



AGENDA REPORT

City Attorney's Office

DATE:	June 18, 2024
TO:	Mayor Martinez and Members of the City Council
FROM:	Dave Aleshire, City Attorney
Subject:	Consideration of an Oil Refining Business License Tax Ballot Measure for November 5, 2024, Election
FINANCIAL IMPACT:	The cost of placing the proposed measure on the ballot is determined by the number of pages to be printed in the sample ballot booklet. The cost might range from \$4,000 to \$10,000.
PREVIOUS COUNCIL ACTION:	May 7, 2024 (Item P.1.) April 16, 2024 (Item V.4.d) May 21, 2024 (Item Q.1.)
STATEMENT OF THE ISSUE:	To improve the quality of life for Richmond residents, the City is seeking new sources of tax revenue. Oil refining has negative impacts on the City, including environmental hazards, public health harms, and stressing emergency services. This is a proposal to generate new tax revenue to improve the City's financial position. In raising new revenue, the City could raise new tax revenue from the oil industry, justified by its negative impacts on the City.
RECOMMENDED ACTION:	ADOPT a resolution submitting the Proposed Oil Refining Business License Tax Ballot Measure to the voters at the November 5, 2024, election and AUTHORIZE the City Attorney's Office and staff to finalize any necessary documents relating to the ballot measure – City Attorney's Office (Dave Aleshire 510-620-6509).

DISCUSSION:

At its May 21, 2024, meeting, the Richmond City Council received a presentation from Communities for Better Environment (“CBE”) Action and Asian Pacific Environmental Network (“APEN”) Action regarding a potential tax on oil refining in the City (See Attachment 1). At that meeting, Council directed staff and the City Attorney’s office to discuss the potential tax with CBE Action and APEN Action and, further, to draft the necessary documents so that City Council may consider submitting such a tax to the voters for their consideration at the November 5, 2024, general municipal election. The City Attorney has prepared the necessary documents in coordination with CBE and APEN per the May 21, 2024, direction from City Council.

Public Impacts Associated with the Refining Industry

As outlined in the May 21, 2024, staff report and as presented by CBE, there are ongoing negative externalities associated with proximity to a large, pollutive industrial facility. As further described in the attached presentation, the City and its residents face negative public impacts from oil refining, including public health and environmental impacts, and additional stresses on emergency services. With respect to public health, particulate matter from the refinery alone is linked to 5 to 11 premature deaths in Richmond each year. The federal Environmental Protection Agency (EPA) estimates that the health impacts of oil refining in Contra Costa County range from \$70 million to \$140 million annually. Oil spills and other toxic releases underscore the environmental risks and impacts. Incidents like the 2012 explosion demonstrate that refinery emergencies are Richmond emergencies.

These burdens are each a justification for the City to impose tax liability proportional to the many impacts that oil refining has on our community. These costs are also illustrative, non-binding examples of what the City could allocate, on an annual basis at Council discretion, future revenue towards. Other examples include growing the City’s tax base through economic development activities or increasing financial reserves to support public sector employment and general City services in the case of future economic shifts.

Measure T

In 2008, the City’s voters approved Measure T, which established a business license tax in which manufacturing businesses would pay the greater of (1) what was paid by other general businesses or (2) a flat fee of 0.250 percent of the value of raw materials used in the manufacturing process. A party was able to successfully challenge Measure T; however, the City and that party entered into a settlement agreement that ended the litigation. This settlement agreement required the party to make a settlement payment. It further limited the party’s maximum tax payment owed by the party pursuant to Chapter

13.52 (the City's utility users' tax) of the Richmond Municipal Code and limited the party's business license tax obligation such that it is calculated at \$234.10 plus \$46.80 per employee for the first 25 employees and \$40.10 for every employee thereafter. The settlement agreement further stated that any tax imposed upon the party before July 1, 2025, would result in that tax amount credited against both the settlement payment and the taxes paid by that party pursuant to the settlement agreement.

Measure U

The City's voters adopted Measure U in 2020 and modified the City's business license tax such that it modified the existing tax such that the tax rate is 0.06 percent to 5.00 percent of the gross receipts, depending on the business type. The Richmond Refining Business License Tax would be separate from and additive to Measure U; thus, in the future, both the Richmond Refining Business License Tax and Measure U would apply to businesses engaged in oil refining in the City. City staff understand from CBE and APEN that this approach reflects a common reality in local revenue generation, where pollutive and extractive industries face higher tax burdens given their significant negative public impacts, as is the case for the oil refining sector, as detailed in the prior and attached presentations.

Tax Proposal

The ordinance if adopted by the voters, implements a business license tax upon oil refining in the City (See Attachment 3). The rate of the proposed tax is \$1.00 per barrel of feedstock refined within the City. The proposed tax is submitted as a general tax, which means that the revenues can be spent on any valid municipal purpose. It would also be operative on July 1, 2025, and would be in addition to any other taxes owed under the Richmond Municipal Code. In terms of the proposed tax's validity, CBE and APENs' attorneys have provided their legal analysis on the validity of the tax (See Attachment 4). If approved, it is estimated that the tax will collect approximately \$60 million to \$90 million per year.

Resolutions and Procedures

If Council desires to submit this proposed business license tax as a general tax to the voters at the November 5, 2024, general municipal elections, then it must adopt the resolution by a two thirds (2/3) vote (i.e., 5 out of 7 council members must approve the resolution) (See Attachment 2). The resolution further contains the "ballot question." The ballot question must be fair and impartial, provide the rate, type, and duration of the tax, and be limited to 75 words. The resolution also provides for direct and rebuttal arguments and directs the drafting of an impartial analysis by the City Attorney.

Passage of the tax will require the approval by a majority of the voters.

DOCUMENTS ATTACHED:

- Attachment 1 — CBE Action and APEN Action Presentation for June 18, 2024
- Attachment 2 — Resolution Submitting Measure
- Attachment 3 — Proposed Tax Ordinance
- Attachment 4 — CBE Action and APEN Action Analysis of Proposed Tax