



CITY of BRISBANE

City Council Special Meeting Agenda

Friday, December 9, 2022 at 12:00 PM • Virtual Meeting

This meeting is compliant with the Ralph M. Brown act as amended by California Assembly Bill No. 361 effective September 16, 2021 providing for a public health emergency exception to the standard teleconference rules required by the Brown Act. The purpose of this is to provide a safe environment for the public, staff and Councilmembers, while allowing for public participation. The public may address the Council using exclusively remote public comment options. The Council may take action on any item listed in the agenda.

PUBLIC MEETING VIDEOS

Members of the public may view the City Council Meeting by logging into the Zoom Webinar listed below. City Council Meetings can also be viewed live and/or on-demand via the City's YouTube Channel, www.youtube.com/brisbaneca, or on Comcast Channel 27. Archived videos can be replayed on the City's website, <http://brisbaneca.org/meetings>.

TO ADDRESS THE COUNCIL

The City Council Meeting will be an exclusively virtual meeting. The agenda materials may be viewed online at www.brisbaneca.org at least 24 hours prior to a Special Meeting, and at least 72 hours prior to a Regular Meeting.

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Aside from commenting while in the Zoom webinar the following email and text line will be also monitored during the meeting and public comments received will be noted for the record during Oral Communications 1 and 2 or during an Item.

Email: ipadilla@brisbaneca.org

Text: 628-219-2922

Join Zoom Webinar: zoom.us (please use the latest version: zoom.us/download)
brisbaneca.org/cc-zoom

Webinar ID: 991 9362 8666

Passcode: 123456

Call In Number: 1 (669) 900 9128

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact the City Clerk at (415) 508-2113. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

Any writings that are received after the agenda has been posted but before 2 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and on the internet (www.brisbaneca.org/meetings). Any writings that are received after the agenda has been posted but after 2 p.m. of the day of the meeting will be available on the internet at the start of the meeting (www.brisbaneca.org/meetings), at which time the materials will be distributed to the Council.

12:00 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

ROLL CALL

ADOPTION OF AGENDA

ORAL COMMUNICATIONS NO. 1

NEW BUSINESS

- A. Adoption of Resolution adopting the County of San Mateo Certification of Votes and declaring results of Measure O at the Municipal Election held on November 8, 2022

(This item was continued from the City Council Special Meeting of December 8, 2022)

- B. Adoption of Resolution adopting the County of San Mateo Certification of Votes and declaring results of Measure U at the Municipal Election held on November 8, 2022

(This item was continued from the City Council Special Meeting of December 8, 2022)

- C. Consider Adoption of Transactions and Use Tax Ordinance 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

(This item was continued from the City Council Special Meeting of December 8, 2022)

- D. Introduction of an Ordinance to Administer and Implement the Business License Tax Imposed on Hotels and Other Places Designed for Occupancy by Transients.

(This item was continued from the City Council Special Meeting of December 8, 2022)

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

File Attachments for Item:

A. Adoption of Resolution adopting the County of San Mateo Certification of Votes and declaring results of Measure O at the Municipal Election held on November 8, 2022

(This item was continued from the City Council Special Meeting of December 8, 2022)



CITY COUNCIL AGENDA REPORT

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

From: Clay Holstine, City Manager

Subject: Adoption of Resolution adopting the County of San Mateo Certification of Votes and Declaring Results of Measure O at the Municipal Election held on November 8, 2022

Recommendation:

Adopt Resolution No. 2022-____ adopting the County of San Mateo's Certification of Votes and Declaring Results of Measure O, adding 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, at the General Municipal Election held on November 8, 22.

Background:

On July 7, 2022, the City Council called an election 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.

Discussion:

The attached resolution declares the results of the election that was held on November 8, 2022 regarding Measure O. At the time of this report, the certification of votes from the County of San Mateo has not been received. The official results will be an exhibit to the attached resolution and the final numbers will be inserted into the resolution when known.

In order to take action, the City Council will need to have the certified results prior to the start of the meeting on December 8, 2022. If not the item will be continued to December 9, 2022 at noon.

Attachments

1. Resolution No. 2022-____

Ingrid Padilla

Ingrid Padilla, City Clerk

Clayton L. Holstine

Clayton Holstine, City Manager

ATTACHMENT 1

RESOLUTION NO. 2022-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPTING COUNTY OF SAN MATEO CERTIFICATION OF VOTES AND DECLARING RESULTS OF MEASURE O, AN ORDINANCE OF THE CITY OF BRISBANE ADDING 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, AT THE MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2022

WHEREAS, a General Municipal Election was held in and throughout the City of Brisbane on the eight day of November, 2022, for the purpose of submitting Measure O, an ordinance of the City of Brisbane adding 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; and

WHEREAS, the City Clerk of said City has duly posted and presented to the City Council of the City of Brisbane the County of San Mateo's certification of the votes cast for this Measure in said General Municipal Election; and

WHEREAS, said City Council has access to and has examined said certification of votes cast in said election.

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

1. The number of votes cast at said election was ____; ____ in favor and ____ against.
2. That the record of votes cast in said election is shown on Exhibit A of the Certificate of the Chief Elections Official, attached hereto, and by such reference made a part hereof.
3. The Statement of the final results by the County of San Mateo Registrar of Voters as shown in Exhibit A and the results of the votes cast at the special municipal election consolidated with the statewide election are hereby ratified, confirmed and approved.
Measure O
4. That Measure O, an ordinance of the City of Brisbane, passed by the majority needed.

Coleen Mackin, Mayor

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

AYES:

NOES:

ABSENT:

Ingrid Padilla, City Clerk

File Attachments for Item:

B. Adoption of Resolution adopting the County of San Mateo Certification of Votes and declaring results of Measure U at the Municipal Election held on November 8, 2022

(This item was continued from the City Council Special Meeting of December 8, 2022)



CITY COUNCIL AGENDA REPORT

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

From: Clay Holstine, City Manager

Subject: Adoption of Resolution adopting the County of San Mateo Certification of Votes and Declaring Results of Measure U at the Municipal Election held on November 8, 2022

Recommendation:

Adopt Resolution No. 2022-____ adopting the County of San Mateo's Certification of Votes and Declaring Results of Measure U, 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, at the General Municipal Election held on November 8, 22.

Background:

On July 7, 2022, the City Council called an election to add 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.

Discussion:

The attached resolution declares the results of the election that was held on November 8, 2022 regarding Measure U. At the time of this report, the certification of votes from the County of San Mateo has not been received. The official results will be an exhibit to the attached resolution and the final numbers will be inserted into the resolution when known.

In order to take action, the City Council will need to have the certified results prior to the start of the meeting on December 8, 2022. If not the item will be continued to December 9, 2022 at noon.

Attachments

1. Resolution No. 2022-____

Ingrid Padilla

Ingrid Padilla, City Clerk

Clayton L. Holstine

Clayton Holstine, City Manager

ATTACHMENT 1

RESOLUTION NO. 2022-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPTING COUNTY OF SAN MATEO CERTIFICATION OF VOTES AND DECLARING RESULTS OF MEASURE U, 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, AT THE MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2022

WHEREAS, a General Municipal Election was held in and throughout the City of Brisbane on the eight day of November, 2022, for the purpose of submitting Measure U, 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; and

WHEREAS, the City Clerk of said City has duly posted and presented to the City Council of the City of Brisbane the County of San Mateo's certification of the votes cast for this Measure in said General Municipal Election; and

WHEREAS, said City Council has access to and has examined said certification of votes cast in said election.

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

1. The number of votes cast at said election was ____; ____ in favor and ____ against.
2. That the record of votes cast in said election is shown on Exhibit A of the Certificate of the Chief Elections Official, attached hereto, and by such reference made a part hereof.
3. The Statement of the final results by the County of San Mateo Registrar of Voters as shown in Exhibit A and the results of the votes cast at the special municipal election consolidated with the statewide election are hereby ratified, confirmed and approved.
Measure U
4. That Measure U, an ordinance of the City of Brisbane, passed by the majority needed.

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-_____ was duly and regularly adopted by the City Council of the City of Brisbane, at a meeting held thereof on December __, 2022, by the following vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla, City Clerk

File Attachments for Item:

C. Consider Adoption of Transactions and Use Tax Ordinance 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

(This item was continued from the City Council Special Meeting of December 8, 2022)



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, CDTFA 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, CDTFA 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

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

C.

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) _____ (s) _____
 City Clerk 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

By _____
(Signature)

Clayton Holstine
(Typed Name)

City Manager
(Title)

CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION

By _____
Administrator
Local Revenue Branch

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

File Attachments for Item:

D. Introduction of an Ordinance to Administer and Implement the Business License Tax Imposed on Hotels and Other Places Designed for Occupancy by Transients.

(This item was continued from the City Council Special Meeting of December 8, 2022)



CITY COUNCIL AGENDA REPORT

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

From: Clay Holstine, City Manager & Michael Roush, Legal Counsel

Subject: Introduction of an Ordinance to Administer and Implement the Business License Tax Imposed on Hotels and Other Places Designed for Occupancy by Transients. This Ordinance is exempt from review under the California Environmental Quality Act because it is not a “project”. Section 15378 (b)(5) of the CEQA Guidelines.

Community Goal/Result:

Fiscally Prudent

Recommendation:

Introduce an Ordinance to add numerous sections to the Brisbane Municipal Code (Sections 5.20.036 through 5.20.044) to administer and implement the Business License Tax imposed on hotels and other places designed for occupancy by transients, which tax was approved by Brisbane voters at the November 8, 2022 general municipal election. Because of the numbering system in the Code, the current Section 5.20.040 (concerning the business license tax for street vendors) will need to be deleted and relocated to Section 5.20.235.

Background

In July 2022, City Council adopted Ordinance 674, adding 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”—generally guests who pay to rent a room at a hotel or stay at a short term rental. The Ordinance provides that the hotel operator must pay a daily business license tax of \$2.50 for every room that is rented. The tax was contingent, however, on Brisbane voters approving it at the November 8, 2022 general municipal election. Voters approved the tax and hotels and similar businesses must begin paying the tax as of January 1, 2023.

That Ordinance, however, did not set forth how the tax would be administered or implemented, to address matters such as reporting and remitting the tax, penalties and interest if the tax is not paid timely, appeals, recording keeping, and similar provisions. Accordingly, staff has drafted the attached Ordinance to provide how the tax will be administered and implemented. These provisions did not need to be approved by the voters; only the tax itself.

Discussion

Separate from this tax, the City also has a Transient Occupancy Tax (TOT) Ordinance that requires hotel operators to collect this tax from paying guests and remit such tax to the City. Currently, as approved by the voters, this tax is 14% of the rate charged by the hotel for the accommodations.

The City's TOT Ordinance sets forth numerous provisions concerning the administration and implementation of that Ordinance and these provisions, to the extent applicable, have been incorporated into the attached Ordinance. Among other matters, they track the requirements of hotel operators under the TOT Ordinance to report and remit the tax, penalties and interest if the remittance is not timely, authorizing the tax administrator (Finance Director) to determine the tax if the operator fails or refuses to pay the tax, operator appeals, refunds, and violations of the Ordinance.

Because of the numbering system in the Municipal Code and the addition of these sections, the current section 5.20.040 which concerns the business license tax for "peddlers, hawkers and street vendors" needs to be deleted and relocated, without substantive change, to a new section 5.20.235.

Assuming City Council introduces this Ordinance at its meeting on December 8 or December 9 if the item is carried over to that date, the second reading of the Ordinance may appear on the Council's consent calendar on December 15, 2022. It will go into effect 30 days later. Since these matters simply implement and administer the Ordinance that imposed the tax, they do not affect the requirement that hotels must begin paying the tax as of January 1, 2023. (The first remittance—covering January 1, 2023 through March 31, 2023—is not due until April 2023.)

CEQA Determination

Recently, a State appellate court has held that in order to comply with the Brown Act, certain agenda item titles must reflect what environmental review is associated with a proposed Council action and if the proposed action is exempt under CEQA, that exemption identified. The agenda title for this item reflects that this Ordinance is exempt under CEQA because it is an administrative activity of a government that will have no direct or indirect effect on the environment. CEQA Guidelines, Section 15378 (b)(5).

Fiscal Impact

There is no fiscal impact associated with the introduction or adoption of this Ordinance. Assuming that hotels are at 70% occupancy, staff estimates the City will receive \$250,000 annually from this tax.

Clayton L. Holstine

Clayton Holstine, City Manager

Michael H. Roush

Michael Roush, Legal Counsel

Attachment:

Ordinance to Administer and Implement the Business License Tax Imposed on Hotels and Other Places Designed for Occupancy by Tenants

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE TO DELETE SECTION 5.20.040 AND TO ADD NEW SECTIONS 5.20.036, 5.20.037, 5.20.038, 5.20.039, 5.20.040, 5.20.041, 5.20.042, AND 5.20.043 TO IMPLEMENT AND ADMINISTER THE BUSINESS LICENSE TAXES FOR HOTELS AND OTHER PLACES DESIGNED FOR OCCUPANCY OF TRANSIENTS AND TO RELOCATE THE CURRENT SECTION 5.20.040 (PEDDLERS, HAWKERS AND STREET VENDORS) TO A NEW SECTION 5.20.235 WITHOUT CHANGE

The City Council of the City of Brisbane ordains as follows:

Section 1. Section 5.20.040 (Peddlers, Hawkers, and Street Vendors) is hereby deleted.

Section 2. Sections 5.20.036 through 5.20.043, inclusive are hereby added to the Brisbane Municipal Code to read as follows

Section 5.20.036—Definitions

Terms used in Sections 5.20.037 through 5.20.043 shall have the same meanings as the definitions of those terms in Section 3.24.020 of this Code, as said Section may be amended from time to time.

Section 5.20.037 Reporting and Remitting

Each operator shall, on or before the last day of April, July, October and January, make a return to the tax administrator, on forms provided by the tax administrator, of the total rooms rented during the previous three months and the amount of tax calculated for such room rentals. The full amount of the tax calculated shall be remitted to the tax administrator at the time the return is filed. The tax administrator may require additional information in any returned. Such actions may be appealed under Section 5.20.040. Returns and payments are due immediately upon cessation of any business for any reason.

Section 5.20.038 Penalties and Interest

- A. Original Delinquency. Any operator who fails to remit any tax imposed by Section 5.20.035 within the time required shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.
- B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten (10%) penalty first imposed.
- C. Fraud. If the tax administrator determines that the non-payment of any remittance due under Section 5.20.035 is due to fraud, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto, in addition to the penalties stated in subsections A and B of this section.
- D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by Section 5.20.035 shall pay interest at the rate of one percent (1%) per month or fraction

thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid in full.

- E. Penalties and Interest Merged With Tax. Every penalty imposed and such interest as accrues under this Section shall become part of the tax required to be paid by Section 5.20.035.

Section 5.20.039 Failure to collect and report tax—determination of tax by tax administrator.

- A. Assessment of Estimated Tax. If any operator shall fail or refuse to pay the tax and to make, within the time provided in Section 5.20.036, the tax administrator shall proceed in such manner as the tax administrator may deem best to obtain facts and information upon which to base the tax administrator's estimate of the tax due. As soon as the tax administrator shall procure such facts and information as the tax administrator is able to obtain upon which to base the assessment of any tax imposed by Section 5.20.035 and payable by any operator who has failed or refused to pay the same and to make such report and remittance, the tax administrator shall proceed to determine and assess against such operator the tax, penalty and interest provided by Section 5.20.038. The tax administrator may include in the assessment costs of any necessary audits or investigations.
- B. Notice of Assessment—Determination of Tax. Where a determination and assessment of the tax is made under subsection A of this Section, the tax administrator shall give notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the operator's last known place of address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, penalties, and interest, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give no less than five (5) days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified in the notice should not be fixed for such tax, penalties and interest. At such hearing, the operator may appear and offer evidence why such specified tax, penalties and interest should not be so fixed. After such hearing, the tax administrator shall determine the proper tax, penalties and interest to be remitted and shall thereafter give written notice to the operator in the manner prescribed herein of such determination and the amount of such tax, penalties and interest. The amount determined to be due shall be paid in full within fifteen (15) days unless an appeal is taken as provided in Section 5.20.040.

Section 5.20.040 Appeal

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, penalties and interest, if any, may appeal to the city manager by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The city manager shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at the operator's last known place of address. The city manager may designate a neutral hearing officer to hear the appeal and make a recommendation to the city manager as to the appeal. The findings of the city manager shall be final and conclusive and shall be served on the operator/appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon service of the notice.

Section 5.20.041 Records

It shall be the duty of every operator liable for the payment to the city of any tax imposed by Section 5.20.035 to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as the operator may have been liable for the payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times. Such records shall be maintained at the operator's premises or shall be available for delivery to the tax administrator within two weeks after request. Such records shall be so maintained for at least six months after a change of operator. The records shall include at least the following: Daily summaries of rooms rented.

Section 5.20.042 Refunds

- A. Whenever the amount of any tax, penalty or interest has been overpaid or paid more than once, or has been erroneously or illegally paid or received by the city under Section 5.20.035 or 5.20.036, it may be refunded as provided in subsections B and C of this Section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment or the date the tax was due, whichever was earlier.
- B. An operator may claim a refund or take a credit against taxed to be remitted in the amount overpaid, paid more than once, or erroneously or illegally paid or received when it is established to the satisfaction of the tax administrator that the tax paid or received was overpaid, paid more than once, or erroneously or illegally paid or received by the city.
- C. No refund shall be paid under the provisions of this Section unless the operator establishes the right thereto by written records showing entitlement to such refund.

Section 5.20.043 Collection of tax

- A. Actions to Collect. Any tax required to be paid by any operator under Section 5.20.035 shall be deemed a debt owned by the operator to the city. Any operator owing money to the city under Section 5.20.035 shall be liable to an action brought in the name of the city for recovery of such amount.
- B. Notice of Intent to Record a Lien—Hearing. If the amount required to be paid to the city under Section 5.20.035 is not paid when due, the tax administrator may within three years after the amount is due, in addition to any other rights or remedies available for collection of such amount, give written notice to the operator and the owner of the property on which the hotel is located, if different, of the city's intent to record a lien against the property on which the operator's hotel is located. The notice shall specify a time and place at which a hearing will be conducted by the tax administrator to consider any objections by the operator or property owner to the recording of such lien, which hearing shall not be less than fifteen days from the date of the notice. The date of the hearing may be continued from time to time by the tax administrator. At the conclusion of the hearing, the tax administrator shall render a decision as to whether a lien should be filed with respect to any amount payable to the city under Section 5.20.035 that the tax administrator finds is then delinquent. The decision of the tax administrator may be appealed to the city manager as provided in Section 5.20.040.
- C. Recordation and Enforcement of Tax Lien. Upon a final determination of the amount of the delinquency by the tax administrator of the city manager on appeal, as the case may be, the tax administrator may file for record in the office of the San Mateo County recorder a tax lien specifying the amount of the tax, penalty and interest due, the name and address as it appears

on the records of the operator liable for same and the name of the property owner, and the legal description of the property on which the hotel is located. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon such real property. Such lien shall be valid for a period of ten years and may be enforced by an action to foreclose the lien in a manner prescribed by law.

- D. **Successor's Liability—Withholding by Purchaser.** If any operator liable for any amount under Section 5.20.035 sells or transfers the hotel or any ownership interest therein, the successor or transferee shall withhold sufficient funds out of the purchase price to cover such amount until the former operator produces a receipt from the tax administrator showing that it has been paid or a certificate stating that no amount is due.
- E. **Liability of Purchase.** If the purchaser of a hotel fails to withhold funds from the purchase price as required, the purchaser shall become liable for the payment of the amount required to be withheld to the extent of the purchase price.
- F. **Continued Liability of Operator.** The sale or transfer of a hotel, dismissal of the operator, or other termination of the rights of an operator to operate the hotel shall not relieve the operator from liability for taxes due or owing under Section 5.20.035.

Section 5.20.044 Violations

Any violations of Sections 5.20.035 through 5.20.043 shall be punishable by fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16, and 1.18 of this code.

Section 3. Section 5.20.235 is added to the Brisbane Municipal Code as follows:

Section 5.20.235 Peddlers, Hawkers, and Street Vendors

- A. Every person carrying on the business of a peddler of any goods, wares or merchandise shall pay a license tax of twenty five dollars (\$25.00) per day in advance.
- B. For purposes of this Section, a "peddler" is defined to be and includes every person not having a regularly established place of business in the city, who travels from place to place, or has a stand upon any public street, alley, or other public place, doorway of any building, unenclosed or vacant lot, or parcel of land, who sells or offers for sale any goods, wares or merchandise in the person's possession.

Section 4. CEQA Determination

Introduction and adoption of this Ordinance is not subject to environmental review under the California Environmental Quality Act because it is not a project as defined under the CEQA Guidelines, Section 15378 (b) (5) [organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

Section 5. Effective Date.

This Ordinance shall become effective thirty days after its adoption.

Mayor

Attest:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas R. McMorrow, City Attorney

I certify that the foregoing Ordinance No. ____ was adopted by the Brisbane City Council at a regular meeting on December 15, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk