

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Request to Defer Fire Service Capacity Charge

DATE: November 1, 2010

City Council Goals:

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane. (#9)

Purpose:

To present Council with a property owner's request to pay fire service capacity charges over a four year period.

Recommendation:

Staff requests that Council make two decisions:

1. Will the Council allow this property owner to pay its fire service capacity charges in four installments per one of the Agreements drafted by the City Attorney?
2. If yes to the first question, then shall the deferred payments be made without interest (Version 1), or with interest (Version 2), and if with interest, does Council concur with the five percent rate proposed by staff?

Background:

The owner of the existing church structure at 298 San Bruno Avenue, the San Francisco Peninsula Baptist Association, has submitted building plans for a remodel/tenant improvement project. The proposed scope of work triggered the requirement to install fire sprinklers in the building. The fire protection engineer hired by the owner has determined, and the city's fire plan checker has confirmed, that this new sprinkler system will require the capacity of a 3" line. Per BMC §13.12.015, the capacity charge for a 3" Fire Service Meter is \$22,154.00. (Note that the capacity charge for a 3" Potable Water Meter is \$52,623.00, with the difference in charges based on the regular expected use of a potable meter versus the hopefully infrequent flow of water through a fire meter.)

The property owner has requested the city consider allowing them to make payments in four annual installments (see Attachment 1). The City Attorney has drafted two versions of an agreement to defer these charges, as well as a short form deed of trust and assignment of rent to secure the indebtedness until such time as it is paid in full (see Attachments 2-4).

Discussion:

As there is no existing policy that allows staff to take a ministerial action or provide a recommendation, Council's options are generally:

- Deny the request. The applicant would then have to pay the fire service capacity charge in full to obtain a building permit, or withdraw their application.
- Approve the request.
- If the request is approved, then Council should determine if the deferred payments will or will not accrue interest, and if they accrue interest, at what rate.

Council may also wish to consider if this is a one-time approval exclusively to this applicant (considering perhaps the unique nature of the applicant and its property, and the ensuing cost of installing a 3" meter on such a property), or if they have guidance to direct staff to review this matter in further detail for future consideration of possible changes to the municipal code.

Fiscal Impact:


The only direct cost to the city by allowing these payments to be deferred would be the loss of interest if Council were to approve deferring these payments without requiring an interest rate charge.

Measure of Success

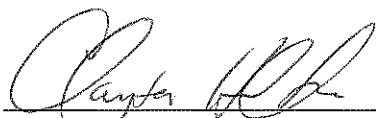
The primary community value related to this item is safety; as there is no immediate plan to utilize the capacity charge that will be collected from the property owner, staff believes that this value will not be negatively impacted if the deferred payment is approved.

Attachments:

1. San Francisco Peninsula Baptist Association letter dated 10/19/10
2. Version 1 – No Interest - Agreement for Deferred Payment of Capacity Charge
3. Version 2 – Interest Charged - Agreement for Deferred Payment of Capacity Charge
4. Short Form Deed of Trust and Assignment of Rents

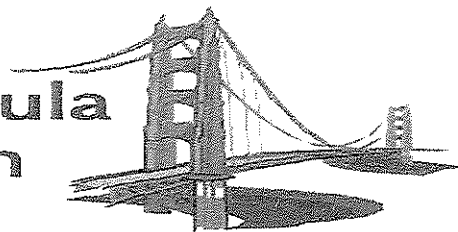


Director of Public Works/City Engineer



City Manager

San Francisco Peninsula Baptist Association



141 Industrial St., San Francisco, CA 94124
415-647-2880

Oct. 19, 2010
Randy L. Breault
City of Brisbane
50 Park Place
Brisbane, CA 94005

Dear Mr. Breault,

Thank you for meeting with myself and our general contractors regarding our ongoing project at 298 San Bruno. Per our conversation I am submitting a formal request that the usage fees related to the installation of water lines for our fire sprinkler system be divided into four equal payments payable over the next four years at the rate quoted to Mr. Morley. The city's consideration of the issue is greatly appreciated. This would make proceeding with the project far more likely for the church that I represent and would seem to better match the intended nature of the assessment as a "use fee." Since it is likely (hopefully) a system we will never actually use. I appreciate your assistance in bringing this request to the attention of who ever would be able to facilitate this matter. Thank you so much for your assistance. We have been sincerely impressed with the help we have received from the Planning Office on this project. We are looking forward to calling Brisbane our home in the near future.

Yours,

A handwritten signature in cursive script that reads "Joseph W. Caldwell". The signature is fluid and elegant, with the first letters of the first and last names being capitalized and prominent.

Dr. Joseph W. Caldwell
Executive Director
San Francisco Peninsula Baptist Association
dom@inassociation.com
510-647-2880

Attachment 1

VERSION 1 – NO INTEREST

**AGREEMENT FOR DEFERRED
PAYMENT OF CAPACITY CHARGE**

THIS AGREEMENT, dated _____, 2010, by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and SAN FRANCISCO PENINSULA SOUTHERN BAPTIST ASSOCIATION, a California corporation ("Owner"), is made with reference to the following facts:

A. Owner is the owner of real property located at 298 San Bruno Avenue, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-284-240 ("the Property").

B. Owner is remodeling an existing structure upon the Property ("the Project") and is required to pay capacity charges for connection to City's water system, as prescribed by Section 13.12.015 of the Brisbane Municipal Code. City has determined that the capacity charge for Owner's fire sprinkler water meter will be the sum of \$22,154.00 (the "Fire Service Capacity Charge").

C. City has agreed to accept payment of the Fire Service Capacity Charge in four equal annual installments, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

1. Owner agrees to pay, and City agrees to accept, the Fire Service Capacity Charge in four (4) equal installments, payable as follows:

- (a) The first installment, in the amount of \$5,538.50, shall be paid prior to the issuance by City of a building permit for the Project and shall be a condition that must be satisfied before such permit can be issued.
- (b) The second, third and fourth installments, each in the amount of \$5,538.50, shall be paid not later than the anniversary date of each consecutive year of the date on which the building permit for the Project is issued. Upon issuance of such permit, the parties shall execute an Addendum to this Agreement to confirm such anniversary date.

2. In the event of any default by Owner in payment of any installment when due, such installment shall bear interest from and after the due date at the rate of seven

VERSION 1 – NO INTEREST

percent (7.0%) per annum until paid in full. In addition, City may, at its option, declare all of the remaining installments to be immediately due and payable. In such event, interest shall be charged on all installments declared to be due at the rate specified herein.

3. Owner reserves the right to prepay any portion or all of the unpaid installments at any time, without premium or penalty.

4. The obligation of Owner to pay the installments of the Fire Service Capacity Charge in accordance with the terms of this Agreement is secured by a Deed of Trust against the Property in favor of City, executed by Owner concurrently herewith. In the event of any sale or transfer of the Property, or any interest therein, without the prior written consent of City, City may, at its option, declare the entire outstanding balance of the Fire Service Capacity Charge to be immediately due and payable.

5. In the event legal action shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall pay all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

THE CITY OF BRISBANE,
a municipal corporation

By: _____
Clay Holstine,
City Manager

SAN FRANCISCO PENINSULA
SOUTHERN BAPTIST ASSOCIATION,
a California corporation

By: _____
Dr. Joseph W. Caldwell,
Executive Director

VERSION 2 – INTEREST CHARGED

AGREEMENT FOR DEFERRED PAYMENT OF CAPACITY CHARGE

THIS AGREEMENT, dated _____, 2010, by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and SAN FRANCISCO PENINSULA SOUTHERN BAPTIST ASSOCIATION, a California corporation ("Owner"), is made with reference to the following facts:

A. Owner is the owner of real property located at 298 San Bruno Avenue, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-284-240 ("the Property").

B. Owner is remodeling an existing structure upon the Property ("the Project") and is required to pay capacity charges for connection to City's water system, as prescribed by Section 13.12.015 of the Brisbane Municipal Code. City has determined that the capacity charge for Owner's fire sprinkler water meter will be the sum of \$22,154.00 (the "Fire Service Capacity Charge").

C. City has agreed to accept payment of the Fire Service Capacity Charge in four equal annual installments, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

1. Owner agrees to pay, and City agrees to accept, the Fire Service Capacity Charge in four (4) equal installments, payable as follows:

- (a) The first installment, in the amount of \$5,538.50, shall be paid prior to the issuance by City of a building permit for the Project and shall be a condition that must be satisfied before such permit can be issued.
- (b) Interest shall be charged on the unpaid balance of the Fire Service Capacity Charge at the rate of five percent (5%) per annum, commencing on the date a building permit is issued for the Project. Interest shall be paid annually, on the same due date for payment of the principal installments as specified in Paragraph (c) below.
- (c) The balance of the Fire Service Capacity Charge in the amount of \$16,615.50 shall be paid in three equal annual installments, each in the amount of \$5,538.50, due and payable not later than the anniversary date of each

VERSION 2 – INTEREST CHARGED

consecutive year of the date on which the building permit for the Project is issued. Upon issuance of such permit, the parties shall execute an Addendum to this Agreement to confirm such anniversary date.

2. In the event of any failure by Owner to pay any installment of the Fire Service Capacity Charge when due, the rate of interest charged on such installment shall be increased from five percent (5%) to seven percent (7%) per annum, effective as of the due date until the date on which the delinquent installment is paid in full. In addition, City may, at its option, declare the entire unpaid balance of the Fire Service Capacity Charge to be immediately due and payable together with all accrued and unpaid interest thereon. In such event, interest shall be charged on the entire unpaid principal balance at the rate of seven percent (7%) per annum.

3. Owner reserves the right to prepay any portion or all of the outstanding balance of the Fire Service Capacity Charge together with any accrued and unpaid interest thereon, at any time, without premium or penalty.

4. The obligation of Owner to pay the installments of the Fire Service Capacity Charge in accordance with the terms of this Agreement is secured by a Deed of Trust against the Property in favor of City, executed by Owner concurrently herewith. In the event of any sale or transfer of the Property, or any interest therein, without the prior written consent of City, City may, at its option, declare the entire outstanding balance of the Fire Service Capacity Charge to be immediately due and payable.

5. In the event legal action shall become necessary in order to enforce or interpret this Agreement, the prevailing party shall pay all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

THE CITY OF BRISBANE,
a municipal corporation

SAN FRANCISCO PENINSULA
SOUTHERN BAPTIST ASSOCIATION,
a California corporation

By: _____
Clay Holstine,
City Manager

By: _____
Dr. Joseph W. Caldwell,
Executive Director

RECORDING REQUESTED BY:

CITY OF BRISBANE

AND WHEN RECORDED MAIL TO:

CITY OF BRISBANE

Attn: City Clerk

50 Park Place

Brisbane, CA 94005

APN NO. 007-284-240

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust, made this _____ day of _____, between **SAN FRANCISCO PENINSULA SOUTHERN BAPTIST ASSOCIATION**, a California corporation, herein called Trustor, whose address is 298 San Bruno Avenue, Brisbane, California 94005, **FIRST AMERICAN TITLE INSURANCE COMPANY**, herein called Trustee, and **THE CITY OF BRISBANE**, a municipal corporation, herein called Beneficiary.

Witnesseth: That Trustor **IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE**, that property located at 298 San Bruno Avenue, in the City of Brisbane, County of San Mateo, State of California, identified as **Assessor's Parcel Number 007-284-240**, and more particularly described as follows:

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness in the amount of **\$16,615.50**, in accordance with the terms of that certain Agreement For Deferred Payment of Capacity Charge, between Trustor and Beneficiary executed concurrently herewith. 3. Payment of such further sums that may become payable to Beneficiary under the terms of said Agreement, including interest on the indebtedness.

IF THE TRUSTOR SHALL SELL, CONVEY OR ALIENATE SAID PROPERTY, OR ANY PART THEREOF, OR ANY INTEREST THEREIN, OR SHALL BE DIVESTED OF TRUSTOR'S TITLE OR ANY INTEREST THEREIN, WHETHER VOLUNTARILY OR INVOLUNTARILY, WITHOUT THE WRITTEN CONSENT OF BENEFICIARY BEING FIRST HAD AND OBTAINED, BENEFICIARY SHALL HAVE THE RIGHT, AT ITS OPTION, TO DECLARE ALL INDEBTEDNESS AND OBLIGATIONS SECURED HEREBY, IRRESPECTIVE OF THE MATURITY DATE THEREOF, TO BE IMMEDIATELY DUE AND PAYABLE.

Attachment 4

To Protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded on July 2, 1968, in the book and at the page of Official Records in the office of the County Recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	2210	I.M. 188	Nevada	450	210	San Mateo	5496	67
Contra Costa	5658	1	Placer	1204	632	Santa Barbara	2237	734
El Dorado	884	635	Sacramento	68-07-02	288	Santa Clara	8177	403
Los Angeles	T5841	240	San Benito	339	63	Santa Cruz	1890	1
Marin	2222	339	San Diego	Series 9	111626	Shasta	958	68
Mendocino	768	171		Book 1968		Solano	1514	628
Monterey	563	646	San Joaquin	3221	96	Sonoma	2338	981
Napa	789	862	San Luis Obispo	1481	591	Yuba	469	398

(which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

SAN FRANCISCO PENINSULA SOUTHERN
BAPTIST ASSOCIATION, a California corporation

By: _____
Dr. Joseph W. Caldwell, Executive Director

STATE OF CALIFORNIA
COUNTY OF SAN MATEO

On _____, before me _____, Notary Public, personally appeared DR. JOSEPH W. CALDWELL, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) To keep said property in good condition and repair, not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof, not to commit, suffer or permit any act upon said property in violation of law to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general

(2) To provide maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed

(4) To pay at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, all costs, fees and expenses of this Trust

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his rights either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey any part of said property, consent to the making of any map or plot thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary state that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "The person or persons legally entitled thereto" "Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them)

(10) That as additional security, Trustor hereby give to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees. Upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder. Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing encumbrances secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof, all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby whether or not named as Beneficiary herein in this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.