CITY of BRISBANE

Planning Commission Meeting Agenda

Thursday, November 13, 2025 at 7:30 PM ● Hybrid Meeting ● Brisbane City Hall 50 Park Place, Brisbane CA

The public may observe/participate in Planning Commission meetings using remote public comment options or attending in person. Planning Commissioners shall attend in person unless remote participation is permitted by law. The Commission may take action on any item listed on the agenda.

TO ADDRESS THE COMMISSION

In Person:

Location: 50 Park Place, Brisbane, CA 94005, Community Meeting Room

Masks are no longer required but are highly recommended in accordance with California Department of Health Guidelines. To maintain public health and safety, please do not attend in person if you are experiencing symptoms associated with COVID-19 or respiratory illness.

To address the Planning Commission on any item on or not on the posted agenda, fill out a Request of Speak Form located in the Community Meeting Room Lobby and submit it to the City staff.

Remote Participation:

Members of the public may observe/participate in the meeting by logging into the Zoom webinar listed below. Planning Commission Meetings may also be viewed live and/or on-demand via the City's YouTube channel at , or on Comcast Channel 27. Archived videos may be replayed on the City's website, . Please be advised that if there are technological difficulties, the meeting will nevertheless continue.

The agenda materials may be viewed online at at least 24 hours prior to Special Meetings, and at least 72 hours prior to a Regular Meeting.

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting to . Remote meeting participants may address the Planning Commission via Zoom Webinar using the link or the call in number listed below. Note, the above email will <u>not</u> be monitored during the meeting and emails received during the meeting will not be responded to or brought to the attention of the Planning Commission during the meeting.

Zoom Webinar: (please use the latest version:)

Webinar ID: 970 0458 3387

Call In Number: +1 (669) 900-9128

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact the Community Development Department at (415) 508-2120 in advance of the meeting. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

All written communications are provided to the Planning Commission. Any written communication that is received after the agenda has been posted but before 4 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and online at . Any writings that are received after 4 p.m. of the day of the meeting will be distributed to the Planning Commission and made available for public inspection at the front lobby and on the internet the day after the meeting ().

Commissioners: Funke, Gooding, Lau, Patel, and Sayasane

CALL TO ORDER

ROLL CALL

ADOPTION OF AGENDA

CONSENT CALENDAR

Please Note: Items listed here as Consent Calendar Items are considered routine and will be acted upon collectively by one motion adopting the Planning Department's recommendation unless a member of the public, the Commission, or its staff asks to remove an item to discuss it. Prior to the motion, the Chairperson will ask if anyone wishes to remove an item from the Consent Calendar.

A. Approval of draft meeting minutes of October 23, 2025

ORAL COMMUNICATIONS (Limited to a total of 15 minutes)

WRITTEN COMMUNICATIONS

OLD BUSINESS

None

NEW BUSINESS

None

WORKSHOP

B. Brisbane Acres Density Transfer Provisions, potential amendment per Housing Element Program 2.G.1

C. Zoning Penalty Fee

ITEMS INITIATED BY STAFF

ITEMS INITIATED BY THE COMMISSION

ADJOURNMENT

D. Cancelation of the regular meetings of November 27, 2025, December 11, 2025, and December 25, 2025, and adjournment to the regular meeting of January 8, 2026

APPEALS PROCESS

Anyone may appeal the action of the Planning Commission to the City Council. Except where specified otherwise, appeals shall be filed with the City Clerk not later than 15 calendar days following the Planning Commission's decision. Exceptions to the 15-day filing period include the following: appeals shall be filed with the City Clerk within 6 calendar days of the Planning Commission's action for use permits and variances and 10 calendar days for tentative maps and advertising sign applications. An application form and fee are required to make a formal appeal. For additional information, please contact the City Clerk at 415-508-2110.

File Attachments for Item:

A. Approval of draft meeting minutes of October 23, 2025

DRAFT
BRISBANE PLANNING COMMISSION
Action Minutes of October 23, 2025
Hybrid Meeting

CALL TO ORDER

Chairperson Sayasane called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Commissioners Gooding, Patel, and Sayasane
Absent: Commissioners Funke and Lau
Staff Present: Director Swiecki, Senior Planner Johnson, and Associate Planner Robbins

ADOPTION OF AGENDA

A motion was made by Commissioner Gooding and seconded by Commissioner Patel to adopt the agenda. Motion approved 3-0.

