

City of Brisbane
Agenda Report

TO: Mayor and City Council
FROM: Hal Toppel, City Attorney
SUBJECT: Code Amendments re Sewer and Water Service Charges
DATE: For Council Meeting on May 16, 2011

City Council Goals:

To provide for effective and efficient delivery of City services. [1]

To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community. [2]

To maintain and improve infrastructure. [3]

Purpose:

The purpose of this ordinance is to bring the Municipal Code into compliance with current state laws authorizing automatic increases in charges for sewer and water service.

Recommendation:

Introduce Ordinance No. 560, with adoption at the next meeting of the City Council on June 6, 2011.

Background and Discussion:

Section 13.08.020.D of the Municipal Code provides for automatic increases in sewer service charges based upon the percentage increase in the Consumer Price Index and cost increases charged to the City by San Francisco for sewer treatment services. Similarly, BMC Section 13.12.020.C provides for automatic increases in water service charges based upon the percentage increase in the Consumer Price Index and cost increases for water charged to the City by San Francisco pursuant to the Water Supply Agreement between the City and San Francisco. Copies of both sections have been provided with this Report for your reference.

Until recently, it was generally assumed that water and sewer charges not placed on the tax roll were not "property-related services" subject to Proposition 218 because the charges were based upon individual usage. However, the California Supreme Court held to the contrary and found that both water and sewer service charges were property-related and therefore any increase in such charges needed to comply with the provisions of Proposition 218. Although no election to approve an increase in water or sewer charges is required, a public hearing must be conducted on the proposed increase with notice of the hearing sent to each customer at least 45 days prior to the hearing. If a protest is received from a majority of the customers, the proposed increase cannot be made. The procedural requirements of Proposition 218 have been implemented by Section 53753 of the Government Code, a copy of which is attached.

The process for raising sewer and water service charges was simplified, to some degree, with the enactment of Government Code Section 53756, a copy of which is also attached. This Section allows certain automatic increases for a period of 5 years, without the need to conduct a public hearing, provide a 45 day notice of that hearing, and run the risk of a majority protest (regardless of how unlikely that risk might be). The only notice that must be given is a notice of the increase that will take effect not less than 30 days from the date of the notice. But after the 5 year period, further increases must again comply with the procedural requirements of Prop. 218.

Section 53756 allows automatic increases for "inflation", which is usually defined as the percentage increase in the Consumer Price Index. These adjustments can be made for both sewer and water service charges. However, the state law makes a distinction between water and sewer charges for other adjustments. While automatic increases can be made for increases in the wholesale cost of water provided to the City, there is no comparable provision in Section 53756 that would allow automatic increases for the cost of sewer treatment services charged to the City. Consequently, the existing provisions in BMC Section 13.08.020.D that would pass-through these cost increases are no longer in compliance with state law. In addition, the existing provisions do not contain the 5 year limit on automatic adjustments, as now imposed by state law.

The proposed ordinance will amend the Muni Code to allow automatic CPI adjustments for both water and sewer and pass-through adjustments for increases in the cost of water for successive periods of 5 years. With regard to water, the CPI adjustment would only apply to the operating expenses exclusive of the cost of water charged to the City by San Francisco (since any increase in those charges would be separately passed-through to the customer). CPI adjustments for sewer service would be applied to all costs for operating the system, including sewer treatment costs charged by San Francisco. The ordinance gives the City Council discretion to approve a lesser increase whenever the Council deemed it appropriate to do so. A notice of the increase must still be given at least 30 days prior to the effective date and may be included in the regular billing statement sent to the customer.

Fiscal Impact:

The ordinance will enable the City to continue the policy of making regular adjustments for inflationary increases in the cost of operating its sewer and water systems and to pass through the expected increases in the cost of water charged by San Francisco.

Measure of Success:

The success of the ordinance will be measured by the extent to which the City is able to recover its actual costs related to the delivery of sewer and water service.

Attachments:

1. Proposed Ordinance No. 560
2. Brisbane Municipal Code Sections 13.08.020.D and 13.12.020.C
3. Government Code Sections 53755 and 53756


City Attorney


City Manager

ORDINANCE NO. 560

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING SUBSECTION 13.08.020.D AND SUBSECTION 13.12.020.C OF THE MUNICIPAL CODE CONCERNING INCREASES IN SEWER AND WATER SERVICE CHARGES

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

SECTION 1: Subsection 13.08.020.D in Chapter 13.08 of the Municipal Code is amended to read as follows:

D. Cost Increases. It is hereby declared to be the policy of the City Council to adjust the sewer service charges established by this Section to reflect future increases in the cost of living, as authorized and to the extent permitted by Section 53756 of the California Government Code. Consequently, such charges shall be subject to adjustment as follows:

- (a) The schedule of sewer service charges established by this Section shall be subject to automatic adjustment pursuant to this Subsection D for a period of five (5) years from the date of adoption. Thereafter, no increase in the sewer service charges shall be made unless such increase is adopted in accordance with the procedure set forth in Section 53755 of the Government Code pertaining to increases in charges for property-related service. Upon the adoption of each new schedule of sewer service charges pursuant to Section 53755, such schedule shall be effective for another five (5) year period and subject to automatic cost of living adjustments hereunder.
- (b) During the five (5) year adjustment period described in Paragraph (a), the sewer service charges shall automatically be increased each year by the percentage increase, if any, in 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 for the month nearest January first of each year as compared with the CPI published for the month nearest to January first of the immediately preceding year (the "CPI Increase").
- (c) An automatic increase in sewer service charges resulting from a CPI Increase shall be effective as of the next billing date following the date of adjustment. At least thirty (30) days prior to the effective date of the adjustment, a notice of the increase shall be mailed to the same address to which the billing statement for sewer service charges is normally sent and may be included in the regular billing.

- (d) The City Council may, by resolution, cancel the automatic increase or approve an increase below the CPI Increase for any individual year during the 5 year adjustment period. In no event, however, may the CPI Increase result in the establishment of sewer service charges that exceed the cost of providing the sewer service.

SECTION 2: Subsection 13.12.020.C in Chapter 13.12 of the Municipal Code is amended to read as follows:

C. It is hereby declared to be the policy of the City Council to adjust the water service charges established by this Section to reflect future increases in the cost of living and the cost of water supplied to the City by San Francisco pursuant to the Water Service Agreement between the City and San Francisco, as authorized and to the extent permitted by Section 53756 of the California Government Code. Consequently, such charges shall be subject to adjustment as follows:

- (a) The schedule of water service charges established by this Section shall be subject to automatic adjustment pursuant to this Subsection C for a period of five (5) years from the date of adoption. Thereafter, no increase in the water service charges shall be made unless such increase is adopted in accordance with the procedure set forth in Section 53755 of the Government Code pertaining to increases in charges for property-related service. Upon the adoption of each new schedule of water service charges pursuant to Section 53755, such schedule shall be effective for another five (5) year period and subject to automatic adjustments hereunder.
- (b) During the five (5) year adjustment period described in Paragraph (a), the water service charges shall automatically be increased each year by the sum of the following:
 - (1) The amount of any increase charged to the City by San Francisco for the cost of water supplied to the City pursuant to the Water Service Agreement between the City and San Francisco (the "SF Cost Increase"); plus
 - (1) The percentage increase, if any, in 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 for the month nearest January first of each year as compared with the CPI published for the month nearest to January first of the immediately preceding year (the "CPI Increase"). Such increase shall be applied only to the operating expenses of the water system exclusive of the cost of

water charged to the City by San Francisco pursuant to the Water Service Agreement between the City and San Francisco.

- (c) An automatic increase in water service charges resulting from a SF Cost Increase shall be effective as of the next billing period following the date on which the higher water cost was imposed. An automatic increase in water service charges resulting from a CPI Increase shall be effective as of the next billing date following the date of adjustment. At least thirty (30) days prior to the effective date of the adjustment, a notice of the increase shall be mailed to the same address to which the billing statement for water service charges is normally sent and may be included in the regular billing.
- (d) The City Council may, by resolution, cancel the automatic increase or approve an increase below the combined total of the SF Cost Increase and the CPI Increase for any individual year during the 5 year adjustment period. In no event, however, may an automatic increase result in the establishment of water service charges that exceed the cost of providing the water service.

