

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND, CA, AMENDING SECTIONS 9.22.040 AND 9.22.090 OF THE RICHMOND MUNICIPAL CODE, DEFINING THE OPEN STORAGE AND TRANSFER OF COAL AND PETROLEUM COKE AS A PUBLIC NUISANCE AND PROVIDING REGULATIONS FOR ENCLOSED STORAGE AND TRANSFER

The City Council of the City of Richmond do ordain as follows:

SECTION 1. Amendment of Chapter 9.22 Public Nuisances

Section 9.22 entitled "Public Nuisances" of the Municipal Code of the City of Richmond is hereby amended to read as follows (underline text indicates insertion):

9.22.010 - Title.

This chapter shall be known as the "nuisance code," may be cited as such, and will be referred to herein as "this chapter."

9.22.020 - Purpose.

- (a) It is the intent of the Council in adopting this chapter to provide a comprehensive method for the identification and abatement of certain public nuisances within the City.
- (b) Provisions of this chapter are to be supplementary and complementary to all of the provisions of the Richmond Municipal Code, state law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right of power of the City to abate any and all nuisances.

9.22.030 - Application.

The provisions of this chapter shall apply generally to all property throughout the City wherein any of the conditions, hereinafter specified, are found to exist; provided, however, that any condition which would constitute a violation of this Code, but which is duly authorized under any City, state or federal law, shall not be deemed to violate this Code.

9.22.040 - Definitions.

The definitions set forth in Section 9.20.010 of this Code shall be applicable to the provisions contained in this chapter. In addition, the following words shall have the following specified meanings:

"Director of Public Health" means the Director of the Health Services Department of Contra Costa County or said Director's designee.

"Junk" means any castoff, damaged, discarded, junked, obsolete, salvage, scrapped, unusable, worn-out or wrecked object, thing or material composed in whole or in part of asphalt, brick, carbon, cement, plastic or other synthetic substance, fiber, glass, metal, paper, plaster, plaster of Paris, rubber, terra cotta, wool, cotton, cloth, canvas, organic matter or other substance, having no substantial market value or requiring reconditioning in order to be used for its original purpose.

Owner. In addition to the definition set forth in Section 9.20.010 of this Code, the term "owner" also means the occupant, lessee, or holder of a beneficial interest in real property, as the case may be.

"Property" means premises.

"Nuisance" shall be defined as set forth in Section 3479 et seq. of the Civil Code.

Definitions relating to the handling and storage of coal or petroleum coke shall be the same as those listed in South Coast Air Quality Management District Rule 1158, as amended.

9.22.050 - Authority—Director of Public Works and Director of Public Health.

- (a) The Director of Public Works, City of Richmond, or such person designated by the City Manager, hereinafter referred to as "Director of Public Works," is authorized and directed to use the provisions of this chapter for the purpose of abating those nuisances which exist as the result of violation of those ordinances for which said Director's department has enforcement responsibility.
- (b) The Director of the Health Services Department of the county, hereinafter referred to as "Director of Public Health," is authorized and directed to use the provisions of this chapter for the purpose of abating those nuisances which exist as the result of violation of those ordinances for which said Director's department has enforcement responsibility.
- (c) As used herein, the terms "Director of Public Works" and "Director of Public Health" shall include the authorized representatives of such Directors and the Fire Chief and his authorized representatives as concerns Sections 9.22.090(a)(5) and 9.22.090(c)(9) of this chapter or any other section of this chapter in which the specified condition or activity poses a fire hazard.

9.22.060 - Right of entry.

To the extent authorized by law, whenever necessary to enforce any provisions of this chapter or whenever the City Manager or his or her designee or the Director has reasonable cause to believe that there exists on any premises any condition which is in violation of this chapter, said Manager or his or her designee or Director may enter on such premises at reasonable times to make inspections.

9.22.070 - Responsibility for proper property maintenance.

- (a) Every owner of real property within the City is required to maintain such property in a manner so as not to violate the provisions of this chapter and such owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding such property.
- (b) Every occupant, lessee, or holder of any interest in property, other than as owner thereof, is required to maintain such property in the same manner as is required of the owner thereof, and the duty imposed by this section on the owner thereof shall in no instance relieve those persons herein referred to from the similar duty.

9.22.080 - Violation—Penalty.

In addition to all other remedies and penalties available under other sections of this Code or under other laws, any person, firm or corporation, whether owner, lessee, sublessor, sublessee or occupant of any premises who violates the provisions of this Code shall be subject to an administrative citation pursuant to Chapter 2.62 of this Code for each day such violation continues.

9.22.090 - Nuisances specified.

It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this City to maintain such premises or to permit such premises to be maintained in such a manner that any one or more of the conditions or activities described in the following subsections are found to exist:

- (1) Generally.
 - (A) Any dangerous, unsightly, or blighted condition which is detrimental to the health, safety or welfare of the public;
 - (B) Any condition in violation of the California Building Code, National Electrical Code, California Mechanical Code, Uniform Housing Code as amended by Health and Safety Code Section 19720.3, California Plumbing Code and Uniform Security Code, Title 24 of the California Code of Regulations, the State Building Standards Code, as adopted by reference in this Code, subject to any amendments, additions or deletions made thereto;
 - (C) Any condition in violation of Chapter 9.24 of this Code (Animal Control Law);
 - (D) Any condition in violation of Chapters 15.04, 15.06 and 15.08 of this Code (Zoning, Sign and Subdivision ordinances);
 - (E) Any condition in violation of Chapter 8.16 of this Code (Uniform Fire Prevention Code);
 - (F) Any condition in violation of any rule, regulation, standard or other requirement of the air pollution control district in which the City lies;
 - (G) Any condition recognized in law or in equity as constituting a public nuisance.
- (2) Buildings or Structures in a State of Disrepair.
 - (A) Any building or structure, or portion thereof, which is structurally unsafe or which constitutes a fire hazard, or which has been abandoned or left vacant for a period of six (6) months or more without work being performed in good faith under building permits to rehabilitate the building or structure proceeding in good faith;
 - (B) Any building or structure, including, but not limited to, walls, fences, signs or retaining walls, which are broken, deteriorated, or substantially defaced (including defacement by markings commonly referred to as "graffiti") so that the disrepair poses a risk of harm to the public or constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to the use and enjoyment of nearby properties or reduces nearby property values;
 - (C) Any building or structure having dry rot, warping or termite infestation or any building or structure on which the condition of the exterior finish has become so deteriorated as to permit decay, excessive checking, cracking, peeling, chalking, dry rot, warping or termite infestation so that the disrepair poses a risk to the public or constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to the use and enjoyment of nearby properties or reduces nearby property values.
- (3) Property Inadequately Maintained.
 - (A) The keeping, storage, depositing or accumulation on the premises of any personal property, including, but not limited to, abandoned, wrecked, dismantled or inoperative vehicles, automotive parts or equipment, appliances, furniture, containers, packing materials, scrap metal, wood, building materials, junk, solid waste, rubbish, and debris, which is within the view of persons on adjacent or nearby real property or the public right-of-way and which poses a risk of harm to the public or constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to the use and enjoyment of nearby properties or reduces nearby property values; provided, however, that wood and building materials being used or to be used for a project of repair or renovation for which a valid and current building permit has been obtained may be stored for such period of time as is necessary expeditiously to complete the project;

- (B) The keeping, storage, depositing or accumulation of dirt, sand, gravel, concrete or other similar materials that is visible from the public right-of-way. However, building materials being used or to be used for a repair project or renovation, and for which a valid and current building permit has been obtained, may be stored for such period of time as is necessary expeditiously to complete the project;
- (C) Property on which overgrown, dead or decayed trees, weeds or other vegetation pose a risk of harm to the public, or constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to the use and enjoyment of nearby properties or reduces nearby property values;
- (D) Any parking lot, driveway, sidewalk or path which is cracked or has potholes or other breaks in the surface which poses a risk or harm to the public;
- (E) Any swimming pool, pond or other body of water which is abandoned, unattended, unfiltered or otherwise not maintained, resulting in the water becoming polluted by excess bacterial growth or by the presence of garbage, refuse, debris, papers or any other foreign matter or material which creates an unhealthy or unsafe condition;
- (F) Maintenance of property in such a manner that matter, including, but not limited to, smoke, odors, dust, dirt, or debris, is permitted to be transported by wind or water or otherwise upon any street, course, alley, sidewalk or other public property or onto neighboring or adjacent properties so as to pose a risk of harm to the public, or to create a condition which is offensive to the senses or detrimental to the use and enjoyment of nearby properties or reduces nearby property values;
- (G) Failure to install or to maintain landscaping which is required by this Code or which is required by the Richmond Redevelopment Agency for a redevelopment project area;
- (H) Storage of solid waste receptacles or bins in front or side yards or visible from the public right-of-way except where:
 - (i) The layout or configuration of the property and the buildings thereon would impose a hardship upon the property owner seeking to comply with this section, or
 - (ii) Compliance with this section would itself constitute a hazard to public health, safety or welfare.

Any exception granted pursuant to this subsection shall be subject to the review of the Director of Public Works on a periodic basis set by the Director;

- (I) Property on which any condition poses a fire hazard;
- (J) Property on which any condition exists which is likely to harbor rats, vermin or other pests;
- (K) Any vacant lot or undeveloped parcel shall be maintained by the owner to prevent the accumulation of trash, rubbish, garbage, or debris. Upon written notice to the owner of record, by mail to the last mailing address as listed in the County Tax Assessor's records, that the lot or parcel is the site of illegal dumping or contains trash, rubbish or garbage, the owner shall remove all such trash, rubbish, garbage or debris within the time stated in the notice.
 - (i) Upon two (2) or more violations of this section within a twenty-four (24) month period, the property owner shall, at the owner's expense, erect a fence around the vacant lot or parcel of sufficient height and strength to prevent illegal dumping and/or the unlawful accumulation of trash, rubbish, garbage, or debris and/or unauthorized

entry within thirty (30) days of the second notice of violation. The second notice of violation shall include a notice that a fence is required under this section.

- (ii) If the property owner, after being given written notice that a fence is required, fails to erect such fence within thirty (30) days of the written notice, the City may apply for an abatement warrant to erect such fence, and upon obtaining the warrant shall erect the fence. All costs of obtaining the warrant and erecting the fence shall, at the City's sole election, be placed on the property as a special assessment lien or collected as a debt against the property owner.
 - (iii) It is unlawful for any person or entity to remove, damage, breach or in any way interfere with a fence erected under this section. The property owner shall at all times properly maintain such fence, including repair or replacement, in the event of damage or deterioration.
 - (iv) The property owner may apply in writing to the City Manager to remove a fence erected under this section in the event the lot is being developed and all necessary grading or building permits have obtained. Such permission shall not be withheld if such permits have been issued or if the lot or parcel is no longer vacant.
- (4) Abandoned or Unsecured Buildings.
- (A) Any building, fence or other structure which is or has been abandoned, boarded up, partially destroyed or permitted to remain in a state of partial construction so that it poses a risk of harm to the public, or constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to the use and enjoyment of nearby properties or reduces nearby property values; provided, however, that no partially constructed, reconstructed or demolished structure shall be considered in a state of partial construction if there exists a valid and current building or demolition permit and substantial work has been done pursuant to such permit within the immediately preceding three months.
 - (B) Any building, structure or other property which is unlocked or unsecured or has broken or missing doors or windows or other glazed openings allowing unauthorized access by the public so as to constitute a potential attraction to children or trespassers or a harbor for vagrants, criminals, or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing a nuisance or other unlawful act.
- (5) Parking and Storage of Vehicles and Equipment.
- (A) Parking or storage of construction equipment or machinery or other industrial or commercial equipment or machinery in any area zoned for residential uses so that it is within the view of persons on adjacent or nearby real property or on the public right-of-way except while excavation, construction or demolition operations covered by an active building or demolition permit are in progress on the property.
 - (B) Parking or storage of motor vehicles, trailers, campers, boats and other mobile equipment in any area not designated as a parking space on the approved site plan.
- (6) Hazardous and Attractive Nuisances.
- (A) Any building, object or condition, whether natural or man-made, which due to its accessibility to the public or due to its potential attraction to children poses a hazard, including, but not limited to, abandoned, unsecured, unused or neglected motor vehicles, machinery or equipment, abandoned or unprotected wells, shafts, foundations, or basements, hazardous or unprotected pools, ponds, construction sites, or excavations, and stored chemicals, gas, oil, or toxic or flammable substances;

- (B) Erosion, subsidence, or surface water drainage problems which are hazardous or injurious to the public or to adjacent properties whether caused by grading operations, excavations or fill or as a result of the topography, geology or configuration of the land in its natural state.
- (7) Noise. The emanation of noise of such a loud, unusual penetrating, persistent, raucous or boisterous nature so as to unreasonably disturb, annoy, interfere with or endanger the comfort, repose, health, peace, safety or welfare of neighboring residents of normal sensitivity.
- (8) Vector Control. It shall be a violation of this section for anyone to create, cause, commit, or maintain a public nuisance, which is defined as any one or more of the following:
 - (A) Anything that is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of person, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street or highway;
 - (B) Any artificial alteration of property, excluding water, from its natural condition, resulting in it supporting the development, attraction, or harborage of vectors, with the presence of vectors in their developmental stages on property being prima facie evidence that the property is a public nuisance;
 - (C) Any water that is a breeding place for vectors, with the presence of vectors in their developmental stages in the water being prima facie evidence that the water is a public nuisance; or
 - (D) Any activity that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors.
- (9) Any uncovered storage or transfer of coal or petroleum coke shall be deemed a nuisance, and specifically the following shall apply to storage or transfer of coal or petroleum coke:
 - (A) All piles of coal or petroleum coke shall be maintained in enclosed storage. The enclosed storage shall be equipped with and use as needed, a water spray system or permitted air pollution control equipment sufficient to control fugitive dust emissions at designed vents and at entrances or exits for material or vehicles.
 - (B) Any entrance or exits for coal or petroleum coke or vehicles shall have overlapping flaps, sliding doors or other devices(s) approved by the Director of Public Works, which shall remain closed except to allow vehicles to enter and leave or when people are inside. Material truck and railcar unloading shall be in an enclosed structure that is either equipped with a water spray system to be used as needed to prevent visible dust emissions or vented to permitted air pollution control equipment that is operated during unloading activities. The ends of the structure shall have overlapping flaps that reduce the opening to no greater than 11 feet high by 10 feet wide, sliding doors which shall remain closed except to allow trucks to enter and leave, or other equally effective devices as approved by the Director of Public Works.
 - (C) The operator shall only conduct railcar coal or petroleum coke unloading in an enclosed structure that is either equipped with a water spray system operated to prevent visible dust emissions, or vented to permitted air pollution control equipment that is operated during unloading activities. The ends of the structure shall have overlapping flaps, sliding doors or other equally effective devices as approved by the Director of Public Works, which shall remain closed except to allow the railcars to enter and leave.
 - (D) The operator shall pave and maintain as paved, the following areas:

- (1) All ground surfaces within the facility where coal or petroleum coke accumulations routinely occur; and,
 - (2) All roads and vehicle movement areas within the facility that are used for transporting or moving coal or petroleum coke.
- (E) In order to clean roads of accumulations of coal or petroleum coke, the operator shall use a street sweeper to clean any track-in/track-out road and any road inside the facility, used to transport coal or petroleum coke.
- (1) The street sweeping shall be sufficient so that not more than 4 hours elapses between each street sweeper cleaning or after every 100 truck material receipts or dispatches, but not less than one time daily when the facility is open for business.
 - (2) Each 24-hr. day, the day beginning at 12:01 A.M., the operator shall designate and record whether for that day the operator is street sweeping every four hours or every 100 trucks. The record shall show the date and time when street sweeping was performed and the truck count.
 - (3) Facility operators shall begin cleaning up coal or petroleum coke spills of more than three pounds, or that cover more than a square foot, within one hour and continue cleanup operations until the spill is removed.
- (F) The operator shall maintain all areas within the facility free of any accumulation of coal or petroleum coke unless the accumulation is completely covered.
- (G) All conveyors shall be enclosed conveyors.
- (H) The operator shall only load materials into ships through a telescoping loading chute which uses a water spray system, or an air pollution control system, sufficient to control fugitive dust emissions during operations that is extended to within five feet of the top of the pile; or, is at least 5 feet below the hatch opening.
- (I) The operator shall not load coal or petroleum coke into any truck trailer unless it is subsequently and immediately covered, before leaving the facility, in one of the following manners sufficient to prevent material from escaping from the trailer onto the facility property:
- (1) A solid sliding cover on the top of the truck that is kept completely closed, or;
 - (2) A slot-top type cover that reduces the uncovered open surface area by at least 50% and extends above the trailer top edges, without gaps and either the material contained in the trailer is moist material, or a chemical stabilizer is applied to the surface of the coal or petroleum coke in sufficient amounts and concentration so as to prevent fugitive dust emissions during transport; or,
 - (3) A continuous tarp that completely covers the trailer top, and does not contact the coal or petroleum coke within the trailer. In addition, the tarp shall be installed or the trailer constructed to prevent wind from entering over the leading edge of the trailer rim into the interior of the trailer.
- (J) Facility operators shall not load coal or petroleum coke into truck trailers such that a trailer leaks liquid that contains material onto the facility property. If a truck trailer leaks liquid that contains material onto the facility property, the facility operator shall clean the affected property within one hour with a street sweeper or water.
- (K) The operator shall clean all out-going coal or petroleum coke transport trucks, whether loaded or empty, so that:

(1) Any part of any tractor, trailer or tire exterior surface, excluding the inside of the trailers, are free of all loose coal or petroleum coke in excess of 1 gram per square decimeter or 10 grams total.

(2) The coal or petroleum coke removed by the truck cleaning operation is collected and recycled or otherwise disposed of so that it does not result in fugitive dust emissions.

(L) The operator shall not cause, or allow the discharge into the atmosphere of, fugitive dust for a period or periods aggregating more than three minutes in any one hour which is equal to or greater than 10% opacity (equivalent to 10% opacity under EPA Method 9 or one half of No. 1 on the Ringelmann Chart, as published by the United States Bureau of Mines).

(M) Section 9.22.090 (9) shall be effective one year from the date of adoption.

9.22.100 - Administrative abatement.

- (a) Authority. Whenever an authorized City employee has inspected or caused to be inspected any premises and has found and determined that such premises are in violation of this chapter, and such violation does not warrant a summary abatement under this chapter, an authorized City employee may commence proceedings to cause abatement of the nuisance as provided herein, without limitation as to any other administrative or legal remedies.
- (b) Notice of Violation. Upon determining that premises located in the City are in violation of this chapter, an authorized City employee may issue a notice of violation directed to the record owner and to the occupants, as appropriate, of the premises. The notice of violation shall contain:
- (1) The name and address of the person, firm, corporation or entity in violation, and the street address and such other description as is required to identify the premises where the violation is present;
 - (2) A statement which specifies the conditions which constitute the nuisance, an explanation of what specific code sections have been violated, and measures necessary to abate the nuisance;
 - (3) An order that the nuisance be abated within a specified time period;
 - (4) The range of administrative, civil and/or criminal actions and monetary penalties, as described herein, that the City may impose for such violations if not corrected;
 - (5) A statement informing the recipient of the name and office telephone number of the person to contact should the recipient desire to explain why he or she believes the premises should not be declared to be a public nuisance and abated. The authorized City employee may rescind or modify the notice of violation based on substantive evidence presented by the recipient; and
 - (6) Service of Notice of Violation. A copy of the notice of violation, shall be served either by personal delivery or by First Class U.S. mail, postage prepaid, upon the record owner at the address as it appears at the County Recorder's Office of Contra Costa County, and upon the occupants of the premises, if any. If neither of these methods result in the notice of violation being served upon the record owner and any occupants after reasonable attempts to serve, a copy of the notice shall be posted on the premises.
- (c) Administrative Citation. If after serving the notice of violation as described in this chapter, the owner or occupants do not timely abate the nuisance specified in the notice of violation, then an authorized City employee may issue an administrative citation directed to the record owner and any occupants of the premises.
- (1) Service of Administrative Citation. A copy of the administrative citation, shall be served either by personal delivery or by First Class U.S. mail, postage prepaid, upon the record owner at the

address as it appears at the County Recorder's Office of Contra Costa County, and upon the occupants of the premises, if any. If neither of these methods result in the administrative citation being served upon the record owner and any occupants after reasonable attempts to serve, a copy of the notice shall be posted on the premises.

- (d) Noncompliance Notice and Order. If after serving the notice of violation the owner and occupants do not timely abate the nuisance(s) specified in the notice of violation, or a notice of violation was served on the owners and occupants within the past twelve (12) months for a substantially similar violation, then an authorized City employee may issue noncompliance notice and order directed to the record owner and to the occupants, as appropriate, of the premises. The noncompliance notice and order shall contain the following:
- (1) The name and address of the person, firm, corporation or entity in violation, and the street address and such other description as is required to identify the premises where the violation is present;
 - (2) A statement which specifies the conditions which constitute the nuisance, an explanation of what specific code section have been violated, and measures necessary to abate the nuisance;
 - (3) An order that the nuisance be abated within a specified time period;
 - (4) A statement informing the recipient of his or her right to appeal the determination to a hearing officer by filing with the Richmond Police Department Code Enforcement Unit within ten (10) calendar days from the date of the noncompliance notice and order, and on a form available from the Richmond Police Department Code Enforcement Unit, a written statement requesting a hearing and providing a factual and specific explanation of: (A) why the premises should not be declared to be a public nuisance and abated, and (B) why the costs of such abatement should not become a special assessment lien against the premises;
 - (5) A statement that if the person, firm, corporation or entity fails to abate the violation and nuisance or fails to file on a timely basis a request for an appeal hearing, the noncompliance notice and order shall be final and not subject to judicial review, and all persons served with such noncompliance notice and order shall be deemed to have consented to the abatement of the nuisance and that, at the election of the City, the City will abate the nuisance and the costs of such abatement may be charged against the premises and may be recorded as a special assessment lien against the premises; and
 - (6) Service of Noncompliance Notice and Order.
 - (A) Persons Entitled to Service. The noncompliance notice and order shall be served upon the owner of the premises, any occupants of the premises, and any other person, corporation, or entity in violation.
 - (B) Method of Service. Unless otherwise provided in this section, service of a noncompliance notice and order shall be made by personal service or by First Class U.S. Mail, postage prepaid with confirmation of delivery by the U.S. Postal Service. Service on any property owner in violation is deemed complete when it is served or delivered at the address listed by the property owner at the County Recorder's Office of Contra Costa County, or as known to the City official issuing the order. If personal service or service by mail with confirmation of delivery is not reasonably feasible or too cost prohibitive, service of the noncompliance notice and order may be made by posting the order on the subject premises and sending a copy by regular United States mail service. Service posting in the manner herein provided shall be effective on the date of posting. As an alternative, substituted service of the noncompliance notice and order may be made as follows:

- (C) (i) By leaving a copy during usual business hours at the recipient's business with the person who is apparently in charge, and then mailing a copy by first-class mail to the recipient at the address where the copy was left; or
 - (ii) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and then mailing a copy by first-class mail to the recipient at the address where the copy was left.
 - (D) If the party entitled to service has a property manager or rental agency overseeing the premises, substituted service may be made as set forth in above upon the property manager or rental agency.
 - (E) Substituted service may be made by posting the noncompliance notice and order on the premises and mailing a copy of the noncompliance notice and order to the person, corporation, or entity in violation at the address of the property on which the violation has occurred or is occurring.
 - (F) If the person, corporation, or entity in violation or other person entitled to service cannot be located or service cannot be made as set forth in this section, service may be made by publication in a newspaper of general circulation in Contra Costa County. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.
- (e) Appeal Hearing.
- (1) Hearing Officer. The appeal shall be heard by a hearing officer appointed by the City Manager or his or her designee to hear administrative appeals. The hearing officer may be a City employee, but in that event the hearing officer shall not have had any responsibility for the investigation, prosecution or enforcement of nuisances under this chapter and shall not have had any personal involvement in the appeal to be heard within the past twelve months.
 - (2) Setting Appeal Hearing. The appeal hearing shall be set by the City Manager or his or her designee, and notice of the appeal hearing shall be sent to the appellant by first class mail at the address provided with the written appeal request. The appeal hearing shall be set for a date no sooner than twenty (20) days following a request for an appeal hearing. Notice of the appeal hearing shall be mailed at least fifteen (15) days before the date set for hearing.
 - (3) Format of Hearing Officer's Decision. The hearing officer shall issue a written decision containing findings of fact and a determination of the issues presented. The hearing officer may affirm, modify or reverse the notice of violation, administrative citation or the noncompliance notice and order.
 - (4) Contents of Hearing Officer's Decision. If it is shown by a preponderance of all the evidence that the condition of the premises constitutes a violation of the Richmond Municipal Code or is a public nuisance as defined in this chapter, the decision shall declare the premises to be a public nuisance and shall order and require the appellant to abate the nuisance not later than ten (10) calendar days after the issuance of the decision or, if ten (10) calendar days is insufficient to abate the nuisance, within such other time as specified by the hearing officer not to exceed sixty (60) days. The decision shall inform the appellant that if the nuisance is not abated within the time specified, the nuisance may be abated by the City in such manner as may be ordered by an authorized City employee and the expense thereof made a special assessment lien upon the property involved. This is in addition to any other legal remedies that the City may choose to compel compliance.
 - (5) Service of the Hearing Officer's Decision. Upon issuance of the decision, the City shall serve a copy on the appellant by first class mail to the address provided by appellant in the written

notice of appeal. The hearing officer's decision shall be deemed served three (3) days after the date it is mailed to the address provided by the appellant.

- (6) **Finality of Hearing Officer's Decision.** The decision of the hearing officer on an appeal of a noncompliance notice and order shall constitute the final administrative decision of the City and shall not be appealable to the City Council or any committee or commission of the City.
- (f) **Failure to Obey Order—Abatement by City.** If, after any noncompliance notice and order or any order of a hearing officer made pursuant to this chapter has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, an authorized City employee is authorized and directed to cause the nuisance to be abated by City personnel or private contract. Further, an authorized City employee shall obtain a warrant, if required, and thereafter is expressly authorized to enter upon the premises for the purpose of abating the nuisance.

9.22.110 - Abatement by City or owner—Assessment of all costs of abatement against owner or property.

- (a) In the event the nuisance is not abated within the time specified in the notice or, if a hearing is held, within the time specified in the hearing decision, the City may take all necessary action to abate such nuisance, and the owner of such property and/or any other person whose duty was to abolish or abate such nuisance, in addition to incurring penalties as provided herein, shall become personally indebted to the City for the damages, all costs and charges, including all reasonable administrative costs of abatement and enforcement incurred by the City by reason of the existence of the nuisance or the abatement of the nuisance, as set forth in the Master Fee Schedule authorized by Richmond Municipal Code Chapter 2.34. These damages, costs and charges may alternatively be assessed as a lien against the property on which the nuisance existed.
- (b) In the event the nuisance is abated within the time specified in the notice or, if a hearing is held, within the time specified in the hearing, by the owner or anyone acting on behalf of the owner, the owner of such property and/or any other person whose duty was to abolish or abate such nuisance, in addition to incurring penalties as provided herein, shall become personally indebted to the City for the damages, all costs and charges, including all reasonable administrative costs of abatement and enforcement incurred by the City by reason of the existence of the nuisance or the abatement of the nuisance, as set forth in the Master Fee Schedule authorized by Richmond Municipal Code Chapter 2.34. These damages, costs and charges may alternatively be assessed as a lien against the property on which the nuisance existed.
- (c) The City Manager or his or her designee shall keep an itemized account of the expenses incurred by the City in abating violations under this chapter. After the completion of the work of abatement, whether by the owner or by the City, said Manager or his or her designee shall cause an itemized bill of the expenses to be mailed to the owner.
- (d) On a periodic basis as determined by City Manager or his or her designee, said City Manager or his or her designee shall prepare and file with the City Clerk a report and assessment list which identifies all real property at which abatement work was done by the City pursuant to this chapter and for which the owner has not fully reimbursed the City within 30 days of the date of billing. The report and assessment list shall provide a description of the real property at which the work was performed, the expenses incurred by the City and the names and addresses of the persons entitled to notice, as identified in Section 9.22.100(c) of this chapter.
- (e) Upon receipt of the report, the City Clerk shall post a notice of filing of the report in a conspicuous place in the City Hall, with said notice specifying the filing date of the report and assessment list and the time and place when and where the report and assessment list will be submitted to the City Council for hearing and confirmation. The City Clerk shall also mail by first class mail a notice to each property owner identified in the report and assessment, at the address specified in Section

9.22.100(c) of this chapter. Said notice shall provide a description of the real property at which the work was performed, the nature of the work performed, and the expenses incurred by the City in performing the work and shall notify the owner that said costs shall be assessed against the owner or the property unless objection is made by the owner in writing and submitted to the City Clerk at least two days before the hearing. Said notice shall also specify the time and place when and where the proposed assessment will be presented to the City Council for hearing and confirmation. The notice shall be mailed at least 10 days prior to the date of said hearing.

- (f) Any owner who objects to the proposed assessment and who desires to challenge the proposed assessment at the City Council hearing must submit any and all objections in writing to the City Clerk at least two days prior to the date of hearing. The failure of any owner to submit objections to the City Clerk shall constitute a waiver of any such objections.
- (g) At the time and place fixed for hearing and confirming the proposed assessments, the City Council shall hear the same. At such hearing, only those persons who have submitted written objections to the City Clerk will be heard by the Council. At said hearing, the City Council may correct, modify or eliminate any proposed assessment which it may deem excessive or otherwise incorrect. Thereafter, by vote and resolution, the Council shall confirm each assessment and the amount thereof, as proposed or as corrected and modified, and order that an assessment be made as a personal obligation of the owner or, alternatively, assess it against the property. If the Council orders that an assessment be charged as a personal obligation of the property owner, it shall direct appropriate City personnel to collect the same by use of all appropriate legal remedies. If the Council orders that an assessment be assessed against the property, it shall also direct that the same be recorded on the tax assessment roll and thereafter said assessment shall constitute a special assessment and lien against the property. The special assessment and lien shall be subject to the same penalties as are provided for other delinquent taxes or assessments of the City.
- (h) The City Manager is authorized and directed to pay as a reward, a sum equal to twenty-five (25) percent of the penalty or the fine actually paid by a person cited for violating any provision of this chapter, in the aggregate per case, where a claim for reward is made, for information leading to the arrest and successful collection of a fine or fee.

9.22.120 - Summary abatement.

- (a) If, in the opinion of an authorized City employee or, if a hearing has been requested, the Board of Appeals, there exists a condition on any premises which is of such a nature as to be substantially dangerous to the public health, safety or welfare, which, if not abated, would, during the pendency of the abatement procedures set forth in this chapter, subject the public to potential harm of a serious nature, the same may be abated by the City forthwith without compliance with the provisions of this chapter.
- (b) No summary abatement shall be undertaken unless it shall first be approved by the City Attorney or his authorized representative.
- (c) The cost of summary abatement including all administrative costs of any action taken hereunder, including reasonable attorney's fees, may be assessed against the subject real property as a special assessment lien and/or made a personal obligation of the owner as provided in Section 9.22.110.
- (d) As soon as practicable following completion of the abatement, an authorized City employee shall issue a notice of violation and/or noncompliance notice and order in accordance with this chapter. Persons receiving such notices shall be entitled to all hearing rights as provided in this chapter.

9.22.130 - Abatement of dangerous buildings.

Notwithstanding the procedures set forth in Section 9.22.110 of this chapter, whenever the Director of Public Works has inspected or has caused to be inspected any building or structure and has determined that such building or structure is a dangerous building pursuant to the Uniform Code for the Abatement of Dangerous Buildings as adopted by the State of California and Chapter 6.10 of this Code, abatement of the conditions causing the building to be dangerous shall be undertaken pursuant to the procedures set forth in the Uniform Code for the Abatement of Dangerous Buildings and this Code.

9.22.140 - Vector control—Summary abatement.

Notwithstanding and in addition to any other remedy available under the ordinance codified in this section or other federal, state or local law or regulation, if a public nuisance as defined in this chapter exists and constitutes an immediate threat to public health or safety, the City may summarily and without notice or hearing abate such nuisance at the expense of the persons creating, causing, committing, or maintaining the nuisance. The expense of abatement of the vector nuisance shall be a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with Section 38773.1 or 38773.5 of the California Government Code and Section 9.22.110 of this chapter.

SECTION 3. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4. Effective Date.

This ordinance amendment shall be effective 30 days after passage and adoption. First introduced at a regular meeting of the City Council of the City of Richmond held on _____ and finally passed and adopted at a regular meeting held on _____ by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Clerk of the City of Richmond

(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney