

# *City of Brisbane*

## *Agenda Report*

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney

SUBJECT: Revisions to Title 1 of the Municipal Code  
Adoption of Schedule of Administrative Penalties.

DATE: For Council Meeting on October 4, 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 and update various chapters in Title 1 of the Municipal Code and provide additional remedies for enforcement of violations.

The proposed resolution will establish a schedule of administrative penalties that may be imposed by the hearing officer as part of a compliance order when the responsible person fails to correct the violation within the prescribed time.

### **Recommendations:**

Adopt Ordinance No. 547  
Adopt Resolution No. 2010-40

### **Background and Discussion:**

Ordinance No. 547 was introduced at the regular Council meeting on September 13, 2010. No modifications to the original version are being suggested and staff recommends adoption of Ordinance No. 547 in the form as originally presented to the City Council.

Chapter 1.18, which is being added to the Municipal Code by Ordinance No. 547, establishes a procedure for the issuance of administrative compliance orders by a hearing officer. Under Section 1.18.090.A, such order may include the imposition of administrative

penalties if the responsible person fails to correct the violation within the time prescribed in the compliance order. The ordinance provides for maximum per diem penalties to be established from time to time by resolution of the City Council. Under state law, the administrative penalties for violations that would constitute an infraction may not exceed the amounts set forth in the Government Code as the maximum fines for infraction offenses.

The proposed Resolution will adopt a schedule of penalties having the same amounts as the fines imposed for misdemeanor and infraction offenses. These amounts are maximums and the hearing office may impose a lesser penalty or suspend the penalty, depending upon the circumstances set forth in Sections C and D of the resolution (which are taken directly from Section 1.18.090 of the ordinance. The Schedule of Penalties will become effective on the same effective date as Ordinance 547.

**Fiscal Impact:**

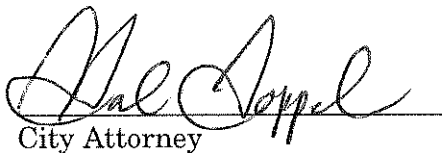
There should be some increased recovery of the costs of code enforcement as a result of the adoption of maximum fines now allowed by State law for both misdemeanor and infraction offenses and the ability to recover administrative costs and penalties related to citations and compliance orders.

**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. 547  
Resolution No. 2010-40

  
City Attorney

  
City Manager

**ORDINANCE NO. 547**

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING TITLE 1 OF THE BRISBANE MUNICIPAL CODE BY ADDING A NEW CHAPTER 1.02, AMENDING CHAPTER 1.04, REPEALING CHAPTER 1.08, AMENDING CHAPTER 1.14, AMENDING CHAPTER 1.16, AND ADDING A NEW CHAPTER 1.18**

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

**SECTION 1:** A new Chapter 1.02, entitled "Definitions," is added to Title 1 of the Brisbane Municipal Code, to read as follows:

**Chapter 1.02  
DEFINITIONS**

**Sections:**

1.02.005	Application of definitions
1.02.010	Business day
1.02.020	Chapter
1.02.030	City
1.02.040	City Council
1.02.050	Code
1.02.060	County
1.02.070	Day
1.02.080	Government Code
1.02.090	Holiday
1.02.100	Month
1.02.110	Oath
1.02.120	Occupant
1.02.130	Owner
1.02.140	Penal Code
1.02.150	Person
1.02.160	Personal property
1.02.170	Preceding, following
1.02.180	Property
1.02.190	Real property
1.02.200	Section
1.02.210	Shall, may
1.02.220	State
1.02.230	Tenant
1.02.240	Week
1.02.250	Writing
1.02.260	Year

**§1.02.005 Application of definitions**

The definitions set forth in this Chapter shall be applied throughout this Code, unless the context or the provision clearly requires otherwise.

**§1.02.010 Business day**

"Business day" means any day other than a holiday or day that the City offices are closed for the entire day for any reason.

**§1.02.020 Chapter**

"Chapter" means a chapter of this Code unless some other statute is expressly mentioned.

**§1.02.030 City**

"City" means the City of Brisbane and includes all territory over which the City now has, or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

**§1.02.040 City Council**

"City Council" means the City Council of the City of Brisbane.

**§1.02.050 Code**

"Code" or "this Code" means the Brisbane Municipal Code.

**§1.02.060 County**

"County" means the County of San Mateo, California.

**§1.02.070 Day**

"Day" means a calendar day consisting of the period of time between midnight and the midnight following.

**§1.02.080 Government Code**

"Government Code" means the Government Code of the State of California.

**§1.02.090 Holiday**

"Holiday" means every Saturday, Sunday, and such other days on which the City offices are closed in observance thereof.

**§1.02.100 Month**

"Month" means a calendar month unless otherwise expressed.

**§1.02.110 Oath**

"Oath" includes an affirmation.

**§1.02.120 Occupant**

"Occupant" as applied to a building or land, means any person in actual or constructive possession of the whole or a part of such building or land, either alone or with others.

**§1.02.130 Owner**

"Owner" means a person holding any ownership interest in property, and includes a part owner, joint owner, holder of a community property interest, tenant in common, or tenant in partnership, of such property or any portion thereof.

**§1.02.140 Penal Code**

"Penal Code" means the Penal Code of the State of California.

**§1.02.150 Person**

"Person" includes any natural person, firm, association, organization, partnership, joint venture, trust, corporation or company.

**§1.02.160 Personal property**

"Personal property" includes every species of property, except real property as defined in this Chapter.

**§1.02.170 Preceding, following**

"Preceding" means next before and "following" means next after.

**§1.02.180 Property**

"Property" includes every species of real and personal property.

**§1.02.190 Real property**

"Real property" includes lands, tenements and hereditaments

**§1.02.200 Section**

"Section" means a section of this Code, unless some other statute is expressly mentioned.

**§1.02.210 Shall, may**

"Shall" is mandatory and "may" is permissive or discretionary.

**§1.02.220 State**

"State" or "this State" means the State of California.

**§1.02.230 Tenant**

"Tenant" as applied to a building or land, means any occupant of such building or land, or any portion thereof, pursuant to a written or verbal lease, or a lease implied by law.

**§1.02.240 Week**

"Week" means seven consecutive days.

**§1.02.250 Writing**

"Writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code, it shall be made in writing in the English language, unless it is expressly provided otherwise.

**§1.02.260 Year**

"Year" means a calendar year, except where expressly provided otherwise.

**SECTION 2:** Chapter 1.04 in Title 1 of the Brisbane Municipal Code is renamed to "Rules of Construction" and amended in its entirety to read as follows:

**Chapter 1.04**  
**RULES OF CONSTRUCTION**

**Sections:**

- 1.04.005 Application of rules of construction
- 1.04.010 Headings in Code; effect
- 1.04.020 Code references; inclusion of amendments
- 1.04.030 Official time; computation of time
- 1.04.040 Title of office
- 1.04.050 Grammatical interpretation
- 1.04.060 Exercise of powers and duties by authorized representatives
- 1.04.070 Repeal shall not revive any ordinances
- 1.04.080 Service of notices

**§1.04.005 Application of rules of construction**

The general rules of construction set forth in this Chapter shall be applied throughout this Code, unless the context or the provision clearly requires otherwise.

**§1.04.010 Headings in Code; effect**

Title, chapter, and section headings are not part of and do not in any manner affect the scope, meaning, or intent of the provisions of this Code.

**§1.04.020 Code references; inclusion of amendments**

Whenever reference is made to any portion of this Code or any State law, the reference applies to all amendments and additions thereto now or hereafter made.

**§1.04.030 Official time; computation of time**

A. Whenever certain hours are designated in this Code, they shall mean Pacific Standard Time or Pacific Daylight Savings Time, as may be in current use in the City.

B. The time in which any act provided by this Code is to be done is computed by excluding the first day and including the last day.

C. Whenever any act is required by this Code to be performed on a particular day which day falls upon a holiday, or within a specified period of time which ends on a holiday, the act may be performed on the next business day with the same effect as if it had been performed upon the day appointed.

**§1.04.040 Title of office**

Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the City.

**§1.04.050 Exercise of powers and duties by authorized representatives**

Whenever a power is granted to, or a duty is imposed upon, an officer or employee of the City, the power may be exercised or the duty may be performed by a deputy or duly authorized representative of such officer or employee, unless this Code expressly provides otherwise.

**§1.04.060 Grammatical interpretation**

A. **Gender.** Each gender includes the masculine, feminine and neuter genders.

B. **Number.** The singular number includes the plural and the plural includes the singular.

C. **Tense.** Words used in the present tense include the past and future tenses, and words used in the future tense include the past and present tenses.

**§1.04.070 Repeal shall not revive any ordinances**

The repeal of an ordinance shall not repeal any repealing clause that may be contained in such ordinance, or revive any ordinance that may have been repealed by such ordinance.

**§1.04.080 Service of notices**

Whenever a notice is required to be given under this Code and the manner of giving such notice is not otherwise specified, the notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail in a sealed envelope, postage prepaid for regular first class mail, addressed to the person to be notified at such person's last known business or residence address as the same appears in the records of the City or other records available to the City. Service by mail shall be deemed to have been made on the third business day after deposit of the notice in the United States Mail in the manner provided herein.

**SECTION 3:** Chapter 1.08 in Title 1 of the Brisbane Municipal Code, entitled "Arrest Procedure" is repealed in its entirety.



**SECTION 4:** A new Chapter 1.14 is added to Title 1 of the Brisbane Municipal Code, entitled "Code Enforcement," to read as follows:

**Chapter 1.14**  
**CODE ENFORCEMENT**

**Sections:**

1.14.010	Authority to enforce Code
1.14.020	Violations as misdemeanors or infractions; public nuisances
1.14.030	Penalties for Violations
1.14.040	Prohibited acts
1.14.050	Authority to arrest
1.14.060	Notice to appear
1.14.070	Failure to appear
1.14.080	Determination of punishment
1.14.090	Place of confinement
1.14.100	Payment of costs of abatement as condition for probation
1.14.110	Permits, certificates and licenses
1.14.120	Existing violation as basis determination of incompleteness
1.14.130	Fees, charges, licenses and taxes made a civil debt
1.14.140	Recorded notice of violation

**§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, Harbor Master, 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.

**§1.14.020 Violations as misdemeanors or infractions; public nuisances**

A. **General violation.** It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements 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. Any person violating any of such provisions or failing to comply with any of such requirements shall be guilty of a misdemeanor or an infraction, if so specified.

B. **Separate offense.** Each person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued, or permitted by such person, and shall be punishable accordingly.

C. **Reduction of misdemeanor to infraction.** Notwithstanding any other provision of this Code, any violation constituting a misdemeanor may, in the discretion of the enforcing authority, be charged and prosecuted as an infraction. A violation shall be deemed an infraction if a citation is issued specifying that the violation is an infraction, or the City Attorney files a complaint in the superior court specifying that the offense is an infraction, or the City Attorney makes a motion to reduce a misdemeanor charge to an infraction prior to trial on the matter.

D. **Enhancement of infraction to misdemeanor.** Notwithstanding any other provision of this Code, any offense which would otherwise be an infraction may, in the discretion of the enforcing authority, be charged and prosecuted as a misdemeanor if the defendant has been convicted of three or more violations of this Code within twelve (12) consecutive months immediately preceding the commission of the offense, or four or more violations of this Code within twenty-four (24) consecutive months immediately preceding the commission of the offense. For the purposes of this section, a bail forfeiture shall be deemed to be a conviction for the offense charged.

E. **Public nuisance.** In addition to the penalties provided by this Chapter, any condition caused or permitted to exist in violation of any of 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 in violation of any condition of an approval, permit or license granted pursuant to this Code, shall be deemed a public nuisance and may be abated by the City pursuant to Chapter 8.36 of this Code or otherwise as permitted by State law. Each day such condition continues shall be regarded as a new and separate offense.

#### **§1.14.030 Penalties for Violations**

A. **Misdemeanor offenses.** Whenever a violation 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, is declared to be unlawful and a misdemeanor, where no specific penalty is provided therefore, such violation shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

B. **Infraction offenses - general violations.** Whenever a violation 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, is declared to be unlawful and an infraction, where no specific penalty is provided therefore, such violation shall be punished by:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first conviction;
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second conviction of the same provision or ordinance within twelve (12) consecutive months;
- (3) A fine not exceeding five hundred dollars (\$500.00) for each additional conviction of the same provision or ordinance within twelve (12) consecutive months.

**C. Infraction offenses - building and safety regulations.** Any person convicted of an infraction offense for violation of any provision contained in Chapter 15.01 (grading), Chapter 15.04 (uniform codes), Chapter 15.08 (unsafe buildings), Chapter 15.44 (fire code), Chapter 15.48 (moving of buildings), Chapter 15.52 (well construction), or Chapter 15.75 (recycling of materials), shall be punished by:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first conviction;
- (2) A fine not exceeding five hundred dollars (\$500.00) for a second conviction of the same provision or ordinance within twelve (12) consecutive months;
- (3) A fine not exceeding one thousand dollars (\$1,000.00) for each additional conviction of the same provision or ordinance within twelve (12) consecutive months.

**D. Changes to Government Code.** If the maximum fines for infraction offenses allowed to be charged by California Government Code Section 36900(b) should increase or decrease, then the revised amounts allowed or permitted by law shall automatically be applied to this Section, as of the effective date of the change in State law.

#### **§1.14.040 Prohibited acts**

Whenever in this Code any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering or concealing such act or omission.

#### **§1.14.050 Authority to arrest**

Every officer and employee of the City having any duty to enforce any of 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, is hereby authorized, pursuant to Section 836.5 of the Penal Code, to arrest a person without a warrant whenever any such officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor or infraction in the presence of such officer or employee which is a violation of a 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, which such officer or employee has the duty to enforce.

**§1.14.060 Notice to appear**

If any person is arrested for 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, and such person is not immediately taken before a magistrate as prescribed by the Penal Code, the arresting officer or employee shall prepare in duplicate a written notice to appear in court, containing the name and address of such person arrested, and the offense charged. If the violation is designated as a misdemeanor, the notice shall also specify the time and place where the arrested person shall appear in court, which shall be a date at least ten (10) days after the date of arrest. After issuance of the written notice to appear, the arresting officer shall comply with, and the release or nonrelease of the person arrested shall be governed by, the provisions of Sections 853.5 through 853.8 of the Penal Code, and such provisions are incorporated herein by reference.

**§1.14.070 Failure to appear**

Any person willfully violating his written promise to appear in court issued pursuant to the preceding section, is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

**§1.14.080 Determination of punishment**

Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case shall be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code.

**§1.14.090 Place of confinement**

Every person found guilty of violating any of the provisions of this Code and sentenced to imprisonment shall be imprisoned in the County jail.

**§1.14.100 Payment of costs of abatement as condition for probation**

Upon any guilty plea or judgment of conviction in any criminal proceeding brought for the 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, wherein the City has or will incur costs and expenses in removing or abating a nuisance caused, committed or maintained by the defendant as a result of such violation for which the defendant is prosecuted, if the defendant is otherwise entitled by law to probation, then the court may require the payment to the City of such costs and expenses as one of the conditions of such probation.

**§1.14.110 Permits, certificates and licenses**

All officials, departments, and employees of the City vested with the authority or duty to issue permits, certificates, or licenses shall conform to the provisions of this Code and shall issue no permit, certificate, or license which conflicts with the provisions of this Code. Any permit, certificate or license issued in conflict with the provisions of this Code shall be null and void; *provided, however*, where only a portion of a permit, certificate or license is in conflict, such portion shall be invalidated and the other portions of the permit, certificate or license shall remain in full force and effect.

**§1.14.120 Existing violation as basis determination of incompleteness**

Where an application is submitted for any form of permit, approval, license, or other entitlement relating to real property on which the City has found to exist any violation 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, and the City has issued a notice or demand to correct such violation or has initiated any enforcement action based upon such violation, the City may refuse to accept and process the new application on the ground that the application will be deemed to be incomplete until such time as the outstanding violation has been corrected, or corrective action has been commenced, to the satisfaction of the enforcement officer.

**§1.14.130 Fees, charges, licenses and taxes made a civil debt**

The amount of any fee, service charge, utility charge, license, or tax of any nature whatsoever imposed by 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 an approval, permit or license granted pursuant to this Code, shall be deemed a civil debt owing to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the collection of the amount of any such delinquent or unpaid fee, service charge, utility charge, license, or tax, together

with any penalties applicable thereto. The remedy prescribed by this Section shall be cumulative and the use of a civil action to collect such amount as a debt shall not bar the use of any other remedy available to the City for the collection thereof.

**§1.14.140 Recorded notice of Code violation**

A. Whenever the City Manager 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 may notify the owner of such property of the City Manager'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, 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 (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.

B. 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 City Manager 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.

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

D. 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 5:** Chapter 1.16 in Title 1 of the Brisbane Municipal Code is renamed to "Administrative Citations " and amended in its entirety to read as follows:

**Chapter 1.16**  
**ADMINISTRATIVE CITATIONS**

**Sections:**

1.16.010	Applicability of Chapter
1.16.020	Definitions
1.16.030	Administrative citation
1.16.040	Service of administrative citations
1.16.050	Time period to correct or remedy violations
1.16.060	Amount of administrative citation fines
1.16.070	Appeal of an administrative citation
1.16.080	Advance deposit hardship waiver
1.16.090	Failure to timely appeal administrative citation
1.16.100	Hearing on administrative citation before hearing officer
1.16.110	Hearing officer's decision on administrative citation
1.16.120	Right to judicial review
1.16.130	Payment of administrative fine and costs
1.16.140	Lien procedure

**§1.16.010 Applicability of Chapter**

A. This Chapter provides for administrative citations and fines which are in addition to all other civil legal remedies and which are an alternative to criminal legal remedies that may be pursued by the City to address any violation 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.

B. Use of the remedies and procedures of this Chapter shall be at the sole discretion of the enforcement officers. The availability of the remedies and procedures of this Chapter are not exclusive and shall not limit or preclude the use of criminal or other civil code enforcement proceedings, including issuance of an administrative compliance order pursuant to Chapter 1.18 of this Code and commencement of judicial injunctive or abatement proceedings.

**§1.16.020 Definitions**

For the purposes of this Chapter, the following definitions shall apply:

A. "Applicable law" means 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, or any combination of the foregoing.

B. "Enforcement officer" means any City employee or employee of a contracting agency, including the County, or any agent of the City, having the authority to enforce any applicable law.

C. "Hearing officer" means any person designated by the City Manager to hear an appeal of an administrative citation. The hearing officer shall not be any enforcement officer or direct supervisor of an enforcement officer and may be a non-employee of the City. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the hearing officer.

D. "Responsible person" means any person who is in immediate control of the premises or activity which constitutes a violation of an applicable law, the business owner, the property owner, and any person engaging in prohibited conduct.

**§1.16.030 Administrative citation**

A. Whenever an enforcement officer determines that a violation of any applicable law has occurred, the enforcement officer shall have authority to issue an administrative citation to any responsible person.

B. Each administrative citation shall contain the following information:

- (1) The name(s) and address(es) of the responsible person(s).
- (2) The date(s) of the violation.
- (3) The address or a definitive description of the location where the violation occurred.
- (4) The section or provision of the applicable law which has been violated and a description of the violation.
- (5) A prohibition of the continuation or repeated occurrence of the violation described in the administrative citation.
- (6) A description of the potential consequences should the violator continue or repeat the violation.
- (7) Either:
  - (a) The amount of the administrative fine charged and to be paid by the responsible person as a result of the violation; or
  - (b) In the case of certain continuing violations described in Section 1.16.050 of this Chapter, the amount of the administrative fine that will become payable if the violation is not corrected or remedied within the prescribed time.



- (8) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid and the process by which the City may collect any unpaid amounts owed.
- (9) A description of the administrative citation review process, including the time within which the administrative citation may be contested and how to obtain a form to contest the administrative citation.
- (10) The name and signature of the citing enforcement officer.

C. An administrative citation may be in letter form or any other form which adequately conveys the information set forth above.

#### **§1.16.040 Service of administrative citations**

A. An administrative citation may be served in one of the following ways, as may be applicable:

- (1) By personal delivery to the responsible person; or
- (2) By causing a copy of the citation to be sent by certified mail, postage prepaid, return receipt requested, addressed to a location reasonably calculated to give notice to the responsible person, as determined by the enforcement officer. If the violation involves any real property, the notice may be sent to the address of the owner as it appears in the most recently adopted assessment roll of the County.
- (3) If any citation sent by certified mail is not delivered by reason the U.S. Postal Service being unable to obtain a signed receipt and the failure of the addressee to thereafter claim the mail from the post office, the citation may then be sent to the responsible person by regular mail.
- (4) Where personal delivery or service by mail upon a property owner cannot be made despite a diligent effort, the citation may be served by posting a copy thereof at a conspicuous location on any real property that is the subject of the citation.

B. Service of a citation which is personally served is completed at the time of such personal service. Service of a citation which is served by certified mail shall be deemed completed on the date the receipt is signed. Service of a citation which is served by regular mail which is not returned by the U. S. Postal Service shall be deemed completed on the third business day after deposit of the citation in the U.S. Mail. Service of a citation which is served by posting is completed at the time of posting.

C. The failure of any person to receive a copy of an administrative citation shall not affect the validity of any proceedings or actions taken under this Chapter. A copy of the return receipt or affidavit of mailing, or a copy of the posted citation along with an affidavit of posting, shall be retained by the enforcement officer.

**§1.16.050 Time period to correct or remedy certain continuing violations**

A. Where the violation of an applicable law is a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, the responsible person shall be provided a reasonable amount of time, but not less than ten (10) days in which to correct or otherwise remedy the violation.

B. The enforcement officer may extend the time in which to correct or otherwise remedy a violation upon a showing that the responsible person requires additional time to complete the corrective work or upon a showing that the responsible person is awaiting issuance of a permit that is required for performance of the corrective work, provided the responsible person offers proof that action has been commenced to correct or otherwise remedy the violation or that a proper application for such permit has been made.

C. If the violation is not corrected or remedied within the time required by the enforcement officer, the fine specified in the administrative citation shall become immediately due and payable.

**§1.16.060 Amount of administrative citation fines**

A. **Amount of fine.** Any party to whom an administrative citation has been issued shall be responsible for payment of a fine for violating the applicable law specified in the citation, determined as follows:

- (1) One hundred dollars (\$100.00) for a first citation;
- (2) Two hundred dollars (\$200.00) for a second citation for the same violation within twelve (12) consecutive months;
- (3) Five hundred dollars (\$500.00) for each additional citation for the same violation within twelve (12) consecutive months.

B. **Changes to Government Code.** If the maximum fines for infraction offenses allowed to be charged by California Government Code Section 53069.4 should increase or decrease, then the revised amounts allowed or permitted by law shall automatically be applied to this Section, as of the effective date of the change in State law.

**§1.16.070 Appeal of an administrative citation**

A. Any recipient of an administrative citation who desires to contest that a violation has occurred or that the recipient is the party responsible for committing the violation may, within ten (10) days from the date that service of the administrative citation was completed, file a written notice of appeal with the City Clerk for the matter to be heard by a hearing officer. Any appeal not timely filed shall be rejected.

B. The notice of appeal shall contain the following information:

- (1) Name, mailing address, and telephone number of each appellant.
- (2) A copy of the administrative citation or the reference number of the administrative citation.
- (3) A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant.
- (4) A brief statement in ordinary and concise language of the relief sought and the reasons why the administrative citation should be rescinded, modified or otherwise set aside.
- (5) The signature of each appellant.

C. The notice of appeal shall be accompanied by either an advance deposit of the total fine amount or a completed application for advance deposit waiver as described in Section 1.16.080 of this Chapter. Any notice of appeal filed without payment of the advance deposit or submittal of the advance deposit waiver application shall be deemed incomplete.

D. The person requesting the hearing shall be notified of the time and place set for the hearing pursuant to Section 1.16.100.A of this Chapter.

E. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration, then a copy of this report also shall be served on the appellant at least five (5) business days prior to the date of the hearing.

F. Enforcement of the administrative citation shall be stayed during the pendency of an appeal which is properly and timely filed.

**§1.16.080 Advance deposit hardship waiver**

A. Any person who intends to request a hearing to contest an administrative citation and who is financially unable to make the advance deposit of the fine, as required in Section 1.16.070, may file an application for advance deposit

hardship waiver. The application shall be on a form available from the City Clerk's office and shall be accompanied by a sworn affidavit as described in Subsection B below.

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. 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.

C. The requirement of depositing the full amount of the fine as described in Section 1.16.070 shall be stayed unless the City makes a determination not to issue the advance deposit hardship waiver. The City Manager or designee must either grant or deny the application for a waiver within a reasonable period of time, taking into account the complexity of the data pertinent to the application.

D. If the application for an advance deposit hardship waiver is denied, a written determination listing the reasons for the denial shall be issued and shall be served by mail upon the person who applied for the waiver. The written determination to deny the waiver shall be final.

**§1.16.090 Failure to timely and properly appeal administrative citation**

Failure to timely and properly file an appeal from an administrative citation, or the failure to make an advance deposit of the full amount of the fine within ten (10) days after service of a written denial of the cited person's application for an advance deposit hardship waiver, shall constitute a relinquishment of all rights to an appeal hearing. In such event, the determination that the violation occurred and that the cited person was responsible for the violation shall be deemed final on the date that service of the administrative citation is deemed completed pursuant to Section 1.16.040 of this Chapter.

**§1.16.100 Hearing on administrative citation before hearing officer**

A. A hearing before the hearing officer shall be set for a date that is not less than ten (10) days and not more than sixty (60) days from the date that a notice of hearing is issued, unless the hearing officer determines that the matter is urgent and needs to be heard sooner or that good cause exists for an extension of time. Notice of the hearing shall be sent by regular mail to the cited person at the address shown on the notice of appeal.

B. No hearing to contest an administrative citation shall be held unless the fine set forth in Section 1.16.060 has been deposited in advance, or an advance

deposit hardship waiver application has been granted by the City pursuant to Section 1.16.080.

C. The hearing serves to provide the cited person the full opportunity to object to the determination that a violation has occurred, and/or that the violation has continued to exist, and/or that the cited person is responsible for the violation. The cited person may appear personally or through an attorney and shall have the opportunity to testify, present evidence, and cross-examine witnesses concerning the administrative citation.

D. The hearing officer shall consider any written or oral evidence submitted that is relevant to the matter. Formal rules of evidence do not apply. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. All hearings shall be open and public.

E. The hearing officer may continue the hearing and request additional information from the enforcement officer or the person(s) accused of a violation prior to issuing a written decision.

F. The failure of the cited person to appear at the hearing after proper notice or, in the alternative, to present evidence for consideration at the hearing, shall constitute a forfeiture of the fine and failure to exhaust administrative remedies that may bar judicial review.

#### **§1.16.110 Hearing officer's decision on administrative citation**

A. Within a reasonable time following the conclusion of the hearing, the hearing officer shall make findings and issue a determination, a copy of which shall be provided to both the responsible party and the enforcement officer.

B. If the hearing officer finds that no violation has occurred or that the cited person was not responsible for the violation, the hearing officer shall issue a finding of those facts. If the hearing officer determines that an administrative citation should be cancelled, the City shall promptly refund the amount of the fine. If the hearing officer upholds the violation, the City shall retain any fines paid or shall be entitled to collect the fines owing but unpaid.

C. If the violation is upheld, the hearing officer may assess administrative costs against the violator from the date on which compliance was ordered. The administrative costs may include any and all costs incurred by the City in connection with the matter before the hearing officer, including, but not limited to, costs of inspection, investigation, staffing costs incurred in preparation for the hearing and costs to conduct the hearing.

D. The decision of the hearing officer shall be final upon service on the responsible person, subject only to judicial review as allowed by law.

**§1.16.120 Right to judicial review**

A. Within twenty (20) days after service of the final decision of the hearing officer, a person contesting that decision may seek judicial review by filing an appeal to be heard by the superior court for San Mateo County pursuant to Government Code Section 53069.4.

B. If no notice of appeal is filed within the time specified in Paragraph A of this Section, the decision of the hearing officer shall be deemed confirmed.

**§1.16.130 Payment of administrative fine and costs**

A. In the absence of a timely and proper appeal by the responsible person, the administrative fine shall be paid in full within thirty (30) days from the date the citation is served upon the responsible person pursuant to Section 1.16.040. Where a timely and proper appeal has been filed and the violation is upheld, any fine and administrative costs owed to the City shall be paid in full within thirty (30) days after the date the decision of the hearing officer is served on the responsible person.

B. Payment of any fine and administrative costs shall not excuse the failure to correct the violation, nor shall it bar further enforcement action by the City for any continuation or repeated occurrence of the violation that was the subject of the original enforcement action, or any other violation of an applicable law.

C. Any person who fails to pay to the City the amount imposed as a fine or administrative cost within the time prescribed in this Chapter shall be liable for payment of a late charge thereon in an amount equal to one percent (1%) per month of the delinquent payment from the date such payment became due until the date it is paid in full.

D. The City shall be entitled to collect all fines, administrative costs, and late charges owed to it pursuant to this Chapter by use of all available legal means, and the same may be collected as:

- (1) A personal obligation of the responsible person; and/or
- (2) A lien upon real property, if the violation is in connection with such property, in accordance with the provisions of Section 1.16.140 of this Chapter.

**§1.16.140 Lien procedure**

A. Upon a determination that any administrative fine and/or administrative cost owed to the City pursuant to this Chapter has not been paid in full within ninety (90) days from the date the same became due, and in cases where the violation involves any real property, the City may elect to collect such amounts by means of a recorded lien against such property pursuant to this Section.

B. Prior to recordation of the lien, the enforcement official shall prepare and file with the City Clerk a report stating the amounts due and owing, the date of the citation, the street address and assessor's parcel number of the subject property, and the name and address of the record owner of the property. The report shall be accompanied by a copy of the decision by the hearing officer, if any. The City Clerk shall fix a time, date and place for the City Council to consider such report and hear any protests or objections thereto. A copy of the report along with a written notice of the City Council hearing thereon shall be served on each property owner whose interest is shown on the most recently adopted assessment roll of the County not less than ten (10) days prior to the date set for the hearing.

C. Any person owning a legal or equitable interest in the real property proposed to be subject to a lien pursuant to this Section may file a written protest with the City Clerk and may protest orally at the City Council hearing. The grounds for protest or objection, and any evidence or testimony submitted in support or in opposition to the imposition of a lien, shall be confined to whether the amount of any administrative fine or administrative cost imposed was paid in full or was successfully challenged by a writ of mandate or other proceeding. At the close of the hearing, the City Council shall adopt a resolution confirming, discharging, or modifying the amount of the lien based upon evidence produced at the hearing.

D. If the lien, or any portion thereof, is confirmed by the City Council, the City Clerk shall record the same in the office of the County Recorder as a judgment lien against the subject property. Once recorded, such lien shall have the force and effect and priority of a judgment lien governed by the provisions of Section 697.340 of the Code of Civil Procedure, and may be extended as provided in Section 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

E. A lien recorded pursuant to this Section may be foreclosed by an action brought by the City for a money judgment.

F. Once payment in full is received by the City, the City Clerk shall either record a notice of satisfaction or provide the property owner with a notice of satisfaction so the owner may record the notice with the County Recorder. Such notice of satisfaction shall cancel the City's lien.

**SECTION 6:** A new Chapter 1.18, entitled "Administrative Compliance Orders," is added to Title 1 of the Brisbane Municipal Code, to read as follows:

### **Chapter 1.18**

#### **ADMINISTRATIVE COMPLIANCE ORDERS**

**Sections:**

- 1.18.010 Applicability of Chapter
- 1.18.020 Definitions

1.18.030	Compliance order
1.18.040	Service of compliance order
1.18.050	Notice of hearing
1.18.060	Hearing on compliance order before hearing officer
1.18.070	Hearing officer's decision on compliance order
1.18.080	Administrative order
1.18.090	Administrative penalties
1.18.100	Administrative costs
1.18.110	Right to judicial review
1.18.120	Failure to comply with administrative order
1.18.130	Lien procedure

**§1.18.010 Applicability of Chapter**

A. This Chapter provides for administrative remedies which are in addition to all other civil legal remedies and which are an alternative to criminal legal remedies that may be pursued by the City to address any violation 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.

B. Use of the remedies and procedures of this Chapter shall be at the sole discretion of the enforcement officers. The availability of the remedies and procedures of this Chapter are not exclusive and shall not limit or preclude the use of criminal or other civil code enforcement proceedings, including issuance of an administrative citation pursuant to Chapter 1.16 of this Code and commencement of judicial injunctive or abatement proceedings.

**§1.18.020 Definitions**

For the purposes of this Chapter, the following definitions shall apply:

A. "Applicable law" means 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, or any combination of the foregoing.

B. "Enforcement officer" means any City employee or employee of a contracting agency, including the County, or any agent of the City, having the authority to enforce any applicable law.

C. "Hearing officer" means any person designated by the City Manager to hear an appeal of an administrative compliance order. The hearing officer shall not be an enforcement officer or direct supervisor of an enforcement officer and may be a non-employee of the City. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly



conditioned upon the extent to which an administrative compliance order is upheld by the hearing officer or the extent to which administrative penalties and administrative costs are imposed by the hearing officer.

D. "Responsible person" means any person who is in immediate control of the premises or activity which constitutes a violation of an applicable law, the business owner, the property owner, and any person engaging in prohibited conduct.

#### **§1.18.030 Compliance order**

A. Whenever an enforcement officer determines that a violation of any applicable law has occurred, the enforcement officer shall have authority to issue a written administrative compliance order to any responsible person.

B. Each administrative compliance order shall contain the following information:

- (1) The name(s) and address(es) of the responsible person(s).
- (2) The date(s) of the violation.
- (3) The address or a definitive description of the location where the violation occurred.
- (4) The section or provision of the applicable law which has been violated and a description of the violation.
- (5) The action required to correct the violation.
- (6) The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved, and the amount of penalties that will begin to accrue.
- (7) Either a copy of this Chapter or an explanation of the consequences of noncompliance with the compliance order and a description of the hearing procedure and appeal process for contesting the compliance order.
- (8) The name and signature of the enforcement officer issuing the compliance order.

#### **§1.18.040 Service of compliance order**

A. An administrative compliance order may be served in any of the following ways, as may be applicable:

- (1) By personal delivery to the responsible person; or

- (2) By causing a copy of the compliance order to be sent by certified mail, postage prepaid, return receipt requested, addressed to a location reasonably calculated to give notice to the responsible person, as determined by the enforcement officer. If the violation involves any real property, the notice may be sent to the address of the owner as it appears in the most recently adopted assessment roll of the County.
- (3) If any compliance order sent by certified mail is not delivered by reason the U.S. Postal Service being unable to obtain a signed receipt and the failure of the addressee to thereafter claim the mail from the post office, the compliance order may then be sent to the responsible person by regular mail.
- (4) Where personal delivery or service by mail upon a property owner cannot be made despite a diligent effort, the compliance order may be served by posting a copy thereof at a conspicuous location on any real property that is the subject of the order.

B. Service of a compliance order which is personally served is completed at the time of such personal service. Service of a compliance order which is served by certified mail shall be deemed completed on the date the receipt is signed. Service of a compliance order which is served by regular mail which is not returned by the U. S. Postal Service shall be deemed completed on the third business day after deposit of the order in the U.S. Mail. Service of a compliance order which is served by posting is completed at the time of posting.

C. The failure of any person to receive a copy of a compliance order shall not affect the validity of any proceedings or actions taken under this Chapter. A copy of the return receipt or affidavit of mailing, or a copy of the posted compliance order along with an affidavit of posting, shall be retained by the enforcement officer.

#### **§1.18.050 Notice of hearing**

A. If the enforcement officer determines that all violations have been corrected within the time specified in the compliance order, or within such additional time as may be allowed by any amended order, the enforcement officer shall so advise each party to whom the compliance order was addressed.

B. If full compliance is not achieved within the time specified in the compliance order or any amended order, the enforcement officer shall schedule a hearing before a hearing officer. The hearing shall be set for a date that is not less than ten (10) days and not more than sixty (60) days from the date that a notice of hearing is issued, unless the hearing officer determines that the matter is urgent and needs to be heard sooner or that good cause exists for an extension of time. Notice of the hearing shall be sent by regular mail to each responsible person named in the compliance order.

**§1.18.060 Hearing on compliance order before hearing officer**

A. The hearing serves to provide the full opportunity to the person subject to a compliance order to object to the determination that a violation has occurred, and/or that the violation has continued to exist, and/or that the person subject to the compliance order is responsible for the violation. The person subject to the compliance order may appear personally or through an attorney and shall have the opportunity to testify, present evidence, and cross-examine witnesses concerning the compliance order.

B. The hearing officer shall consider any written or oral evidence submitted that is relevant to the compliance order. Formal rules of evidence do not apply. The compliance order shall constitute prima facie evidence of the facts set forth therein. All hearings shall be open and public.

C. The hearing officer may continue the hearing and request additional information from the enforcement officer or the person subject to the compliance order prior to issuing a written decision.

D. The failure of the person subject to the compliance order to appear at the hearing after proper notice or, in the alternative, to present evidence for consideration at the hearing, shall constitute a failure to exhaust administrative remedies that may bar judicial review.

**§1.18.070 Hearing officer's decision on compliance order**

A. Within a reasonable time following the conclusion of the hearing, the hearing officer shall make findings and issue a decision regarding the existence of the violation and the extent of compliance with the order. The hearing officer shall issue written findings on each violation specified in the compliance order. A copy of the decision shall be provided to both the person subject to the compliance order and the enforcement officer.

B. If the hearing officer finds that a violation has occurred and has not been corrected within the time specified in the compliance order, and further finds that any person subject to the compliance order is responsible for such violation, the hearing officer shall issue an administrative order pursuant to Section 1.18.080 of this Chapter.

C. If the hearing officer finds that no violation has occurred, or that the violation has been fully corrected, or that the person subject to the compliance order is not responsible for the violation, the hearing officer shall rescind the compliance order and direct that no further proceedings be conducted thereon.

**§1.18.080 Administrative order**

A. An administrative order issued by the hearing officer following a determination that a violation has occurred, has not been corrected, and that the

person subject to the order is responsible for the violation, shall impose any or all of the following:

- (1) An order to correct the violation, including a schedule for performance of the corrective work if appropriate.
- (2) Payment of administrative penalties as provided in this Chapter.
- (3) Payment of administrative costs as provided in this Chapter.

B. The administrative order of the hearing officer is final at the time it is made; however, the hearing officer shall retain continuing jurisdiction over the violation that is the subject of the order and shall have the power to modify the administrative order, after providing the person subject to the order with notice and an opportunity to be heard, until full compliance with the order is achieved.

#### **§1.18.090 Administrative penalties**

A. The hearing officer may impose administrative penalties for each day during which a violation is continued after the date when compliance was ordered to be achieved, in an amount not to exceed the maximum provided in a schedule of administrative penalties as adopted from time to time by resolution of the City Council and in effect as of the date on which the administrative order is issued.

B. In determining the amount of the administrative penalty, and subject to the limitation set forth in Paragraph C of this Section, the hearing officer may take any or all of the following factors into consideration:

- (1) The duration of the violation;
- (2) The frequency, recurrence, and number of violations, related or unrelated, by the same violator;
- (3) The seriousness of the violation;
- (4) The good faith efforts of the violator to come into compliance;
- (5) The impact of the violation on the community;
- (6) Such other factors as justice may require.

C. If the violation of applicable law would otherwise constitute an infraction offense, the administrative penalty that may be imposed per day for each separate violation shall not exceed the amount allowed or permitted by California Government Code Section 53069.4

D. Administrative penalties imposed by the hearing officer shall accrue on a daily basis from the date specified in the administrative order, and shall be

payable at the time and in the manner prescribed by the administrative order. The administrative penalties shall cease to accrue on the date the violation is corrected to the reasonable satisfaction of the enforcement officer, as evidenced by a final inspection approval signed by the enforcement officer.

E. The hearing officer may suspend the imposition of administrative penalties for any period of time during which:

- (1) The violator has applied for any permits that are required for performance of the corrective work; and
- (2) Such permit applications are actively pending before the City or other governmental agency responsible for issuance thereof.

**§1.18.100 Administrative costs**

A. The hearing officer may assess administrative costs against the violator when the hearing officer determines that a violation has occurred and the violator failed to correct such violation within the time specified in the administrative compliance order.

B. The administrative costs may include any and all costs incurred by the City in connection with the matter before the hearing officer, including, but not limited to, costs of inspection, investigation, staffing costs incurred in preparation for the hearing and costs to conduct the hearing, and costs for all re-inspections necessary to enforce the administrative order.

**§1.18.110 Right to judicial review**

A. Within twenty (20) days after service of the final decision of the hearing officer, a person contesting that decision may seek judicial review by filing an appeal to be heard by the superior court for San Mateo County pursuant to Government Code Section 53069.4.

B. If no notice of appeal is filed within the time specified in Paragraph A of this Section, the decision of the hearing officer shall be deemed confirmed.

**§1.18.120 Failure to comply with administrative order**

A. Payment of any penalties and administrative costs shall not excuse the failure to correct the violation, nor shall it bar further enforcement action by the City for any continuation or repeated occurrence of the violation that was the subject of the original compliance order, or any other violation of an applicable law.

B. Any person who fails to pay the City the amount imposed as an administrative penalty or administrative cost within the time prescribed in the administrative order shall be liable for payment of a late charge thereon in an

amount equal to one percent (1%) per month of the delinquent payment from the date such payment became due until the date it is paid in full.

C. The City shall be entitled to collect all administrative penalties, administrative costs, and late charges owed to it pursuant to this Chapter by use of all available legal means, and the same may be collected as:

- (1) A personal obligation of the person subject to the administrative order; and/or
- (2) A lien upon real property, if the violation is in connection with such property, in accordance with the provisions of Section 1.18.130 of this Chapter.

**§1.18.130 Lien procedure**

A. Upon a determination that any administrative penalty and/or administrative cost owed to the City pursuant to this Chapter has not been paid in full within ninety (90) days from the date the same became due, and in cases where the violation involves any real property, the City may elect to collect such amounts by means of a recorded lien against such property pursuant to this Section.

B. Prior to recordation of the lien, the enforcement official shall prepare and file with the City Clerk a report stating the amounts due and owing, the date of the compliance order, the street address and assessor's parcel number of the subject property, and the name and address of the record owner of the property. The report shall be accompanied by a copy of the decision by the hearing officer imposing the administrative penalties and administrative costs which have become delinquent.

C. The City Clerk shall fix a time, date and place for the City Council to consider such report and hear any protests or objections thereto. A copy of the report along with a written notice of the City Council hearing thereon shall be served on each property owner whose interest is shown on the most recently adopted assessment roll of the County not less than ten (10) days prior to the date set for the hearing.

D. Any person owning a legal or equitable interest in the real property proposed to be subject to a lien pursuant to this Section may file a written protest with the City Clerk and may protest orally at the City Council hearing. The grounds for protest or objection, and any evidence or testimony submitted in support or in opposition to the imposition of a lien, shall be confined to whether the amount of any administrative penalties or administrative costs imposed was properly calculated, or was paid in full, or was successfully challenged by a writ of mandate or other proceeding. At the close of the hearing, the City Council shall adopt a resolution confirming, discharging, or modifying the amount of the lien based upon evidence produced at the hearing.

E. If the lien, or any portion thereof, is confirmed by the City Council, the City Clerk shall record the same in the office of the County Recorder as a judgment lien against the subject property. Once recorded, such lien shall have the force and effect and priority of a judgment lien governed by the provisions of Section 697.340 of the Code of Civil Procedure, and may be extended as provided in Section 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

F. A lien recorded pursuant to this Section may be foreclosed by an action brought by the City for a money judgment.

G. Once payment in full is received by the City, the City Clerk shall either record a notice of satisfaction or provide the property owner with a notice of satisfaction so the owner may record the notice with the County Recorder. Such notice of satisfaction shall cancel the City's lien.

**SECTION 7:** 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 8:** 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 \_\_\_\_\_, 2010, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

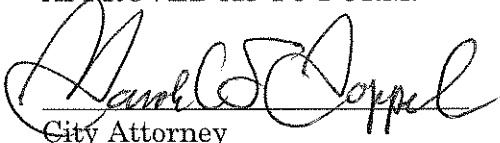
\_\_\_\_\_  
Mayor

ATTEST:

---

City Clerk

APPROVED AS TO FORM:



---

City Attorney



**RESOLUTION NO. 2010-40**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE  
ESTABLISHING A SCHEDULE OF ADMINISTRATIVE PENALTIES  
FOR VIOLATIONS OF THE BRISBANE MUNICIPAL CODE**

**WHEREAS**, the City Council has adopted Ordinance 547, containing various amendments to Title 1 of the Brisbane Municipal Code; and

**WHEREAS**, among other changes, Ordinance 547 added a new Chapter 1.18 to the Municipal Code pertaining to administrative compliance orders; and

**WHEREAS**, Chapter 1.18 provides for the issuance of administrative compliance orders following the conduct of a hearing and a determination by the hearing officer that a violation of the municipal code has not been corrected; and

**WHEREAS**, Section 1.18.090.A authorizes the hearing officer to impose administrative penalties for each day during which a violation is continued after the date on which compliance was ordered to be achieved, in such amount not exceeding the maximum provided in a schedule of administrative penalties adopted by resolution of the City Council; and

**WHEREAS**, a proposed Schedule of Administrative Penalties has been presented to the City Council for consideration and adoption, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Brisbane as follows:

1. The Schedule of Administrative Penalties attached hereto as Exhibit "A" is hereby approved and adopted.
2. The Schedule of Administrative Penalties shall become effective on the same effective date as Ordinance 547 and may thereafter be modified at any time by resolution of the City Council.

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Mayor

I hereby certify that the foregoing Resolution No. 2010-40 was duly and regularly adopted at the regular meeting of the Brisbane City Council on October 4, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Sheri Marie Spediacci, City Clerk

## SCHEDULE OF ADMINISTRATIVE PENALTIES

**Adopted by Resolution No. 2010-40  
Pursuant to Section 1.18.090  
of the Brisbane Municipal Code**

- A. For violations classified in the Municipal Code as a misdemeanor offense, or violations that may be charged as a misdemeanor offense, the maximum per diem penalty shall be \$1,000.00.
- B. For violations classified in the Municipal Code as an infraction offense, or charged as an infraction offense, the maximum per diem penalty shall be as follows:
- (1) One hundred dollars (\$100.00) for the first violation;
  - (2) Two hundred dollars (\$200.00) for a second violation of the same provision or ordinance within twelve (12) consecutive months;
  - (3) Five hundred dollars (\$500.00) for each additional violation of the same provision or ordinance within twelve (12) consecutive months.
- C. In determining the amount of the administrative penalty under Paragraph A or B above, the hearing officer may take any or all of the following factors into consideration:
- (1) The duration of the violation;
  - (2) The frequency, recurrence, and number of violations, related or unrelated, by the same violator;
  - (3) The seriousness of the violation;
  - (4) The good faith efforts of the violator to come into compliance;
  - (5) The impact of the violation on the community;
  - (6) Such other factors as justice may require.
- D. The hearing officer may suspend the imposition of administrative penalties for any period of time during which:
- (1) The violator has applied for any permits that are required for performance of the corrective work; and
  - (2) Such permit applications are actively pending before the City or other governmental agency responsible for issuance thereof.