



# Brisbane City Council

## Chapter 4 – Legal Proceedings Local Law

Consolidated as at 4/11/2014  
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*Dedicated to a better Brisbane*

## **Chapter 4 – Legal Proceedings Local Law**

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## Part 1 - General penalty

1. Except where in any case it is otherwise expressly provided, any person who is guilty of any offence against any of the provisions of the Ordinances shall be liable to a maximum penalty of 20 penalty units.

## Part 2 - Proceedings By The Council

### Recovery of damages, expenses, etc.

- 1.(1) When any person is convicted of an offence against any provision of "*The Brisbane Tramway Trust Acts, 1922 to 1924*", as modified and applied to the Council by Order in Council published in the *Gazette* on 27 October, 1925, or against any provision of the Metropolitan Water Supply and Sewerage Act as modified and applied to the Council by order in Council published in the *Gazette* on 28 March, 1928, or against any provision of any other Act conferring powers, rights, privileges, or authorities on the Council, or against any Ordinance or By-law of the Council, the Council shall have the right to recover from such person, in addition to any penalty that may be imposed –

- (a) The amount of any damage or expense sustained by it through the act or default constituting such offence;
- (b) All fees, rates, charges, fares, rents, dues, and other amounts, the omission to pay which was an element in or was in any way related to such offence,

but not more than \$2 000 in all in addition to the penalty.

- (2) The Court in which the conviction is made shall have jurisdiction to award the amount of such damage, expense, fees, rates, charges, fares, rents, dues, or other amounts (but not exceeding \$2000) on application made by or on behalf of the Council, and to make such order as to the mode of recovering the said amount in default of payment as it may make when inflicting a fine or penalty.
- (3) Instead of applying to such Court for payment the Council may, in its discretion, whether proceedings for an offence have been instituted or not, sue for the full amount of such damage, expense, fees, rates, charges, fares, rents, dues, or other amounts in any Court of competent jurisdiction.

- 2.(1) Summary proceedings for the recovery of any penalties or moneys payable in respect of any offence against –

- (a) To the extent those Acts as so modified and applied remain applicable and in force within the City and to be observed and administered by the Council, any provision of "*The Brisbane Tramway Trust Acts, 1922 to 1924*" as modified and applied to the Council by Order in Council published in the *Gazette* on 27 October, 1925,
- (b) To the extent that Act as so modified and applied remains applicable and in force within the City and to be observed and administered by the Council, any provision of the Metropolitan Water Supply and Sewerage Act as modified and applied to the Council by Order in Council published in the *Gazette* on 28 March, 1928, or

- (c) Any provision of the Standard Sewerage By-laws or the Standard Water Supply By-laws under the *Sewerage and Water Supply Act 1949-1978*, or
- (d) Any Ordinance or By-law of the Council or any other Act or Regulation, By-law or statutory instrument which the Council administers, superintends, or enforces,

may be instituted by the Council under the *Justices Act 1886-1980* by the complaints of the Chief Executive Officer or any officer of the Council authorized generally or in respect of any special proceeding by writing under the hand of the Mayor.

- (2) Save as is otherwise expressly provided, proceedings with respect to offences against any provision of "*The Brisbane Tramway Trust Acts, 1922 to 1924*", as modified and applied to the Council by Order in Council published in the *Gazette* on 27 October, 1925, any provision of the Metropolitan Water Supply and Sewerage Act as modified and applied to the Council by Order in Council published in the *Gazette* on 28 March, 1928, or any Ordinance or By-law of the Council may be instituted within twelve (12) months after the offence is committed or within six (6) months after discovery of the offence by the complainant, whichever is the later.

### **Proceedings other than summary proceedings**

- 3. The Council may, if in its opinion summary proceedings would afford an inadequate or ineffective remedy, and notwithstanding that summary proceedings have not previously been taken or that such proceedings having been commenced have not been adjudicated upon, cause any proceedings to be taken against any person in the Supreme Court –
  - (a) To enforce the abatement or prohibition or restraint of any breach of the Ordinances or By-laws of the Council or of any Act or Regulation administered by the Council; or
  - (b) To enforce compliance with any order made under any Act, Ordinance, By-law, or Regulation; or
  - (c) For the recovery of any penalties or expenses from, or for the punishment of, any persons offending against any Ordinance or By-law or any such Act or Regulation.

### **No abridgment of proceedings**

- 4. The provisions of this Part shall be deemed to be in addition to and not to abridge or affect any right, remedy, or proceeding at common law or under any Act, Ordinance, By-law, or Regulation.

## **Part 3 - Remedy For Breach Of Conditions**

- 1. If the Council or its delegate when giving any consent, permission or approval under an Ordinance, or under any other law regulation or statutory instrument, imposes a condition requiring the demolition and/or removal of a building or structure or part of a building or structure or the doing of any other act or thing at the end of any time or on the happening of any event, then, if such building or structure or part of a building or structure is not

demolished and/or removed or such other act or thing is not done in accordance with the requirement of such condition, the Council, by its servants, workmen, agents and contractors, may after fourteen (14) days' notice to the owner and to the occupier of the land upon which the building or structure or part of a building or structure is situated or such other act or thing was required to be done, enter upon such land and demolish the building or structure or part of a building or structure or do the act or thing left undone, as the case may be. The expense of such demolition or of doing the act or thing left undone shall be a debt owed by the owner of the said land to the Council and shall be recoverable by the Council in the same manner as general rates.

## **Part 4 - Remedies Generally**

1. Nothing contained in any Ordinance whereby –
  - (a) A penalty is imposed for the breach of that or any other Ordinance; or
  - (b) Provision is made for the payment by any person of any money or damages to the Council; or
  - (c) The Council or any officer thereof is authorized to pull down, remove, or alter any work, structure, material or thing; or
  - (d) Any remedy is given to the Council; or
  - (e) Provision is made for the taking of any proceedings by the Council; or
  - (f) Provision is made for the enforcement of that or any other Ordinance; or
  - (g) Any other provision is made in relation to any contravention or threatened contravention of that or any other Ordinance,

shall be construed as providing a sole or exhaustive remedy, or shall prevent the Council from taking proceedings for any relief to which it may be entitled at law or in equity or under any Act, Ordinance, By-law or Regulation in respect of any contravention or threatened contravention by any person of the provisions of any Ordinance.

2. The exercise of any power or remedy, or the taking of any proceedings, by or on behalf of the Council, shall not prevent the Council from exercising the same or any other power or remedy, or from taking the same or other proceedings, or from both exercising any power or remedy and taking any proceedings, in relation to any matter from time to time as the occasion may require.

## **Part 5 - Arrest of Offenders**

### **Definition of "inspector"**

1. In this Part the word "inspector" means-
  - (a) any employee of the Council, in any unit of administration, who holds an

appointment as an inspector, or is for the time being carrying out the duties of an inspector,

- (b) any person authorised in writing by the Chief Executive Officer to act as an inspector for the purposes of this Part, and
- (c) any person appointed by the Council to act in a voluntary capacity as a Parks Ranger under Part 1 of Chapter 9.

### **Name and address of offender**

- 2.(1) Any inspector and any member of the Police Force who finds any person committing or who reasonably suspects any person of having committed, a breach of any of the provisions of any Ordinance or By-law of the Council, or of "*The Brisbane Tramway Trust Acts, 1922 to 1924*", as modified and applied to the Council by Order in Council published in the *Gazette* on 27 October, 1925, or of the Metropolitan Water Supply and Sewerage Act as modified and applied to the Council by Order in Council published in the *Gazette* on 28 March, 1928, or of any other Act conferring powers, rights, privileges, or authorities on the Council, or any By-law, Order-in-Council, Rule, Regulation, or Resolution thereunder, may demand from such person his name and place of abode.
- (2) Any such person who refuses to state his name and place of abode when required to do so by an inspector or by a member of the Police Force, or who in the opinion of a member of the Police Force states a false name or place of abode, may, without any warrant other than this Ordinance, be arrested by a member of the Police Force and taken before a stipendiary magistrate, or justices, there to be dealt with according to law.
- (3) Any person who refuses to state his name and place of abode, or states a false name or place of abode, shall be guilty of an offence.

### **Breach after warning**

- 3. Any person who is found by an inspector or a member of the Police Force committing a breach of any such Ordinance, By-law, Act, Order-in-Council, Rule, Regulation, or Resolution as aforesaid, and who, after being warned by an inspector or member of the Police Force to desist, continues to commit such breach, or commits a breach of the same or a similar nature, may, without any warrant other than this Ordinance, be arrested by a member of the Police Force and taken before a stipendiary magistrate or justices, there to be dealt with according to law.

## **Part 8 - Evidence**

- 1. Every entry whether made before or after the coming into force of this Ordinance, in a book kept by the Chief Executive Officer purporting to be an entry relating to the proceedings of the Council or of a Committee thereof, or of any Board constituted by Ordinance, and to be signed by the Chairman of the Council or of such Committee or of such Board, as the case may be, or a certified copy of or an extract from any such entry sealed with the seal of the Council and signed by the Chairman for the time being of the Council, or of such Committee, or of such Board as the case may be, and the Chief

Executive Officer, shall upon the production thereof alone, be received in any Court as evidence of the proceedings appearing by such entry to have been taken without proof of any meeting to which the same may refer having been duly convened or held, or of the persons attending any such meeting having been or being members of the Council or members of such Committee or of such Board, or of the signatures of such Chairman or the Chief Executive Officer, respectively, or of the fact of their having been such Chairman or Chief Executive Officer, and all such matters shall be presumed until the contrary is proved.

The term "book" includes any loose leaf system of keeping records of the proceedings of the Council or of any Committee thereof or of any Board as aforesaid.

The Chief Executive Officer shall for the purposes of this Ordinance be deemed to keep every book containing the record of the proceedings of the Council or of any Committee thereof or of any Board as aforesaid.

2. In any proceedings by or on behalf of the Council for a breach of the Town Plan or an Ordinance, By-law, Regulation, or Statute, the due appointment of all officers of the Council, and the authority of any officer to do any act or to institute the proceedings, shall be presumed until the contrary is proved.
3. In any proceedings to which the Council is a party the production of any map or plan purporting to be made by the Council or by any officer under its direction, and sealed with the seal of the Council, or purporting to be issued or published by any Department or officer of the State of Queensland, shall be sufficient evidence of the matters stated or delineated thereon until the contrary is proved. This Ordinance shall not apply in respect of a map or writing which forms part of the Town Plan.
4. In any proceedings in which the Council is a party, the production of a certificate of title, memorandum of transfer, or other instrument creating an interest in land, or of a duly certified copy thereof, shall be sufficient evidence that the person named therein as registered proprietor, or as entitled to such interest, is the owner of or person entitled to an interest in such land until the contrary is proved.
- 5.(1) All courts and persons acting judicially shall take judicial notice of the signature of any person who holds or has held the office of Mayor, Chief Executive Officer or Deputy Chief Executive Officer and the fact that such person holds or has held such office if the signature purports –
  - (a) to be attached or appended to any document; and
  - (b) to have been made by him as Mayor, Chief Executive Officer or Deputy Chief Executive Officer as the case may be.
- (2) All courts and persons acting judicially shall take judicial notice of the Seal affixed to any deed, instrument or other document and shall presume that it was duly so affixed.
- (3) It shall not be necessary in any legal proceeding to prove that the person signing any deed, instrument or other document in a clause therein as provided in paragraph (5) of ordinance

10 of Part 1 of Chapter 2 of the ordinances was authorised so to sign and such authority shall be presumed until the contrary is proved.

- 6.(1) In any prosecution for a breach of the provisions of any Ordinance or of the Town Plan every allegation or averment contained in the complaint shall be prima facie evidence of the matter so alleged or averred.
- (2) This Ordinance shall apply to any matter so alleged or averred although –
  - (a) Evidence in support or rebuttal of the matter alleged or averred or of any other matter is given; or
  - (b) The matter alleged or averred is a mixed question of law and fact, but in that case the allegation or averment shall be prima facie evidence of the fact only.
- (3) Any evidence given in support or rebuttal of a matter so alleged or averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this Ordinance.
- (4) This Ordinance shall not lessen or affect any onus of proof otherwise falling on the defendant.
- (5) This Ordinance shall not derogate from the averment provisions of any other Ordinance.

## **Part 9 - Non-Compliance with Orders of the Council and Violation of Ordinances**

1. Where anything is by any Ordinance, or by any direction, order, notice or requirement made under the authority of any Ordinance directed, ordered, or required to be done or forbidden to be done, and such act so directed, ordered, or required to be done remains undone or such act so forbidden to be done is done, in every such case the person making default as to such direction, order, requirement, or prohibition respectively shall be guilty of an offence, which shall be a continuing offence for every day on which such default continues after the expiration of any time within which such act is so directed, ordered, or required to be done, or beyond which by such direction, order, notice or requirement it must no longer be done.

## **Part 10 - Protection of Council Property**

1. SECTION NUMBER NOT USED
2. SECTION NUMBER NOT USED
3. SECTION NUMBER NOT USED

- 3A.(1) Any Event Organiser who authorises the distribution of Fly Poster signs advertising their events must take all reasonable steps to ensure that these signs are not illegally displayed under Section 2 of this Local Law.



Maximum Penalty:

- (i) First offence – 30 penalty units
  - (ii) Second offence (within twelve months after the first offence) – 40 penalty units
  - (iii) Third and subsequent offence (within twelve months after the first offence or six months after the most recent offence) – 50 penalty units
- (2) For the purpose of this section –
- (a) Event Organiser means –
    - (i) the person who is primarily responsible for the staging of any event; or
    - (ii) the person who authorises the distribution of Fly Poster signs for that event;
  - (b) Fly Poster signs means a Fly Poster Sign as specified in Advertisements Subordinate Local Law 2005;
  - (c) the term “reasonable steps” does not include simply placing a condition in the relevant distribution contract entered into by the Event Organiser.

## Coat of Arms

- 4.(1)** In this Ordinance "lawful authority" means the authority of the Establishment and Co-ordination Committee of the Council and "Coat of Arms" means the Armorial Ensigns and Supporters for which letters patent were granted to the City of Brisbane by The College of Arms on the 30th September 1947 a representation whereof is depicted in the Schedule hereto.
- (2) A person who without lawful authority (proof whereof shall lie upon the person accused) -
- (i) Assumes or uses in connection with -
    - (a) Any trade, business, calling or profession; or
    - (b) Any club or any body or association of persons whatsoever, including, but without limit to the generality of the provisions of this paragraph, any club or any body or association of persons formed for the purpose of playing any game or athletic sport whatsoever; or
  - (ii) Prints, publishes, or distributes, or sends or delivers to any person, or causes to be printed, published, or distributed, or sent or delivered to any other person any written or printed matter whatsoever in or upon which appears or appear; or
  - (iii) Reproduces or represents by any means whatsoever on any article or material whatsoever,  
the Coat of Arms or any Coat of Arms so nearly resembling the Coat of Arms as to be likely to deceive shall be guilty of an offence and liable to a maximum penalty of 50 penalty units.
- (3) Where the Coat of Arms or any Coat of Arms so nearly resembling the Coat of Arms as to be likely to deceive is or are assumed or used, or any written or printed matter is printed, published, distributed or sent or delivered to any person in connection with a club or a body or association of persons which is not a body corporate in contravention of the provisions of paragraph (2) of this Ordinance, then every member of the governing body by whatever name called and every officer of that club, body or association shall be

deemed to have committed that offence and shall be liable accordingly, unless he proves that he did not know and could not, by the use of due diligence, have known of the commission of that offence.

- (5) Judicial notice shall be taken of the representation of the Coat of Arms in the Schedule hereto in any proceeding for an offence under this Ordinance.

### *The Schedule*

#### Representation of Coat of Arms



## **Part 11 - Service of Notices, etc., by or upon the Council Authentication**

### **Service by the Council**

2. Any notice, order, process, summons, or other document under or for any of the purposes of any Act, Ordinance, or By-law required or authorized to be given or served by Brisbane City Council or by any officer thereof to or upon any person, may be served in any manner in which if it were a notice, order, process, summons, or other document required or authorized to be given or served by a Local Authority under or for any of the purposes of the *Local Government Act 1936-1980*, it might be given or served to or upon such person:

Provided that in any case in which the giving or service of any such document requires its publication in the *Gazette* and in some newspaper there shall be deemed to be sufficient publication thereof if there is published in the *Gazette* and in some newspaper a notice that such document or a copy thereof may be inspected and obtained at the City Hall, or at some other office of the Council named in such notice in the City of Brisbane. Any such notice shall be addressed in the same manner in which a document to be given or served for the purpose of the *Local Government Act 1936-1980* may be addressed, and shall give the real property description and situation of the land or premises in respect of which the document is to be given or served. Such a notice shall also state the purport of such document and that the publication is for the purpose of giving or serving the document.

### **Service upon the Council**

3. Any legal process may be served on the Council by serving the same on the Chief Executive Officer, the Deputy Chief Executive Officer, or the City Solicitor.

Any other document may be served on the Council –

- (i) By delivering the same to the Chief Executive Officer or the Deputy Chief Executive Officer;
- (ii) By forwarding the same by post in a prepaid registered letter addressed to the Chief Executive Officer.

### **Documents forwarded by post**

4. Any document forwarded by post shall be deemed to have been served at the last moment of the day on which the same ought to be delivered at its destination in the ordinary course of post; and in proving service it shall be sufficient to prove that the same was properly stamped and addressed and put into the post.

## **Part 12 - Offences Relating to and Against Council Officers**

1. For the purposes of this Part, the term "officer" means a person holding office under, or employed by the Council.
2. Any person who -
  - (a) personates an officer on an occasion when the latter is required to do any act or attend in any place by virtue of his office or employment;
  - (b) falsely represents himself to be an officer, and assumes to do any act or attend in any place for the purpose of doing any act by virtue of his pretended office or employment; or
  - (c) -
    - (i) uses any threat or insulting or abusive language to;
    - (ii) assaults or attempts to assault; or
    - (iii) obstructs or impedes or attempts to obstruct or impede,

an officer at any time when he is engaged in the discharge or attempted discharge of his duties as such, shall be guilty of an offence.

3. The provisions of this Part shall be in addition to and not in derogation of the provisions of any other ordinances of the Council or any other law.

## Endnotes

### Key

#### Key to abbreviations in list of amendments

Key	Explanation
amd =	amended
ch =	chapter
def =	definition
div =	division
hdg =	heading
ins =	inserted
om =	omitted
pt =	part
renum =	renumbered
rep =	repealed
s =	section
sch =	schedule
sub =	substituted

### List of amendments

<b>PART 1</b>	<b>GENERAL PENALTY</b>
s 1(1)	amd <i>Administrative Arrangements Amending Local Law 2013 s 6</i>
<b>PART 10</b>	<b>PROTECTION OF COUNCIL PROPERTY</b>
s 1	om <i>Public Land and Council Assets Local Law 2014 s 95</i>
s 2	om <i>Public Land and Council Assets Local Law 2014 s 95</i>
s 3	om <i>Public Land and Council Assets Local Law 2014 s 95</i>
s 4(2)	amd <i>Administrative Arrangements Amending Local Law 2013 s 7</i>
s 4(4)	om <i>Administrative Arrangements Amending Local Law 2013 s 7</i>
<b>PART 13</b>	<b>VEHICLES ON COUNCIL LAND</b>
Part 13	om <i>Public Land and Council Assets Local Law 2014 s 95</i>
s 6(1)	om <i>Administrative Arrangements Amending Local Law 2013 s 8</i>
s 6(2)	amd <i>Administrative Arrangements Amending Local Law 2013 s 8</i>
s 8	amd <i>Administrative Arrangements Amending Local Law 2013 s 8</i>
<b>PART 14</b>	<b>INFRINGEMENT NOTICES FOR PRESCRIBED OFFENCES</b>
Part 14	om <i>Administrative Arrangements Amending Local Law 2013 s 9</i>