



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Clay Holstine, City Manager

Subject: Revised Resolution Establishing the 2020 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP

City Council Goal/Results

Fiscally Prudent & Economic Development

Purpose

To establish for calendar year 2020 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 No. 2020-50 imposing a business license tax in the amount of \$400,000 as to Kinder Morgan/SFPP and rescinding Resolution No. 2020-42.

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.

Accordingly, based on the number of barrels “over the rack”, Kinder Morgan/SFPP paid \$261,093 for 2017, \$323,332 for 2018 and \$365,458 for 2019.

The settlement agreement also provides that at the November 2019 municipal election, Council would place before the voters a revision to the then 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. The voters approved the revision to the business license tax as described.

On June 4, 2020, Council adopted Resolution No. 2020-42 imposing a business license tax for the Kinder Morgan/SFPP facility in the amount of \$351,040. That amount was based on information that had been reported to the City by SFPP that the number of barrels “over the rack” was 5,850,678. That number, however, was incorrect. SFPP has advised the City that the correct number of barrels was substantially higher—8,326,342 (apparently missing originally were the ethanol barrels).

Discussion

Kinder Morgan/SFPP has provided the City with revised bill of lading (“BOL”) reports for 2019. These show that in 2019 there were 8,326,342 of barrels “over the rack”. These numbers are consistent with the estimates that are reflected in the settlement agreement. The ordinance provides the tax rate may be up to 6 cents per barrel but the settlement agreement caps the tax at \$400,000. Adoption of the attached resolution will set the tax rate at 0.04804 cents per barrel and impose for 2020 a business license tax for Kinder Morgan/SFPP at the maximum, \$400,000. The resolution also rescinds the resolution adopted on June 4 imposing a tax in the amount of \$351,040.

Fiscal Impact

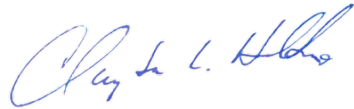
As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$400,000 for calendar year 2020.

Measure of Success

Kinder Morgan's/SFPP's payment of \$400,000 to the City, which is expected by June 30, 2020.

Attachment

Resolution No. 2020-50



Clay Holstine, City Manager

RESOLUTION NO. 2020-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ESTABLISHING THE BUSINESS LICENSE TAX CHARGED TO KINDER MORGAN/SFPP LLC FOR CALENDAR YEAR 2020 UNDER SECTION 5.20.011 OF THE BRISBANE MUNICIPAL CODE AND RESCINDING RESOLUTION NO. 2020-42

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 2020 the liquid fuel storage tax will be set by the City Council based on a formula in an amount of six cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal (“over the rack”) during calendar year 2019; and

WHEREAS, for calendar year 2019, Kinder Morgan/SFPP LLC provided revised data to the City indicating that the number of barrels “over the rack” for calendar year 2019 were 8,326,342; and

Whereas, the Section 5.20.011 provides the City Council may set a tax rate for these facilities up to six cents per barrel, so long as the overall tax amount does not exceed \$400,000.

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

1. For 2020, the City Council sets the business license tax rate for the Kinder Morgan/SFPP liquid storage facility in Brisbane at 0.04804 cents per barrel and the annual business license tax charged to Kinder Morgan/SFPP LLC for 2020 shall be \$400,000.
2. Payment of the business license taxes for 2020 shall be due and payable in full by June 30, 2020.
3. Resolution No. 2020-42 is hereby rescinded.

Terry O’Connell, Mayor

I hereby certify that the foregoing Resolution No. 2020-50 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 18, 2020 by the following vote:

AYES:

NOES

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk