



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Carolina Yuen

Subject: Resolution Establishing the 2022 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP

Community Goal/Result

Economic Development – Brisbane will work with the businesses and residents to provide for economic vitality/diversity

Fiscally Prudent - Brisbane's fiscal vitality will reflect sound decisions which also speak to the values of the community

Purpose

To establish for calendar year 2022 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. The City receives revenues from diverse sources in order to provide the necessary high-quality services the community expects.

Recommendation

Adopt the attached resolution imposing a business license tax in the amount of \$324,327 as to Kinder Morgan/SFPP for calendar year 2022.

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	\$135,000 in 2015
\$400,000 in 2016	\$400,000 in 2017

The company paid the for 2014, 2015, and 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 centers per barrel. Accordingly, based on the number of barrels “over the rack,” Kinder Morgan/SFPP paid:

\$261,093 for 2017

\$323,332 for 2018

\$356,458 for 2019

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 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.

Since 2020, the City was able to collect based on the revised rate. Kinder Morgan/SFPP reported the number of over the rack barrels and accordingly paid as follows:

2020 – \$400,000 maximum allowed based on 8,326,342 barrels from 2019

2021 – \$288,586 based on 4,809,771 barrels from 2020

Discussion

Kinder Morgan/SFPP has provided the City with its bill of lading (“BOL”) reports for 2021. These show that in 2021 there were 5,405,448 barrels “over the rack.” This number is more than the previous year reflecting a recovery from the pandemic year as anticipated, but not yet to pre-pandemic levels. The ordinance provides the tax rate may be up to 6 cents per barrel, with a cap of \$400,000. Adoption of the attached resolution will set the tax rate at 6 cents per barrel and impose for 2022, a business license tax for Kinder Morgan/SFPP at \$324,327.

Fiscal Impact

As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$324,327 for calendar year 2022.

Measure of Success

Kinder Morgan/SFPP to make payment of \$324,327 to the City for 2022.

Attachment

Resolution Establishing the Business License Tax to Kinder Morgan/SFPP LLC for Calendar Year 2022

Carolina Yuen

Carolina Yuen, Finance Director

Clayton L. Holstine

Clay Holstine, City Manager

RESOLUTION NO. 2022-_____

**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 2022 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/SFFPP 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 2022 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 2021; and

WHEREAS, Kinder Morgan/SFPP LLC provided data to the City indicating that the number of barrels “over the rack” for calendar year 2021 was 5,405,448; 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 2022, the City Council sets the business license tax rate for the Kinder Morgan/SFPP liquid storage facility in Brisbane at 6.00 cents per barrel and the annual business license tax charged to Kinder Morgan/SFPP LLC for 2022 shall be \$ 324,327.

2. Payment of the business license taxes for 2022 shall be due and payable in full by July 31, 2022.

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-_____ was duly and regularly adopted at a regular meeting of the Brisbane City Council on July 7, 2022 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk