

# *City of Brisbane*

## *Agenda Report*

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney

SUBJECT: Amendment to Business License Tax on Recycling Establishments

DATE: For Council Meeting on July 5, 2011

### **Recommendation:**

Adopt Resolution No. 2011-34 to repeal Resolution 2011-29  
Adopt Resolution No. 2011-35 for submittal of a revised ordinance to the voters

### **Background and Discussion:**

On June 20, 2011, the City Council adopted Resolution No. 2011-29 calling a special municipal election for submission to the voters of a proposed ordinance to increase the business license fee charged to certain recycling establishments. The term "recycling establishment" was defined in the proposed ordinance as "an establishment engaged in the business of collecting, sorting, cleansing, treating, processing, or reconstituting waste or other discarded materials for the purpose of reuse in altered form." The increased fee would be applied only to a recycling establishment that recycles 100,000 tons or more of material during any single calendar year.

At the time Resolution No. 2011-29 was adopted, the question was raised as to whether it would be applicable to the recycle operations currently being conducted on the Baylands, which primarily involve the handling dirt. The Council was advised that the ordinance was not intended to apply to this operation. Aside from the Baylands, the Municipal Code contains several references to recycling which also should be excluded from the proposed ordinance. While such exclusion might be argued as a matter of interpretation of the existing language, in order to avoid any ambiguity, staff believes that the proposed ordinance should be revised to expressly set forth these exclusions.

The language of the proposed ordinance should be contained in a single document to facilitate review by the voters. Consequently, we recommend that the amendment to the ordinance be accomplished by a complete repeal of Resolution No. 2011-29 and the adoption of a replacement resolution containing the revised language. Thus, Resolution 2011-34 should first be adopted to repeal Resolution 2011-29, followed by the adoption of Resolution No. 2011-35 containing the revised definition of recycling establishment.

The revised ordinance will specifically exclude each of the following from the definition of "recycling establishment": (1) a "scavenger" having a contract with the City for collection of solid waste pursuant to BMC Chapter 8.24; (2) an "authorized recycling agent" having a contract with the City to collect recyclable materials pursuant to BMC Chapter 8.32; (3) an "applicant" for a permit to construct a "covered project" subject to recycling of construction and demolition debris pursuant to BMC Chapter 15.75; and (4) an establishment primarily engaged in the recycling of soil, including the incidental recycling of rock, stone, concrete and rebar (i.e. the Baylands).

The only other change being made to the text of the proposed ordinance is the addition of a sentence at the end of Paragraph (c), dealing with annual adjustments to the fee, giving the City Council discretion to adopt an annual increase below the maximum fee that could be charged based upon the 3% or CPI adjustment authorized by the ordinance. The Council would need to take such action by resolution; otherwise the adjustment provided in the ordinance would automatically be made.

**Fiscal Impact:**


If the City is able to charge the maximum business license fee authorized by the ordinance, the City would receive additional revenue of \$3,000,000 per year, subject to annual increases of either 3% or the percentage increase in the cost of living index, whichever is greater.

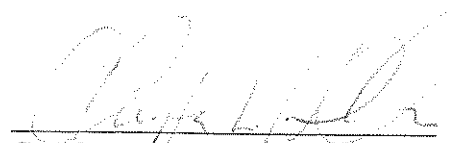
**Measure of Success:**

Approval of the proposed ordinance by the voters and the establishment of a recycle operation in the City having a volume that would qualify for payment of the increased business license fee.

**Attachments:**

Resolution No. 2011-34  
Resolution No. 2011-35

  
\_\_\_\_\_  
City Attorney

  
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City Manager

**RESOLUTION NO. 2011-34**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BRISBANE REPEALING RESOLUTION NO. 2011-29**

**WHEREAS**, on June 20, 2011, the City Council adopted Resolution No. 2011-29, calling a special municipal election for submission to the voters of a proposed ordinance to increase the business license tax on certain recycling establishments; and

**WHEREAS**, the City Council desires to modify the definition of recycling establishment contained in the proposed ordinance in order to clarify the intended application of the ordinance if approved by the voters; and

**WHEREAS**, the modification can best be accomplished by repealing Resolution No. 2011-29 and replacing it with a newly adopted resolution which has been presented to the City Council concurrently herewith,

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

1. Resolution No. 2011-29, entitled "A resolution of the City Council of the City of Brisbane calling a special municipal election to be consolidated with the general election on November 8, 2011, for submission to the voters of a proposed ordinance to increase the business license tax on certain recycling establishments" is hereby repealed.

2. This Resolution shall be effective immediately upon adoption.

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Mayor

I hereby certify that the foregoing Resolution No. 2011-34 was duly and regularly adopted at the regular meeting of the Brisbane City Council on July 5, 2011, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Sheri Marie Spediacci, City Clerk

**RESOLUTION NO. 2011-35**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE CALLING A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE GENERAL ELECTION ON NOVEMBER 8, 2011, FOR SUBMISSION TO THE VOTERS OF A PROPOSED ORDINANCE TO INCREASE THE BUSINESS LICENSE TAX ON CERTAIN RECYCLING ESTABLISHMENTS**

**WHEREAS**, the City has established a business license tax, as set forth in Chapter 5.20 of the Brisbane Municipal Code; and

**WHEREAS**, Section 5.20.100 of the Brisbane Municipal Code imposes a tax upon persons carrying on the business of operating a refuse transfer station; and

**WHEREAS**, the City Council desires to increase the tax on certain recycling establishments 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 a majority of the voters voting upon the proposed increase at a regularly-scheduled election at which members of the Brisbane City Council are being elected; and

**WHEREAS**, November 8, 2011, is the next regularly-scheduled election at which members of the Brisbane City Council will be elected,

**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, 2011, at which there shall be submitted for approval by the voters of the City of Brisbane a proposed ordinance amending Section 5.20.100 of the Brisbane Municipal Code to increase the business license tax charged to certain recycling establishments.

**SECTION 2: FULL TEXT OF PROPOSED ORDINANCE**

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

**"AN ORDINANCE OF THE CITY OF BRISBANE AMENDING SECTION 5.20.100 OF THE BRISBANE MUNICIPAL CODE TO INCREASE THE BUSINESS LICENSE TAX CHARGED TO CERTAIN RECYCLING ESTABLISHMENTS**

**The People of the City of Brisbane, California, hereby ordain as follows:**

**§1:** Section 5.20.100 in Chapter 5.20 of the Brisbane Municipal Code is amended in its entirety to read as follows:

**5.20.100 Recycling establishments**

(a) **Definition of recycling establishment.** As used in this Section 5.20.100, the term "recycling establishment" means an establishment engaged in the business of collecting, sorting, cleansing, treating, processing, or reconstituting waste or other discarded materials for the purpose of reuse in altered form. Notwithstanding the foregoing, for the purposes of this Section 5.20.100 the term "recycling establishment" shall not include any of the following:

- (1) A "scavenger," as defined in Section 8.24.010.F of this Code, having a contract with the City to collect garbage, rubbish and waste matter pursuant to Chapter 8.24 of this Code.
- (2) An "authorized recycling agent," as defined in Section 8.32.020.A of this Code, having a contract with the City to collect recyclable materials pursuant to Chapter 8.32 of this Code.
- (3) An "applicant," as defined in Section 15.75.010 of this Code, engaged in the performance of a "covered project," as defined and governed by Chapter 15.75 of this Code pertaining to construction and demolition debris.
- (4) An establishment primarily engaged in the recycling of soil, including the incidental recycling of rock, stone, concrete or rebar.

(b) **Business license fee.** Every recycling establishment in the City, as defined in Paragraph (a) of this Section, that recycles 100,000 tons or more of material during any single calendar year shall pay a business license fee of up to three million dollars (\$3,000,000) per year, subject to adjustment in accordance with Paragraph (c) of this Section. The business license fee imposed by this Section shall become effective in an amount to be selected by the City Council up to the authorized ceiling amount on such date as may be established by resolution of the City Council. From and after such effective date, the business license fee shall be

paid in two equal installments, due not later than January 1<sup>st</sup> and July 1<sup>st</sup> of each year.

(c) **Annual adjustment.** For the calendar year beginning on January 1, 2013 and on January 1<sup>st</sup> of each calendar year thereafter (the "Adjustment Date"), the business license fee payable under Paragraph (b) of this Section may be increased to any amount within the authorized ceiling of three million dollars (\$3,000,000) per year. On any Adjustment Date after the business license fee has been set at the authorized ceiling of three million dollars (\$3,000,000) per year, the business license fee payable under Paragraph (b) of this Section shall be whichever of the following amounts is the greater: (i) the fee charged for the immediately preceding year plus three percent (3%) of such fee; or (ii) \$3,000,000 plus an amount obtained by multiplying \$3,000,000 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 Statistical Area ("CPI") published nearest to the Adjustment Date, the and denominator of which shall be the CPI published nearest to the date the business license fee was set at \$3,000,000 per year. The City Council may, by resolution, adopt a business license fee for any calendar year in an amount below the maximum fee that could be charged under the 3% or CPI adjustment provided herein.

§2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 3: TEXT OF BALLOT MEASURE**

The proposed ordinance for increase to the business license tax charged to certain recycling establishments shall be presented for approval by the voters as the following ballot measure:

Shall the business license tax for certain recycling establishments that recycle 100,000 tons or more of material during any single calendar year be increased to up to \$3,000,000 per year, subject to annual increase of either 3% or the percentage increase in the Consumer Price Index, whichever is greater, after the amount reaches \$3,000,000 per year?

**SECTION 4: 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 5: CONDUCT OF ELECTION**

The election on said ballot measure shall be consolidated with the general municipal election to be held on November 8, 2011, and shall be conducted in accordance with the provisions of Resolution No. 2011-16 adopted by the City Council on June 20, 2011.

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Cyril G. Bologoff, Mayor

I hereby certify that the foregoing Resolution No. 2011-35 was duly and regularly adopted at the regular meeting of the Brisbane City Council on July 5, 2011 by the following vote:

AYES:  
NOES:  
ABSENT:

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Sheri Marie Spediacci, City Clerk