

ORDINANCE NO. 22-07 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND AMENDING
SECTIONS 9.22.100 AND 9.22.120 OF THE MUNICIPAL CODE OF THE CITY OF
RICHMOND, PERTAINING TO CODE ENFORCEMENT

SECTION 1. Section 9.22.100 of the Municipal Code of the City of Richmond is hereby amended to read as follows:

9.22.100 **Administrative** Abatement ~~procedure~~.

(a) Authority. Whenever ~~the Director of Public Health or the Director of Public Works~~ **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, the Director~~ **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, ~~the Director~~ **an authorized city employee** shall ~~may~~ issue a ~~notice~~ **Notice of Violation** directed to the record owner and to the occupants, as appropriate, of the premises. The ~~notice~~ **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 ~~and which also may specify the measures necessary to abate 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; ~~and~~

(4) ~~A statement that the owner (or any occupant to whom the notice has been directed) has the right to request a hearing before the Board of Appeals and that such request must be made in writing and must be made within the time period within which the owner (or occupant) has been ordered to abate the nuisance.~~ **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; and**

(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.

~~(e)(6) Service of Notice of Violation. The written notice shall be served upon any occupant to whom it has been directed and upon the record owner of the property upon which the nuisance exists at least five days before the abatement deadline date specified in the notice. The written notice shall be served either by personal delivery upon the record owner or by mailing a copy to the record owner by certified mail, return receipt requested, at the owner's last known address as it appears on the latest equalized assessment roll of the county. Service on any occupant to whom the notice has been directed shall be made by personal delivery to the occupant or by mailing a copy to the occupant by certified mail, return receipt requested, at the address of the subject property or to another address known to be the occupant's home, business or mailing address. In all instances, a copy of the notice shall also be posted on the premises. 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) Duty to Abate--Request for Hearing. After the written notice has been served, it shall be the duty of the owner (or any occupant to whom the notice has been directed) to abate such nuisance within the time specified by the notice.~~

~~However, within the time specified in the notice to abate the nuisance, the owner (or occupant) may request a hearing before the Board of Appeals, created in Section 6.02.030 of this Code (Board of Appeals). Such request must be made in writing and should set forth the reasons why the abatement is not necessary.~~

(d) Non-Compliance Notice & 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 an Non-Compliance Notice & Order directed to the record owner and to the occupants, as appropriate, of the premises. The Non-Compliance Notice & 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; and

(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 Non-Compliance Notice & 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 Non-Compliance Notice & Order shall be final and not subject to judicial review, and all persons served with such Non-Compliance Notice & 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.

(6) Service of Non-Compliance Notice & Order.

(A) Persons Entitled to Service. The Non-Compliance Notice & 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 Non-Compliance Notice & 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 Non-Compliance 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 Non-Compliance 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 Non-Compliance Notice & Order on the premises and mailing a copy of the Non-Compliance Notice & 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) Hearing Decision. On receipt of a timely written request for hearing, the Board of Appeals shall set a date for and on that date shall conduct a hearing on the proposed abatement. At the hearing the Board of Appeals shall redetermine whether or not a nuisance exists and whether or not the owner (or any occupant to whom the notice has been directed) should abate the nuisance. If the Board of Appeals finds, based on a preponderance of the evidence, that the nuisance continues to exist, the Board of Appeals shall issue a written decision informing the owner (or occupant) of that finding and specifying the time within which the abatement shall be completed. The decision of the Board of Appeals shall be the final and conclusive administrative decision.~~

(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 Non-Compliance Notice & 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 Non-Compliance 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) Service of Hearing Decision. The hearing decision shall be served on the record owner and on any occupant to whom the notice has been directed in the same manner as set forth in subsection (c) of this section. One copy of the hearing decision shall also be served on each of the following, if disclosed from official public records: The holder of any mortgage, deed of trust or other lien or encumbrance of record and the holder of any other estate or legal interest of record in the premises.~~

(f) Failure to Obey Order - Abatement by City. If, after any Non-Compliance Notice & 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.

SECTION 2. Section 9.22.120 of the Municipal Code of the City of Richmond is hereby amended to read as follows:

9.22.120 Summary Abatement

(a) If, in the opinion of ~~the Director of Public Works or the Director of Public Health~~ 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 ~~imminently~~ 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 Non-Compliance Notice & Order in accordance with this Chapter. Persons receiving such Notices shall be entitled to all hearing rights as provided in this Chapter.

SECTION 3. Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 4. 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 5. This Ordinance shall be effective 30 days after passage and adoption.

First read at a regular meeting of the City Council of the City of Richmond held on November 14, 2006 and finally passed and adopted at a regular meeting held on July 17, 2007 by the following vote:

AYES: Councilmembers Bates, Butt, Lopez, Marquez, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: None

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

LOUISE RENNE. Interim
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 22-07 N.S., finally passed and adopted by the Council of the City of Richmond at a meeting held on July 17, 2007.