

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2021-29

By Gene Zacharyasz Sponsored By Mayor Cyril M. Kleem
Councilwoman Kim Smith

AN ORDINANCE

AMENDING SECTION 931.02(a)(b)(c)(d)(e)(f), CRIMINAL ACTIVITIES AS A NUISANCE, ABATEMENT, PROCEDURE AND COSTS OF ENFORCEMENT, ABATEMENT AND SECTIONS 1331.05(a), (b) and (c), NUISANCE CONDITIONS AT LEASED PROPERTIES PROHIBITED – PROCEDURES – NUISANCE HEARING OFFICER, OF THE CODIFIED ORDINANCES OF THE CITY OF BERA, TO REMOVE PARKING OFFENSES AS QUALIFYING INCIDENTS TO A NUISANCE DECLARATION AND TO PROVIDE CONSISTENCY BETWEEN OWNER-OCCUPIED AND NON-OWNER-OCCUPIED NUISANCE PROPERTIES.

WHEREAS, Ordinance 2009-1 enacted Section 931.02, establishing the definitions of those violations constituting a criminal nuisance; and

WHEREAS, Ordinance 2018-33 enacted Section 1331.05, establishing definitions and procedures for criminal nuisances occurring at non-owner-occupied residential properties; and

WHEREAS, it is important to periodically review and appropriately amend the Codified Ordinances of the City of Berea to ensure that it serves the best interest of the city and its residents and businesses; and

WHEREAS, this Council finds that parking violations are temporary in nature and are not the type of violation that should constitute a criminal nuisance and therefore do not serve the best interests of the residents and businesses; and

WHEREAS, this Council finds that owner occupied properties and leased properties should be treated equally under the law as it relates to the number and type of violations required in order to constitute a criminal nuisance.

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

SECTION 1. That current Section 931.02(a)(b)(c)(d)(e)(f), attached hereto as Exhibit "A" and incorporated herein by reference, shall be, and the same is hereby amended to new section 931.02(a)(b)(c)(d)(e)(f), attached hereto as Exhibit "B" and incorporated herein by reference.

SECTION 2. That Section 1331.05(a), (b) and (c), attached hereto as Exhibit "C", and incorporated herein by reference, shall be, and the same is hereby amended to new Section 1331.05(a), (b) and (c), attached hereto as Exhibit "D", and incorporated herein by reference.

SECTION 3. That the remaining Sections and Subsections of 931.02 and 1331.05 shall be and remain in full force and effect as previously written and codified.

SECTION 4. 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 5. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. No. 2021-29

By Zacharyasz Sponsored By Mayor Kleem; Councilwoman Smith

PASSED: June 21, 2021

President of Council

ATTEST: [Signature]
Clerk of Council

APPROVED: June 21, 2021

APPROVED AS TO FORM:

Mayor

Director of Law

EXHIBIT "A"

931.02

(a) The following activities occurring on any privately owned lot, or within 30 feet from the property line of same, and engaged in by an owner, occupant, tenant, guest or invitee of one lawfully residing or occupying the premises or establishment on the subject lot, are hereby declared to be nuisances:

- (1) Any act that would constitute a violation of any section of Part Nine "General Offense" of the Codified Ordinances of the City of Berea, or any similar Ohio Revised Code provision, except any act that would constitute an offense against a family member in violation of a provision of Chapter 937 of the Codified Ordinances of the City of Berea or Chapter 2919 of the Ohio Revised Code;
- (2) Any act that would constitute a violation of Chapter 321 of the Codified Ordinances of the City of Berea, Garbage and Rubbish or similar Ohio Revised Code provision;
- (3) Any act that would constitute a violation of Chapter 327 of the Codified Ordinances of the City of Berea, Trees and Weeds or similar Ohio Revised Code provision;
- (4) Any act that would constitute a violation of Chapter 1329 of the Building Code of the City of Berea, Exterior Maintenance or similar Ohio Revised Code provision;
- (5) Any act that would constitute a violation of Chapter 751 of the Codified Ordinances of the City of Berea, Parking Generally, or similar Ohio Revised Code provision;
- (6) Any act that would constitute a felony under the Ohio Revised Code except any act that would constitute an offense against a family member in violation of any provision of Chapter 2919 of the Ohio Revised Code.

(b) The Chief of Police or his designee, upon finding that one or more nuisance activities declared in subsection (a) hereinabove have occurred within any twelve month period at or within 30 feet of any property line of the same premises, may cause a written warning letter to be sent via regular mail to the last known address of the property owner declaring that such property may be declared a nuisance property if a second or additional nuisance activities occur at or within 30 feet of any property line of the same premises within any twelve month period. The Chief of Police or his designee, upon finding that a second nuisance activity declared in subsection (a) hereinabove has occurred within any twelve month period at or within 30 feet of any property line of the same premises, may cause written notice and order to be sent via regular mail to the last known address of the property owner declaring that such property is a nuisance property. The notice and order shall set forth the nature of the nuisances, the estimated cost to abate any future nuisance, and state that the owner may avoid being charged the cost of the City abatement by taking steps to prevent any further nuisance activity as declared in subsection (a)

hereinabove. The notice and order shall further state that if a third nuisance activity or subsequent nuisance activities as declared in subsection (a) hereinabove occurs within twelve months of the dates of the first two activities, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property. The notice and order shall be sent via regular mail to the last known address of the property owner.

(c) If within twelve months after the first of the two nuisances referred to in subsection (a) hereinabove occurred, a third nuisance activity as declared in this chapter occurs, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions, and the costs of such abatement may be assessed on the nuisance property, and the costs shall be calculated as set forth in subsection (d) of this section. The City shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least thirty days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. Notice shall be sent via regular mail to the last known address of the property owner.

(d) Costs of the abatement shall be based upon the hourly wage of the police officer(s) or City employees involved in the abatement of the nuisance activity, plus 75% (to recoup the costs of fuel, materials, vehicle and equipment depreciation and other related expenses), multiplied by the number of hours required to abate the nuisance. The minimum cost of abatement shall be seven hundred fifty dollars (\$750.00) per incident. Any portion of time less than one hour shall be rounded up to the next whole hour. (Ord. 2012-72. Passed 10-15-12.)

(e) The owner of a nuisance property who receives a notice from the Chief of Police or his designee pursuant to this chapter may appeal such notice by submitting a written request for reconsideration to the Chief of Police within thirty days of the date of the notice. If the Chief of Police finds that the facts presented do not support the declaration of a nuisance, the Chief shall rescind the notice. Otherwise the Chief shall deny the request and advise the appellant in writing of the denial and of the appellant's right to file an appeal to the Planning Commission. The owner may appeal the denial of the request for reconsideration by submitting a written appeal letter to the Planning Commission within thirty days of the date of the Chief's denial. Any such appeal shall not stay any actions by the City to abate the first or any subsequent nuisance activity. In any such appeal, the City must show by a preponderance of the evidence that each violation stated in the notice being appealed has occurred, and that the declaration of the property as a nuisance property or of the intent of the City to assess the property for abatement costs, whichever is applicable, is justified. The City shall be deemed to have failed to meet this standard if the owner demonstrates by a preponderance of evidence that:

- (1) He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or

(2) He or she had knowledge of the nuisance activity, but has promptly and vigorously taken all actions necessary to abate each nuisance including, without limitation, compliance with the requirements of Ohio Revised Code Sections 5321.17(C) and 5321.04(A)(9) or

(3) He or she had no knowledge of the nuisance activity and could not, with reasonable care and diligence, have known of the nuisance activity, and upon receipt of the notice of the declaration of the property as a nuisance property, he or she promptly took all actions necessary to abate the nuisance including, without limitation, compliance with the requirements of Ohio Revised Code Sections 5321.17(C) and 5321.04(A)(9).

(f) The declaration of a nuisance property, an order to abate a nuisance, or the assessment of costs by the City on a property, do not affect or limit the City's right or authority to bring criminal prosecution or other legal action against any person for violation of the City's ordinances. The remedies provided in this chapter are cumulative and do not restrict or limit any other civil remedy or criminal penalty provided for elsewhere in the Codified Ordinances of the City of Berea or the Ohio Revised Code.

EXHIBIT "B"

931.02

(a) The following activities occurring on any privately owned lot, or within 30 feet from the property line of same, and engaged in by an owner, occupant, tenant, guest or invitee of one lawfully residing or occupying the premises or establishment on the subject lot, are hereby declared to be nuisances:

- (1) Any act that would constitute a violation of any section of Part Nine "General Offense" of the Codified Ordinances of the City of Berea, or any similar Ohio Revised Code provision, except any act that would constitute an offense against a family member in violation of a provision of Chapter 937 of the Codified Ordinances of the City of Berea or Chapter 2919 of the Ohio Revised Code;
- (2) Any act that would constitute a violation of Chapter 321 of the Codified Ordinances of the City of Berea, Garbage and Rubbish or similar Ohio Revised Code provision;
- (3) Any act that would constitute a violation of Chapter 327 of the Codified Ordinances of the City of Berea, Trees and Weeds or similar Ohio Revised Code provision;
- (4) Any act that would constitute a violation of Chapter 1329 of the Building Code of the City of Berea, Exterior Maintenance or similar Ohio Revised Code provision;
- (5) Any act that would constitute a felony under the Ohio Revised Code except any act that would constitute an offense against a family member in violation of any provision of Chapter 2919 of the Ohio Revised Code.

(b) The Chief of Police or his designee, upon finding that one or more nuisance activities declared in subsection (a) hereinabove have occurred within 30 feet of any property line of the same premises, may cause a written warning letter to be sent via regular mail to the last known address of the property owner and the occupant(s), declaring that such property may be declared a nuisance property if a second or additional nuisance activities occur at or within 30 feet of any property line of the same premises within any twenty-four month period.

The Chief of Police or his designee, upon finding that a two or more nuisance activities declared in subsection (a) hereinabove has occurred within the twenty-four-month period immediately preceding the second nuisance activity, at or within 30 feet of any property line of the same premises, shall cause written notice and order to be sent via regular mail to the last known address of the property owner and the occupant(s) declaring that such property is a nuisance property. The notice and order shall set forth the nature of the nuisances, the estimated cost to abate any future nuisance, and state that the owner may avoid being charged the cost of

the City abatement by taking steps to prevent any further nuisance activity as declared in subsection(a) hereinabove. The notice and order shall further state that if a third nuisance activity or subsequent nuisance activities as declared in subsection (a) hereinabove occurs within twenty-four months of the dates of the second nuisance activity, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property. The notice and order shall be sent via regular mail to the last known address of the property owner and occupant(s).

(c) If within twenty-four months after the first of the two nuisances referred to in subsection (a) and (b) hereinabove occurred, a third nuisance activity occurs, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions, and the costs of such abatement may be assessed on the nuisance property, and the costs shall be calculated as set forth in subsection (d) of this section. The City shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least thirty days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. Notice shall be sent via regular mail to the last known address of the property owner.

(d) Costs of the abatement shall be based upon the hourly wage of the police officer(s) or City employees or their agents involved in the abatement of the nuisance activity, plus 75% (to recoup the costs of fuel, materials, vehicle and equipment depreciation and other related expenses), multiplied by the number of hours required to abate the nuisance. The minimum cost of abatement shall be seven hundred fifty dollars (\$750.00) per incident. Any portion of time less than one hour shall be rounded up to the next whole hour.

(e) The owner of a nuisance property who receives a notice from the Chief of Police or his designee pursuant to this chapter may appeal such notice by submitting a written request for reconsideration to the Chief of Police within thirty days of the date of the notice. If the Chief of Police finds that the facts presented do not support the declaration of a nuisance, the Chief shall rescind the notice. Otherwise, the Chief shall deny the request and advise the appellant in writing of the denial and of the appellant's right to file an appeal to the Planning Commission. The owner may appeal the denial of the request for reconsideration by submitting a written appeal letter to the Planning Commission within thirty days of the date of the Chief's denial. Any such appeal shall not stay any actions by the City to abate the first or any subsequent nuisance activity. In any such appeal, the City must show by a preponderance of the evidence that each violation stated in the notice being appealed has occurred, and that the declaration of the property as a nuisance property or of the intent of the City to assess the property for abatement costs, whichever is applicable, is justified. The City shall be deemed to have failed to meet this standard if the owner demonstrates by a preponderance of evidence that:

- (1) He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or
- (2) He or she had knowledge of the nuisance activity, but has promptly and vigorously taken all actions necessary to abate each nuisance including, without

limitation, compliance with the requirements of Ohio Revised Code Sections 5321.17(C) and 5321.04(A)(9): or

(3) He or she had no knowledge of the nuisance activity and could not, with reasonable care and diligence, have known of the nuisance activity, and upon receipt of the notice of the declaration of the property as a nuisance property, he or she promptly took all actions necessary to abate the nuisance including, without limitation, compliance with the requirements of Ohio Revised Code Sections 5321.17(C) and 5321.04(A)(9).

(f) The declaration of a nuisance property, an order to abate a nuisance, or the assessment of costs by the City on a property, do not affect or limit the City's right or authority to bring criminal prosecution or other legal action against any person for violation of the City's ordinances. The remedies provided in this chapter are cumulative and do not restrict or limit any other civil remedy or criminal penalty provided for elsewhere in the Codified Ordinances of the City of Berea or the Ohio Revised Code.

EXHIBIT "C"

1331.05

- (a) The following activities occurring on any privately-owned lot that is subject to Chapter 1331, or within 30 feet from the property line of same, and engaged in by an owner, occupant, tenant, guest or invitee of one lawfully residing or occupying the premises or establishment on the subject lot, are hereby declared to be nuisances:
- (1) Any act that would constitute a violation of any section of Part Nine "General Offenses" of the Codified Ordinances of the City of Berea, or any similar Ohio Revised Code provision, except any act that would constitute an offense against a family member in violation of a provision of Chapter 937 of the Codified Ordinances of the City of Berea or Chapter 2919 of the Ohio Revised Code or a person in a dating relationship, as defined in Section 3113.31 of the Revised Code;
 - (2) Any act that would constitute a violation of Chapter 321 of the Codified Ordinances of the City of Berea, Garbage and Rubbish or similar Ohio Revised Code provision;
 - (3) Any act that would constitute a violation of Chapter 327 of the Codified Ordinances of the City of Berea, Trees and Weeds or similar Ohio Revised Code provision;
 - (4) Any act that would constitute a violation of Chapter 1329 of the Building Code of the City of Berea, Exterior Maintenance Code or similar Ohio Revised Code provision; or
 - (5) Any act that would constitute a violation of Chapter 751 of the Codified Ordinances of the City of Berea, Parking Generally, or similar Ohio Revised Code provision; or
 - (6) Any act that would constitute a felony under the Ohio Revised Code except any act that would constitute an offense against a family member in violation of any provision of Chapter 2919 of the Ohio Revised Code or a person in a dating relationship, as defined in Section 3113.31.
- (b) The Director of Public Safety or her designee, upon finding that a nuisance activity declared in subsection (a) hereinabove has occurred within any twelve-month period at or within 30 feet of any property line of the same premises, shall cause written notice and order to be sent via regular mail to the last known address of the property owner declaring that such property may be subject to the nuisance law upon a second offense.

The notice and order shall set forth the nature of the nuisance, the estimated cost to abate the nuisance, and that the owner may avoid being charged the cost of the City abatement by taking steps to prevent any further nuisance activity as declared in subsection (a) herein. The notice and order shall further state that if a second nuisance activity or subsequent nuisance activities, as declared in subsection (a) herein occurs within twelve months of the date of the first activity, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed to the nuisance property. The notice and order shall be sent via regular mail to the last known address of the property owner.

- (c) If within twelve months after the occurrence of the first nuisance condition, a second nuisance activity occurs, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions, and the costs of such abatement may be assessed on the nuisance property, and the cost shall be calculated as set forth in subsection (d) of this section. The City shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least thirty (30) days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. Notice shall be sent by regular mail to the last known address of the property owner.

EXHIBIT D

1331.05

- (a) The following activities occurring on any privately-owned lot that is subject to Chapter 1331, or within 30 feet from the property line of same, and engaged in by an owner, occupant, tenant, guest or invitee of one lawfully residing or occupying the premises or establishment on the subject lot, are hereby declared to be nuisances:
- (1) Any act that would constitute a violation of any section of Part Nine "General Offense" of the Codified Ordinances of the City of Berea, or any similar Ohio Revised Code provision, except any act that would constitute an offense against a family member in violation of a provision of Chapter 937 of the Codified Ordinances of the City of Berea or Chapter 2919 of the Ohio Revised Code or a person in a dating relationship, as defined in Section 3113.31 of the Revised Code;
 - (2) Any act that would constitute a violation of Chapter 321 of the Codified Ordinances of the City of Berea, Garbage and Rubbish or similar Ohio Revised Code provision;
 - (3) Any act that would constitute a violation of Chapter 327 of the Codified Ordinances of the City of Berea, Trees and Weeds or similar Ohio Revised Code provision;
 - (4) Any act that would constitute a violation of Chapter 1329 of the Building Code of the City of Berea, Exterior Maintenance or similar Ohio Revised Code provision;
 - (5) Any act that would constitute a felony under the Ohio Revised Code except any act that would constitute an offense against a family member in violation of any provision of Chapter 2919 of the Ohio Revised Code or a person in a dating relationship, as defined in Section 3113.31.
- (b) The Director of Public Safety or a designee, upon finding that one or more nuisance activities declared in subsection (a) herein above have occurred within 30 feet of any property line of the same premises, may cause a written warning letter to be sent via regular mail to the last known address of the property owner declaring that such property may be declared a nuisance property upon continued violations. A copy of the warning letter shall also be sent via regular mail to the subject property addressed to the occupant(s).

The Director of Public Safety or a designee, upon finding that two or more nuisance activities declared in subsection (a) above have occurred within the twenty-four-month period immediately preceding the second nuisance activity, at or within 30 feet of any property line of the subject premises, shall cause written notice and order to be sent via regular mail to the last known address of the property owner declaring that such property may be subject to the nuisance law upon a third or subsequent offense. A copy of the

notice and order shall also be sent by regular mail to the subject property, addressed to the occupant(s).

The notice and order shall set forth the nature of the nuisance(s), the estimated cost to abate any future nuisance(s), and state that the owner may avoid being charged the cost of abatement by the City by taking steps to prevent any further nuisance activity. The notice and order shall also state that if a third or subsequent nuisance activities occurs within twenty-four months of the date of the first nuisance activity, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed to the nuisance property.

- (c) If within twenty-four- months after the occurrence of the first of the two previous nuisance conditions, a third or subsequent nuisance activity occurs, the City may declare the property a criminal nuisance and abate the nuisance by responding to the activity using administrative and law enforcement actions, with the cost calculated as set forth in subsection (d) of this section. The cost of such abatement may be assessed on the nuisance property, and notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least thirty (30) days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. Notice shall be sent by regular mail to the last known address of the property owner and posted on the subject property.