

**ORDINANCE NO. 1975**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE ADOPTING CHAPTER 9.62 FIREWORKS REGULATION OF THE VACAVILLE MUNICIPAL CODE RELATING TO FIREWORKS REGULATION**

**WHEREAS**, Vacaville Municipal Code Chapter 1.28 and Vacaville Municipal Code Section 15.20.271.040.Q generally governs storage and use of fireworks and enforcement thereof; and

**WHEREAS**, the City Council now desires to add Chapter 9.62 to the Vacaville Municipal Code to specifically address fireworks regulations; and

**WHEREAS**, the City Council of the City of Vacaville is the decision-making body for this Ordinance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The foregoing recitals are true and correct and constitute the findings in this matter.

**SECTION 2.** Chapter 9.62 of the Vacaville Municipal Code is hereby added to read as follows:

**Chapter 9.62**

**FIREWORKS REGULATION**

**Sections:**

**9.62.010 Findings and purpose.**

**9.62.020 Definitions.**

**9.62.030 Manufacturing and transport of fireworks.**

**9.62.040 Prohibition on possession, storage, sale, or use of fireworks.**

**9.62.050 Supervision of minors.**

**9.62.060 Social host liability.**

**9.62.070 Enforcement.**

**9.62.080 Determining violations; penalties for violations.**

**9.62.090 Payment of fines, fees, and penalties.**

**9.62.100 Imposition of response costs for public safety responses.**

**9.62.110 Appeals – Hearings on the imposition of civil fine and/or response costs – Imposition of administrative penalties.**

**9.62.120 Cumulative remedies.**

**9.62.130 Severability and preemption.**

**9.62.010 Findings and purpose.**

- A. The City of Vacaville has deemed the use of dangerous and safe and sane fireworks, as defined in Health and Safety Code Sections 12500 et seq., to pose a risk to public health and safety, and prohibits the use of any kind of firework by members of the general public. The provisions of this chapter are intended to regulate the use of all fireworks to provide for the safety of the community and the prevention of fires.
- B. This chapter provides for the regulation of the manufacture, transportation, possession, use, and sale of fireworks within the City of Vacaville and the imposition, enforcement, collection, and administrative review of administrative fines, related to the possession, use, storage, sale and/or display of fireworks, including those classified as "dangerous fireworks" and "safe and sane fireworks" as defined in California Health and Safety Code Sections 12500 et seq., with the exception of the use of fireworks with a pyrotechnic licensee when operating pursuant to and accordance with the terms of that license.
- C. The issuance of citations imposing administrative fines may be performed at the discretion of the officials of the City authorized under this chapter; and the issuance of a citation to any person constitutes but one remedy to redress violations of this code by any person. By adopting this chapter, the City does not intend to limit its authority to employ any other remedy, civil or criminal, to redress any violation of this code or state law by any person.
- D. The imposition of fines related to "dangerous fireworks" under this chapter shall be limited to persons who possess, sell, use, and/or display, or the seizure of, twenty-five pounds or less (gross weight) of such dangerous fireworks.
- E. Fines collected pursuant to this chapter related to "dangerous fireworks" shall not be subject to Health and Safety Code Section 12706. However, the City shall provide cost reimbursement to the state fire marshal for the transportation and disposal of "dangerous fireworks" seized by the City where applicable. These costs will be included in addition to any administrative fines imposed under this chapter.

**9.62.020 Definitions.**

As used in this chapter, the following words and phrases shall have the following meanings:

- A. "California Fire Code" means the California Fire Code, 2019 Edition, as published by the California Building Standards Commission, as amended from time to time.
- B. "City" means the City of Vacaville.
- C. "City Manager" means the City Manager of the City of Vacaville or his or her designee.

- D. "City Clerk" means the City Clerk of the City of Vacaville or his or her designee.
- E. "Citation" and "written notice" means any type of document, no matter how named or entitled, issued to a person responsible for a violation of this chapter and informing the person responsible of the violation of this chapter.
- F. "Dangerous fireworks" means dangerous fireworks as defined in Health and Safety Code Sections 12505 and 12561 and the relevant sections of Title 19, Code of Regulations, Division 1, Chapter 6 which are hereby incorporated by reference.
- G. "Enforcement Officer" means any department authorized by the City Manager to enforce violations of this chapter, including, but not limited to, the Fire Chief, the Police Chief, or the Division of Code Enforcement of the City.
- H. "Fire Department" means the City of Vacaville Fire Department.
- I. "Fireworks" means either dangerous fireworks or safe and sane fireworks.
- J. "Fire Chief" means the Chief of the City's Fire Department or his or her designee.
- K. "Fire Code Official" means the Chief of the City's Fire Department only and shall not include his or her designee.
- L. "Hearing Officer" means the City Manager or his or her designee.
- M. "Minor" means any person less than eighteen (18) years of age.
- N. "Occurrence" means a subsequent violation after an oral warning, citation, or written notice is issued.
- O. "Party, gathering or event" is a group of two or more persons who have assembled or are assembling for a social or commercial occasion or activity.
- P. "Police Department" means the City of Vacaville Police Department.
- Q. "Police Chief" means the Chief of the City's Police Department or his or her designee.
- R. "Public safety services" and/or "response costs" means the costs associated with a response to and abatement of a violation of this chapter, such as responses by the Enforcement Officer, Fire Department, the Police Department, and/or other emergency response providers, including but not limited to:
  - 1. The portion of the costs of salaries and benefits of the response personnel of the Enforcement Officer, Fire Department, and/or the Police Department for the amount of time spent responding to, remaining at, or otherwise dealing with a violation of this chapter and the administrative costs attributable to such response(s);
  - 2. The cost of any medical treatment to or for any response personnel of the Enforcement Officer, Fire Department, the Police Department, and/or other emergency response providers injured responding to, remaining at, or leaving the

scene where a violation of this chapter occurred;

3. The cost of the use of any City equipment or property, and the cost of repairing any City equipment or property damaged in responding to, remaining at or leaving the scene where a violation of this chapter occurred; and
  4. Any other costs recoverable in compliance with California Civil Code Section 1714.9.
- S. "Pyrotechnic displays" means public firework displays or displays used in conjunction with special effects, for motion pictures, theatrical and group entertainment productions operated by a professional California state licensed pyrotechnician, provided such displays secure a permit from the Fire Code Official and meet all applicable requirements of California Health and Safety Code.
- T. "Responsible Person" means a person or persons who cause(s) a violation under this chapter to occur or allow(s) a violation to exist or continue, by his or her action or failure to act, or whose agent, employee, or independent contractor cause(s) a violation to occur, or allows a violation to exist or continue. For purposes of this chapter, a social host is a responsible person unless found to be exempt under Section 9.62.060(C).
- U. "Safe and sane fireworks" and "state-approved fireworks" shall mean state-approved fireworks defined in Health and Safety Code Sections 12529 and 12562 and the relevant sections of Title 19, Code of Regulations, Division 1, Chapter 6, which are hereby incorporated by reference.
- V. "Social host" means:
1. Any owner of private property as listed on the most recent assessment roll;
  2. Any person who has the right to use, possess or occupy a public or private property under a lease, permit, license, rental agreement, or contract; or
  3. Any person who hosts, organizes, supervises, facilitates, officiates, conducts, or sponsors a gathering on public or private property, and if such person is a minor, then that person's parents or legal guardians.
- W. "Strictly liable" means liable for a wrongful act irrespective of such person's intent, knowledge, negligence or lack thereof in committing the wrongful act.

#### **9.62.030 Manufacturing and transport of fireworks.**

The manufacturing and/or transportation of any fireworks is prohibited, except by a person who has been issued a permit by the office of the state fire marshal or is otherwise permitted to do so pursuant to provisions of state law, and such manufacturing or transportation is being performed in compliance with applicable requirements of the California Fire Code and Vehicle Code. Travel outside of state-approved routes shall be subject to the approval of a permit issued by the Fire Code Official in accordance with Health and Safety Code Section 12652.

**9.62.040 Prohibition on possession, storage, sale, or use of fireworks.**

The possession, storage, sale, and use of any dangerous or safe and sane fireworks, shall be prohibited by any person throughout the City of Vacaville except when a permit is issued, in advance, by the Fire Code Official for the exceptions below:

- A. Storage and handling of fireworks in accordance with Section 5605 of the California Fire Code.
- B. The use of fireworks for pyrotechnic displays in accordance with Section 5608 of the California Fire Code.

The prohibition on the possession of fireworks in this section shall not apply to manufacturing and transportation activities permitted under Section 9.62.030.

**9.62.050 Supervision of minors.**

- A. It shall be unlawful for any person having the care, custody or control of a minor to permit such minor to discharge, explode, fire or set off any fireworks, at any time.
- B. Any person having the care, custody, or control of a minor shall be strictly liable for any unlawful ignition, use, or discharge of any fireworks by that minor.
- C. If the person responsible for a violation of this chapter is a minor, then the minor and the parents or guardians of the minor may be jointly and severally liable for the administrative fines or response costs imposed pursuant to this chapter, irrespective of whether the parent(s) or guardian(s) knew of the violation by the minor.

**9.62.060 Social host liability.**

- A. No social host shall suffer or permit any persons to use fireworks:
  - 1. On property that is either owned by the social host, or occupied or otherwise used by the social host pursuant to a lease, permit, license, rental agreement, or contract; or
  - 2. At any gathering on public or private property that is hosted, organized, supervised, facilitated, officiated, conducted, or sponsored by the social host, except for pyrotechnic displays that are permitted in accordance with Section 9.62.040.
- B. It is the duty of any social host who knowingly hosts, permits, or allows any gathering to take place to take all reasonable steps to prevent the possession and/or use of fireworks by that social host's guest(s), licensee(s), and/or invitee(s). A social host shall be strictly liable for any possession or use of fireworks by any person on property that is either owned by the social host, or occupied or otherwise used by the social host pursuant to a lease, permit, license, rental agreement, or contract.
- C. No social host shall, with respect to private property where fireworks are possessed and/or used, be liable for a violation of this Section 9.62.060 if the social host can demonstrate that at the time of such violation the social host:

1. Had rented or leased the property to another person;
  2. Was not present at the scene where a violation of this chapter occurred; and
  3. Had no prior knowledge of the violation.
- D. The right to use, possess, or occupy a unit in a multifamily residential property under a lease, rental agreement, or contract shall not alone support a finding that the person possessing such right suffered or permitted a violation of this section occurring in the common areas of the property, absent evidence establishing a violation of Section 9.62.060(A)(2).
- E. Nothing in this section shall limit the liability of any social host for a violation of Section 9.62.030 or 9.62.040 by the social host.

**9.62.070 Enforcement.**

- A. A violation of Section 9.62.030 and/or Section 9.62.040 constitutes a public nuisance and an immediate threat to public health and safety and shall be summarily abated by the Enforcement Officer, the Fire Department, or the Police Department, by all reasonable means including, but not limited to:
- i. seizing, taking, removing, or causing to be removed, at the expense of the responsible person, all stocks of fireworks offered or exposed for sale, stored or held in violation of this chapter; and/or
  - ii. issuing an order requiring any party, gathering or event be disbanded and/or issuing a citation or written notice of violation under this chapter; and/or
  - iii. arresting a responsible person by the Police Department under any other applicable ordinances or state statutes.
- B. The amount of the administrative penalty for violations of this chapter pertaining to fireworks shall be governed by Section 9.62.080.
- C. The City Manager, the Fire Chief, or the Police Chief, may call upon the City Attorney to institute necessary legal proceedings to enforce the provisions of this chapter and to institute appropriate actions to that end.

**9.62.080 Determining violations; penalties for violations.**

- A. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- B. Each person who violates any provisions of this chapter by possessing, using, storing, selling, and/or displaying of any dangerous firework, or violates Sections 9.62.050 or 9.62.060 and such violation involves dangerous fireworks, shall be subject to the imposition and payment of an administrative fine of one thousand dollars per occurrence, a late charge of ten percent (10%) if the fine is not timely paid in accordance with Section 9.62.090(C).
- C. Each person who violates any provisions of this chapter by possessing, using, storing, selling, and/or displaying of any safe and sane fireworks or state-approved fireworks, or violates Sections 9.62.050 or 9.62.060 and such violation involves any safe and sane fireworks or state-approved fireworks, shall be subject to the imposition of payment of an

administrative fine, and a late charge if the fine is not timely paid in accordance with Section 9.62.090(C), as provided below:

Number of Violations in Any Twelve-Month Consecutive Period	Amount of Administrative Penalty	Late Charge	Total Amount of Penalty Plus Late Charge
First	\$250.00	Ten Percent (10%)	\$275.00
Second	\$500.00	Ten Percent (10%)	\$550.00
Third	\$750.00	Ten Percent (10%)	\$825.00
Fourth or more	\$1,000.00	Ten Percent (10%)	\$1,100.00

- D. Each occurrence that the provisions of this chapter are violated shall be deemed as a separate offense. Additionally, each day or portion thereof that the provisions of this chapter are violated shall also be deemed a separate offense.
- E. In addition to such administrative penalties, each responsible person shall be liable for all costs incurred by the office of the state fire marshal for the transportation and disposal of any fireworks seized from the responsible person. The costs incurred by the office of the state fire marshal will be calculated based upon the regulations promulgated by that office. If those regulations have not been adopted by the office of the state fire marshal at the time a responsible person is cited for possession of dangerous fireworks under this code, the City will reserve twenty-five percent of any fine collected under this provision to cover the actual cost of disposal to the office of the state fire marshal.
- F. Nothing in this section shall be intended to limit any of the penalties provided for under the California Health and Safety Code or Penal Code with regard to the sale, use, possession, delivery, storage, and/or transportation of dangerous fireworks. The penalties set forth herein are intended to be nonexclusive and are intended to be in addition to any other remedies provided in this article or any other law, statute, ordinance or regulation.

**9.62.090 Payment of fines, fees, and penalties.**

- A. In addition to the administrative fine, and any applicable late charge, as specified in Section 9.62.080(B) or Section 9.62.080(C), any person who violates any provision of this chapter shall be liable and responsible for, and shall pay to the City any and all other costs, fees, penalties, and expenses which may be assessed or imposed as a result of a violation of this chapter.
- B. The Enforcement Officer shall immediately issue a citation or within fifteen (15) days of the date of the violation give written notice of a violation of this chapter to any and all responsible person(s) identified by the Enforcement Officer. The citation or notice may be served immediately at the time of violation or may be served on the responsible person(s) by personal service or certified mail to the last known address of the responsible person(s). The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.
- C. The amount of any administrative fine and/or response costs shall be deemed a debt owed to the City by the responsible person(s) found in violation of this chapter and

therefore liable for a fine under Section 9.62.080 and response costs under Section 9.62.100, and, if that person is a minor, then also his/her parents or guardians. All such fines and/or response costs shall be paid within thirty (30) days of the date of issuance of the citation or written notice or, in the event of an appeal, within thirty (30) days of the date of the Hearing Officer's decision. Any person owing such fine and/or response costs shall be liable in an action brought in the name of the City for recovery of such fine and/or response costs. These costs may include reasonable attorneys' fees incurred in the action if the City prevails, as the City reserves the right to seek to recover reasonable attorney fees, on a case-by-case basis, pursuant to California Government Code Section 25845(c). In those cases in which the City seeks to recover reasonable attorney fees, the other party may likewise do so if it is the prevailing party. Administrative fines recovered by the City pursuant to this chapter shall be placed in the budget of the Enforcement Officer to be used by that Enforcement Officer. Failure to timely pay fines shall subject the offender to late charges in Section 9.62.080.

- D. **Debt Collection.** All unpaid fines, fees and penalties, and late charges assessed shall be a debt to the City and subject to all remedies for debt collection allowed by law. The debt collection process shall be as follows:
1. A first notice of debt owed will be given to the debtor to pay all amounts owed to the City by the date indicated in the notice.
  2. A second notice of debt owed will be given to the debtor if the amount owed is not paid by the date set in the first notice. The amount owed in the second notice will be owed by the date indicated in the notice.
  3. If the amount owed to the City is not received by the date indicated in the second notice, the debt will be collected by use of all available legal means.

Failure to receive any debt collection notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

Nothing in this section shall be intended to prohibit the City from referring an outstanding debt to a collection agency or from proceeding with any other method of debt collection available to the City by law.

- E. **Personal Obligation.** When any violation of this chapter has occurred, whether or not the responsible person(s) has any ownership interest in the real property on which the violation occurred, and the fine and/or response costs associated with the violation are not paid within the time frames set forth in this chapter and as required by the notice, citation or order of the Hearing Officer, in addition to all other remedies available to the City, the fine and/or response costs shall be a personal obligation of the responsible person(s); and, in addition to all other remedies available to the City, the City may institute an action in any court of competent jurisdiction against the responsible person(s) for the fine and/or response costs associated with the violation.

#### **9.62.100 Imposition of response costs for public safety responses.**

- A. In addition to any and all other costs, fees, penalties and expenses which may be assessed or imposed as a result of a violation of this chapter, any responsible person who violates any provision of this chapter shall be liable and responsible for, and shall be required to reimburse the City for, all public safety services costs and expenses incurred



by the City in connection with the violation and abatement of the nuisance. The City shall notify the responsible person(s) in writing of the imposition of such costs and expenses, and in doing so shall set forth such costs and expenses with reasonable specificity. The response costs for public safety responses shall be separate and distinct from a citation and administrative fine described in Section 9.62.080. The notice of costs and expenses set forth in this Section 9.62.100 may be included with, or be separate and distinct from, any citation or written notice of violation of this chapter, and shall be served on the responsible person(s) within fifteen (15) days of the date of violation by personal service or certified mail to the last known address of the responsible person(s). In the event that the notice of costs and expenses is separate and distinct from any citation for violation of this chapter, the time in which the responsible person(s) must exercise his or her right to appeal shall be then governed by its own separate and distinct time frame based on the date the notice of costs and expenses was served.

**B. Liens or Special Assessment for response costs for public safety responses.**

When any violation of this chapter has occurred on real property owned in whole or in part by the responsible person(s) who has violated this chapter and the response costs associated with the violation are not paid within the time frames set forth in this section and as required by the notice, citation or order of the Hearing Officer in addition to all other remedies available to the City, the City Council may:

1. **Special Assessment.** Order that response costs be specially assessed against the real property involved. When the City Council orders that the response costs be specially assessed against the real property, it shall confirm the assessment at a public meeting and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. Pursuant to Government Code Section 38773.5, notice of the imposition of the special assessment shall be given to the responsible person(s) by certified mail. All laws and ordinances applicable to the levy, collection, and enforcement of said taxes are hereby made applicable to such special assessment; or
2. **Lien.** Impose the response costs associated with the violation as a lien against the real property pursuant to Government Code Section 38773.1, following confirmation of the lien amount at a public meeting.

Notice of the lien shall be given to the responsible person(s) in the same manner as summons in a civil action pursuant to California Code of Civil Procedure Section 415.10 et seq. If the responsible person(s) cannot be located after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the real property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Solano County.

A lien imposed pursuant to this section may be foreclosed by an action brought by the City for a money judgment. The City may recover from the responsible person(s) any costs incurred regarding the processing and recording of the lien and providing notice to the responsible person(s) as part of its foreclosure action to enforce the lien.

**9.62.110 Appeals – Hearings on the imposition of civil fine and/or response costs – Imposition of administrative penalties.**

A. Any responsible person(s) subject to an administrative fine and/or response costs pursuant to this chapter shall have the right to request a hearing to appeal the imposition and/or amount of any administrative fine and/or response costs.

B. The following procedures shall apply to the appeal:

1. **Form of Appeal.** Any responsible person(s) receiving a citation or written notice may appeal from the citation or written notice by filing a written request for appeal hearing within ten (10) days from the date of the service of the citation or notice. The request for appeal hearing shall contain:

- i. A brief statement in ordinary and concise language of the specific order protested, together with any material facts claimed to support the contentions of the appellant;
- ii. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside;
- iii. The signature of the appellant and his or her official mailing addresses, with a statement from the appellant that he or she agrees to accept service of the written notice of the time and place of the appeal hearing and the decision of the hearing officer at such address; and
- iv. The verification by declaration under penalty of perjury of the appellant as to the truth of the matters stated in the appeal.

2. **Processing of Appeal.** The request for appeal hearing shall be filed with the City Clerk, who shall calendar it for hearing with the Hearing Officer. The Enforcement Officer shall also submit a written report to the Hearing Officer along with the appeal, which shall include:

- i. A chronology summarizing the relevant facts giving rise to the notice or citation;
- ii. The reasons supporting the Enforcement Officer's determination that this chapter was violated;
- iii. A summary of response costs incurred by the City in responding to the public nuisance; and
- iv. A recommendation as to the administrative fine sought to be imposed against the appellant, or administrative penalties recommended in lieu of fines, and/or response costs, if any, together with the reasons supporting that recommendation.

3. At the discretion of the Police Department or Fire Department, any police report or fire report on the matter, or summary thereof, may constitute the written report required under this section.

4. **Noticing of Appeal for Hearing.** Written notice of the time and place of the appeal hearing shall be given at least ten (10) calendar days prior to the date of the hearing to each appellant by the City Clerk by causing a copy of such notice and report to be delivered to the appellant personally or by mailing a copy thereof,

postage prepaid, addressed to the appellant at his or her address shown on the appeal, unless provision of the report will interfere with an ongoing criminal investigation or case, or will, in the Police Department's discretion, endanger the health and safety of any witness or other person identified or identifiable in the report.

- C. **Appeal Fee.** The City may collect and require an appeal fee to be paid at the time the written notice of appeal is filed. The appeal fee shall be set by resolution of the City Council. The fee shall be calculated to recover the total City costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, preparation and service of notices, and staff appearance in the appeal hearing; however, the fee shall not include the Hearing Officer compensation. No appeal shall proceed without payment of the fee at the time the appeal is filed; provided, that the City Manager may waive or defer the appeal fee upon written request for good cause shown. Good cause may include, but is not limited to, severe economic hardship, significant cooperation with the City to prevent any future violations, and other factors indicating good-faith attempts to comply with this chapter.
- D. **Effect of Failure to Appeal.** Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the citation or notice, or any portion thereof.
- E. **Staying of Order Until Appeal.** Enforcement of any citation or notice shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.
- F. **Hearing Procedures.** The following procedures shall apply to the hearing of an appeal hereunder:
1. The Hearing Officer may, upon request of the responsible person or upon request of the Enforcement Officer, grant continuances from time to time for good cause shown, or upon his or her own motion.
  2. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended.
  3. The Hearing Officer shall administer the oath or affirmation.
  4. California Government Code Section 11513 as presently written or hereinafter amended shall apply to the hearing.
  5. Each party may represent themselves, or be represented by anyone of their choice.
  6. The Hearing Officer shall present the City's case first. The appellant shall then present his or her case, followed by a question and answer period by the Hearing Officer so as to allow the Hearing Officer an opportunity to ask pertinent

questions of both sides before making a determination.

**G. Decision of Hearing Officer.**

1. Within ten (10) calendar days of the conclusion of the hearing, the Hearing Officer shall issue a decision either upholding, modifying or dismissing the violation and related fines and recovery costs. If it is shown by a preponderance of the evidence that a violation of this chapter occurred:
  - i. The decision of the Hearing Officer shall contain findings of fact and a determination of the issues presented;
  - ii. Except as set forth in Section 9.62.110(G)(1)(iii), the decision shall include an order to pay the administrative fine and/or response costs incurred by the City in attempting to abate the nuisance, in the amount as imposed by the notice or citation or as otherwise modified by the Hearing Officer; and
  - iii. At the Hearing Officer's discretion, and taking into consideration the responsible person's age, financial ability to pay, the frequency of violations by the responsible party, the impacts of the violation on the community, and any other mitigating factors presented by the responsible person(s), the Hearing Officer may impose in lieu of administrative fines and/or response costs the following administrative penalties:
    - a) Community service work on behalf of the City; and/or
    - b) Training, counseling, or classes that are relevant to the purpose of this chapter as set forth in Section 9.62.010.
  - iv. The decision shall inform the appellant that pursuant to California Government Code Section 53069.4, the responsible person has twenty (20) calendar days from the time the Hearing Officer's decision is served to appeal the decision to the superior court.
2. **Decision of Hearing Officer Final.** The decision of the Hearing Officer shall be final when signed by the Hearing Officer and served as herein provided. Such decision shall be final and conclusive and not subject to further administrative appeal. The decision of the Hearing Officer shall be subject to judicial review according to the provisions and time limits set forth in Section 53069.4 of the California Government Code.
3. **Service of Hearing Officer's Decision.** Upon issuance of the decision, the Enforcement Officer shall serve a copy on the responsible person in the same manner as set forth in Section 9.62.110(B)(4).

**H. Failure to Complete the Administrative Penalties Imposed in Lieu of Administrative Fines.**

The Enforcement Officer shall have the authority to verify completion of any administrative penalties imposed in lieu of administrative fines as set forth by the Hearing Officer. Failure to complete any administrative penalties imposed in lieu of administrative fines as directed, and within the time frame set forth by the Hearing Officer, will result in the administrative penalty or penalties reverting back to initial administrative fines and/or response costs as set forth in the original citation or written notice of violation, or as otherwise set forth in the Hearing Officer's decision without

further right to an administrative appeal.

**9.62.120 Cumulative remedies.**

The remedies, fines, penalties and fees provided for under this chapter are cumulative, and shall not restrict the City from any other remedy to which it is entitled under law or equity. Nothing in this chapter shall be deemed to preclude the imposition of any criminal penalty under state law or this code, nor shall anything in this chapter be deemed to conflict with any penalty or provision under state law, or to prohibit any conduct authorized by the state or federal constitution. This chapter shall not be interpreted in any manner that conflicts with the laws or constitutions of the United States or the State of California.

Nothing in this chapter shall be construed as a waiver by the City of any right to seek reimbursement for actual response costs incurred through other legal remedies or procedures.

**9.62.130 Severability and preemption.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

**SECTION 3. Severability.**

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional.

**SECTION 4. Effective Date.** This ordinance shall take effect thirty days after passage thereof.

**SECTION 5. Publication.** This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

**I HEREBY CERTIFY** that this ordinance was **INTRODUCED** at a regular meeting of the City Council of the City of Vacaville, held on the 12th day of April 2022, and **ADOPTED** and **PASSED** at a regular meeting of the City Council of the City of Vacaville held on the 10th day of May 2022 by the following vote:

AYES: Councilmembers Ritchie, Silva, Stockton, Sullivan, Wylie, Vice Mayor Roberts and Mayor Rowlett

NOES: None

ABSENT: None

APPROVED:

\_\_\_\_\_  
Ron Rowlett, Mayor

ATTEST:

  
\_\_\_\_\_  
Michelle A. Thornbrugh, City Clerk

Date: May 11, 2022