

COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2021-39

By Lean Dozier Sponsored By Councilman Rick Skoczen

AN ORDINANCE

REPEALING AND REPLACING SECTION 327.22, TREES, GRASS, WEEDS AND OTHER CONDITIONS AS A NUISANCE; ABATEMENT, OF CHAPTER 327, GRASS AND WEEDS, OF PART THREE, STREETS, UTILITIES AND PUBLIC SERVICES, OF THE CODIFIED ORDINANCES OF THE CITY OF BEREAL, AND DECLARING AN EMERGENCY.

WHEREAS, the lack of maintenance and appearance of exterior premises, the existence of exterior fire hazards, and the presence of other unsanitary conditions constitute an immediate threat to the health, safety, welfare and reasonable comfort of the residents and inhabitants of the City; and

WHEREAS, due to the lack of maintenance and progressive deterioration, the exterior appearance of certain properties has the further effect of creating blighting conditions and initiating depressed neighborhood groupings, and that if the same are not curtailed and corrected, the conditions are likely to grow and spread and necessitate, in time, the expenditure of large amounts of public funds to correct and eliminate the same; and

WHEREAS, by implementing timely regulations and restrictions, as herein contained, the growth of such blight may be prevented and the immediate neighborhood and property values be maintained; and

WHEREAS, Codified Ordinance Section 327.22, Trees, Grass, Weeds and Other Conditions as a Nuisance; Abatement, lacks the specificity that is required to effectively enforce its provisions; and

WHEREAS, the Codified Ordinances do not address standards for natural gardens; and

WHEREAS, the Council of the City of Berea and the Administration wish to repeal and replace Section 327.22 of the Codified Ordinances in order to provide language that will create clear and effective standards and to specify requirements for natural gardens.

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

SECTION 1. That Section 327.22, Trees, Grass, Weeds and Other Conditions as a Nuisance; Abatement, of Chapter 327, Grass and Weeds, of Part Three, Streets, Utilities and Public Services, of the Codified Ordinances of the City of Berea, attached hereto as Exhibit "A" and incorporated herein by reference, shall be expressly repealed and replaced with new Section 327.22, attached hereto as Exhibit "B" and incorporated herein by reference.

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 it is important to have specific and enforceable regulations in place so as to prevent blight and properly maintain City neighborhoods. 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.

COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2021-39

By Dorier Sponsored By Skoczen

PASSED: June 21, 2021

M. A. D.
President of Council

ATTEST: A. Hogan
Clerk of Council

APPROVED: June 21, 2021

John Klein
Mayor

APPROVED AS TO FORM:

John D.
Director of Law

12/2021

<https://export.amlegal.com/api/export-requests/326b2ba9-0868-4c44-b29d-9b41b3dc2f27/download/>**327.22 TREES, GRASS, WEEDS AND OTHER CONDITIONS AS A NUISANCE; ABATEMENT.**

(a) Trees. The following acts, things and conditions done or existing within this City are declared to constitute nuisances:

- (1) Any tree upon any street or public place or so near thereto as to permit the roots of the tree to penetrate through or under the surface thereof.
- (2) Any tree, plant or shrub, wherever located within the City, infected with any parasite, insect, fungus or pest, which may be communicated to any other tree, plant or shrub.
- (3) Any tree, plant or shrub, or part thereof, which has fallen or is in such condition that if it falls, is likely to cause harm to persons or property, including the property upon which it is situated.
- (4) Any tree, plant or shrub whose branches or trunk obstructs or impedes traffic on any street or public place. Branches overhanging any public sidewalk, pavement, street or roadway within (9) feet of the public sidewalk, pavement, street or roadway, or within thereof, shall be deemed prima-facie to obstruct or impede traffic thereon.

(b) Grass, Weeds and Other Conditions.

- (1) The existence, upon any lot or parcel of land within the City, of grass, weeds, or other combustible material likely to catch fire and spread such fire to other property, or of weeds which are spreading or maturing seeds, or about to do so, or of ragweed, goldenrod, poison ivy or poison oak, or of any other condition existing upon any lot or parcel that is likely to become airborne, or to harbor vermin or insects, or to cause deterioration to any structure, rot, decay, or create noxious odor or condition, or is likely to enter into the storm drain or to create an environmental hazard or health concern, or to spread or reach beyond outside of any given parcel, or as otherwise set forth below is declared a nuisance.
- (2) On any lot or parcel within the City, not meeting the requirements of subsection (2) below, grass or weeds growing to a height of six inches or more shall be prima facie deemed to be likely to catch fire and spread such fire to other property.
- (3) On any undeveloped parcel of land one acre or greater in the CC, GI, and BR-CD Zoning Districts, grass and weeds growing in excess of six inches or more within the first thirty feet of land that is adjacent to any public right of way shall be prima facie deemed to be likely to catch fire and spread such fire to other property.

(c) Whenever in the opinion of the Director of Public Service any of the nuisances defined in this section exist, the Director shall cause its abatement, which may include trimming or removal of any tree, plant, shrubbery, grass, weeds, vines or other materials constituting said nuisance, and cause the cost of the abatement to be charged and collected, in the manner provided in Chapter 931 of the Codified Ordinances.

(d) No person who is the owner, occupant or who has charge, care or control of any lot or parcel of land within the City shall permit a nuisance as herein defined to exist or continue thereon. (Ord. 2018-27. Passed 5-7-18.)

327.22 TREES, GRASS, WEEDS AND OTHER CONDITIONS AS A NUISANCE; ABATEMENT

A. Trees. The following acts, things and conditions done or existing within the City are declared to constitute a nuisance:

1. Any tree upon any street or public place or so near thereto as to permit the roots of the tree to penetrate through or under the surface thereof, unless approved by the Shade Tree Commission, in accordance with Codified Ordinance 327.01 – 327.11.
2. Any tree, plant or shrub, wherever located in the City, infected with any parasite, insect, fungus or pest, which may be communicated to any other tree, plant or shrub.
3. Any tree, plant or shrub, or part thereof, which has fallen or is in such condition that if it falls, is likely to cause harm to persons or property, including the property upon which it is situated.
4. Any tree, plant or shrub whose branches or trunk obstructs or impedes traffic on any street, roadway or public place. Branches overhanging any public sidewalk, pavement, street or roadway within nine (9) feet of the public sidewalk, pavement street or roadway, or within thereof, shall be *prima facia* evidence of a safety hazard.

B. Grass, Weeds and Other Conditions

1. Definitions

- a. Cultivated Flowers and Gardens: Plants that are deliberately planted or maintained, which includes the need for weed removal, in a planned or designed yard or landscape, with the intent to control, direct and maintain the growth of the plant.
- b. Improved property: Means any residential or commercial property with a building of any description.
- c. Noxious Weeds: Any weed that is listed in Ohio Administrative Code 901:5-37-01, which is incorporated herein, and as further amended.
- d. Ornamental Grass: Grasses which do not serve any purpose other than as decoration.
- e. Poisonous weed or poisonous vine: Any plant that when touched or ingested in sufficient quantity that can be harmful or fatal or capable of evoking a toxic reaction to another person. Examples include, but are not limited to poison ivy, poison oak, poison sumac, poison hemlock, wild parsnip, and giant hogweed, ragweed, goldenrod.
- f. Responsible Person: The owner(s), occupant(s), lessee(s), or other person(s) or company having the charge or management of any property located in the City is required to comply with Section 327.22.
- g. Turf Grass: Grasses commonly used in regularly cut lawns or play areas, such as, but not limited to, bluegrass, fescue, and ryegrass blends, whether dormant or alive.

h. Unimproved property: Means vacant or unimproved property, lot or parcel of land with no building of any description.

i. Weeds: Plants, grasses, except for turf grasses or ornamental grasses, or vines that are generally not valued by a reasonable person, or that is not managed or maintained by a Responsible Person or where a plant experiences vigorous growth, especially one that tends to overgrow or choke-out cultivated plants, provided, however, that this term shall not include cultivated flowers and gardens.

If there is a reasonable disagreement between the City and the Responsible Person about whether a particular plant is a weed, the burden shall be on the Responsible Person, at his or her cost, to provide evidence through a trained professional in botany or a similar field, to the satisfaction of the Director of Public Service, that the particular plant is not a weed.

2. Nuisance Condition: The existence, upon any improved or unimproved property, of turf grass, weeds, noxious weeds, poisonous weeds or poisonous vines, or other combustible material likely to catch fire and spread such to other property, or of weeds, noxious weeds or poisonous weeds or vines, which is likely to become airborne, or to harbor vermin or insects, or to cause deterioration to any structure, rot, decay or create noxious odor or condition, or is likely to enter the storm drain or to create an environmental hazard, safety hazard or health concern, or to spread or reach beyond the property line, or as otherwise set forth in this Section, is hereby declared to be a nuisance.

3. Length Restrictions:

a. Except as provided in (b) below, on both improved and unimproved properties, the Responsible Person(s) shall maintain turf grasses or weeds at a length not to exceed six (6) inches. Turf grasses or weeds that are found to be over six (6) inches in length shall be *prima facia* evidence that they are reasonably likely to catch fire and spread such fire to other property and shall constitute a nuisance.

b. On any unimproved property less than one-acre in size, in the CC, GI or BR-CD Zoning Districts, as defined in Section 200.01 of the City of Berea Zoning Code, turf grass or weeds in excess of six (6) inches within the first thirty (30) feet of land that is adjacent to any public right of way, shall be *prima facia* evidence that they are reasonably likely to catch fire and spread such fire to other property and shall constitute a nuisance.

4. Noxious Weeds, Poisonous Weeds or Poisonous Vines: The Responsible Party of any improved or unimproved property shall remove and destroy any and all noxious or poisonous weeds or poisonous vines found on the property. The existence of any and all noxious or poisonous weeds or poisonous vines shall constitute a nuisance.

5. General Maintenance Requirements:

a. Bushes and shrubs shall be trimmed and maintained in a reasonable fashion and kept from becoming overgrown and unsightly. Examples include, but are not limited to, bushes or shrubs that choke-out other plants or are unsightly to a reasonable person or

bushes or shrubs that have experienced wild or uncontrolled growth or other deleterious, unhealthy or unsightly growth. A failure to maintain bushes and shrubs shall constitute a nuisance.

b. Turf grass, ornamental grasses or weeds, or groundcover shall not encroach upon a sidewalk or driveway, and a violation herein shall constitute a nuisance.

c. The location of any tree, shrub, bush, ornamental grass, weed or any cultivated plant shall be located in and maintained in a manner so as not to create a safety hazard for vehicle, bike or pedestrian travel. An officer of the Berea Police Department shall have the duty of determining whether or not a safety hazard exists. Any condition creating a safety hazard shall constitute a nuisance.

d. No Responsible Person shall plant or cause to be planted any plant material in the public right of way. Any property with plantings or stones in a tree lawn that was in existence on June 23, 2021 shall be permitted to maintain the planting in accordance with the requirements of this Section. However, if the City or any utility requires access to the tree lawn to perform the maintenance, repair or replacement of any infrastructure, the plantings or stones shall be removed at the Owner's expense and shall not be permitted to be replanted or otherwise replaced with any material other than turf grass.

C. Enforcement; Abatement

1. No person, who is the owner, occupant or who has charge, care or control of any improved or unimproved property, lot or parcel within the City shall permit a violation of this Section or permit a nuisance as herein defined, to exist or continue. Any violation of this subsection shall be subject to the penalties set forth in Section 327.99.

2. Whenever in the opinion of the Director of Public Service, or the designee, any of the nuisance conditions, as defined herein, exist, the Director or designee shall cause the nuisance condition to be abated, which may include, but is not limited to, trimming or removal or destruction or cutting. The cost of such abatement shall be charged and collected in the manner provided in Chapter 931 of the Codified Ordinances.