



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Michael Roush, Legal Counsel & Jeremy Dennis, City Manager

Subject: Ordinance Concerning Notices of Violations for Violations of the Brisbane Municipal Code

Community Goal/Result

Safe Community - Residents and visitors will experience a sense of safety

Recommendation

Introduce the attached Ordinance amending the Municipal Code concerning Notices of Violations for violations of the Brisbane Municipal Code and then, subsequently, adopt the Ordinance.

Adoption of this Ordinance is not subject to further environmental review since it is not a project under the California Environmental Quality Act. Section 15378 (b)(5), CEQA Guidelines.

Background

When the City becomes aware of potential violations of the Municipal Code, typically by complaints from residents, the City's Code Enforcement Officer will investigate. If it appears that there is a violation, the Code Enforcement Officer will contact the property owner and/or responsible party and advise that the violation must be abated or corrected. If those informal methods to resolve the matter are not successful, the Municipal Code provides a number of remedies that the City may pursue in order to gain compliance. These include an infraction or misdemeanor citation (depending on the nature of the violation) which imposes a fine on the violator, an administrative citation which likewise imposes a fine on the violator, or a Notice of Violation ("NOV") which does not impose a fine on the violator but does order the violator to correct or abate the violation within a specified period of time and advises that the failure to correct or abate may subject to further enforcement actions. NOV's also provide that the person who received the NOV may appeal, i.e., the person cited contends that there is no violation of the Code.

Currently, for most NOV's, the Municipal Code does not expressly provide for an appeal hearing except in the limited situations where the NOV provides that the Code Enforcement Officer may record a Notice of Violation against the property if the violation is not corrected or abated. Typically, however, most NOV's do not include that language but only that the violation must be corrected within a specific period time. Therefore, for most NOV's there are no express procedures in the Municipal Code about the appeals process when the NOV does not say that

the Code Enforcement Officer may record the NOV against the property. This came into focus recently when an NOV for a zoning ordinance violation was issued, it did not say an NOV may be recorded, and the person who received the NOV filed an appeal. That particular appeal became moot when the NOV was withdrawn but appeals procedures for these types of NOVs should be placed into the Municipal Code for future enforcement actions.

The City has adopted by reference a number of what are called “Construction Codes”, for example, the California Building, Residential, Electrical, Plumbing, Energy and Green Building Standards, and Property Maintenance Codes. Section 15.04.040, Brisbane Municipal Code. Generally, these Codes are based on International or Uniform Codes and the intent of these Codes is to provide uniform standards throughout the State. NOVs under these Codes provide their own appeals procedures.

Typically, these Codes call for a “Board of Appeals” to hear appeals, with Board members to be persons with experience in the particular subject matter of the particular Code, for example, the Board members under the Building Code are to have experience and training in building construction. Board members are appointed by the “chief appointing authority” (presumably the City Manager) or by the governing body, e.g., the City Council; Board members may not be employees of the agency that issued the NOV. To say that most cities have such appointed such Boards would be an overstatement and indeed Brisbane has never established or appointed such a Board. Perhaps oddly, the Codes typically provide, however, that if a Board has not been appointed, the governing body is to hear appeals of NOVs, notwithstanding that most members of a governing body would lack experience and training in these areas. Moreover, unlike appeals of NOVs for violations under other Chapters of the Municipal Code, recent case law holds that appeals of NOVs under the construction codes must be heard by a Board of Appeals, not by a single hearing officer.

A city may, however, amend most construction codes under certain limited conditions, i.e., because of local climatic, geological, topographical or environmental conditions. Moreover, such amendments must be approved by the California Building Standards Commission. See Section 15.04.043, BMC, concerning amendments to certain construction codes. Accordingly, there would not be the required grounds to amend most construction codes to revise the appeals procedure, for example to have a single hearing officer hear appeals and, even if the City were to so amend those codes, it seems unlikely the California Building Standards Commission would approve.

One construction code, however, the International Property Maintenance Code, may be amended for reasons not tied to climactic, geological, topographical, or environmental circumstances. That Code is often the subject of Brisbane issued NOVs.

Discussion

Staff recommends that Section 1.14.140 of the Municipal Code be amended such that if an NOV is issued, it may, but need not, provide that an NOV may be recorded against the property if the underlying violation is not corrected or abated. Otherwise, the NOV will provide that the violation must be corrected or abated within a specific period of time. Whether the NOV has the recording language or not, the person who receives the NOV may appeal.

Staff also recommends that the International Property Maintenance Code be amended by deleting the current appeals procedures that contemplates a Board of Appeals and replacing it with the appeals procedure set forth in Chapter 1.14 (Code Enforcement). Such amendment does not need to be approved by the California Buildings Standards Commission. More importantly, the amendment would permit a single hearing officer to hear and decide appeals of NOVs for violations of the Property Maintenance Code. In the absence of a Board of Appeals being appointed, appeals of NOVs for violations of other construction codes will need to be heard by the City Council. Fortunately, such appeals are rare and indeed, staff is not aware of any such appeals in the last 15 years.

If this Ordinance is adopted, for the overwhelming majority of NOVs, if there is an appeal, the City Manager may designate a hearing officer to hear and decide the merits of the appeal. The hearing officer may be a City Department head whose department does not have direct regulatory authority over that portion of the Municipal Code giving rise to the violation. For example, if the Code Enforcement Officer issued an NOV for a zoning ordinance violation and the NOV was appealed, the City Manager could assign the Public Works Director to hear the appeal since that Director has no direct regulatory authority over zoning matters. Whether a City Department Head or otherwise, the hearing officer's decision is final, subject only to judicial review.

In instances where an NOV has been recorded after a hearing officer has upheld the underlying violation or where the person fails to appeal, and the violation is subsequently corrected, the City will prepare a termination/cancellation of the NOV and provide it to the property owner so that the owner may have it recorded and remove the cloud on title.

The issuance of an NOV, recorded or not, is in addition to any other remedies the City may have, such as criminal or administrative citations, or a civil action, to compel compliance.

Fiscal Impact

There is no fiscal impact in introducing, and then adopting, this Ordinance. Council has adopted a fee schedule that provides a fee (currently \$454) for processing and administering these types of appeals.

Environmental Review

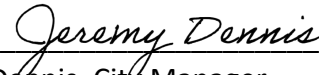
No further environmental review under the California Environmental Quality Act is required for introduction/adoption of this Ordinance because it is an organizational or administrative activity of the City that will not result in direct or indirect physical changes in the environment and hence it is not a project under CEQA. CEQA Guidelines, Section 15378(b)(5).

Attachment:

1. Ordinance amending Sections 1.14.140 and 15.04.043 of the Brisbane Municipal Code concerning notices of violations



Michael Roush, Legal Counsel



Jeremy Dennis, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BRISBANE TO AMEND SECTIONS 1.14.140 AND 15.04.043 OF THE BRISBANE MUNICIPAL CODE CONCERNING NOTICES OF CODE VIOLATIONS

THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 1.14.140 of the Brisbane Municipal Code is amended to read as follows:

“1.14.140 Notices of code violations.

(Subsection A, no change).

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 or 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:

1. Issue to the owner of such property a notice of violation informing the owner of the location of the violation, the description of the violation, the code section violated, the corrective or abatement action required, the date by which the violation must be corrected or abated, that if the violation is not corrected or abated within the time frame set forth that the owner will be subject to further code enforcement actions, and the owner's appeal rights; and/or
2. Issue to the owner of such property of the enforcement officer's intent to record a notice of violation in the office of the county recorder. The notice of intent shall describe the nature of the violation and inform the owner that a notice of violation will be recorded unless the owner requests a hearing within 20 days from the date of the notice.

C. Any notice of violation or notice of intent to record a notice of violation 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 posted to the property.

D. If the owner exercises appeal rights timely under paragraph 1 of Subsection B, or if the owner timely requests a hearing under paragraph 2 of subsection B, the City Manager, unless the code requires otherwise, shall appoint a hearing officer, who may be a City Department Head or Deputy Department Head whose Department does not have direct regulatory authority over the property in question. The hearing officer may affirm, modify, or reverse the decision of the enforcement officer that there is a violation of the code to be corrected or abated. The decision of the hearing officer shall be final subject only to judicial review as provided by law.

E. If the owner does not exercise timely appeal rights under paragraph 1 of subsection B and the violation remains uncorrected or unabated or, if owner has exercised timely appeal rights and the hearing officer, following the hearing and consideration of the relevant evidence, determines that a

violation as cited in the notice of violation exists, the enforcement officer may take further enforcement actions.

F. If the owner does not timely request a hearing under paragraph 2 of subsection B and the violation remains uncorrected or unabated or, if the owner has timely requested a hearing and hearing officer, following the hearing and consideration of the relevant evidence, determines that violation as cited in the notice of intent to record exists, the enforcement officer may record a notice of code violation in the office of the county recorder.

G. If a notice of code violation has been recorded, at the request of the affected property owner or other interested person and upon the enforcement officer's determination that the violation has been corrected or abated, the enforcement officer shall furnish to the owner or other interested party a termination/cancellation of the recorded notice of code violation.

H. The enforcement officer's issuing to the owner a notice of violation or a notice of intent to record 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 2: Section 15.04.043 of the Brisbane Municipal Code is amended to read:

"Section 15.04.043 Amendments to the California Building Standards Codes

The 2022 California Building Code (CBC), California Residential Code (CRC), California Green Building Standards Code (CALGreen), and the 2021 International Property Maintenance Code (IPMC) are hereby amended as follows:

(Subsections A through I, no change).

J. Section 107 of the IPMC is deleted and replaced with the following:

Appeals of administrative citations, notices of violation, or compliance orders of the code official issued under this code shall be conducted in accordance with Chapter 1.14 (Code Enforcement).'

SECTION 3: This Ordinance shall be in full force and effect 30 days after its passage and adoption.

The above Ordinance was regularly introduced and after waiting the time required by law was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN

Mayor of the City of Brisbane

ATTEST:

Ingrid Padilla, City Clerk

Approved as to form:

Thomas R. McMorrow, City Attorney