



CITY COUNCIL AGENDA REPORT

Meeting Date: June 6, 2019

From: Clay Holstine, City Manager

Subject: Resolution Calling for a Special Municipal Election to be Consolidated With the General Election on November 5, 2019 Revising and Potentially Increasing the Business License Tax for Liquid Storage Facilities

Community Goal/Result

Fiscally Prudent

Purpose

Ensure the City has a diverse tax base in order to provide necessary services to the Community.

Recommendation

Adopt Resolution 2019-27 calling for the election and establishing other election procedures in connection therewith, for the purpose of revising and potentially increasing the Business License Tax for Liquid Storage Facilities.

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 only \$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.

Based on the number of “over the rack” barrels in 2016 and 2017, respectively, Kinder Morgan/SFPP paid the City \$261,093 and \$323,332 for its business license tax for 2017 and 2018.

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. Accordingly, also on the Council’s June 6 agenda is a resolution that 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 as to the Kinder Morgan facility at 950 Tunnel Avenue be greater than \$400,000. The attached resolution calls for a special election to be held in conjunction with the Council’s November 2019 election to revise and potentially increase (over what Kinder/Morgan/SFPP has been charged) the business license tax on liquid storage facilities.

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 5, 2019.

The attached resolution calls for a special election to be consolidated with the municipal election on November 5, 2019 to increase (potentially) the business license tax for liquid storage facilities but in no case, as to the Kinder Morgan facility, more than \$400,000 annually. If a majority of the voters voting on the ballot measure approve it, it will go into effect.

The attached resolution also 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 15, 2019

Rebuttal arguments: August 25, 2019

Impartial Analysis: August 25, 2019

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

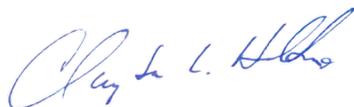
If this ballot measure is approved, the tax will be calculated at 6 cents per “over the rack” barrel but in no event, as to the Kinder Morgan facility, more than \$400,000 annually. If this amount had been applied in 2017, 2018 and 2019, the City would have received \$400,000. It is anticipated that the City will continue to receive this same amount in the future.

Measure of Success

If the voters approve the Ordinance, the City will continue to receive close to, if not always, \$400,000 annually from the business license tax for liquid storage facilities.

Attachments

1. Resolution 2019-27 calling for a special election on November 5, 2019 to allow the voters to decide whether to revise and potentially increase the business license tax for liquid storage facilities in the City.



Stuart Schillinger

Clay Holstine, City Manager

Stuart Schillinger, Administrative Services

ATTACHMENT 1

RESOLUTION NO. 2019-27

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 5, 2019, FOR SUBMISSION TO THE VOTERS OF A PROPOSED ORDINANCE TO AMEND AND POTENTIALLY INCREASE THE BUSINESS LICENSE TAX FOR LIQUID STORAGE FACILITIES

WHEREAS, the City has established a business license tax, as set forth in Chapter 5.20 of the Brisbane Municipal Code, and Section 5.20.011 of the Brisbane Municipal Code imposes a tax on any person engaged in the business of operating, leasing, supplying or providing liquid storage facilities as an alternative to the gross receipts business license tax; and

WHEREAS, the City Council desires to place a ballot measure before the voters at the November 5, 2019 election to revise the tax, and thereby to potentially increase the tax, on liquid storage facilities, 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

WHEREAS, November 5, 2019 is the next 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 5, 2019, 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 amending Section 5.20.011 to revise, and potentially increase, the business license tax on liquid storage facilities.

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 TO AMEND SECTION 5.20.011 OF THE BRISBANE MUNICIPAL CODE TO REVISE AND POTENTIALLY INCREASE THE BUSINESS LICENSE TAX ON LIQUID STORAGE FACILITIES”

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

Section 1. Section 5.20.011 of the Brisbane Municipal Code is amended to read as follows:

“Section 5.20.11 Liquid Storage Facilities

- A. Any person engaged in the business of operating, leasing, supplying or providing a liquid storage facility shall pay an annual business license tax of up to six cents per barrel delivered over the rack in the preceding calendar year, with the exact rate to be determined each year by the Brisbane City Council; provided, however, that the tax imposed on SFPP, L.P. (or its successor) for the liquid storage facility at the Brisbane Terminal, located at 950 Tunnel Avenue, Brisbane, CA shall in no event be more than \$400,000 annually.
- B. The annual amount of liquid storage facilities business license tax payable by any person shall be reduced by the amount of sales or use tax received by the City attributable to such person, or sales tax attributable to other persons, based on sales of liquid storage facilities as the point of sale, during the same calendar year (the “sales tax credit”).”

SECTION 3. TEXT OF BALLOT MEASURE

The proposed ordinance to revise/increase the business license tax charged to liquid storage facilities shall be presented for approval by the voters as the following ballot measure:

To pay for general municipal expenses, shall the City revise/increase the annual business license tax on a liquid storage facility of up to six cents per barrel delivered over the rack to such facility in the preceding calendar year?

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 5, 2019, 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: PUBLICATION OF MEASURE

The City Clerk's Office is directed to cause notice of the measure to be published once in accordance with Section 12111 of the State Elections Code.

SECTION 6: 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 7: 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 15, 2019. The Rebuttal arguments must be submitted to the City Clerk by August 25, 2019 and shall not exceed 250 words.

SECTION 8: 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 9: FULL TEXT OF ORDINANCE

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

SECTION 10: CONDUCT OF ELECTION

The election on said ballot measure shall be consolidated with the general municipal election to be held on November 5, 2019.

SECTION 11. 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 12: 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.

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2019-27 was duly and regularly adopted at the meeting of the Brisbane City Council on June 6, 2019 by the following vote:

AYES: Councilmembers

NOES:

ABSENT:

Ingrid Padilla, City Clerk