



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

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

Subject: Adoption of Ordinance to Impose a Business License Tax on Hotels and Resolution Amending the Ballot Question for the Measure/Ordinance to be Submitted to the Voters Imposing a Business License Tax on Hotels

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 an Ordinance, to take effect immediately, to impose a business license tax on hotels, as defined, subject to voter approval at the November 8, 2022 election.

Re-adopt Resolution No. 2022-57 with a revised ballot question.

BACKGROUND

At the City Council's meeting on June 23, 2022, it adopted a resolution calling a special election to submit to the voters a ballot measure concerning a proposed ordinance to impose a business license tax on hotels as that term is defined in the ordinance. In that resolution, the full text of the ordinance was set forth and Section 6 of the Resolution provides:

"If a majority of the voters voting upon the ballot measure vote in its favor, the proposed ordinance shall become a valid and binding ordinance of the City of Brisbane. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council and shall go into effect on that date or such other date as may be specified by the City Council."

At the meeting, however, Council did not adopt the ordinance itself.

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 business license tax on hotels set forth the rate of the tax to be levied but not the amount of money to be raised annually or the duration of the tax. The ballot question therefore needs to be revised.

This revision does not change the text of the Ordinance itself or other portions of the Resolution.

DISCUSSION

Although the language in the resolution does provide the ordinance would be considered adopted when the City Council declares the vote (assuming there was majority approval), in an abundance of caution, staff recommends Council adopt the attached ordinance which tracks the ordinance in the resolution and the ordinance that the voters will consider at the November 2022 election. As mentioned, the ordinance would not go into effect unless a majority of the voters approve it.

The ordinance may be adopted on July 7 (without a first reading) because ordinances relating to taxes for the usual and current expenses of the City and/or relating to elections take effect immediately. Government Code, section 36937 (a) and (d).

The ballot question is revised to read:

To pay for general municipal expenses, shall an ordinance be adopted imposing on hotels and other places designed for overnight stays by guests a business license tax of \$2.50 per room for each day such room is rented, generating approximately \$250,000 annually until ended by the voters?

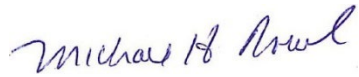
Fiscal Impact

There will be no fiscal impact in adopting this ordinance but the ordinance will be submitted to the voters in November 2022. Since the City will have an election for Councilmembers in November 2022, there will be an additional cost of approximately \$5,000 (based on prior years' experience) to place the measure on the ballot. The measure, if approved by the voters, would impose a business license tax on hotels and staff estimates that the City will receive \$250,000 annually from such tax.

Environmental Review

Adoption of the attached ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA). Imposing the business license tax on hotels is exempt from CEQA under CEQA Guidelines, Section 15378 as it does not constitute a project within the meaning of CEQA because it does not have a potential for resulting in a direct physical change in the environment nor a reasonably foreseeable indirect physical change in the environment. As a separate and independent basis, this action is also exempt under CEQA Guidelines Section 15061 (b)(3) (no significant environmental impact).

Attachment: Ordinance Imposing a Business License Tax on Hotels
Resolution 2022-57 with revised ballot question



Michael Roush, Legal Counsel,



Clay Holstine, City Manager

ORDINANCE NO. 2022-XX

AN ORDINANCE OF THE CITY OF BRISBANE TO ADD SECTION 5.20.035 TO THE BRISBANE MUNICIPAL CODE TO IMPOSE A BUSINESS LICENSE TAX ON HOTELS AND OTHER PLACES DESIGNED FOR OCCUPANCY BY TRANSIENTS”

The City Council of the City of Brisbane hereby ordain as follows:

Section 1. Section 5.20.035 is added to the Brisbane Municipal Code to read as follows:

“Section 5.20.035 Hotels and Other Places Designed for Occupancy by Transients

- A. Definitions. The definitions used in this Section 5.20.035 shall be the same as the definitions in Section 3.24.020 of the Brisbane Municipal Code, as said Section may be amended from time to time.
- B. Every Operator shall pay a daily business license tax of two dollars and fifty cents (\$2.50) for every room in a Hotel for which a Transient has paid Rent.
- C. The business license tax under this Section 5.20.035 shall be paid in four installments, due no later than January 1, April 1, July 1 and October 1 of each year.
- D. Beginning January 1, 2024 and on January 1 of each subsequent year (“the adjustment date”), the two dollars and fifty cents (\$2.50) referred to in subsection B of this section may be increased by multiplying the two dollars and fifty cents (\$2.50) by a fraction, the numerator of which shall be the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, All Items, for the San Francisco-Oakland-Hayward Statistical Area (“CPI”) published nearest to the adjustment date and denominator of which shall be the CPI published nearest to the date the business license tax was set at two dollars and fifty cents (\$2.50).

