

City of Brisbane
Agenda Report

TO: Mayor and City Council
FROM: Hal Toppel, City Attorney
SUBJECT: Amendments to Penalty Provisions of Municipal Code
DATE: For Council Meeting on December 6, 2010

City Council Goals:

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

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

Purpose:

The proposed ordinance will revise all of the penalty provisions in the Municipal Code by classifying violations as infractions or misdemeanors and providing for enforcement of violations in accordance with the newly adopted provisions of Title 1.

Recommendations:

Introduce Ordinance No. 554

Background and Discussion:

This Ordinance is a follow-up to the recently adopted Ordinance No. 547, which amended Title 1 of the Municipal Code to establish new enforcement remedies and fines for code violations. Submitted with the proposed Ordinance is a table showing the nature of the amendment being made to each of the penalty provisions. In most cases, the classification of the violation as either an infraction or a misdemeanor has not changed, but in all cases a cross-reference has been added to Chapters 1.14, 1.16, and 1.18, which contain the penalty amounts and the administrative enforcement procedures. Various errors and inconsistencies found in the existing code have also been corrected.

The most significant reclassification of a violation from a misdemeanor to an infraction offense is the Zoning Ordinance (Section 62 of the proposed ordinance). With the

adoption of the new administrative enforcement remedies, which include the imposition of fines along with the ability to record a notice of code violation, we believe that these procedures will be a more effective, efficient and economical way to obtain compliance. It should also be remembered that upon the commission of a third violation of the same regulation within any 12 month period, the enforcement officer has the option to charge the third and any additional violation as a misdemeanor. The amendments to the Zoning Ordinance contained in Sections 62, 63 and 64 of the proposed Ordinance were considered by the Planning Commission on November 18, 2010, and the Commission unanimously recommended adoption.

Fiscal Impact:

Although the new administrative enforcement remedies are not intended as revenue measures, there should be some cost savings to the City as a result of the increased ability to impose fines and what we expect will be a reduction in enforcement costs through the avoidance of judicial proceedings.

Measure of Success:

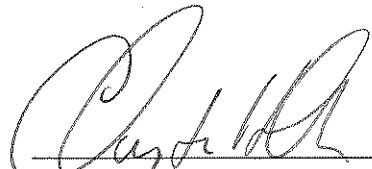
Receipt of fines, penalties and administrative enforcement costs and a determination by City staff that the new code enforcement tools are effective.

Attachments:

Ordinance No. 554
Table of Municipal Code Penalties



City Attorney



City Manager

ORDINANCE NO. 554

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING VARIOUS PROVISIONS OF THE MUNICIPAL CODE TO CLASSIFY VIOLATIONS AS MISDEMEANORS OR INFRACTIONS AND ESTABLISH PENALTIES FOR CODE VIOLATIONS

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

SECTION 1: The first sentence of Section 2.28.100 in Chapter 2.28 of the Municipal Code, pertaining to the City's disaster council and emergency organization, is amended to read as follows:

It shall be a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code, for any person, during an emergency, to:

SECTION 2: Section 3.20.150 in Chapter 3.20 of the Municipal Code, pertaining to sales and use taxes, is amended to read as follows:

3.20.150 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 3: Subsection 3.24.140.A in Chapter 3.24 of the Municipal Code, pertaining to the transient occupancy tax, is amended to read as follows:

A. The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 4: Section 5.24.080 in Chapter 5.24 of the Municipal Code, pertaining to business licenses, is amended to read as follows:

5.24.080 Violation- Penalties.

The violation of any of the provisions of Chapters 5.04 through 5.24, or the intentional misrepresentation to any officer or employee of the city of any material fact in procuring the license or permit herein provided, shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 of 1.18 of this Code.

SECTION 5: Section 5.28.170 in Chapter 5.28 of the Municipal Code, pertaining to auto wrecking establishments, is amended to read as follows:

5.28.170 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 6: Section 5.32.380 in Chapter 5.32 of the Municipal Code, pertaining to bingo games, is amended to read as follows:

5.32.380 Violation- Penalties.

A. Any person who violates Sections 5.32.020, 5.32.030, 5.32.180, 5.32.210, 5.32.220 5.32.230, 5.32.240, 5.32.250, 5.32.260, 5.32.270, 5.32.280, 5.32.290, 5.32.300, 5.32,310, 5.32.320, 5.32.330, 5.32.340 or 5.32.350 shall be guilty of a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. A violation of Section 5.32.210 shall be punishable by a fine not to exceed ten thousand dollars (\$10,000.00), which fine shall be deposited in the general fund of the city.

C. Any person who continues to conduct a bingo game after the imposition of any summary suspension, as provided for under subsection A of Section 5.32.140, shall be guilty of a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 7: Section 5.44.140 in Chapter 5.44 of the Municipal Code, pertaining to mechanical amusement devices, is amended to read as follows:

5.44.140 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 8: Section 5.60.130 in Chapter 5.60 of the Municipal Code, pertaining to public dances, is amended to read as follows:

5.60.130 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, except a violation of Section 5.60.090 or 5.60.100, which shall constitute an infraction. In either case, such violation shall be punishable by the

finest, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 9: Subsection 5.66.030.A in Chapter 5.66 of the Municipal Code, pertaining to storage of automobiles under repair, is amended to read as follows:

A. The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 10: Section 6.04.130 in Chapter 6.04 of the Municipal Code, pertaining to animal control, is repealed.

SECTION 11: Section 6.04.300 in Chapter 6.04 of the Municipal Code, pertaining to animal control, is amended to read as follows:

6.04.300 Violation-Penalties.

A. Except as otherwise provided in Paragraph B or this Section, the violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. The violation of any of the provisions of Subsection 6.04.100.A, Subsection 6.04.105.A, or Section 6.04.120 of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 12: A new Section 6.08.110 is added to Chapter 6.08 of the Municipal Code, pertaining to exotic animals, to read as follows:

6.08.110 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such provisions shall be cumulative and in addition to any rights and remedies that may be available to the director by reason of the violation, including the suspension or revocation of any permit issued pursuant to this Chapter.

SECTION 13: Section 6.12.060 in Chapter 6.12 of the Municipal Code, pertaining to spaying, neutering and breeding of cats and dogs, is amended to read as follows:

6.12.060 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 14: A new Section 6.14.080 is added to Chapter 6.14 of the Municipal Code, pertaining to miscellaneous animal regulations, to read as follows:

6.14.080 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such provisions shall be cumulative and in addition to any rights and remedies that may be available to the City by reason of the violation, including the revocation of any permit issued pursuant to this Chapter.

SECTION 15: Section 8.04.030 in Chapter 8.04 of the Municipal Code, pertaining to food establishments, is amended to read as follows:

8.04.030 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 16: Section 8.08.050 in Chapter 8.08 of the Municipal Code, pertaining to milk and cream, is amended to read as follows:

8.08.050 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 17: Chapter 8.12 of the Municipal Code, pertaining to permits for the sale of fireworks, is repealed in its entirety. The possession, storage, sale, use or discharge of fireworks within the City is now expressly prohibited by Section 15.44.090 of the Municipal Code.

SECTION 18: Section 8.16.120 in Chapter 8.16 of the Municipal Code, pertaining to litter and handbill distribution, is amended to read as follows:

8.16.120 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 19: Section 8.24.160 in Chapter 8.24 of the Municipal Code, pertaining to collection and disposal of garbage, is amended to read as follows:

8.24.160 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 20: Section 8.28.100 in Chapter 8.28 of the Municipal Code, pertaining to noise control, is amended to read as follows:

8.28.100 Violations-Enforcement-Penalties.

A. The violation of any of the provisions contained in this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. It shall be the duty of all public safety officers, and public works supervisors and the planning director to enforce the provisions of this Chapter. Any permit or license of any type issued by any department or officer of the City, issued in conflict with the provisions of this Chapter, shall be null and void.

C. In addition to the penalties set forth for infraction offenses and the procedures for administrative enforcement and nuisance abatement, any noise level and its source in violation of any of the provisions of this Chapter may be summarily abated, which may include, but is not limited to, removal, dismantlement and taking into custody the source of such noise, and in this regard, the confiscation of any machine or device used to violate any of the provisions of this Chapter is authorized to be held for use as evidence in any proceeding that may be brought for such violation.

SECTION 21: Section 8.32.140 in Chapter 8.32 of the Municipal Code, pertaining to recyclable materials, is amended to read as follows:

8.32.140 Collection by unauthorized persons prohibited-Violation-Penalties.

A. It is unlawful for any person, business or other entity, not otherwise excepted by the provisions of this Chapter, or by state or federal law, to collect

recyclable materials in the City; provided, however, the collection of segregated recyclable materials with the intent to recycle all such materials collected by one who has an arrangement to, and does recycle all, such materials collected shall not be prohibited. The receipt of money or other consideration by the collector in addition to the materials collected creates the presumption that the collection of such materials is not for the purpose of recycling.

B. From the time of placement of recyclable materials at curbside, or other appropriate designated collection locations or in any container used for recycling provided by the authorized recycling agent, said recyclable materials shall be and become the property of the authorized recycling agent.

C. Any person engaged in the unauthorized collection of recyclable materials is guilty of an infraction, subject to fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Any such unauthorized collections from one or more locations within the City shall constitute a separate and distinct offense.

SECTION 22: Subsection 8.36.020.C in Chapter 8.36 of the Municipal Code, pertaining to abatement of public nuisances, is amended to read as follows:

C. Any person, whether as owner, tenant or occupant of any premises, who violates any of the provisions of this Chapter shall be guilty of an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 23: Subsection 8.36.050.C in Chapter 8.36 of the Municipal Code, pertaining to abatement of public nuisances, is amended to read as follows:

C. The notice shall contain the following information:

- (1) A description of the property sufficient for identification;
- (2) A description of the conditions upon the property which are alleged to constitute a public nuisance;
- (3) A statement of the time and place of the hearing to determine whether the described condition constitutes a nuisance and the proposed abatement actions that must be taken if the nuisance is found to exist;
- (4) A statement as to whether the City has elected to seek, as a part of the abatement costs, reasonable attorney's fees incurred with regard to any portion or all of the abatement proceedings, in which case the notice shall also state that attorneys fees would be awarded to the prevailing party.

The notice shall further advise that each owner has the option to voluntarily abate the nuisance and to inform the hearing officer that such action has been completed prior to the hearing date. Upon receipt of such information from a property owner, the hearing officer shall conduct an inspection of the premises and if the nuisance is found to have been satisfactorily abated, the hearing shall be canceled and written notice of such cancellation shall be given to the same persons who received notice of the abatement hearing.

SECTION 24: Subsection 8.36.110.C in Chapter 8.36 of the Municipal Code, pertaining to abatement of public nuisances, is amended to read as follows:

C. The finance director shall submit an itemized report of abatement costs to the city manager for confirmation. The city clerk shall serve a copy of such report upon the property owner by certified mail addressed to the owner as shown on the latest available county assessment roll, or as otherwise known to the city clerk. The report of abatement costs shall be accompanied by a notice of the time and place when a hearing will be conducted by the city manager to consider confirmation of such report and levy or assessment of a lien against the affected property for collection of abatement costs. The notice shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The report and notice shall be served upon the property owner at least ten (10) days prior to the scheduled date of the hearing.

SECTION 25: Subsection 8.40.030.C in Chapter 8.40 of the Municipal Code, pertaining to water waste, is amended to read as follows:

C. Penalties for Failure to Correct Water Waste. Any person receiving a notice of correction who fails to eliminate the water waste as required by the notice shall be guilty of an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such fines and penalties may be added to the water bill for the service connection which is the source of the water waste. In addition to the foregoing, the City may exercise any other rights or remedies provided by law for violations of this Code, including civil nuisance abatement proceedings.

SECTION 26: Section 9.12.060 in Chapter 9.60 of the Municipal Code, pertaining to card games, is amended to read as follows:

9.12.060 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 27: Section 9.20.050 in Chapter 9.20 of the Municipal Code, pertaining to loitering, is amended to read as follows:

9.20.050 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 28: Section 9.28.040 in Chapter 9.28 of the Municipal Code, pertaining to malicious mischief, is amended to read as follows:

9.28.040 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 29: Section 9.34.060 in Chapter 9.34 of the Municipal Code, pertaining to posting of signs warning of the effect of alcohol during pregnancy, is amended to read as follows:

9.34.060 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 30: Section 9.36.010 in Chapter 9.36 of the Municipal Code, pertaining to solicitations at private residences, is amended to read as follows:

9.36.010 Nuisance declared.

The practice of going in and upon private residences in the city by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise not having been requested or invited to do so by the owner or owners, occupant or occupants of the private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise and/or disposing of and/or peddling or hawking the same, is declared to be unlawful and a public nuisance.

SECTION 31: Section 9.36.030 in Chapter 9.36 of the Municipal Code, pertaining to solicitations at private residences, is repealed in its entirety.

SECTION 32: Section 9.36.050 in Chapter 9.36 of the Municipal Code, pertaining to solicitations at private residences, is amended to read as follows:

9.36.050 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 33: Section 9.44.060 in Chapter 9.44 of the Municipal Code, pertaining to curfew for minors, is amended to read as follows:

9.44.060 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 34: Section 9.52.070 in Chapter 9.52 of the Municipal Code, pertaining to firearms and other weapons, is amended to read as follows:

9.52.070 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 35: Section 9.56.070 in Chapter 9.56 of the Municipal Code, pertaining to switchblade knives, is amended to read as follows:

9.56.070 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 36: Section 10.08.130 in Chapter 10.08 of the Municipal Code, pertaining to vehicles and traffic is repealed in its entirety.

SECTION 37: Section 10.08.140 in Chapter 10.08 of the Municipal Code, pertaining to vehicles and traffic, is amended to read as follows:

10.08.140 Violation-Penalties.

Unless specifically designated as a misdemeanor offense, the violation of any of the provisions of this Title shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 38: Subsection 10.24.240.C in Chapter 10.24 of the Municipal Code, pertaining to parking of commercial vehicles in residential districts, is repealed in its entirety.

SECTION 39: Section 12.04.200 in Chapter 12.04 of the Municipal Code, pertaining to streets, sidewalks and public places, is amended to read as follows:

12.04.200 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 40: Section 12.12.080 in Chapter 12.12 of the Municipal Code, pertaining to tree regulations, is amended to read as follows:

12.12.080 Violation-Penalties.

A. The violation of any provision of this Chapter is hereby declared to be unlawful and shall constitute an infraction and a public nuisance, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. In addition to any other penalties prescribed by law for an infraction offense, any person unlawfully removing or destroying a protected tree may be penalized as follows:

- (1) Replacing the unlawfully removed tree with a new tree as similar thereto as reasonably feasible, or if such replacement is not feasible because of the size or age of the removed tree, with such number of similar trees as will, to the extent reasonably possible, mitigate the loss of aesthetic quality caused by the unlawful removal, as determined by the city manager. All such replacement trees shall be maintained by the property owner under a five (5) year maintenance agreement with the city. The City may require that a bond or other security satisfactory to the City be posted to guaranty the performance of the owner's obligations under the maintenance agreement.
- (2) In addition to any other penalty that may be imposed for violation of this Chapter, the violator may be charged a fine in an amount equal to the value of the unlawfully removed tree, as determined by the city manager, based upon the opinion by a qualified arborist or other evidence of value satisfactory to the city manager.
- (3) The violation of any provision of this Chapter during the conduct by any person of a tree removal, landscaping, construction or other

business in the city shall constitute grounds for revocation of any business license issued to such person.

SECTION 41: Section 12.28.040 in Chapter 12.28 of the Municipal Code, pertaining to recreational activities on certain streets and sidewalks, is amended to read as follows:

9.28.040 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code; *provided, however*, the fine for a first conviction shall be \$50; the fine for a second conviction for the same offense within twelve (12) consecutive months shall be \$75; and the fine for each additional conviction for the same offense within twelve (12) consecutive months shall be \$100.

SECTION 42: Section 12.32.030 in Chapter 12.32 of the Municipal Code, pertaining to occupancy of airspace above or below rights-of-way, is amended to read as follows:

12.32.030 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 43: Section 13.04.580 in Chapter 13.04 of the Municipal Code, pertaining to unauthorized damage or destruction of sewage works, is amended to read as follows:

13.04.580 Unauthorized damage or destruction of sewage works prohibited.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works.

SECTION 44: Section 13.04.620 in Chapter 13.04 of the Municipal Code, pertaining to the City sewer system, is amended to read as follows:

13.04.620 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 45: Section 13.06.200 in Chapter 13.06 of the Municipal Code, pertaining to storm water management and discharge control, is amended to read as follows:

13.06.200 Violation-Penalties

The violation of any of the provisions of this Chapter shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such fines, penalties and enforcement provisions are cumulative and shall be in addition to any other enforcement remedies specified in this Chapter.

SECTION 46: Section 13.06.210 in Chapter 13.06 of the Municipal Code, pertaining to storm water management and discharge control, is amended to read as follows:

13.06.210 Penalty for delinquent storm water charges.

If storm water charges are delinquent for a period of sixty (60) days, a penalty of ten (10) percent of the amount owed for delinquent storm water charges shall be imposed. If storm water charges are delinquent for a period of one hundred twenty (120) days, an additional penalty of one and one-half (1 1/2) percent per month shall be paid.

SECTION 47: Section 13.06.280 in Chapter 13.06 of the Municipal Code, pertaining to storm water management and discharge control, is amended to read as follows:

13.06.280 Administrative enforcement powers.

In addition to the other enforcement powers and remedies established by this Chapter and the administrative enforcement provisions established by Chapters 1.16 and 1.18 of this Code, any authorized enforcement official has the authority to utilize the following administrative remedies.

A. Cease and Desist Orders. When an authorized enforcement official finds that a discharge has taken place or is likely to take place in violation of this Chapter, the official may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (1) comply with the requirement; (2) comply with the time schedule for compliance, and/or (3) take appropriate remedial or preventive action to prevent the violation from recurring.

B. Notice to Clean. Whenever an authorized enforcement official finds significant oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the city storm sewer system, he or she may give notice to remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

C. A cease and desist order or a notice to clean shall constitute an administrative compliance order governed by the provisions of Chapter 1.18 of this Code, and shall be issued and enforced in the same manner as specified therein.

SECTION 48: Section 13.06.290 in Chapter 13.06 of the Municipal Code, pertaining to storm water management and discharge control, is repealed in its entirety.

SECTION 49: Section 13.12.150 in Chapter 13.12 of the Municipal Code, pertaining to the City's water system, is amended to read as follows:

13.12.150 Violation-Penalties

The violation of any of the provisions of this Chapter or any regulations adopted hereunder shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 50: Section 15.01.380 in Chapter 15.01 of the Municipal Code, pertaining to grading, is amended to read as follows:

15.01.380 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 51: A new Section 15.12.240 is added to Chapter 15.12 of the Municipal Code, pertaining to building permits and fees, to read as follows:

15.12.240 Fees set by resolution of the City Council.

The amount of fees required to be paid pursuant to the provisions of this Title and the construction codes shall be established from time to time by resolution of the City Council. Any reference in this Chapter to Section 15.12.250 shall be construed as being a reference to this Section 15.12.240.

SECTION 52: Section 15.12.290 in Chapter 15.12 of the Municipal Code, pertaining to building permits and fees, is amended to read as follows:

15.12.290 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such fines, penalties and

enforcement provisions are cumulative and shall be in addition to any other enforcement remedies specified in this Chapter.

SECTION 53: Section 15.45.250 in Chapter 15.45 of the Municipal Code, pertaining to storage of hazardous materials in underground tanks, is amended to read as follows:

15.45.250 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such fines, penalties and enforcement provisions are cumulative and shall be in addition to the civil penalties and remedies specified in this Chapter.

SECTION 54: Section 15.48.130 in Chapter 15.48 of the Municipal Code, pertaining to moving of buildings or structures, is amended to read as follows:

15.48.130 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 55: Section 15.52.110 in Chapter 15.52 of the Municipal Code, pertaining to well construction, is amended to read as follows:

15.52.110 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 56: Section 15.60.100 in Chapter 15.60 of the Municipal Code, pertaining to seismic hazards, is amended to read as follows:

15.60.100 Violation-Penalties.

The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 57: Section 15.70.140 in Chapter 15.70 of the Municipal Code, pertaining to water conservation in landscaping, is amended to read as follows:

15.70.140 Enforcement of Chapter.

A. The violation of any of the provisions of this Chapter shall constitute an infraction and a public nuisance, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. In addition to any other criminal or civil enforcement proceedings, every violation of this Chapter, or any permit or approval granted pursuant to this Chapter, determined to be a public nuisance may be abated by the City in accordance with the provisions of Chapter 8.36 of the Brisbane Municipal Code.

C. This Chapter may be enforced by the City Manager and his authorized representatives (the "Enforcement Official"). The Director of Community Development, the Director of Public Works/City Engineer, and the City Building Inspector are hereby designated as authorized representatives of the City Manager, with full power to enforce the provisions of this Chapter.

D. The Enforcement Official has the authority to conduct such inquiries, audits inspections, or surveys to ensure compliance with the requirements of this Chapter. Whenever the Enforcement Official determines that a violation of this Chapter has occurred, the Enforcement Official may serve an administrative citation pursuant to Chapter 1.16 of this Code, or an administrative compliance order pursuant to Chapter 1.18 of this Code, or both.

SECTION 58: Section 15.72.090 in Chapter 15.72 of the Municipal Code, pertaining to indoor water conservation, is amended to read as follows:

15.72.090 Enforcement of Chapter.

A. The violation of any of the provisions of this Chapter shall constitute an infraction and a public nuisance, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. In addition to any other criminal or civil enforcement proceedings, every violation of this Chapter, or any permit or approval granted pursuant to this Chapter, determined to be a public nuisance may be abated by the City in accordance with the provisions of Chapter 8.36 of the Brisbane Municipal Code.

C. This Chapter may be enforced by the City Manager and his authorized representatives (the "Enforcement Official"). The Director of Community Development, the Director of Public Works/City Engineer, and the City Building Inspector are hereby designated as authorized representatives of the City Manager, with full power to enforce the provisions of this Chapter.

D. The Enforcement Official has the authority to conduct such inquiries, audits inspections, or surveys to ensure compliance with the requirements of this Chapter. Whenever the Enforcement Official determines that a violation of this Chapter has occurred, the Enforcement Official may serve an administrative citation

pursuant to Chapter 1.16 of this Code, or an administrative compliance order pursuant to Chapter 1.18 of this Code, or both.

SECTION 59: Section 15.75.090 in Chapter 15.75 of the Municipal Code, pertaining to recycling and diversion of construction and demolition debris, is amended to read as follows:

15.75.090 Violations, penalties and enforcement.

A. Each violation of the provisions of this Chapter shall constitute a public nuisance and be subject to abatement as such in the manner provided by law.

B. The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Where the violation is the failure to achieve the diversion requirement applicable to the covered project and the construction and demolition debris from the covered project have already been delivered to the landfill, the violation shall be deemed to have ceased after a period of ten (10) days.

C. The building official shall have the authority to enforce this Chapter, including but not limited to the authority to order that work be stopped where any work is being done contrary to the provisions of this Chapter.

D. No certificate of occupancy or final inspection approval shall be issued for any covered project unless the building department has determined that the provisions of this Chapter have been complied with.

SECTION 60: Section 16.48.040 in Chapter 16.48 of the Municipal Code, pertaining to subdivisions, is amended to read as follows:

16.48.040 Violation-Penalties.

The violation of any of the provisions of this Title shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such fines, penalties and enforcement provisions are cumulative and shall be in addition to any other enforcement remedies specified in this Chapter.

SECTION 61: Section 16.48.080 in Chapter 16.48 of the Municipal Code, pertaining to subdivisions, is amended to read as follows:

16.48.080 Notice of violation.

Whenever the Community Development Director has knowledge that real property has been divided in violation of this Title, he shall have authority to record a Notice

of Code Violation pursuant to Section 1.14.140 of this Code, and for this purpose the Community Development Director shall be deemed the authorized representative of the City Manager.

SECTION 62: Section 17.58.010 in Chapter 17.58 of the Municipal Code, pertaining to enforcement of zoning regulations, is amended to read as follows:

17.58.010 Violation-Penalties.

The violation of any of the provisions of this Title shall constitute an infraction, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code. Such fines, penalties and enforcement provisions are cumulative and shall be in addition to any other enforcement remedies specified in this Title.

SECTION 63: Section 17.58.020 in Chapter 17.58 of the Municipal Code, pertaining to enforcement of zoning regulations, is amended to read as follows:

17.58.020 Declaration of public nuisance

Any building or structure erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this Title and any use of land or buildings operated or maintained contrary to the provisions of this Title, are declared to be public nuisances. The city attorney may commence the necessary proceedings for the abatement, removal and enjoining thereof in the manner prescribed by law in the courts which may have jurisdiction to grant such relief as will accomplish such abatement and restraint. The remedies provided for in this Section shall be in addition to any other remedy or remedies or penalties provided in this Title, or elsewhere in this Code, or any other law or ordinance.

SECTION 64: Section 17.58.030 in Chapter 17.58 of the Municipal Code, pertaining to enforcement of zoning regulations, is repealed.

SECTION 65: Section 18.300.010 in Chapter 18.300 of the Municipal Code, pertaining to marina regulations, is amended to read as follows:

18.300.010 Violation-Penalties

The violation of any of the provisions of this Title shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

SECTION 66: 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 67: 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 _____, 201_, by the following vote:

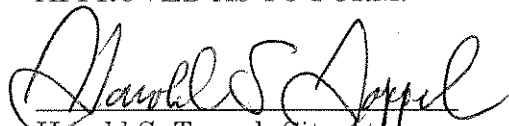
AYES:
NOES:
ABSENT:
ABSTAIN:

Cyril G. "Cy" Bologoff, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:



Harold S. Toppel, City Attorney

BRISBANE MUNICIPAL CODE PENALTIES

- M:** Means a violation is classified as a misdemeanor: maximum fine
I: Means a violation is classified as an infraction: maximum fine (1st, 2nd & 3rd offense within 12 months)
T: Means the maximum imprisonment time (in months, unless number of days is specified)
Title 1: Means the specified penalty has been deleted and a cross reference to Chapters 1.14, 1.16 and 1.18 has been substituted

Section	Subject	Existing Penalty	Proposed Change
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ORDINANCE NO. 547 - ADOPTED

1.16.010	General Penalty	M: \$500; T: 6 I: \$50 / \$100 / \$250	<p><u>Chapter 1.14</u> M: \$1,000; T: 6 I: general violations: \$100 / \$200 / \$500 I: bldg & safety regs: \$100 / \$500 / \$1,000</p> <p><u>Added:</u> <u>Section 1.14.140</u> Recorded notice of code violation <u>Chapter 1.16</u> Administrative citations <u>Chapter 1.18</u> Administrative compliance orders</p>
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ORDINANCE NO. _____

2.28.100	Emergency Organization	M: \$500; T: 6	Misdemeanor; Title 1 [§ 1]
3.20.150	Sales and Use Tax	M: \$500; T: 6	Misdemeanor; Title 1 [§ 2]
3.24.080	Transient Occupancy Tax	Penalties & interest	No change

Section	Subject	Existing Penalty	Proposed Change
3.24.140. A	Transient Occupancy Tax	M: \$1,0000; T: 6	Misdemeanor; Title 1 [§ 3]
5.24.030; 5.24.040; 5.24.050	Business License Tax	Penalties	No change
5.24.080	Business License Tax	M: \$500; T: 6	Misdemeanor; Title 1 [§ 4]
5.28.170	Auto Wrecking Business	M: \$500; T: 6	Misdemeanor; Title 1 [§ 5]
5.32.380	Bingo Games	M: \$500; T: 6 – also \$10,000 fine for receiving any pay or profit from game.	Misdemeanor; Title 1 No change to \$10,000 fine for pay or profit [§ 6]
5.44.140	Mechanical Amusement Devices	M: \$500; T: 6	Misdemeanor; Title 1 [§ 7]
5.60.130	Public Dances	M: \$50 to \$300; T: 30 days	Misdemeanor, except infraction for 5.60.090 and 5.60.100; Title 1 [§ 8]
5.66.030	Storage of Automobiles Under Repair	M: \$500; T: 6	Change to infraction; Title 1 [§ 9]
6.04.130	Animals	This section deleted and combined with 6.04.300. [§ 10]	
6.04.300	Animals	I: \$100 / \$200 / \$500	Infraction, except misdemeanor for dangerous or vicious animals (from 6.04.130); Title 1. [§ 11]
6.08.110	Exotic Animals	New Section	Misdemeanor; Title 1 [§ 12]
6.12.060	Animal Control - Spaying, Neutering & Breeding	I: \$100 / \$200 / \$500	Infraction; Title 1 [§ 13]
6.14.080	Misc. Animal Regulations	New Section	Infraction; Title 1 [§ 14]
8.04.030	Food Establishments	M: \$500; T: 6	Misdemeanor; Title 1 [§ 15]

Section	Subject	Existing Penalty	Proposed Change
8.08.050	Milk and Cream	M: \$500; T: 6	Misdemeanor; Title 1 [§ 16]
8.12.150	Sale of fireworks	Entire Chapter 8.12 repealed. Fireworks now prohibited per 15.44.090. [§ 17]	
8.16.120	Litter-Handbill Distribution	M: \$500; T: 6	Change to infraction; Title 1. [§ 18]
8.20.140	Dismantled, Junked or Wrecked Motor Vehicles	M: No fine specified. No amendment. Enforcement provisions included in Chapter.	
8.24.160	Collection and Disposal of Garbage	M: \$500; 90 days	Change to infraction; Title 1. [§19]
8.28.100	Noise Control	I and M (conflicting provisions): No fine specified	Any violation is an infraction; Title 1 [§ 20]
8.32.140	Recyclable Materials	I: No fine specified	Infraction; Title 1 [§ 21]
3.36.020. C	Abatement of Public Nuisances	I: \$100 / \$200 / \$500	Infraction; Title 1 [§ 22]
8.36.050. C	Abatement of Public Nuisances	Amend notice provisions to include recovery of attorneys fees to comply with state law. [§ 23]	
8.36.110. C	Abatement of Public Nuisances	Amend notice provisions to comply with State law. [§ 24]	
8.40.030. C	Water Waste	Citation for fines; \$100 / \$200 / \$300 / \$400 / \$500 – can be added to water bill	Infraction; Title 1 [§ 25]
8.44.080	Tobacco Retailer Permit	Administrative fine: \$100 / \$200 / \$500	No change; enforcement handled by County
8.48.030	Skateboard Parks	I: \$5 / \$10 / \$20	No change
9.12.060	Card Games	M: \$500; T: 6	Misdemeanor; Title 1 [§ 26]
9.20.050	Loitering & Unlawful Consumption of Alcoholic Beverages	M: \$500; T: 6	Misdemeanor; Title 1 [§ 27]

