



CITY COUNCIL AGENDA REPORT

Meeting Date: May 4, 2023

From: Carolina Yuen, Finance Director

Subject: Resolution Establishing the 2023 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 2023 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 \$338,159 as to Kinder Morgan/SFPP for calendar year 2023.

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. 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 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. If the voters so approved, 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

Discussion

Kinder Morgan/SFPP has provided the City with information that in 2022 there were 5,635,991 barrels “over the rack.” The ordinance provides 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 2023 a business license tax for Kinder Morgan/SFPP of \$338,159.

Fiscal Impact

As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$338,159 for calendar year 2023.

Measure of Success

Kinder Morgan/SFPP to make a payment of \$338,159 to the City for 2023.

Attachment - Resolution Establishing the Business License Tax to Kinder Morgan/SFPP LLC for Calendar Year 2023.

Carolina Yuen

Carolina Yuen, Finance Director

Clayton L. Holstine

Clay Holstine, City Manager

RESOLUTION NO. 2023-_____

**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 2023 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 2023 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 2022; and

WHEREAS, Kinder Morgan/SFPP LLC provided data to the City indicating that the number of barrels “over the rack” for calendar year 2022 was 5,635,991; 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 2023, 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 2023 shall be \$338,159.

2. Payment of the business license taxes for 2023 shall be due and payable in full by July 31, 2023.

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2023-____ was duly and regularly adopted at a regular meeting of the Brisbane City Council on May 4, 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk