

City of Brisbane
Agenda Report

TO: Mayor and City Council
FROM: Hal Toppel, City Attorney
SUBJECT: Technical Amendments to BMC Title 1
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 make several technical amendments to Title 1 of the Brisbane Municipal Code.

Recommendation:

Introduce Ordinance 555

Background and Discussion:

The City Council recently adopted Ordinance No. 547 to completely amend the code enforcement provisions contained in Title 1 of the Municipal Code. Staff is now engaged in the follow-up work to implement these provisions. Further review of the new legislation has suggested the need for several technical amendments. A redline version of the ordinance is included in the packet showing the manner in which the existing provisions will be amended. The proposed ordinance will accomplish the following changes:

Section 1: Authority to enforce Code.

This Section will amend BMC Section 1.14.010 to add the Fire Chief and the Director of Parks and Recreation as persons who are authorized to enforce the Code. The

Fire Chief was initially excluded because the Chief is given his own enforcement authority under the Fire Code, but upon discussion of this section with the Fire Marshal, we agreed that there are other provisions of the Muni Code that are enforced by the Fire Department, such as weed abatement. The Director of Parks and Recreation was added to make it clear that he can use the new administrative code enforcement procedures to enforce the park regulations. Also, that department head has other responsibilities beyond parks.

Section 2: Recorded Notice of Code Violation.

The adopted provisions dealing with recorded notices of code violation, as set forth in Section 1.14.140, only allowed a Notice of Intention to record such notice to be signed by the City Manager. Since all department heads have authority to sign Administrative Citations, it was felt that greater flexibility can be achieved if the same persons are given authority to sign a notice of intent to record a notice of violation. The recipient of the notice has the same right to request a hearing before anything is recorded.

Section 3: Application for advance deposit hardship waiver.

A person who has been cited for a code violation and required to pay a fine may appeal the citation and request that the violation be considered by a hearing officer. The notice of appeal must be accompanied by an advance deposit of the fine. However, the advance deposit can be waived upon a showing of financial hardship by the cited person. As now adopted, Subsection 1.16.080.B requires the City to consider the income, expenses and assets of the cited person to establish financial inability to pay the deposit. The City has never been anxious to look at private financial data of this kind and would prefer to rely upon an evaluation of financial circumstances made by an impartial third party. The proposed amendment would allow the City to grant the waiver if the cited person shows that he or she has qualified, or would be qualified, for participation in a public or private program available only to persons of low or very low income, such as (by way of example only) subsidized housing, food stamps, SSI, Med-Cal or California LifeLine.

Fiscal Impact:

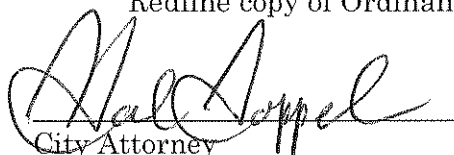
None

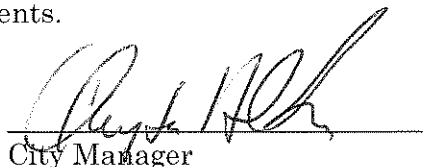
Measure of Success:

Increased flexibility of the new enforcement tools and ease of use.

Attachments:

Proposed Ordinance No. 555.
Redline copy of Ordinance 555 showing amendments.


City Attorney


City Manager

ORDINANCE NO. 555

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING
VARIOUS PROVISIONS IN TITLE 1 OF THE MUNICIPAL CODE
PERTAINING TO CODE ENFORCEMENT**

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

SECTION 1: Section 1.14.010 in Chapter 1.14 of the Municipal Code is amended to read as follows:

§1.14.010 Authority to enforce Code

In the absence of a specific delegation, assignment, or restriction of enforcement authority to a particular officer, employee, or agent of the City, the City Manager, City Attorney, Chief of Police, Director of Administrative Services, Director of Public Works/City Engineer, Director of Community Development, Fire Chief, Harbor Master, Director of Parks and Recreation, Animal Control Officer, Building Official, and any Code Enforcement or Community Service Officer, and their respective authorized representatives, shall have the authority to enforce the provisions of this Code, or any other ordinance of the City, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, or any condition of an approval, permit or license granted pursuant to this Code.

SECTION 2: Section 1.14.140 in Chapter 1.14 of the Municipal Code is amended to read as follows:

§1.14.140 Recorded notice of Code violation

A. As used in this Section, the term "Enforcement Officer" means any of the persons listed in Section 1.14.010 of this Chapter, and the term "Hearing Officer" means any person designated by the City Manager to conduct a hearing pursuant to this Section, who shall not be the Enforcement Officer or a supervisor of the Enforcement Officer.

B. Whenever an Enforcement Officer has knowledge of a violation of any provision of this Code, or any other ordinance of the City, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, or any condition of any approval, permit or license granted pursuant to this Code, and such violation is located upon any real property in the City, the Enforcement Officer may notify the owner of such property of the Enforcement Officer's intent to record a notice of violation in the office of the

County Recorder. Such notice of intent shall be mailed to the owner at the address shown on the latest available assessment roll, or as otherwise known to the Enforcement Officer, and a copy thereof shall be posted upon the property. The notice of intent shall describe the nature of the violation and inform the owner that a notice of violation will be recorded unless a hearing before a Hearing Officer is requested by the owner within 20 days from the date of the notice.

C. In the event a hearing is not requested and the violation has not been corrected, or in the event that after the conduct of a hearing before the Hearing Officer, and consideration of all evidence presented thereat by the owner, the Hearing Officer determines that a violation of one or more of the aforementioned codes, ordinances, rules, regulations, orders or conditions in fact exists, the Enforcement Officer may record a Notice of Code Violation in the office of the County Recorder. The determination by the Hearing Officer shall be final, subject only to judicial review as allowed by law.

D. At the request of the affected property owner or other interested person and upon determination by the Enforcement Officer that a violation has been fully corrected and no longer exists, the Enforcement Officer shall furnish to the owner or other interested person a notice of cancellation of the previously recorded Notice of Code Violation.

E. The recording of a notice of violation pursuant to this Section shall be in addition to any other rights, remedies or actions available to the City by reason of the same violation as described in the notice.

SECTION 3: Subsection 1.16.080.B in Chapter 1.16 of the Municipal Code is amended to read as follows:

B. The City Manager or designee may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited person submits to the City a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City Manager or designee the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing. Financial inability can be established by showing that the applicant has qualified, or would be qualified, for participation in a public or private assistance program available only to persons having low or very low income, such as subsidized housing, food stamps, SSI, Medi-Cal, or California LifeLine.

SECTION 4: 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 5: 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

ORDINANCE NO. 555

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING
VARIOUS PROVISIONS IN TITLE 1 OF THE MUNICIPAL CODE
PERTAINING TO CODE ENFORCEMENT**

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

SECTION 1: Section 1.14.010 in Chapter 1.14 of the Municipal Code is amended to read as follows:

§1.14.010 Authority to enforce Code

In the absence of a specific delegation, assignment, or restriction of enforcement authority to a particular officer, employee, or agent of the City, the City Manager, City Attorney, Chief of Police, Director of Administrative Services, Director of Public Works/City Engineer, Director of Community Development, Fire Chief, Harbor Master, Director of Parks and Recreation, Animal Control Officer, Building Official, and any Code Enforcement or Community Service Officer, and their respective authorized representatives, shall have the authority to enforce the provisions of this Code, or any other ordinance of the City, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, or any condition of an approval, permit or license granted pursuant to this Code.

SECTION 2: Section 1.14.140 in Chapter 1.14 of the Municipal Code is amended to read as follows:

§1.14.140 Recorded notice of Code violation

A. As used in this Section, the term "Enforcement Officer" means any of the persons listed in Section 1.14.010 of this Chapter, and the term "Hearing Officer" means any person designated by the City Manager to conduct a hearing pursuant to this Section, who shall not be the Enforcement Officer or a supervisor of the Enforcement Officer.

AB. ~~Whenever the City Manager~~ an Enforcement Officer has knowledge of a violation of any provision of this Code, or any other ordinance of the City, or any rule, regulation or order promulgated or issued pursuant to this Code, or the provisions of any code adopted by reference by this Code, or any condition of any approval, permit or license granted pursuant to this Code, and such violation is located upon any real property in the City, ~~the City Manager~~ Enforcement Officer may notify the owner of such property of the ~~City Manager's~~ Enforcement Officer's

intent to record a notice of violation in the office of the County Recorder. Such notice of intent shall be mailed to the owner at the address shown on the latest available assessment roll, or as otherwise known to the ~~City Manager Enforcement Officer~~, and a copy thereof shall be posted upon the property. The notice of intent shall describe the nature of the violation and inform the owner that a notice of violation will be recorded unless a hearing before a ~~hHearing eOfficer~~ (as defined in Section ~~1.16.020.C~~ of this Code) is requested by the owner within 20 days from the date of the notice.

~~BC.~~ In the event a hearing is not requested and the violation has not been corrected, or in the event that after the conduct of a hearing before the ~~hHearing eOfficer~~, and consideration of all evidence presented thereat by the owner, the ~~hHearing eOfficer~~ determines that a violation of one or more of the aforementioned codes, ordinances, rules, regulations, orders or conditions in fact exists, the ~~City Manager Enforcement Officer~~ may record a Notice of Code Violation in the office of the County Recorder. The determination by the ~~hHearing eOfficer~~ shall be final, subject only to judicial review as allowed by law.

~~CD.~~ At the request of the affected property owner or other interested person and upon determination by the ~~City Manager Enforcement Officer~~ that a violation has been fully corrected and no longer exists, the ~~City Manager Enforcement Officer~~ shall furnish to the owner or other interested person a notice of cancellation of the previously recorded Notice of Code Violation.

~~DE.~~ The recording of a notice of violation pursuant to this Section shall be in addition to any other rights, remedies or actions available to the City by reason of the same violation as described in the notice.

SECTION 3: Subsection 1.16.080.B in Chapter 1.16 of the Municipal Code is amended to read as follows:

B. The City Manager or designee may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited person submits to the City a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City Manager or designee the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing. Financial inability can be established by showing that the applicant has qualified, or would be qualified, for participation in a public or private assistance program available only to persons having low or very low income, such as subsidized housing, food stamps, SSI, Medi-Cal, or California LifeLine. ~~In determining the cited person's financial ability or inability to deposit the full amount of the fine in advance, the City Manager or designee shall consider the amount of the fine imposed, the income and assets of the cited person, the expenses of the cited person, and any other factors that are reasonably related to the cited person's ability to deposit the full amount.~~

SECTION 4: 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 5: 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