SECTION 3: 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. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2011, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Cyril G. Bologoff, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

Harold S. Toppel, City Attorney

**EXISTING MUNI CODE PROVISIONS REGARDING
INCREASES IN SEWER AND WATER CHARGES**

§ 13.08.020.D - SEWER

D. Cost Increases. It is hereby declared to be the policy of the city council to adjust the foregoing sewer service charges to reflect future increases in the cost of living and the cost of sewer treatment services furnished to the city by San Francisco pursuant to the Sewer Service Agreement between the city and San Francisco. Consequently, the foregoing sewer service charges shall automatically be increased by the sum of the following:

1. The percentage increase, if any, in 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 for the month nearest January first of each year as compared with the CPI published for the month nearest to January first of the immediately preceding year (the "CPI Increase"); and
2. The increase that may occur from time to time in the cost of sewer treatment services furnished to the city by San Francisco (the "SF Cost Increase"); provided, however, that the sewer service charges may not be increased by more than twenty percent (20%) during any single calendar year without adoption of an ordinance amending the schedule of rates set forth in subsection C of this section. An automatic increase in the sewer service charges resulting from a CPI Increase shall be implemented as of the next billing period following the date on which the increased CPI is published; an automatic increase in the sewer service charges resulting from a SF Cost Increase shall be implemented as of the next billing period following the date on which the higher treatment cost is imposed. CPI Increases shall be applied only to the operating expenses of the sewage works exclusive of the cost of sewer treatment services charged by San Francisco.

§ 13.12.020.C - WATER

C. Cost Increases. It is hereby declared to be the policy of the city council to adjust the foregoing water service charges to reflect future increases in the cost of living and the cost of water supplied to the city by San Francisco pursuant to the Water Service Agreement between the city and San Francisco. Consequently, the foregoing water service charges shall automatically be increased by the sum of the following:

1. The percentage increase, if any, in 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 for the month nearest January 1st of each year as compared

with the CPI published for the month nearest to January 1st of the immediately preceding year (the "CPI Increase"); and

2. The increase that may occur from time to time in the cost of water supplied to the city by San Francisco (the "SF Cost Increase"); provided, however, that such water service charges may not be increased by more than twenty percent (20%) during any single calendar year without adoption of an ordinance amending the schedule of rates set forth in subsection B of this section. An automatic increase in the water service charges resulting from a CPI Increase shall be implemented as of the next billing period following the date on which the increase in the CPI is published; an automatic increase in the water service charges resulting from a SF Cost Increase shall be implemented as of the next billing period following the date on which the higher water cost is imposed. CPI Increases shall be applied only to the operating expenses of the water system exclusive of the cost of water charged by San Francisco.

GOVERNMENT CODE
SECTIONS 53755 AND 53756

§ 53755. Notice of proposed increase of existing fee or charge for property-related services; Recording or enforcing lien; Written protest

- (a)
- (1) The notice required by paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution of a proposed increase of an existing fee or charge for a property-related service being provided to a parcel may be given by including it in the agency's regular billing statement for the fee or charge or by any other mailing by the agency to the address to which the agency customarily mails the billing statement for the fee or charge.
 - (2) The notice required by paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution of a proposed new fee or charge may be given in the manner authorized for notice of an increase of a fee or charge if the agency is currently providing an existing property-related service to the address.
 - (3) If the agency desires to preserve any authority it may have to record or enforce a lien on the parcel to which service is provided, the agency shall also mail notice to the recordowner's address shown on the last equalized assessment roll if that address is different than the billing or service address.
- (b) One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to a proposed new or increased fee or charge subject to the requirements of Section 6 of Article XIII D of the California Constitution.
- (c) Any agency that bills, collects, and remits a fee or charge on behalf of another agency may provide the notice required by Section 6 of Article XIII D of the California Constitution on behalf of the other agency.

§ 53756. Agency providing water, sewer, or refuse collection services authorized to adopt a schedule of fees or charges authorizing automatic adjustments

An agency providing water, sewer, or refuse collection service may adopt a schedule of fees or charges authorizing automatic adjustments that pass through increases in wholesale charges for water or adjustments for inflation, if it complies with all of the following:

- (a) It adopts the schedule of fees or charges for a property-related service for a period not to exceed five years pursuant to Section 53755.
- (b) The schedule of fees or charges may include a schedule of adjustments, including a clearly defined formula for adjusting for inflation. Any inflation adjustment to a fee or charge for a property-related service shall not exceed the cost of providing that service.
- (c) The schedule of fees or charges for an agency that purchases wholesale water from a public agency may provide for automatic adjustments that pass through the adopted increases or decreases in the wholesale charges for water established by the other agency.
- (d) Notice of any adjustment pursuant to the schedule shall be given pursuant to subdivision (a) of Section 53755, not less than 30 days before the effective date of the adjustment.