CONSENT CALENDAR

A. Approval of draft meeting minutes of August 28, 2025

A motion by Commissioner Patel, seconded by Commissioner Gooding, to adopt the consent calendar was approved 3-0.

ORAL COMMUNICATIONS

There were none.

WRITTEN COMMUNICATIONS

Written Correspondence from the City of Brisbane Open Space Ecology Committee (OSEC) regarding Item B.

OLD BUSINESS

There were none.

NEW BUSINESS

There were none.

WORKSHOP

B. Workshop – Discussion of proposed amendment to the General Plan Open Space Element

Senior Planner Johnson reported to the Commission on the status and content of the draft Open Space Element and noted that the intent is to also include an amendment to the Land Use Element and zoning maps to designate City acquired lands in the Brisbane Acres as open space. Senior Planner Johnson and Director Swiecki answered questions from the Commission related to the Open Space and Ecology Committee's correspondence, including the relationship of the Open Space Element to the open space implementation plan (2001 Open Space Plan), the possibility of providing a link on the website to provide updates regarding newly acquired properties, open space funding resources and the relationship of the proposed Quarry development to the Element. Senior Planner Johnson indicated that this item is being scheduled to be brought back to the Commission for public hearing in January 2026.

Chair Sayasane allowed time for public comment, but there was no one wishing to address the Commission.

ITEMS INITIATED BY STAFF

Director Swiecki announced the City Council adopted an amendment to ADU height requirements, the commercial property owner of 150 North Hill Drive may propose converting the property to a residential use, City Council will conduct a workshop regarding the results of the community engagement process on the 70 Old County Road project.

ITEMS INITIATED BY THE COMMISSION

There were none.

ADJOURNMENT

C. Chairperson Sayasane adjourned to the next regular meeting of November 13, 2025 at approximately 7:52 p.m.

Attest:

_____
John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on the City's YouTube channel at www.youtube.com/BrisbaneCA, on the City's website at http://www.brisbaneca.org/meetings, or on DVD (by request only) at City Hall.

File Attachments for Item:

B. Brisbane Acres Density Transfer Provisions, potential amendment per Housing Element Program 2.G.1

MEMORANDUM

DATE: November 13, 2025
TO: Planning Commission
FROM: Ken Johnson, Senior Planner
SUBJECT: Workshop – Brisbane Acres Density Transfer Provisions, potential amendment per Housing Element Program 2.G.1

OBJECTIVE

The purpose of tonight's workshop is to discuss and receive Planning Commission feedback on potential amendment to the zoning ordinance, per the 2023-2031 Housing Element Program 2.G.1, and to outline next steps.

Housing Element Program 2.G.1 requires the City to:

> "Study potential updates to the Residential-Brisbane Acres (R-BA) zoning district density transfer program to expand allowable 'receiving' sites to include sites in other residentially or mixed-use zoned districts in the City to facilitate preservation of privately owned parcels in the R-BA zoning district and allow development rights to be transferred to parcels with access to existing infrastructure and lesser habitat value."

The intent is to help achieve the goal of facilitating housing production. Note that the program did not commit the City to a specific amendment to the district development regulations.

The Housing Element committed the City to undertake this study by December 2025.

BACKGROUND

Current Density Transfer Provisions: In 2003, City Council adopted ordinance 473, which established density transfer provisions in the R-BA Brisbane Acres Residential District, Brisbane Municipal Code (BMC) Section 17.12.050. The density transfer provisions were adopted to facilitate preservation of lands in the R-BA district with significant environmental resources. The density transfer provisions allow for transfer of housing development potential from sites with significant environmental resources, "sending sites", to sites that do not have such resources and are near existing infrastructure "receiving sites". The aim of density transfer is to preserve higher resource sites as open space. The adopted density transfer provisions are provided for reference (Attachment 1).

Generally, sites that may meet the criteria for sending sites are those identified within the Priority Preservation Area, as shown on the annotated zoning map (Attachment 2).

The minimum housing unit density in the R-BA is normally 1 unit per 20,000 sq ft of land area. However, through density transfer, a receiving site of at least 20,000 square feet (sq ft) may be divided into smaller sites, but not less than 5,000 sq ft.

As an example, a "sending site" of 60,000 square feet with significant environmental resources could

send up to 3 transfer units (1 unit per 20,000 sq ft) to a "receiving site" of 20,000 sq ft, to allow for development of a total of 4 housing units on the receiving site. Note that the smallest resultant lot size allowed via density transfer is 5,000 sq ft. For comparison, 5,000 sq ft is the current lot size minimum that's permitted in the adjacent R-1 residential district. Ownership of the sending site would be given to the City, for dedication to open space.

Note also that density transfer must be approved as a use permit by City Council, following Planning Commission recommendation, based on the findings outlined in Attachment 1. Additionally, a design permit is required for development of the resultant density transfer receiving sites.

To date, only one density transfer project has been completed. That resulted in development of 3 housing units along San Diego Court.

Open Space Element: Consistent with the Open Space Element of the General Plan, over the past 30 years +/-, the City has been acquiring lands within the upper Brisbane Acres, which are those lands that generally meet the criteria for having significant environmental resources, as outlined above, for dedication to open space. And the City is continuing to seek such acquisition opportunities. See the attached annotated zoning map, that shows the City owned open space properties and the remaining vacant parcels that are in private ownership (Attachment 2).

Housing Element: As noted above, this workshop falls under the Housing Element Goal 2, "Facilitate and support the production of housing at all income levels, but especially affordable housing". Under program 2.G.1, the City committed to "study potential updates to the Residential-Brisbane Acres (R-BA) zoning district density transfer program to expand allowable 'receiving' sites to include sites in other residentially or mixed-use zoned districts in the City to facilitate preservation of privately owned parcels in the R-BA zoning district and allow development rights to be transferred to parcels with access to existing infrastructure and lesser habitat value."

DISCUSSION

As discussed above, the potential density transfer receiving sites are limited to the R-BA zoning district.

Expansion of the receiving sites beyond the R-BA could provide greater incentive for property owners of parcels in the areas with significant environmental resources to transfer their land to the City for open space, while at the same time, providing for additional housing units in other zoning districts that may be closer to City infrastructure, services and amenities.

The Housing Element program identifies potential zoning districts for expansion of the R-BA density transfer program as those zoned for residential or mixed use. The table provided below outlines the potential districts and the current zoned lot size minimums, housing unit densities and preliminary density increases for the Commission's discussion.

District	Lot Size Minimum (sq ft)	Current Housing Unit Density Maximum	Preliminary - Potential Density (per 20,000 sq ft of R-BA open space dedication)	Notes
R-1 Residential	5,000*	1 unit/5,000 sq ft*	**NA**	*R-1 already allows for higher density, above the district standards, as provided under BMC Chapter 17.05 Residential two-unit overlay district.
R-2 Residential	5,000	1 unit/2,500 sq ft	**1 unit/1,500 sq ft**	Potential – Increase in density for multifamily, but suggest leaving minimum lot sizes as is.
R-3 Residential	5,000	1 unit/1,500 sq ft	**1 unit/1,250 sq ft**	
SCRO-1 Southwest Bayshore Commercial (mixed use)	7,500	1 unit/1,500 sq ft	**1 unit/1,250 sq ft**	
NCRO-2 Neighborhood Commercial Downtown Brisbane (mixed use)	2,500	By Use Permit	**NA**	
PAOZ-1 & 2 Parkside Overlay (residential)	NA	28 units/acre (1 unit/1,556 sq ft)	**35 units/acre (1 unit/1,250 sq ft)**	

A preliminary suggestion for Commission discussion is to allow for density transfer from the R-BA to the R-2, R-3, SCRO-1 and PAOZ Parkside zoning districts.

The R-1 is not included, since the district's standard densities may already be exceeded by utilizing the provisions of BMC Chapter 17.05 - Two-unit overlay district. The NCRO-2 is also not included since there is no maximum density provided in the zoning ordinance and, per Housing Element 7.A.2, it will be considered separately for adoption of objective design standards.

The Commission may also consider whether it may be desirable to expand the criteria for sending sites to include other Brisbane Acres sites that may not have significant environmental resources, but are otherwise desirable for establishment of parklands that the City may utilize to provide a buffer to those significant sites, as well as for recreational trails, vistas or other purposes. The vacant lands within the Brisbane Acres that are not City owned are shown on Attachment 2.

NEXT STEPS

Next steps are to be determined based on the Planning Commission's discussion tonight.

ATTACHMENTS

1. BMC Section 17.12.050 - Density Transfer
2. Annotated Zoning Map

_____
Ken Johnson, Senior Planner

ATTACHMENT 1
R-BA Brisbane Acres Residential District
Density Transfer Provisions

BMC Section 17.12.050 - Density transfer.

A. In order to facilitate preservation of lands in the R-BA district with significant environmental resources, one or more additional dwelling units within the R-BA district, in addition to the dwelling unit otherwise permitted on a particular site, may be constructed under the conditions set forth in this Section 17.12.050. As used herein, the additional dwelling units are called "transfer units." The density transfer shall comply with all of the following requirements:

1. One transfer unit may be allocated to the site receiving the density transfer for each twenty thousand (20,000) square feet of land of the total area of the site or sites from which the transfer units are taken which is permanently dedicated to open space. No transfer units shall be allocated for any remaining portion less than twenty thousand (20,000) square feet. The method of retaining the dedicated land in permanent open space shall be approved by the city council upon recommendation of the planning commission and shall be implemented before any building or grading permit is issued for development on the site receiving the transfer units. Where dedicated open space is proposed to remain in private ownership, the applicant and property owner shall execute an agreement with the city for the continued maintenance of the open space, to be recorded with the county of San Mateo prior to issuance of any grading or building permits.

2. The site from which the transfer units are taken must be found to have value as open space based upon one or more of the following considerations:

a. Contiguous with San Bruno Mountain State and County Park;
b. Contains intact native vegetation;
c. Contains endangered butterfly habitat;
d. Contains permanent or semi-permanent wetlands;
e. Forms a portion of a significant watercourse;
f. Does not adjoin developed parcels on more than one side.

In making this determination, the planning commission and the city council shall be guided by the city's open space plan. The density transfer value of undeveloped "paper streets" in the upper Brisbane Acres may be recognized, once it is established that they are not subject to claims of access rights by easement or necessity from any remaining private property owners in the upper Brisbane Acres.

3. The site receiving the transfer units must be found suitable for development with increased density based on all of the following considerations:

a. Has a total area of not less than twenty thousand (20,000) square feet;
b. Does not contain any of the features of value for open space as described in subsections (A)(2)(a) through (A)(2)(e) of this section;
c. Is adjacent to or relatively near existing development and infrastructure.

4. The type of development permitted on the site receiving the transfer units shall be single-family dwellings only, or single-family dwellings with accessory dwelling units consistent with the provisions of Chapter 17.43 of this Title. The site shall be subdivided into lots with a minimum lot area of five thousand (5,000) square feet subject to the maximum density permitted per Sections 17.12.040(A), 17.12.040(B) and 17.12.050(A)(1).

B. A use permit granted by the city council shall be required for all density transfers pursuant to this section. The use permit shall first be considered by the planning commission which shall make its recommendation to the city council. In addition to the findings for issuance of a use permit prescribed by Section 17.40.060 of this title, the approving authority shall find and determine that:

1.The transfer units will be sited, designed and constructed to avoid adverse effects upon environmentally sensitive areas both on and off site, such as disturbance of watercourses and hazardous geologic conditions;

2. The site receiving the transfer units will be served by infrastructure that meets city standards, as determined by the director of public works;

3. The site receiving the transfer units will have adequate parking and vehicular circulation; and

4. The proposed development of the site receiving the transfer units will be compatible with adjacent and nearby development and is designed to minimize its visual impact.
If the density transfer requires any other permits or discretionary approvals, except for the design permit required by Section 17.12.050(C), the applications for such permits or approvals shall be filed and processed concurrently with the application for the density transfer use permit.

C. As a condition of approval of the use permit referred to in Section 17.12.050(B), a design permit shall be required for any density transfer.

CITY OF BRISBANE

ATTACHMENT 1
ANNOTATED ZONING MAP

Zoning Districts

Commercial Mixed-Use	C-1
Commercial / Public Utilities	C/P-U
Heavy Commercial	HC
Manufacturing	M-1
Marsh Lagoon Bayfront	MLB
Brisbane Village Neighborhood Commercial	NCRO-1
Downtown Brisbane Neighborhood Commercial	NCRO-2
Open Space	O-S
Parkside Overlay District - Clustered Housing	PAOZ-1
Parkside Overlay District - Multi-Family Housing	PAOZ-2
Planned Development	PD
Residential	R-1
Residential	R-2
Residential	R-3
Brisbane Acres Residential	R-BA
Residential Mobile Home Park	R-MHP
Residential Two Unit Overlay	R-TUO
Southwest Bayshore Commercial	SCRO-1
Sierra Point Commercial	SP-CRO
Crocker Park Trade Commercial	TC-1
Southeast Bayshore Trade Commercial	TC-2

Brisbane Acres - City of Brisbane Owned Open Space (green)

Brisbane Acres - Vacant and Not City owned (purple)

Priority Preservation Area

Annotated to show Open Space and Undeveloped Parcels in the Brisbane Acres, for Illustrative purposes only.

Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Parcel and HCP GIS data provided by San Mateo County
Zoning GIS data provided by City of Brisbane

Zoning Districts

City Council latest map amendment: 12/5/24

File Attachments for Item:

C. Zoning Penalty Fee

PLANNING COMMISSION MEMORANDUM

Meeting Date: November 13, 2025

From: Julia Ayres, Principal Planner

Subject: Zoning Penalty Fee

Recommendation

That the Commission hear staff's report and give direction to staff.

Background

The City Council has adopted a Master Fee Schedule which establishes fees for various City services for all city departments. As required by Chapter 3.32 of the Municipal Code, the Master Fee Schedule is adopted by resolution and may be amended from time to time.

The Master Fee Schedule, under Planning Fees (other services), lists "Zoning Enforcement Penalty" (Fee P57) in the amount of "10x orig fee." For example, if the planning application fee for reviewing a particular application is $500, and an applicant failed to obtain a permit before undertaking the work, a penalty fee of $5000 would be imposed to obtain an after the fact permit. In current staff's experience, this fee has been applied in very limited circumstances. Most recently, Planning staff has imposed this fee on use permit applications for businesses operating without a use permit and for a sign application for which certain signs were installed prior to obtaining sign permit approval.

The City's legal counsel has raised concerns with the zoning penalty fee that appears in the Master Fee Schedule on three points: the authority for imposing such a fee; the uncertainty as to what is meant by "orig. fee"; and the reasonableness of the multiplier (10x).

Discussion

Zoning enforcement and penalties are addressed in Chapter 17.58 of the Municipal Code, excerpted below:

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.

Generally, the fines/penalties established in the Municipal Code Chapters referenced are $100 for the first offense, $200 for the second offense, and $500 for the third and subsequent offenses. Those fines, however, may be imposed only after a person has been cited and provided an opportunity to contest the citation.

The zoning ordinance therefore does not currently provide the authority to impose a penalty for an owner's obtaining an after the fact planning permit, and there is no established fee for such permit to which any kind of multiplier may be applied. If the city wants to be able to apply such a fee in the future, the zoning ordinance must be amended to provide the authority to impose a specific zoning penalty fee, clarify the basis for such fee, and the relationship between the fee and a multiplier (if desired).

Staff believes it is beneficial to have the ability to impose a zoning penalty fee, though staff does not foresee this fee being used regularly as it is rarely evident that zoning code violations result from willful and knowing defiance of zoning regulations. Staff intends to work with legal counsel to draft Municipal Code text amendments to provide the basis for the fee and specify that application of the fee would be at the discretion of the Community Development Director. The fee amount itself would be subject to adoption by the Council as part of an amendment to the Master Fee Schedule. As a point of interest, the Finance Department has been leading a citywide master fee schedule update, proposed to conclude at the end of this year, that will likely result in adoption of increased planning application fees to enhance cost recovery.

If the Planning Commission agrees, staff will initiate an amendment to the Brisbane Municipal Code. Staff will work with legal counsel to determine the appropriate location for such an amendment. If the amended Chapter is outside of Title 17 (e.g., Title 1), staff would bring the item back as an informational item prior to presenting to Council.

ATTACHMENTS

1. Master Fee Schedule
2. Chapter 17.58 of the Municipal Code
3. Chapter 1.14 of the Municipal Code
4. Chapter 1.16 of the Municipal Code
5. Chapter 1.18 of the Municipal Code

_____Julia Ayres_____ _____John Swiecki_____

Julia Ayres, Principal Planner John Swiecki, Community Development Director

Planning Fees, cont.		2023/24 Adopted Fee	2024/25 Adopted Fee	Basis
P42a	Certificate of Compliance per GC 66499.35(a) and (b)	$1,181	$1,157	
P42b	Certificate of Compliance per GC 66499.35 (c)	$424	$447	
P43	Lot Line Adjustment	$1,129	$1,157	
P43a	Parcel Map Waivers	$1,129	$1,157	
P44	Reversions to Acreage	$1,029	$1,157	
P45	Lot Merger	$424	$447	
Appeals:				
P46	Tie-vote at Planning Commission	$0	$0	
P47	All other appeals	$443	$454	
Environmental Review:				
P48	Categorical Exemption			
P49	Initial Study/Negative Declaration (fee includes those cases in which a Determinaition of HCP Compliance by the Planning Commission is needed, where no other Planning Permit is required.)	$3,001	$3,076	reimbursement for peer review may be required
P50	Environmental Impact Reports	consult. cost +10%	consult. cost +10%	deposit required
P51	Mitigation Monitoring-Inspections etc.	hourly	hourly	
Other Services:				
P52	Pre-application Review	hourly	hourly	
P53	Administrative review subsequent documents from Con. of Appr.	hourly	hourly	
P54	Parking lot redesign/landscape plan review (per BMC section 15.70.030)	$675	$692	
P55	Research record search	hourly	hourly	
P56	Technical report review	consult. cost +10%	consult. cost +10%	
P57	Zoning enforcement penalty	10x orig fee	10x orig fee	
P59	Archiving of records	hourly	hourly	
P62a	Concept review (greater 20,000 sq. feet commercial or 10 units or more of residential)	hourly	hourly	
P62b	Concept review (less than 20,000 sq. feet or less than 10 residential units)	hourly	hourly	
P63	Telecommunications Administrative Permit	$1,239	$1,270	
P64	Alcohol Public Convenience Necessity (PCN)	$460	$648	
P65	Tree Removal Permit	$387	$397	
P66	Administrative Appeal (to City Manager)	$111	$114	
P67	Address Assignment	$128	$131	
P68	Construction Noise Exception Permit per BMC 8.28.080	$765	$784	
P69	Outdoor Sound Amplification Request	$223	$229	
P70	Short Term Rental Permit	$360	$369	
P71	C.3 Stormwater Review/Inspection	consult. cost + $186	consult. cost + $191	
P30a	Housing Development Permit	$2,563	$2,627	
P72	Plan Lines	n/a	$3,476	
P73	Lighting Division	n/a	$648	
P74	Consultant Management Fee	n/a	10% of consultant fee	

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.

(Ord. 298 § 19.1, 1984).

(Ord. No. 554, § 62, 1-18-11)

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.

(Ord. 298 § 19.2, 1984).

(Ord. No. 554, § 63, 1-18-11)

17.58.030 - Reserved.

Editor's note— Ord. No. 554, § 64, adopted January 18, 2011, repealed § 17.58.030, which pertained to violation—penalty and derived from Ord. No. 298, 1984; Ord. No. 403, 1996 and Ord. No. 446, 2000.

Chapter 1.14 - CODE ENFORCEMENT

Sections:

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.

(Ord. No. 547, § 4, 10-4-10; Ord. No. 555, § 1, 1-18-11)

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 (3) or more violations of this code within twelve (12) consecutive months immediately

preceding the commission of the offense, or four (4) 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.

(Ord. No. 547, § 4, 10-4-10)

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 thirty dollars ($130.00) for a first conviction;

2. A fine not exceeding seven hundred dollars ($700.00) for a second conviction for violating same provision or ordinance within one year of the first conviction;
3. A fine not exceeding one thousand three hundred dollars ($1,300.00) for each additional conviction for violating the same provision or ordinance within one year of the first conviction; and
4. A fine not exceeding two thousand five hundred dollars ($2,500.00) for each additional conviction for violating the same provision or ordinance within two (2) years of the first conviction if the property is a commercial property that has an existing building at the time of the violation and the violation is due to the failure by the owner to remove visible refuse or failure to prohibit the unauthorized use of the property.

D. If a fine has been levied pursuant to subsections 2, 3 or 4, the city manager shall have the authority to grant a hardship waiver to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first conviction and that payment of the full amount of the fine would impose a undue financial burden on the responsible party.

E. 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.

(Ord. No. 547, § 4, 10-4-10; Ord. No. 636, § 1, 2-7-19)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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.

(Ord. No. 547, § 4, 10-4-10)

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 twenty (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.

(Ord. No. 547, § 4, 10-4-10; Ord. No. 555, § 2, 1-18-11)

Chapter 1.16 - ADMINISTRATIVE CITATIONS

Sections:

Footnotes:
*--- (**3**) ---*
***Editor's note—** Ord. No. 547, § 5, adopted October 4, 2010, in effect repealed the former Chapter 1.16, § 1.16.010, and enacted a new Chapter 1.16 as set out herein. The former Chapter 1.16 pertained to general penalty and derived from Ord. No. 261, 1980.*

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.

(Ord. No. 547, § 5, 10-4-10)

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.

(Ord. No. 547, § 5, 10-4-10)

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 information set forth above.

(Ord. No. 547, § 5, 10-4-10)

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.
   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.

(Ord. No. 547, § 5, 10-4-10)

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 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.

(Ord. No. 547, § 5, 10-4-10)

1.16.060 - Amount of administrative citation fines.

A. Amount of Fine. Except as set forth in subsection C of this Section 1.16.060, 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.

C. Amount of fine for violations of the City's Short Term Rental Ordinance. Any party to whom an administrative citation has been issued for a violation of the city's short term residential rental ordinance (currently Ordinance No. 655, codified in Chapter 17.35 of the Brisbane Municipal Code), or any subsequently amended short term residential rental ordinance, and where the violation posed a threat to public health or safety, shall be responsible for payment of a fine for violating the applicable law specified in the citation, determined as follows:
   1. Fifteen hundred dollars ($1,500.00) for the first citation;
   2. Three thousand dollars ($3,000.00) for the second citation for the same violation within twelve (12) consecutive months;
   3. Five thousand dollars ($5,000.00) for each additional citation for the same violation within twelve (12) consecutive months.

(Ord. No. 547, § 5, 10-4-10; Ord. No. 668, § 1, 11-18-21; Ord. No. 670, § 1, 1-20-22)

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.

(Ord. No. 547, § 5, 10-4-10)

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 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.

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.

(Ord. No. 547, § 5, 10-4-10; Ord. No. 555, § 3, 1-18-11)

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.

(Ord. No. 547, § 5, 10-4-10)

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.

(Ord. No. 547, § 5, 10-4-10)

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.

(Ord. No. 547, § 5, 10-4-10)

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 subsection A of this section, the decision of the hearing officer shall be deemed confirmed.

(Ord. No. 547, § 5, 10-4-10)

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 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.

(Ord. No. 547, § 5, 10-4-10)

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.

(Ord. No. 547, § 5, 10-4-10)

Chapter 1.18 - ADMINISTRATIVE COMPLIANCE ORDERS

Sections:

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.

(Ord. No. 547, § 6, 10-4-10)

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 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 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.

(Ord. No. 547, § 6, 10-4-10)

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.

(Ord. No. 547, § 6, 10-4-10)

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.
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.

(Ord. No. 547, § 6, 10-4-10)

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.

(Ord. No. 547, § 6, 10-4-10)

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 ha 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.

(Ord. No. 547, § 6, 10-4-10)

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.

(Ord. No. 547, § 6, 10-4-10)

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.

(Ord. No. 547, § 6, 10-4-10)

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 subsection 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.

(Ord. No. 547, § 6, 10-4-10)

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.

(Ord. No. 547, § 6, 10-4-10)

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 subsection A of this section, the decision of the hearing officer shall be deemed confirmed.

(Ord. No. 547, § 6, 10-4-10)

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 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.

(Ord. No. 547, § 6, 10-4-10)

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 Sections 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.

(Ord. No. 547, § 6, 10-4-10)