Section 2. This Ordinance relates to taxes for the usual and current expenses of the City of Brisbane and/or relating to elections 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 3. 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

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I hereby certify that foregoing Ordinance No. _____ was adopted by the Brisbane City Council at a regular meeting on July 7, 2022 by the following vote:

AYES: Councilmembers:

NOES:

ABSENT:

Ingrid Padilla, City Clerk

RESOLUTION NO. 2022-57

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA CALLING A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE GENERAL ELECTION ON NOVEMBER 8, 2022, FOR SUBMISSION TO THE VOTERS A BALLOT MEASURE CONCERNING A PROPOSED ORDINANCE TO IMPOSE/INCREASE A BUSINESS LICENSE TAX ON HOTELS AND OTHER PLACES DESIGNED FOR OCCUPANCY BY TRANSIENTS

WHEREAS, the City has established a business license tax, as set forth in Chapter 5.20 of the Brisbane Municipal Code, that imposes a gross receipts business license tax on any person within the City engaged in conducting business in the City, including the operation of hotels and other places designed for occupancy by transients; and

WHEREAS, the City Council desires to place a ballot measure before the voters at the November 8, 2022 election to impose/increase a business license tax specifically on hotels and other places designed for occupancy by transients in order to provide additional revenue for general municipal expenses; and

WHEREAS, the City's business license tax is a general tax and any increase thereof is subject to approval of a majority of the voters voting upon the proposed tax or tax increase at a regularly-scheduled election at which members of the Brisbane City Council will be elected; and

WHEREAS, November 8, 2022 is the next regularly scheduled election at which members of the Brisbane City Council will be elected and it is desirable to consolidate this special election with that general election.

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

SECTION 1. ELECTION CALLED

The City Council of the City of Brisbane hereby calls a special municipal election, to be consolidated with the general election on Tuesday, November 8, 2022, at which there shall be submitted for approval by the voters of the City of Brisbane a proposed ordinance amending Chapter 5.20 of the Brisbane Municipal Code by adding Section 5.20.035 to the Brisbane Municipal Code to impose and/or increase a business license tax on hotels and other places designed for occupancy by transients.

SECTION 2. FULL TEXT OF PROPOSED ORDINANCE

The complete text of the propose ordinance shall read as follows:

“AN ORDINANCE OF THE CITY OF BRISBANE TO ADD SECTION 5.20.035 TO THE BRISBANE MUNICIPAL CODE TO IMPOSE A BUSINESS LICENSE TAX ON HOTELS AND OTHER PLACES DESIGNED FOR OCCUPANCY BY TRANSIENTS”

The People of the City of Brisbane hereby ordain as follows:

Section 1. Section 5.20.035 is added to the Brisbane Municipal Code to read as follows:

“Section 5.20.035 Hotels and Other Places Designed for Occupancy by Transients

- A. Definitions. The definitions used in this Section 5.20.035 shall be the same as the definitions in Section 3.24.020 of the Brisbane Municipal Code, as said Section may be amended from time to time.
- B. Every Operator shall pay a daily business license tax of two dollars and fifty cents (\$2.50) for every room in a Hotel for which a Transient has paid Rent.
- C. The business license tax under this Section 5.20.035 shall be paid in four installments, due no later than January 1, April 1, July 1 and October 1 of each year.
- D. Beginning January 1, 2024 and on January 1 of each subsequent year (“the adjustment date”), the two dollars and fifty cents (\$2.50) referred to in subsection B of this section may be increased my multiplying the two dollars and fifty cents (\$2.50) by a fraction, the numerator of which shall be the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, All Items, for the San Francisco-Oakland-Hayward Statistical Area (“CPI”) published nearest to the adjustment date and denominator of which shall be the CPI published nearest to the date the business license tax was set at two dollars and fifty cents (\$2.50).

SECTION 3. TEXT OF BALLOT MEASURE

The proposed ordinance to impose and/or increase the business license tax charged to hotels shall be presented for approval by the voters as the following ballot measure:

To pay for general municipal expenses, shall an ordinance be adopted imposing on hotels and other places designed for overnight stays by guests a business license tax of \$2.50 per room for each day such room is rented, generating	YES	
	NO	

approximately \$250,000 annually until ended by the voters?		
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The ballot measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code Section 13116.

SECTION 4. REQUEST TO CONSOLIDATE, CONDUCT ELECTION AND CANVASS RETURNS

The Board of Supervisors of the County of San Mateo is hereby requested to authorize the County Clerk;/Registrar of Voters to render all services necessary and proper for the conduct of the special municipal election called by the Resolution. Pursuant to California Elections Code Section 10403, the City Council hereby requests that the San Mateo County Board of Supervisors consolidate that election with the election to be held on November 8, 2022, and order the special municipal election to be conducted by the Registrar of Voters. The San Mateo County Elections Department is authorized to canvass the returns of the special election.

The City Clerk’s Office shall submit a certified copy of this Resolution to County Elections Division and the City Clerk’s Office is authorized, instructed and directed to work with the County Elections Division as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in the form and content as required by law. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5: PUBLICATION OF MEASURE

The City Clerk’s Office is directed to cause notice of the measure to be published once in accordance with Section 12111 of the State Elections Code.

SECTION 6: REQUIRED VOTER APPROVAL AND EFFECTIVE DATE

If a majority of the voters voting upon the ballot measure vote in its favor, the proposed ordinance shall become a valid and binding ordinance of the City of Brisbane. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council and shall go into effect on that date or such other date as may be specified by the City Council.

SECTION 7. PROCEDURES FOR ARGUMENTS AND REBUTTALS

The City Council authorizes the following members to draft and then file written arguments not exceeding 300 words in length for or against the measure described above:

Argument In Favor and Rebuttal: Subcommittee of Mayor Mackin and Mayor Pro Tem Lentz

Argument Against and Rebuttal: Subcommittee of Mayor Mackin and Mayor Pro Tem Lentz

If not all of the members of the City Council have been authorized to draft the written arguments for or against the measure, or the rebuttal, other Council members may sign such argument/rebuttal. If not all City Councilmembers have signed the argument/rebuttal, those Councilmembers that have drafted the argument/rebuttal may choose any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations to sign the argument/rebuttal. Any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations may also submit a written argument for or against the measure.

Such argument, whether For or Against, shall not exceed 300 words and be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, in accordance with Article 4, Chapter 3, Division 9 of the Election Code of the State of California.

Primary arguments For or Against the measure must be submitted to the City Clerk by 12:00 p.m. on August 19, 2022 and shall not exceed 300 words. The Rebuttal arguments must be submitted to the City Clerk by 12:00 p.m. on August 29, 2022 and shall not exceed 250 words.

SECTION 8: IMPARTIAL ANALYSIS

Pursuant to Elections Code Section 9280, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The analysis shall be printed preceding the arguments For and Against the measure. The analysis shall not exceed 500 words in length. The impartial analysis shall be filed by the date set by this resolution for the filing of primary arguments.

SECTION 9: FULL TEXT OF ORDINANCE

The full text of the Ordinance shall be printed in the Voter Information Pamphlet.

SECTION 10: CONDUCT OF ELECTION

The election on said ballot measure shall be consolidated with the general municipal election to be held on November 8, 2022.

SECTION 11. CEQA

The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA," and 14 Cal Code Reg. Sections 15000 et seq., "CEQA Guidelines"). The tax to submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section

15378(b)(4) the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, Guidelines Section 15060 review under CEQA is not required.

SECTION 12: PASSAGE OF THIS RESOLUTION

This business license tax is a general tax requiring the approval of a majority of qualified electors casting votes. This Resolution must be approved by a two-thirds vote of the Council.

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-57 was duly and regularly adopted at the meeting of the Brisbane City Council on ____, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk