

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-31

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AMENDING SECTION 931.01, GENERAL NUISANCE ABATEMENT, PROCEDURE AND PENALTY, OF CHAPTER 931, NUISANCE ABATEMENT, OF PART NINE, GENERAL OFFENSES CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF BERA, AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of Berea finds that it is desirable to establish more efficient procedures for handling nuisance abatement matters; and

WHEREAS, it is necessary to clarify procedures for emergency and non-emergency abatements.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That Section 931.01, General Nuisance Abatement, Procedure and Penalty, which heretofore has read as follows:

931.01 General Nuisance Abatement, Procedure And Penalty.

(a) Authority of Service Director and Safety Director to Abate Nuisance. Whenever the Director of Public Service or Director of Public Safety finds that there is done or exists within the City an act, thing or condition of a kind which has been or may hereafter be defined by ordinance as a nuisance, the Director of Public Service and the Director of Public Safety, or either of them, are authorized and directed promptly to cause its abatement, as hereinafter provided.

(b) Notice to Property Owner. The Director of Public Service or Director of Public Safety may cause written notice to be served on the owner of the real estate upon which such nuisance exists or the cause or source of such nuisance is located. The notice shall set forth the nature of the nuisance; the estimate of the Director of Public Service or Director of Public Safety of the cost of abating the same; a direction that the owner abate the nuisance by the date, determined by the Director of Public Service or Director of Public Safety, specified in such notice, and the statement that unless the nuisance is abated within the specified time it may be abated by the City and the cost of abatement assessed to the real estate involved, and that the City may, if the nuisance is not so abated, in addition to such assessment, prosecute the owner for failure to comply with the direction of the Director of Public Service or Director of Public Safety.

(c) Service of Notice. The notice may be served by delivering it personally to the owner, by leaving it at the owner's usual place of business or residence, by posting it in a conspicuous place on the real estate involved, by mailing it to the owner, or by publishing it once in a newspaper of general circulation within the City if it cannot be served in any of the other ways above mentioned.

(d) Abatement by Service Director or Safety Director; Cost Assessment. If the nuisance is not abated within the time specified in such notice, the Director of Public Service or Director of Public Safety may cause its abatement and report the cost of abatement to Council, which may assess the cost of abatement on the real estate on which the nuisance existed, or the cause or source of such nuisance was located.

(e) Penalty. Any owner of real estate, upon which a nuisance exists or the cause or source of such nuisance is located, who fails to comply with the direction of the Director of Public Service or Director of Public Safety to abate such nuisance within the time specified in the notice from the Director, shall be deemed guilty of a minor misdemeanor for a first offense and guilty of a misdemeanor of the fourth degree for a second or subsequent offense within one year. Each day of failure to comply shall constitute a separate offense.

shall be and is hereby amended to read in its entirety as follows:

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931.01 GENERAL NUISANCE ABATEMENT, PROCEDURE AND PENALTY.

(a) Purpose. The purpose of this Section is to set forth standards for the declaration of a property or condition as a public nuisance, to authorize the abatement of certain nuisances by the City and to establish the procedures for the abatement of nuisances, in order to prevent hazards to the health, safety and welfare of the public, to prevent blight in residential and other areas, and to prevent conditions which impair or adversely affect the value of neighboring properties, and to provide procedures for emergency and non-emergency abatements.

(b) Authority. Whenever the Director of Public Service or Director of Public Safety finds that there is within the City an act, thing or condition of a kind which has been or may hereafter be defined by ordinance as a nuisance, the Director of Public Service or Director of Public Safety may issue a written notice declaring the existence of such nuisance, and may order the abatement of the nuisance or proceed to abate the nuisance.

(c) Notice to Property Owner and Other Responsible Parties. A written notice declaring a nuisance and order to abate shall be served on the responsible parties, which shall include the owner of the real estate upon which such nuisance exists or the cause or source of such nuisance is located and any additional responsible party.

(1) Content. The notice shall set forth the nature of the nuisance; an estimate of the cost of abating the same; a direction that the owner abate the nuisance by the date, determined by the Director of Public Service or Director of Public Safety, specified in such notice, and a statement that unless the nuisance is abated within the specified time, it may be abated by the City or its designee and the cost of abatement assessed to the real estate involved. The notice shall also state that the City may, if the nuisance is not so abated, in addition to such assessment, prosecute the owner for failure to comply with the direction of the Director of Public Service or Director of Public Safety.

(2) Service of Notice. The notice may be served by delivering it personally to the owner, by leaving it at the owner's usual place of business or residence, by posting it in a conspicuous place on the real estate involved, by mailing it to the owner by regular mail, or by publishing it once in a newspaper of general circulation within the City if it cannot be served in any of the other ways above mentioned.

(d) Non-Emergency Abatement of Nuisance; Collection of Costs; Assessment.

(1) If the nuisance is not abated within the time specified in the notice, the Director of Public Service or Director of Public Safety may cause its abatement. The abatement of a nuisance may be conducted utilizing labor and materials provided by the Department of Public Service, other departments of the City, or by entering into a contract for the provision of abatement services in accordance with the ordinances and Charter of the City.

(2) The City may take such action as it deems necessary to collect the costs incurred by the City in preparing to abate and/or in abating the nuisance, including the assessment of such costs on the real estate on which the nuisance existed or the cause or source thereof was located.

(3) Regardless of the estimated cost of abating a nuisance by the City as determined herein, the responsible parties shall be liable for payment to the City of the actual costs incurred by the City in preparing to abate the nuisance

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if the City does not proceed with the abatement or in preparing to abate and abating the nuisance, plus the City's actual administrative costs, as determined by the Director of Finance. Should the City's actual costs in abating such nuisance be less than the estimate, and the owner has paid to the City an amount equal to such estimated amount, then the City shall refund to the owner the amount of the difference.

(e) Emergency Declaration and Abatement.

- (1) If the Director of Public Service or Director of Public Safety finds that a nuisance condition exists which constitutes an emergency involving immediate danger to human life or health, or an immediate threat of substantial and/or irreparable physical or economic damage to a structure, the Director may declare such condition a nuisance and order its immediate abatement, and the Director may take action necessary to immediately abate the violation constituting a nuisance without advance notice to the owner. Such action may include entering a property for the purposes of conducting an inspection, to the extent and in the manner allowed by law, ordering that the property be immediately vacated, ordering the cessation of utility service if necessary to protect life, health or property, and/or abate the violation constituting the nuisance.
- (2) If the Director abates a nuisance pursuant to this section, notice shall be provided to the owner within three (3) days after the start of the abatement work in the same manner as notice is required in Section (c) herein.

(f) Appeals.

- (1) Whenever an order of abatement or notice of nuisance is issued, or the City takes any other action pursuant to this Section, the person that is the subject of the order, notice or action may appeal such order, notice or action to the Municipal Planning Commission within ten (10) days from the date of the date of the order, notice or action.
- (2) When a nuisance subject to this Chapter has not been abated within the time prescribed in the notice, the Director may authorize the immediate abatement of such nuisance by the City notwithstanding the pendency of an appeal of such order/notice to the Municipal Planning Commission. If, as a result of such appeal, the Planning Commission overturns the order of the Director, then the owner shall not be obligated to pay to the City its costs to abate the nuisance.

(g) Relationship to Other Laws. The authority to abate nuisances, and the procedures required herein, as set forth in this Chapter, shall be in addition to and shall not limit the authority to abate nuisances granted in other ordinances of the City or the laws or Constitution of the State of Ohio.

(h) Penalty. Any owner of real estate, upon which a nuisance exists or the cause or source of such nuisance is located, who fails to comply with the direction of the Director of Public Service or Director of Public Safety to abate such nuisance within the time specified in the notice from the Director, shall be deemed guilty of a minor misdemeanor for a first offense and guilty of a misdemeanor of the fourth degree for a second or subsequent offense within one year. Each day of failure to comply shall constitute a separate offense.

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SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that there are properties in the City that are in such a condition that it is necessary to commence nuisance proceedings. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

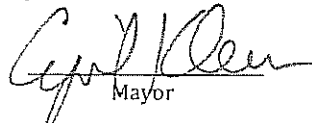
PASSED: May 21, 2018



President of Council

ATTEST: Alyson
Clerk of Council

APPROVED: May 22, 2018



Mayor

Approved as to Form:



Director of Law