



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Michael Roush, Legal Counsel
Clayton Holstine, City Manager

Subject: Ordinance Adding a New Chapter 3.22 to the Brisbane Municipal Code Imposing a Transactions and Use Tax to be Administered by the California Department of Tax and Fee Administration and Resolution Amending the Ballot Question for the Ordinance to be Submitted to the Voters levying a half cent Transaction and Use Tax

COMMUNITY GOAL/RESULT

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

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

RECOMMENDATION

Adopt by a 2/3 vote the Ordinance and re-adopt Resolution 2022-58 with a revised ballot question.

BACKGROUND

On June 23, 2022 Council introduced an ordinance adding a new Chapter 3.22 to the Brisbane Municipal Code imposing a Transaction and Use Tax (commonly known as a sales tax) to be administered by the California Department of Tax and Fee Administration. Council also adopted a resolution calling for the ordinance to be submitted to the voters for consideration at the November 8, 2022 election. The resolution, in part, set forth a ballot question to be submitted to the voters.

In 2020, there was a change in the Elections Code that now provides that when a proposed measure imposes a tax or raises a rate of tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

The ballot question in the resolution that the City Council adopted on June 23, 2022 concerning the proposed transaction and use tax set forth the rate of the tax to be levied (1/2 cent) and

the duration of the tax (until ended by the voters) , but not the amount of money to be raised annually.

DISCUSSION

Council should now adopt the ordinance adding Chapter 3.22 to the Brisbane Municipal Code, subject to voter approval.

The ballot question should be revised as follows:

Shall the City of Brisbane’s measure to fund City services/facilities, such as neighborhood police patrols, fire prevention services, urban wildfire protection, crime suppression/investigation, pothole/street repair, parks and other city facilities, and to support other city services, by levying a ½ cent sales tax, generating approximately \$2,000,000 annually until ended by the voters, be adopted?

This revision does not change the text of the Ordinance itself nor other portions of the Resolution.

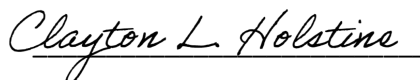
From the City Council meeting of June 23, 2022, staff also wanted to confirm the correct district rate percentage. The proposed tax in this ordinance is a “transactions and use tax” which most people would refer to as a “sales” tax. Technically, it is a “district” tax according to the California Department of Tax and Fee Administration (CDTFA). Transactions and use taxes have similarities and differences when compared to sales tax regulations in California. The combined district rate cannot exceed 9.875%. This limits the combined sales, transactions and use tax rate to 0.5%. A local agency may form more than one district but the total tax levy, including the rate of any countywide districts, must not exceed the 0.5% limit unless special legislation has been enacted to allow a higher limit.

Lastly, Staff deleted a few lines in the introductory words of the Ordinance to make it more concise and applicable to Brisbane.

Attachments Ordinance Adding Chapter 3.22 to the Brisbane Municipal Code
Resolution 2022-58, with a revised ballot question



Michael Roush, Legal Counsel



Clayton Holstine, City Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE ADDING A NEW CHAPTER 3.22 TO THE BRISBANE MUNICIPAL CODE IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

Section 1. The City Council of the City of Brisbane hereby makes the following findings in connection with the adoption of this ordinance:

WHEREAS, a local, Brisbane-approved funding measure would provide local control over local funds, for local needs; and

WHEREAS, voter-approved local funding will help to address priorities in the City such as increasing street repair and maintenance, pothole, and hazard repair programs, maintaining police patrols, maintaining and attracting local businesses, upgrading the City's parks, playgrounds, and play structures for children and youth; and

WHEREAS, voter-approved funding will provide funds for Brisbane that by law cannot be taken by Sacramento.

Section 2. The City Council of the City of Brisbane ordains that a new Chapter 3.22 shall be added to Title 3, Revenue and Finance, subject to voter approval as set forth herein, as follows:

Chapter 3.22 Transactions and Use Tax

Section 3.22.010 Title

This ordinance shall be known as the City of Brisbane Transactions and Use Tax Ordinance. The City of Brisbane hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 3.22.020 Operative Date

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

Section 3.22.030 Purpose

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax

and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 3.22.040 Contract with State

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 3.22.050 Transactions Tax Rate

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one half of one percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 3.22.060 Place of Sale

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or the retailer's agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

Section 3.22.070 Use Tax Rate

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one half of one percent (0.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 3.22.080 Adoption of Provisions of State Law

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 3.22.090 Limitations on Adoption of State Law and Collection of Use Taxes

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

1. A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

Section 3.22.100 Permit not required

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 3.22.110 Exemptions and Exclusions

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons

or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal

property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 3.22.120 Amendment

A. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

B. The City Council may amend this chapter without voter approval only to make minor technical adjustments consistent with the purposes set forth in this ordinance and applicable laws or as necessary to comply with the law.

Section 3.22.130 Enjoining Collection Forbidden

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 3.22.140 Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 3.22.150 Use of Proceeds

The proceeds from the transactions and use tax imposed by this ordinance shall be deposited in the general fund of the City and available for any lawful governmental purpose.

Section 3.22.160 Fiscal Accountability Provisions

The amount generated by this new general purpose revenue source shall be included in the annual audit of the City's financial operations by an independent certified public accountant.

Section 3.22.170 Termination

The authority to levy the tax imposed by this Ordinance shall continue until ended by the voters.

Section 3. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately, but it shall not become operative until approved by a majority of the voters voting at the general municipal election to be held November 8, 2022.

Section 4. The City Clerk shall publish this Ordinance according to law.

Coleen Mackin, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas R. McMorrow, City Attorney

--oOo--

I hereby certify that foregoing Ordinance No. _____ was introduced at a special meeting of the Brisbane City Council on _____, 2022, and adopted by the Brisbane City Council at a regular meeting on _____, 2022 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

RESOLUTION NO. 2022-58

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE SUBMITTING A
TRANSACTIONS AND USE TAX MEASURE TO THE VOTERS AT THE NOVEMBER 8, 2022
GENERAL MUNICIPAL ELECTION AND TAKING CERTAIN RELATED ACTIONS**

WHEREAS, a local, Brisbane-approved funding measure would provide local control over local funds, for local needs; and

WHEREAS, voter-approved local funding will help to address priorities such as increasing street repair and maintenance, pothole, and hazard repair programs, maintaining neighborhood police patrols, maintaining and attracting local businesses, upgrading Brisbane’s parks, playgrounds, and play structures for children and youth; and

WHEREAS, voter-approved funding will provide funds for Brisbane that by law cannot be taken by Sacramento; and

WHEREAS, the City Council has, by separate resolution, called a general municipal election for Tuesday, November 8, 2022 (the “Election”); and

WHEREAS, the City Council has requested that the Election be consolidated with the statewide election held on that date, and the City Council has requested the assistance of San Mateo County in the conduct of the Election; and

WHEREAS, Revenue & Taxation Code Section 7285.9 authorizes the City Council to levy a transactions and use tax for general purposes if the ordinance proposing that tax is approved by a two-thirds vote of all members of the City Council and the tax is approved by a majority vote of the qualified voters of the city voting in an election on the issue; and

WHEREAS, the City Council has adopted an Ordinance, entitled, “An Ordinance of the City of Brisbane Adding a new Chapter 3.22 to the Brisbane Municipal Code Imposing a Transactions and Use Tax To Be Administered by the California Department of Tax and Fee Administration” (the “Tax Ordinance”); and

WHEREAS, the City Council desires to submit the Tax Ordinance to electorate at the Election; and

WHEREAS, arguments for and against said measure, as well as rebuttals, may be filed in accordance with applicable provisions of the law pursuant to Elections Code and the text of the measure shall be printed on the ballot in the voter information portion of the sample ballot.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. The City Council hereby orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance, which is attached hereto as Exhibit “A” and incorporated herein by reference, be submitted to the voters at the Election. Adoption of the ordinance requires a majority vote of those voting on the matter.
2. The question submitted shall appear on the ballot as follows:

Shall the City of Brisbane’s measure to fund city services/facilities, such as neighborhood police patrols, fire prevention services, urban wildfire protection, crime suppression/investigation, pothole/street repair, parks and other city facilities, and to support other city services, by levying a ½¢ sales tax, generating approximately \$2,000,000 annually until ended by voters, be adopted?	YES	
	NO	

3. The City Clerk is instructed to transmit the Tax Ordinance to the City Attorney along with a request that an impartial analysis be prepared for inclusion in the Voters’ Pamphlet materials. Pursuant to Elections Code section 9280, the City Attorney shall prepare an impartial analysis, which shall be filed with the City Clerk’s office no later than August 29, 2022 by 12:00 P.M.
4. The City Council authorizes a Subcommittee of Mayor Mackin and Mayor Pro Tem Lentz to draft and then file written arguments not exceeding 300 words in length for or against the measure described above.
5. Arguments for and against the Measure may be submitted to the City Clerk’s office, until 12 p.m. on August 19, 2022. Rebuttal arguments will be permitted and must be received in the City Clerk’s office by 12:00 pm on August 29, 2022.
6. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.
7. Notice of the time and place of holding of the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in the time, form, and manner as required by law.
8. Pursuant to Section 10400 et seq. of the Elections Code, the Board of Supervisors of San Mateo County is requested to consolidate the election on this ballot measure with other elections held on the same day in the County.
9. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.
10. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.
11. The City Clerk shall file a certified copy of this Resolution with the County Clerk.
12. The City Clerk is hereby authorized to do all things necessary and proper to implement the provisions of this Resolution, including certifying the passage and adoption of this Resolution and entering it into the book of original Resolutions.

Coleen Mackin, Mayor

I hereby certify that foregoing Resolution No. 2022-58 was adopted by the Brisbane City Council at a special meeting on _____, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ingrid Padilla
City Clerk

Approved as to form:



Thomas R. McMorrow, City Attorney