; and

WHEREAS, for calendar year 2018, Kinder Morgan/SFPP LLC provided data to the City indicating that the number of barrels “over the rack” for calendar year 2018 were 6,852,769.

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 2019 shall be \$365,458.
2. Payment of the business license taxes for 2019 shall be due and payable in full by June 30, 2019.

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2019-12 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 6, 2019 by the following vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla, City Clerk