Proposal: The Richmond Refining Business License Tax Act

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Agenda

1. Recap from May 21
2. Proposal: The Richmond Refining Business License Tax
3. Section-by-Section Explanation
4. Additional Ordinance Details

Recap: A Need for New Revenue

The **2022 State Auditor's Report** details the need for the City to balance its budget, which may be done by raising revenue. (Link)

The April 16, 2024 Port audit presentation describes **fiscal needs to support the Port's viability**, mindful of legalities of directing funds from the City to the Port. (Link)

The May 7, 2024 draft FY 2024-25 Annual Operating Budget suggests a **$34 million gap** between budget requests and available revenue. Five-year forecasts in the same document predict that it **will be impossible to balance the budget without new revenue**. (Link)

Recap: Opportunities in the Richmond Refining Business License Tax

With new revenue, the City could address a range of general government issues through the annual budgeting process. In general, the City could **shore up its fiscal position**.

The City could **save reserves** for future economic disturbances to maintain future public sector employment.

The City could **seed new industries** to reduce economic and tax base reliance on any one industry, reflective of Blue/Green New Deal proposals. (Link)

The City could use the new revenue to **mitigate the negative impacts of refining** – e.g., environmental impacts, public health impacts, and emergency services impacts from oil refining.

Recap: Negative Public Refining Impacts – Environmental

In 2023, the refinery produced an average of 25,000 pounds of **hazardous waste** each day. (Link)
In 2021, the refinery released 37,722 pounds of toxic chemicals into surface waters. (Link) The February 2021 **oil spill** into the Bay underscores additional risks. (Link) Oil spills and permitted releases of pollution impact wildlife, and communities that depend on our local ecosystem. (Link)
Groundwater may also get polluted as contaminants seep into aquifers; sea level rise may push toxic groundwater upwards, and these toxic substances can seep into basements, a broken sewage line, or be vaporized and breathed in.

Recap: Negative Public Refining Impacts – Public Health

The refinery is the City's single largest source of particulate matter emissions (**PM2.5**). (Link) BAAQMD data connects the refinery's PM2.5 emissions with **5.1 to 11.6 premature deaths** in Richmond each year. (Link) Other PM 2.5 effects include infant mortality, cancer, and traumatic mental health effects. (Link)

Richmond's **asthma rate** is at the statewide 90th percentile. (Link) Fence-line neighborhoods near the refinery are in the 97th to 99th percentile for asthma, meaning that their asthma rate is higher than 97 to 99% of other California residents. (Link)

The **healthcare impacts** associated with oil refining in Contra Costa County are estimated to be between $70 million and $140 million each year, according to federal EPA figures. (Link)

Recap: Negative Public Refining Impacts – Emergencies

Refinery emergencies are Richmond emergencies.

The 2012 **explosion** injured 6 employees and sent 15,000 Richmond residents to hospitals seeking medical treatment. (Link)

The November 2023 **flaring** incident logged more than 100 air quality complaints to the Air District. (Link)

These incidents, and future ones like it, strain public resources, including the **Fire Department**, but also increase stress on other public systems, including with increased vehicle traffic on roads.

Additional Negative Public Refining Impacts

Odor and noise issues from the refinery, including the Long Wharf, impact City residents. (Link)

Property values are depressed by the presence of an oil refinery, which, in turn, reduces City property tax revenue. (Link)

The oil industry's business model leaves **workers vulnerable to the whims and volatility of the industry**. Whether as a result of business decisions, like the Martinez Marathon Refinery (link), or accidents, like the Philadelphia PES Refinery (link), refinery workers cannot depend on the industry to protect their livelihoods.

The local oil refinery has acknowledged that **"no provisions are made for exit or cleanup costs that may be required"** if or when local refining activity ends one day, leaving the City at risk to shoulder those burdens in the future. (Link)

Recap: Negative Public Refining Impacts

All these impacts are **tied to** to refinery operations.

The more crude oil that is refined, the more pollution that is emitted – the more the environment and public health are harmed, with costs born by the City. The more refining that occurs, the higher the risk that refining-related emergencies are to occur, with costs again born by the City.

The City may impose **taxes proportional to these impacts**.

Recap: General Tax vs. Special Tax

Under Article XIII C of the California Constitution, local governments can generate new revenue in the form of general taxes or special taxes.

They differ in how they are used:

General taxes go to the **General Fund**.

Special taxes may be restricted for **special uses**.

And they differ in how they are established. Both must be approved by the electorate (whether referred by the Council, or by signature petitions), at **different thresholds**:

General taxes are a 50% threshold, special taxes are 2/3.

Proposal: The Richmond Refining Business License Tax

To fund general City services, such as clean air and water treatment, roads, parks, fire and emergency response, toxic land cleanup, and improving community health and youth services, and for general government use, shall the measure establishing a business license tax on the privilege of conducting oil refining in the City of Richmond at the rate of $1.00 per barrel of feedstock refined in the City of Richmond, providing approximately $60 million to $90 million annually for 50 years, be adopted?

Proposal: The Richmond Business License Refining Tax

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such as clean air and water treatment, roads, parks, fire and emergency response, toxic land cleanup, and improving community health and youth services, and for general government use,

shall the measure establishing a business license tax on the privilege of conducting oil refining in the City of Richmond

at the rate of $1.00 per barrel of feedstock refined in the City of Richmond, providing approximately $60 million to $90 million annually

for 50 years,

be adopted?

To fund general City services…

The Richmond Refining Business License Tax is a **general tax**. Cities may raise tax revenue through general taxes or special taxes. Special taxes may have restrictions on how their revenue is used; **general taxes must direct their revenue to the General Fund**.

Thus, the Richmond Refining Business License Tax would direct all of its revenue to the General Fund.

The City Council would allocate and spend revenue raised, therefore, as it allocates and spends the General Fund now, including in accordance with any rules and restrictions the City has for the General Fund.

…such as clean air and water treatment, roads, parks, fire and emergency response, toxic land cleanup, and improving community health and youth services, and for general government use…

The Richmond Refining Business License Tax, as a general tax, will direct its revenue to the General Fund.

General tax ballot measures are allowed, however, to give non-binding examples of what the City could spend revenue on. This helps educate voters about what “general government use” is.

The listed examples are not binding; the City is not required to allocate any new revenue towards these examples of general city services.

…shall the measure establishing a business license tax on the privilege of conducting oil refining in the City of Richmond…

The Richmond Refining Business License Tax is an **excise tax** – on the privilege of conducting oil refining – not a use tax, a sales tax, an inventory tax, or an ad valorem tax.

The County's marijuana tax, the City and County's hazardous waste facility taxes and Measure U are examples of excise taxes.

The Richmond Refining Business License Tax is **paid by oil refiners**, not consumers.

A barrel of oil costs between $70 and $100; **a one dollar increase** on refining costs per barrel is a modest, reasonable tax.

Measure T (2008)

Measure T was also a tax on activities at oil refineries, approved by a majority of Richmond voters in 2008. Measure T was challenged in court, and the tax was struck down in 2009, for two reasons:

1. Measure T **lacked an apportionment mechanism**; and
2. Measure T **was a tandem tax**, where the basis for liability would be determined by assessing whether basis #1 (value of materials used in manufacturing in Richmond) or basis #2 (employee headcount) would generate more revenue.

The Richmond Refining Business License Tax has an apportionment mechanism, and is not a tandem tax.

Measure U (2020)

Measure U was approved by Richmond voters in 2020, which changed how business taxes in Richmond are imposed. Now, under Measure U, businesses must pay a tax on their **gross receipts**.

The Richmond Refining Business License Tax would be **additive to and separate** from Measure U.

Caselaw **clearly permits multiple excise taxes** to apply to the same taxpayer.

Furthermore, the Richmond Refining Business License Tax is justified by **the unique impacts** that the oil refining industry has on the City and residents.

…at the rate of $1.00 per barrel of feedstock refined in the City of Richmond, providing approximately $60 million to $90 million annually….

Tax liability is based on feedstock volume, not feedstock value.

Over the last seven years, the refinery has processed approximately 60 million to 90 million barrels of feedstock per year. Thus, **the Richmond Refining Business License Tax could generate $60 million to $90 million annually**.

In the future, any refinery in the City would report its feedstock volume on a quarterly basis, with record inspection available to the City, and pay the tax **quarterly**.

The City Tax Collector would reduce the tax liability in accordance with constitutional **apportionment** requirements, per guidelines their office will develop.

…for 50 years…

The Richmond Refining Business License Tax would automatically expire in 50 years.

As voter approval is needed for its establishment, the voters of Richmond may also undo or modify the tax through a separate, future ballot measure. The City Council may also modify certain provisions in the future, as described in the ordinance.

That future ballot measure could be Council-referred, as this one, or sent to the ballot by signature gathering for a petition.

…be adopted?

May 21, 2024: Presentation at Council

Direction given to City Attorney to bring this item back to Council

June 18, 2024: Council could vote to place this on the ballot

November 5, 2024: Election Day

Note: As a general tax, there is a 50%+1 voter threshold for passage.

July 1, 2025: Tax liability begins

July 1, 2075: Tax automatically expires

Ordinance

In addition to the ballot measure language for the ballot itself, the attached ordinance details more implementation measures, including definitions, late penalties, collection schedules, and inclusion of an apportionment mechanism.

That ordinance’s effectuation would be contingent on voter approval of the ballot measure, and the **ordinance** would be known as **The Richmond Refining Business License Tax Act**, adding Chapter 13.58 to the Richmond Municipal Code.

Ordinance – “Refining”

Refining is defined as making products through processing, redistillation, cracking, reforming or other processes.

There is an example list of products, or outputs, including: aviation fuel, lubricants, feedstock, plastics, asphalt, biofuels, “or other similar products.”

The tax would not apply to mere storage on-site – refining actually has to occur for the tax to apply.

Ordinance – “Feedstock”

Recall that the basis for tax liability is the volume of feedstock refined.

"Feedstock" is what goes into the refinery for processing. Feedstock is defined in the tax to include **fossil fuel feedstock or biofuels feedstock**.

It’s possible the present oil refinery converts to a biorefinery one day. Biorefineries pose similar negative health, environmental and emergency impacts as fossil fuel refineries, and their own odor impacts, as local examples underscore.

Ordinance – Delinquency Penalties and Interest

Payments are due the day after the quarter in which tax liability exists (e.g., payment for January 1 through March 31 is due on April 1). Payment is delinquent if not paid on or before the end of the month in which payment is due (e.g., April 30).

A delinquency penalty of 10% applies if not paid before becoming delinquent. An additional 15% penalty applies if unpaid for 90 days past original delinquency date.

Interest (simple) will accrue at the rate of 1% each month, or fraction thereof, from the date of delinquency to the date of payment.

Ordinance – Records

The City may issue administrative subpoenas to compel an oil refiner to produce copies of records, or allow for their inspection, that establish the refined feedstock volume and tax liability for the period in question.

The City may enter a nondisclosure agreement to protect any confidential taxpayer information.

To inform the public, there will be an annual report that: (1) attests to the inspection of relevant records; (2) states the total annual revenue of the tax; and (3) affirms how the funds are allocated. Noncompliance with this section shall not affect taxpayer liability.

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