Section	Subject	Existing Penalty	Proposed Change
9.28.040	Malicious Mischief	M: \$25 to \$500; T: 30 days	Misdemeanor; Title 1 [§ 28]
9.34.060	Posting of Signs Warning of the Effect of Alcohol During Pregnancy	Fine: \$100 / \$200 / \$500	Change to infraction; Title 1. [§ 29]
9.36.010	Solicitations at Private Residences	Amend to delete reference to violations being a misdemeanor offense. [§ 30]	
9.36.030	Solicitations at Private Residences	Repeal section providing exemption to certain veterans. [§ 31]	
9.36.050	Solicitations at Private Residences	M: \$500; T: 6	Change to infraction; Title 1. [§ 32]
9.44.060	Curfew For Minors	M: \$500; T: 6	Misdemeanor; Title 1 [§ 33]
9.52.070	Discharge of Firearms and Other Weapons	M: \$10 to \$300; T: 30 days	Misdemeanor; Title 1 [§ 34]
9.56.070	Switchblade Knives	M: \$50 to \$500; T: 30 days to 6 months	Misdemeanor; Title 1 [§ 35]
10.08.130	Vehicles and Traffic	Repeal section. Declares <i>any</i> violation of title to be a misdemeanor; conflicts with violations classified as infractions. [§ 36]	
10.08.140	Vehicles and Traffic	M: applies to entire title; \$500; T: 3	Unless specifically designated as misdemeanor, any violation of title is infraction; Title 1 [§ 37]
10.24.240. C	Parking commercial vehicles in residential districts	I: \$25 / \$50 / \$100	Repeal. Penalties now covered in 10.08.140. [§ 38]
12.04.200	Streets – General Construction and Repair	M: \$500; T: 6	Misdemeanor; Title 1 [§ 39]
12.12.080	Tree Regulations	I: No fine specified; value of removed tree, must plant replacement tree(s)	Infraction; Title 1; plus replacement tree(s) and fine equal to value of tree. [§ 40]

Section	Subject	Existing Penalty	Proposed Change
12.28.040	Recreational Activities on Certain Streets (e.g. skateboards, ball playing)	I: \$50	Infraction; Title 1 but fines set at \$50 / \$75 / \$100. [§41]
12.32.030	Occupancy of Airspace Above or Below Rights of Way	M: \$500; T: 6	Misdemeanor; Title 1 [§ 42]
13.04.580	Sewer System – Causing damage	Amended to delete reference to misdemeanor and penalty (covered in 13.04.620). [§ 43]	
13.04.620	Sewer System – Failure to correct violation	M: \$300; T: 3	Misdemeanor; Title 1 [§ 44]
13.06.200;	Storm Water Management	I: No fine specified; can increase to M	Infraction; Title 1 [§ 45]
13.06.210	Storm Water Management	Reference to penalties deleted (already covered in 13.16.200). [§46]	
13.06.280	Storm Water Management	Amend to include reference to administrative enforcement provisions in Title 1. [§47]	
13.06.290	Storm Water Management	Delete – enforcement and arrest provisions already included in Chapter 1.14. [§ 48]	
13.12.150	Water System	I: \$50 / \$100 / \$250	Infraction; Title 1 [§ 49]
15.01.380	Grading	M: \$1,000; T: 12	Misdemeanor; Title 1 [§ 50]
15.08.280	Building Regulations	M: \$1,000; T: 6	Misdemeanor; Title 1 [Adopted – Ord. 551]
15.12.150	Permits and Fees	Penalty Fee: 10 times permit fee	No change
15.12.240	Permits and Fees	New Section. Provide for all fees to be established by resolution of City Council. [§ 51]	
15.12.290	Permits and Fees	Specify that any violation of Chapter is misdemeanor and add reference to Title 1. [§ 52]	
15.44.180	Fire Code	M: \$1,000; T: 6	Misdemeanor; Title 1 [Adopted – Ord. 552]

Section	Subject	Existing Penalty	Proposed Change
15.45.250	Storage of Hazardous Materials in Underground Tanks	Civil penalties: \$500 per day per 15.45.230	Add: Violation is misdemeanor; Title 1 [§ 53]
15.48.130	Moving of Buildings or Structures	M: \$500; T: 90 days	Misdemeanor; Title 1 [§ 54]
15.52.110	Well Construction	M: \$500; T: 6	Misdemeanor; Title 1 [§ 55]
15.60.100	Seismic Hazard Identification	M: No penalty specified	Misdemeanor; Title 1 [§ 56]
15.70.140	Water Conservation in Landscaping	I: \$100 / \$200 / \$500	Infraction; Title 1 [§ 57]
15.72.090	Indoor Water Conservation	I: \$100 / \$200 / \$500	Infraction; Title 1 [§ 58]
15.75.090	Recycling and Diversion of Debris From Construction and Demolition	M: \$1,000; T: 6	Misdemeanor; Title 1 [§ 59]
16.48.040	Subdivision Ordinance	M: \$500; T: 6	Misdemeanor; Title 1 [§ 60]
16.48.080	Subdivision Ordinance	Amend to cross-reference recorded notice of code violation pursuant to §1.14.140. [§ 61]	
17.58.010	Zoning Ordinance	M: \$1,000; T: 6 – but certain violations classified as infractions.	All violations classified as infractions; Title 1 [§ 62]
17.58.020	Zoning Ordinance	Declaration of nuisance	Amended. [§ 63]
17.58.030	Zoning Ordinance	Penalties	Repealed (replaced by 17.58.010) [§ 64]
18.300.010	Marina Regulations	M: \$500; T: 12	Misdemeanor; Title 1 [§ 65]