



CITY COUNCIL AGENDA REPORT

Meeting Date: December 9, 2022 (Continued from the 12/8/22 CC Meeting)

From: Clay Holstine, City Manager

Subject: Resolution to Implement the Transactions and Use Tax Ordinance Approved by the Voters and a Resolution Authorizing Examination of Sales or Transactions and Use Taxes Records

COMMUNITY GOAL/RESULT:

Fiscally Prudent

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute a Preparatory Agreement, an Administrative Agreement, and any other documents required by the California Department of Tax and Fee Administration in order to implement the voter approved Transaction and Use Tax Ordinance.

Adopt a resolution authorizing certain positions within the City and representatives of MuniServices, LLC to receive/examine records from the California Department of Tax and Fee Administration

BACKGROUND

In July 2022, City Council adopted a Transaction and Use Tax Ordinance to be administered by the California Department of Tax and Fee Administration (CDTFA), subject to approval by Brisbane voters. If approved by the voters, the tax would impose an additional one half of one percent tax (commonly referred to as a sales tax) on the sale of goods in the City. Staff estimated such tax would generate \$500,000 for general municipal purposes. The tax would be imposed effective April 1, 2023.

A majority of Brisbane voters who voted on this measure (Measure U) on November 8, 2022 approved the tax.

In order to implement the tax, CDFTA requires certain agreements and forms to be executed by the City. A resolution authorizing the City Manager to sign such agreements and documents is attached. In addition, CDFTA requires a resolution indicating which positions within the City and/or representatives of MuniServices, LLC, to have access to confidential sales or transaction and use tax records.

DISCUSSION

The resolution authorizes the City Manager to sign two agreements: one for the CDFTA's preparatory work and the other for its ongoing work. The Agreement for Preparation to Administer and Operate the City's Transaction and Use Tax Ordinance provides that the City will pay CDFTA for the work necessary to prepare to administer and operate the tax. Such costs include the costs for developing procedures, data processing programs, developing instructions to Department's staff, etc. The amount to be paid shall not exceed \$175,000 but according to the CDFTA, "the actual amount charged is typically less than \$175,000 particularly in smaller cities and counties where fewer notification mailings are required". The Agreement for State Administration of the City's Transaction and Use Tax authorizes CDFTA to perform the ongoing functions necessary to collect the remit to the City the tax it collects. The annual cost for these services is estimated to be \$4,250.

Under the law, sales or transactions and use tax records are confidential. CDFTA requires the City to list positions within the City, and well as representatives of MuniServices, LLC, which firm assists the City in its administration of these taxes, that will need access to this confidential information.

FISCAL IMPACT

As indicated above, the City must pay CDFTA for its services in connection with its administration of this tax: an amount not to exceed \$175,000 to for its preparatory work and an estimated \$4,250 annually for its ongoing work. The City expects to receive an additional \$500,000 annually from this tax.

Carolina Yuen

Carolina Yuen, Finance Director

Clayton L. Holstine

Clayton Holstine, City Manager

Attachments:

1. Resolution Authorizing the City Manager to Sign
2. Agreements Resolution for Examination of Confidential Records

ATTACHMENT 1

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF BRISBANE**

**AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE
AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION, AND TO EXECUTE ANY OTHER REQUIRED DOCUMENTS, FOR
IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX.**

WHEREAS, on July 7, 2022, the City Council approved Ordinance No. 674 amending the City Municipal Code and providing for a local transactions and use tax, which tax was then provided to the voters of Brisbane for their consideration; and

WHEREAS, at a general municipal election held on November 8, 2022, the voters of Brisbane approved the local transaction and use tax; and

WHEREAS, the California Department of Tax and Fee Administration (Department) administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Department will be responsible to administer and collect the transactions and use tax for the City; and

WHEREAS, the Department requires that the City enter into a “Preparatory Agreement” and an “Administration Agreement” prior to implementation of said taxes, and

Whereas, the Department requires that the City Council authorize the agreements;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Brisbane that the “Preparatory Agreement” attached as Exhibit A and the “Administrative Agreement” attached as Exhibit B are hereby approved and the City Manager is hereby authorized to execute each agreement

and the City Manager, or designee, is also hereby authorized to execute any other documents required by the Department in order to implement the local transaction and use tax..

* * * * *

The foregoing resolution was introduced and adopted at a special meeting of the City Council of the City of _____ held on (Date) , by the following vote, to wit:

AYES: _____

NOES: _____

ABSENT: _____

DATED: _____

ATTEST: (s) _____
City Clerk

(s) _____
Mayor

**AGREEMENT FOR STATE ADMINISTRATION
OF CITY TRANSACTIONS AND USE TAXES**

The City Council of the City of Brisbane has adopted, and the voters of the City of Brisbane (hereafter called “City” or “District”) have approved by the required majority vote, the City of Brisbane Transactions and Use Tax Ordinance (hereafter called “Ordinance”), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the California State Department of Tax and Fee Administration, (hereinafter called the “Department”) and the City do agree as follows:

**ARTICLE I
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No.674, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

**ARTICLE II
ADMINISTRATION AND COLLECTION
OF CITY TAXES**

A. Administration. The Department and City agree that the Department shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the Department Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Department pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Department shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Department shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Department agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Department shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Department.

G. Records of the Department.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Department agrees to permit authorized personnel of the City to examine the records of the Department, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Department's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Department pursuant to this Agreement.

H. Annexation. City agrees that the Department shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Department. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III

ALLOCATION OF TAX

A. Allocation. In the administration of the Department's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion

of the Department, to all districts with which the Department has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Department, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Department in determining the place of use.

ARTICLE IV COMPENSATION

The City agrees to pay to the Department as the State's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Department for the City.

ARTICLE V MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Department shall be addressed to:

California State Department of Tax and Fee Administration
P.O. Box 942879
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to the City shall be addressed to:

Carolina Yuen, Finance Director/Treasurer

50 Park Place

Brisbane, CA 94005

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2023. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Department completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Department written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI
ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Department the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Department may retain all payments made by City to Department to prepare to administer the City Ordinance.

2. City will pay to Department and allow Department to retain Department's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Department or to the State of California the amount of any taxes plus interest and penalties, if any, that Department or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Department its costs for rebating or refunding such taxes, interest, or penalties. Department's costs shall include its additional cost for developing procedures for processing

the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Department's staff for use in making these rebates or refunds and any other costs incurred by Department which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Department's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Department. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Department in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Department in connection with such refunds shall be billed by Department on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Department shall bill City on or before the 25th of each month for all costs incurred by Department for the preceding calendar month. City shall pay to Department the amount of such costs on or before the last day of the succeeding month and shall pay to Department the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Department costs incurred in making those refunds.

CITY OF BRISBANE

CALIFORNIA STATE DEPARTMENT OF
TAX AND FEE ADMINISTRATION

By _____
(Signature)

By _____
Administrator
Local Revenue Branch

Clayton Holstine
(Typed Name)

City Manager
(Title)

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE
CITY'S TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of Brisbane, hereinafter called *City*, and the CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, hereinafter called *Department*, do agree as follows:

1. The Department agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Department at the times and in the amounts hereinafter specified all of the Department's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Department's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Department's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Department. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Department shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Department shall be billed by the Department periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Department the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Department's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Department shall be addressed to:

California Department of Tax and Fee Administration
P.O. Box 942879 MIC: 27
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to City shall be addressed to:

Carolina Yuen, Finance Director / Treasurer
50 Park Place
Brisbane, CA 94005

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Department has received all payments due from City under the terms of this agreement.

CITY OF BRISBANE

CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION

By _____
(Signature)

By _____
Administrator
Local Revenue Branch

Clayton Holstine
(Typed Name)

City Manager
(Title)

ATTACHMENT 2

RESOLUTION NO. _____

A Resolution of the City of Brisbane Authorizing Examination of Sales or Transactions and Use Taxes Records

WHEREAS, pursuant to Ordinance Number 674 of the City of Brisbane (“District”), and Revenue and Taxation Code section 7270, the District entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of transactions and use taxes; and

WHEREAS, the Board of the District (Brisbane City Council) deems it desirable and necessary for authorized officers, employees and representatives of the District to examine confidential sales or transactions and use tax records of the Department pertaining to transactions and use taxes collected by the Department for the District pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Department records, and Section 7056.5 of the California Revenue and Taxation Code establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales or transactions and use tax records of the Department;

NOW, THEREFORE, THE BOARD OF THE DISTRICT (CITY COUNCIL OF THE CITY OF BRISBANE) HEREBY RESOLVES AS FOLLOWS:

Section 1. That the City Manager, Assistant City Manager, Administrative Services Director, Finance Director / Treasurer, Deputy Finance Director, Financial Services Manager, or other officer or employee of the District designated in writing by the City Manager to the California Department of Tax and Fee Administration, is hereby appointed to represent the District with authority to examine sales or transactions and use tax records of the Department pertaining to transactions and use taxes collected for the District by the Department pursuant to the contract between the District and the Department.

Section 2. The information obtained by examination of Department records shall be used only for purposes related to the collection of District transactions and use taxes by the Department pursuant to that contract, and for purposes related to the following governmental functions of the District:

- (a) City administration;
- (b) Revenue management and budgeting;
- (c) Community and economic development; and
- (d) Tracking of economic data

The information obtained by examination of Department records shall be used only for those governmental functions of the District listed above.

Section 3. That MuniServices, LLC is also hereby designated to examine the sales or transactions and use tax records of the Department pertaining to transactions and use taxes collected for the District by the Department. The entity designated by this section meets all of the following conditions, which are also included in the contract between the District and the MuniServices, LLC:

- a) has an existing contract with the District to examine those sales or transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of Department records shall be used only for purposes related to the collection of District transactions and use taxes by the Department pursuant to the contract between the District and the Department and for those purposes relating to the governmental functions of the District listed in Section 2 of this resolution.

Coleen Mackin, Mayor

PASSED, APPROVED AND ADOPTED by the Brisbane City Council at a special meeting on December , 2022.

I hereby certify that the foregoing resolution was adopted by the City Council at a special meeting held on December , 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk