City Attorney's Office

AGENDA REPORT

DATE:	August 14, 2024
TO:	Mayor Martinez and Members of the City Council
FROM:	Dave Aleshire, City Attorney
Subject:	Resolution rescinding Resolution No. 63-24 and a resolution approving a settlement agreement with Chevron Corporation
FINANCIAL IMPACT:	The City would not present for voter approval a proposed business license tax on oil refining which undoubtedly would have been subject to extensive litigation and instead, the City has a binding agreement with Chevron to pay $550M over ten (10) years to the City's General Fund.
PREVIOUS COUNCIL ACTION:	The City Council adopted Resolution No. 63-24 on June 18, 2024 to place a measure on the ballot for the November 5, 2024 election to allow voters of the City to impose a business license tax on oil refining in the City in addition to other taxes on that activity.
STATEMENT OF THE ISSUE:	Chevron Corporation proposed a Tax Settlement Agreement to pay $300M to the City which has been negotiated up to $550M if the Council removes the proposed business license tax on oil refining from the November 5, 2024 ballot. This resolution would allow the agreement to eliminate pending and future litigation.
RECOMMENDED ACTION:	ADOPT a resolution rescinding ("Rescinding Resolution") Resolution No. 63-24, which would remove from the November 5, 2024, ballot a proposed business license tax on oil refining and ADOPT a resolution approving a settlement agreement ("Tax Agreement Resolution") with Chevron Corporation– City Attorney's Office (Dave Aleshire 510-620-6509).

DISCUSSION:

INTRODUCTION. A 2010 settlement agreement between the City and Chevron regarding its payments to the City expires in mid-2025. That agreement provided $114M in funding to the City over 15 years. The City can impose new taxes on Chevron with the expiration of the 2010 agreement.

The City Council adopted Resolution No. 63-24 on June 18, 2024 to place a measure on the ballot for the November 5, 2024 election to allow voters to impose a business license tax on oil refining in the City in addition to other taxes on that activity. If approved by a simple majority of voters, the tax would require Chevron to pay $1 per barrel of oil refined in the City for the 50-year life of the tax. Estimates of the likely proceeds of the tax vary because they require predictions of the future of the oil industry in general, and of Chevron's Richmond refinery in particular. However, the City's Finance Director has estimated those receipts at $60 to $90 million per year, based on refinery production data in past years.

The Coalition for Richmond's Future, which alleges that is "a recently formed non-profit," and Daniela Dickey, a City resident, sued the City challenging the form of question the City Council approved to describe the proposed refining tax on the November 2024 ballot. The Contra Costa Superior Court has issued a tentative ruling requiring changes to that form of question, but the parties have yet had opportunity to argue the case to the court.

In addition, Chevron has stated its view that the ballot measure has legal flaws and made clear its intention to sue to challenge the tax if voters approve it. The City disagrees with Chevron's legal critique, but cannot deny that litigation is likely and may be long-lasting and expensive. The Los Angeles County City of Carson adopted a similar refining tax in 2017 and the matter is still in litigation and the City has not been able to spend any of the tax revenue.

THE PROPOSED SETTLEMENT. Chevron and the City Attorney, supported by a City Council ad hoc committee, have negotiated a settlement agreement that would end the current lawsuit and the threat of new ones. It has these essential terms:

- The City will remove the refining tax from the November 2024 ballot, but it and its voters (acting by initiative) retain the power to impose new taxes on Chevron and other businesses in the City. The Council must act by August 14, 2024 to remove the measure from the ballot — the Elections Code deadline to do so.
- While Chevron's initial offer was $300M ($30M per year) Chevron will pay the City $550M over 10 years ($50M per year for 5 years and $60M per year for 5

years). This will be general fund money and Chevron will not take public credit for any of its expenditures.
- Chevron will pay the City's Measure U business license tax, the City's utility users tax at current rates. Property taxes paid to Contra Costa County for the benefit of the state, county, city, school districts, and other local governments, will not be affected.
- The City or its voters are still permitted impose new taxes on Chevron during the 10-year life of this proposed agreement. However, from the payments Chevron agrees to make under this agreement Chevron is permitted a credit of the payments against those new taxes. This ensures Chevron gets the benefit of its bargain. A similar provision appears in the 2010 settlement agreement that expires next year.

The Council's Options. The City Council has these options with respect to the proposed agreement:

- Approve it, remove the tax measure from the November ballot and accept the agreed payments to create certainty and to avoid litigation.
- Disapprove it and allow voters to decide whether to impose the tax and defend the litigation that will likely follow.
- Continue to negotiate. This would likely prevent the Council from removing the measure from the ballot (which it must do by August 14th) and lead to an energetic campaign on the measure and, perhaps, renewed settlement discussions if it passes, but a significant reduction in income to the City if it does not.

The first option is recommended due to the fact that the payments under the Tax Agreement are in the range of the tax ordinance and the Tax Agreement avoids uncertainties: an election and litigation and delays in receiving the funds.

DOCUMENTS ATTACHED:

Attachment 1 – Resolution rescinding Resolution 63-24
Attachment 2 – Resolution approving settlement agreement with
Chevron Corporation
Attachment 3 – Resolution 63-24