

City of Brisbane

Agenda Report

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney
Steven Baird, Assistant City Attorney

SUBJECT: Resolution 2011-29 approving ballot measure to increase the business license tax paid by certain recycling establishments

DATE: For Council Meeting on June 20, 2011

Purpose:

The purpose of the Resolution is to approve a proposed amendment to the Brisbane Business License Ordinance providing for an increase in the amount of tax paid by recycling establishments handling 100,000 tons or more of material per year, and calling a special election, to be consolidated with the general election on November 8, 2011, for approval of such increase by a majority of the voters in Brisbane.

Recommendation:

Approve Resolution No. 2011-29.

Background and Discussion:

The City has been working with Recology San Mateo County (formerly known as Norcal Waste Systems of San Mateo County) on planning for a major expansion of the existing facility located in Brisbane. The expansion is required as part of the substantial increase in recycling operations to be conducted by Recology in the future. To offset the additional on-going costs that would be incurred by the City as a result of the expansion and to provide an economic benefit to the City in the form of additional revenues that can be used for general municipal purposes, the City has proposed an increase in the business license tax payable by recycling establishments. The increased business license tax would only apply to an establishment that recycles 100,000 tons or more of material during any single calendar year. At the present time, Recology is the only company that would be subject to this tax.

The proposed ordinance would increase the business license tax on a qualifying recycling establishment up to \$3,000,000 per year, payable in two equal installments. Once the \$3,000,000 business license fee ceiling is reached, the amount of the tax will be

subject to annual increases based upon the greater of either 3% per year or the percentage increase in the Consumer Price Index. Because the approximate date for commencement of the Recology project cannot be determined at this time, the proposed ordinance states that the business license fee will become effective on such date and in such amount up to \$3,000,000 as may be established by resolution of the City Council and shall thereafter become payable in two installments due on January 1st and July 1st of each year.

The Brisbane Business License Tax is a general tax that may be increased with voter approval. If the election for such approval is consolidated with a regularly-scheduled election at which members of the Brisbane City Council will be elected, then only a majority vote is required for approval of the tax increase. The next such election will be on November 8, 2011, and Resolution No. 2011-29 calls for a special election to be held on that date for submittal of the ballot measure to the voters.

If approved by the voters, the ordinance will replace Section 5.20.100 of the Brisbane Municipal Code, which imposes a business license tax upon a "garbage, trash, refuse disposal and refuse transfer station." No other company is subject to this tax. Voter approval will constitute the authorization to impose the tax, as required by state law, with the actual time for implementation to be determined at a future date by the City Council, based upon the status of the Recology project.

Fiscal Impact:

The fiscal impact would depend on two variables; when the tax was actually implemented and at what rate. It is anticipated the tax would not be imposed until after Recology was able to incorporate it into the rate it charges to its customers in San Francisco. The normal amount of time for this is 6 – 9 months. Therefore, the earliest the City would start receiving revenue from this tax measure would be July of 2012 however, January of 2013 or July 2013 is more likely. The second aspect of the question is the rate which would be charged. Since it is unknown at this time the maximum impact would be an additional \$3,000,000 a year however, it could be less depending on the actual implementation rate.

Measure of Success:

Approval of the ballot measure by a majority of the Brisbane voters.

Attachments:

Proposed Resolution No. 2011-29.


Assistant City Attorney


City Manager

RESOLUTION NO. 2011-29

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.

(b) **Business license fee.** Every recycling establishment in the City 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 1st and July 1st of each year.

(c) **Annual adjustment.** For the calendar year beginning on January 1, 2013 and on January 1st 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.

§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 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 2011-16 adopted by the City Council on June 20, 2011.

Cyril G. Bologoff, Mayor

I hereby certify that the foregoing Resolution No. 2011-29 was duly and regularly adopted at the regular meeting of the Brisbane City Council on _____, 2011 by the following vote:

AYES:

NOES:

ABSENT:

Sheri Marie Spediacci, City Clerk