



CITY COUNCIL AGENDA REPORT

Meeting Date: June 6, 2024

From: Carolina Yuen, Finance Director

Subject: Resolution Establishing the 2024 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP

Community Goal/Result

Fiscally Prudent
Economic Development

Purpose

To establish for calendar year 2024 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 the attached resolution imposing a business license tax in the amount of \$229,198 as to Kinder Morgan/SFPP for calendar year 2024.

Background

The City receives revenues from diverse sources in order to provide the necessary high-quality services the community expects.

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 1,000 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 1,000 cubic feet of storage capacity. In 2016 and 2017, the Council imposed by resolution a business license tax of \$115.28 for each 1,000 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, \$135,000 in 2015, \$400,000 in 2016, and \$400,000 in 2017. The company paid the 2014, 2015 and 2016 fees under protest and 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 or “over the rack” (\$261,091), that for 2018, the tax rate would be equivalent to 4 and 1/3 cents per barrel (\$323,332) and for 2019, the tax rate would be 5 and 1/3 cents per barrel (\$356,458).

The settlement agreement also provided 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. 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.

Since 2020, Kinder Morgan/SFPP has reported the following number of over the rack barrels and accordingly has paid the business license tax as set forth below:

2020 - \$400,000 maximum allowed based on 8,326,342 barrels from 2019
2021 - \$288,586 based on 4,809,771 barrels from 2020
2022 - \$324,327 based on 5,405,448 barrels from 2021
2023 - \$338,159 based on 5,635,991 barrels from 2022

Staff presented a staff report and resolution at the April 18, 2024 meeting seeking authorization to invoice Kinder Morgan. Council requested staff review with Kinder Morgan the decrease in results and trend further.

Discussion

Kinder Morgan/SFPP has provided the City with information that in 2023 there were 3,819,969 barrels “over the rack.” The ordinance provides that the tax rate may be up to 6 cents per barrel, with a business license cap of \$400,000. Adoption of the attached resolution will set the tax rate at 6 cents per barrel and impose for 2024 a business license tax for Kinder Morgan/SFPP of \$229,198. Kinder Morgan has described the recent decrease in barrels partially to be the result of losing a significant customer and some diesel customers shifting their business away to Renewable Diesel available at other locations, as well as elimination of coding errors which may have caused potential overreporting in previous years. Staff has requested supplemental information to validate the decreasing trend. Although staff continues to review the information received with Kinder Morgan, staff recommends Council use the information provided thus far to invoice for current year to allow enough time to collect and recognize for the current fiscal year.

Fiscal Impact

As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$229,198 for calendar year 2024.

Measure of Success

Kinder Morgan/SFPP to make a payment of \$229,198 to the City for 2024.

Attachment - Resolution Establishing the Business License Tax to Kinder Morgan/SFPP LLC for Calendar Year 2024.

Carolina Yuen

Carolina Yuen, Finance Director

Clay Holstine

Clay Holstine, City Manager

RESOLUTION NO. 2024-_____

**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 2024 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 2024 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 throughout the Brisbane Terminal for delivery at the terminal (“over the rack”) during calendar year 2023; and

WHEREAS, Kinder Morgan/SFPP LLC provided data to the City indicating that the number of barrels “over the rack” for calendar year 2023 was 3,819,969; 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 2024, the City Council sets the business license tax rate for the Kinder Morgan/SFPP liquid storage facility in Brisbane at six cents per barrel and the annual business license tax charged to Kinder Morgan/SFPP LLC for 2024 shall be \$229,198.

2. Payment of the business license taxes for 2024 shall be due and payable in full by June 30, 2024.

Terry O’Connell, Mayor

I hereby certify that the foregoing Resolution No. 2024-_____ was duly and regularly adopted at a regular meeting of the Brisbane City Council on June 6, 2024 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk