

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-33

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

ESTABLISHING NEW CHAPTER 1331, RESIDENTIAL RENTAL PROPERTY PERMITS, OF TITLE FIVE, LOCAL PROVISIONS, OF PART THIRTEEN, BUILDING CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF BEREA.

WHEREAS, the Zoning Code of the City of Berea, Ohio, was enacted by Ordinance No. 2012-29 and adopted on May 7, 2012; and

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

WHEREAS, existing Section 201.20 of the Zoning Code provides for certain procedures for the application for and issuance of a leasing permit but does not adequately address concerns about the conduct of tenants; and

WHEREAS, the administration of the Leasing program may be accomplished in a more effective and efficient manner by simplifying the permitting process and providing the means to respond to common complaints about the conduct of tenants in rental properties; and

WHEREAS, issues with rental properties may be easily resolved by providing an administrative hearing for owners.

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

SECTION 1. That Chapter 1331, Residential Rental Property Permits, be enacted to read as follows:

1331.01 Findings, Purpose and Intent.

In adopting this Chapter, Berea City Council acknowledges that there has been an increase in the number of residential rental properties in the City and that these rental properties have particular needs, issues, concerns and problems that are not as prevalent with non-rental properties. These concerns include, but are not limited to, the safety of tenants and the quiet tranquility of the surrounding residential neighborhoods, both of which may be impaired by, among other things, building and life safety code violations as well as the significant increase in parking of motor vehicles at one and two-family dwellings. It is with these concerns in mind that Berea City Council now adopts this Chapter as an effort to help preserve the housing stock and ensure safe living conditions, adequate parking areas, upkeep of residential structures, to avoid overcrowding and to preserve the peace and tranquility of neighborhoods.

1331.02 Permit Required.

(a) Effective October 1, 2018, except where the owner resides in the dwelling unit, no owner, renter, tenant or regular occupant of any single family or two-family dwelling shall rent, lease or regularly occupy any dwelling unit without first obtaining a Leasing Permit from the City of Berea. "Regular Occupancy" means the physical presence of a person in the dwelling overnight for at least fifteen (15) nights in a consecutive thirty-day period.

(b) Applications for a 2017-2018 Leasing Permit are subject to the requirements set forth in Section 201.20 of the Zoning Code.

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-33

By Maxwell Sponsored By Mayor Kleem

1331.03 Permit Application.

(a) Applications for a Leasing Permit shall be required annually for a period covering October 1 – September 30 of each year.

(b) Applications for a Leasing Permit shall be made by supplying information necessary to determine compliance with applicable laws, ordinances, rules and regulations for the existing use or occupancy or the intended use or occupancy on forms provided by the City. Such information shall include, but is not limited to, the following:

- (1) The name, address, telephone number and email address, if any, of the owner(s) of the property. A post office box number shall not be provided as the sole address of the owner;
- (2) If the owner is a limited partnership, corporation or limited liability company, the name, address and telephone number of the statutory agent of such entity;
- (3) If the owner is a general partnership, the name, address and phone number of the general partner to receive notices from the City relating to the dwelling unit. A post office box number shall not be used as the sole address of the general partner;
- (4) The name, address, telephone number and email address, if any, of any agent or manager of the property. A post office box number shall not be used as the sole address of the agent or manager.
- (5) Any owner who does not reside in or have their principal place of business in Cuyahoga County or an adjacent county shall be required to designate a local agent, who shall be authorized to receive notification of complaints, damages, emergencies, substandard conditions or other communications, including service of process. Any designated local agent shall reside in or have their principal place of business in Cuyahoga County or an adjacent county.
- (6) A description of the rental unit, including the type and number of total rooms and the number of rooms to be used as bedrooms.
- (7) The total number of tenants that will occupy the dwelling unit;
- (8) A statement signed by the property owner, under penalty of perjury, that the dwelling unit complies with all applicable provisions of Part 13 – Building Code of the Codified Ordinances of the City of Berea.

(c) The City shall issue a Leasing Permit for a dwelling unit if it finds all of the following:

- (1) The dwelling unit and property complies with the provisions of Part Thirteen of the Codified Ordinances of the City of Berea; and
- (2) The water bill for the dwelling unit is paid in full, as of the date of application; and
- (3) The property taxes for the property are current, as reported by the Fiscal Officer of Cuyahoga County; and
- (4) The Leasing Permit Application fee is paid in full; and
- (5) All of the information requested in the application has been provided; and
- (6) That the property was not declared a nuisance for any reason specified in Chapter at any time in the previous permitting period.

In making a determination, the City may rely on information provided by the applicant and in public records. The City shall conduct an exterior property maintenance inspection of the property at least once every other year.

(d) Fee. The fee charged for a Leasing Permit application shall be \$60 per year. The fee shall be paid at the time the Leasing Permit Application is filed.

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-33

By Maxwell Sponsored By Mayor Kleem

1331.04 Denial or Revocation of Permit - Appeal.

(a) An applicant who has been denied a Leasing Permit for any of the reasons stated in subsection 1331.03 (c)(1) - (5) above, may within five (5) business days of receipt of notice of a denial, request that the Director of Public Safety or her designee reconsider the permit application. The Director of Public Safety or her designee shall review and reconsider the permit application and send a written decision, by regular mail, within seven (7) business days.

(b) If a Leasing Permit is denied due to subsection 1331.03(c)(6) or a leasing permit revoked due to a nuisance condition, the applicant may request an administrative hearing before a Nuisance Adjudication Hearing Officer, in accordance with 1331.05.

(c) A Leasing Permit may be revoked if any false statement is made by the applicant in connection with the issuance of such permit, for substantial noncompliance of any requirement set forth in Part 13 of the Codified Ordinances of the City of Berea. Except in cases involving a revocation due to a nuisance condition, an applicant may appeal a permit revocation to the Director of Public Safety or her designee within five (5) business days of receipt of notice of a permit revocation. The Director of Public Safety or her designee shall review and reconsider the circumstances leading to the revocation and send a written decision, by regular mail, within seven (7) business days.

(d) Any applicant who has been adversely affected by a decision of the Director of Public Safety or her designee, may seek further appeal to the Municipal Planning Commission in accordance with the procedure contained in Chapter 103 of the Zoning Code of the City of Berea.

1331.05 Nuisance Conditions at Leased Properties Prohibited - Procedures - Nuisance Hearing Officer.

(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 237 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

COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2018-33

By Maxwell Sponsored By Mayor Kleem

- (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.

(d) Costs of Abatement shall be based upon the hourly wage of each City employee involved in the enforcement and 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 expended by City employees required to abate the nuisance plus the additional direct cost to the City if abatement activities were performed by an outside contractor. 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) Appeal of Nuisance Condition

- (1) The owner of a property who receives a notice declaring a nuisance condition from the Director of Public Safety or her designee pursuant to subsections 1331.05(b) and 1331.05(c) may appeal such notice by submitting a written request for a hearing before a Nuisance Adjudication Hearing Officer. The appeal shall be filed in writing on a form provided by the City within ten days of the date of the notice. Any such appeal shall not stay any actions by the City to abate the nuisance activity.
- (2) The City shall schedule the Nuisance Adjudication hearing within thirty (30) days of filing of the appeal. The hearing notice shall be sent by regular mail to the address provided to the City by the person filing the appeal. At the discretion of the City, notice of the hearing may also be sent by regular mail to any person interested in the outcome of the case, including but not limited to neighbors or complainants.

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-33

By Maxwell Sponsored By Mayor Kleem

(3) Nuisance Adjudication Hearing

- a) The Rules of Evidence do not apply to the Nuisance Adjudication Hearing. Hearsay is admissible, to the extent that the Hearing Officer determines that it is reliable.
- b) The Nuisance Adjudication Hearing Officer may consider testimony of city officials, owners and agents of the leased property, neighbors impacted by the conduct of the parties, tenants, witnesses and other interested parties.
- c) The City must show by a preponderance of the evidence the existence of each violation that is subject to the appeal 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:
 - i) He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or
 - ii) 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
 - iii) 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 that the property is or may be designated 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).
- d) The Hearing Officer may:
 - i) Find that the City failed to demonstrate that the conditions subject to the appeal constitute a nuisance or that the owner proved by a preponderance of evidence one of the factors listed in subsection (c) above, and rescind the declaration and notice;
 - ii) Affirm or modify the declaration and notice;
 - iii) Affirm, modify or dismiss the assessment of costs to abate or respond to the nuisance conditions.
 - iv) Approve, revoke or reinstate a leasing permit
- e) The written decision shall be sent by regular mail to the last known address of the property owner(s) within ten days of the Nuisance Adjudication Hearing.

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2018-33

By Maxwell Sponsored By Mayor Kleem

- f) Any applicant who has been adversely affected by a decision of the Nuisance Adjudication Hearing Officer, may seek further appeal to the Municipal Planning Commission in accordance with the procedure contained in Chapter 103 of the Zoning Code of the City of Berea.

1311.06 Conflict and Other Remedies.

(a) In the event of conflict between any provisions of this Chapter, and any other provisions of the Ordinances of the City, the more restrictive provisions shall prevail.

(b) 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.

1331.07 Notice to Tenants.

Upon receipt of an application for a Leasing Permit, the City shall provide information to tenants, including but not limited to, their rights and obligations pursuant to Chapter 5321 of the Ohio Revised Code, the City's Exterior Property Maintenance Code and the nuisance provisions of this Chapter. The information may be provided by regular mail, delivery to the premises or by other means deemed appropriate by the City.

1311.08 Penalty

Whoever violates Section 1331.02(a) shall be, upon conviction of the same, guilty of a misdemeanor of the fourth degree, and have sentence imposed pursuant to Ohio R.C. 2929.21 and 2929.22, provided that no portion of any fine imposed shall be suspended upon a condition. A separate offense shall be deemed committed each day on which a violation or noncompliance occurs or continues.

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 shall take effect and be in force from and after the earliest period allowed by law.

PASSED: May 21, 2018

ATTEST: [Signature]
Clerk of Council

APPROVED: May 22, 2018

[Signature]
President of Council
[Signature]
Mayor

Approved as to Form:

[Signature]
Director of Law