

**ORDINANCE NO. 84-2006**

**TITLE: AMEND ORD. NO. 189-2005 – NUISANCE LAW**

**AN ORDINANCE AMENDING ORDINANCE NO. 189-2005, SECTIONS 674.01 TO 674.05, “CRIMINAL ACTIVITY NUISANCES,” OF THE BARBERTON CODIFIED ORDINANCES, BY CHANGING THE WORDING TO “CALENDAR YEAR,” WHERE APPLICABLE, AND BY FURTHER DEFINING THE COSTS OF THE ABATEMENT, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City has by ordinance declared a number of actions and conditions as nuisances, and the City may abate many of such nuisances and the costs may be assessed on the property on which the nuisance has occurred, or which the nuisance has originated; and

**WHEREAS**, the residents of the City have been adversely affected by criminal activity that repeatedly occurs at, or originates from, certain residential properties in the City; and

**WHEREAS**, repeated violations of law stemming from a single property place an undue burden on the City's safety resources, and therefore, an undue burden on taxpayers; and although most property owners are responsible for activities on their property, some property owners fail to take aggressive action, or any action at all, to deal with such nuisance activities by people they have allowed to live at or to visit their property; and

**WHEREAS**, such repeated criminal activities greatly interfere with the comfortable enjoyment of life and property for the neighbors of such nuisance properties, and lead to the deterioration of neighborhoods, as responsible homeowners move out of neighborhoods where such activity recurs.

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

**SECTION 1.** That Ordinance No. 189-2005, “Barberton Codified Ordinances – Nuisance Law,” Chapter 674 of the Barberton Codified Ordinances, shall be amended with a strikethrough showing deleted wording and bold print showing added wording, and shall read as follows:

**“Criminal Activity Nuisances”**

(A) The following activities occurring on residential property, and engaged in by an owner, occupant or invitee of the owner or occupant of residential property, are hereby declared to be public nuisances:

(1) Any animal violations under Sections 618.01 (running at large), 618.03 (killing or injuring animals), 618.05 (cruelty to animals), or 618.18 (dangerous animals) of the Codified Ordinances and similar statutes of the State of Ohio;

(2) Any disorderly conduct, disturbance of the peace, noise or other violation of Chapter 648 (Peace Disturbances) and Chapter 635 (Noise Abatement) of the Codified Ordinances and similar statutes of the State of Ohio;

(3) Any drug abuse violation under Chapter 624 of the Codified Ordinances and similar statutes of the State of Ohio and any felony violation under R.C. Chapter 2925;

(4) Any gambling violation under Chapter 630 of the Codified Ordinances and similar statutes of the State of Ohio;

(5) Any health, safety, or sanitation violation under Chapter 660 of the Codified Ordinances and similar statutes of the State of Ohio;

(6) Any violation under Chapter 632 (Junk Cars) of the Codified Ordinances and similar statutes of the State of Ohio;

(7) Any obstruction of official business violation under Section 606.14 of the Codified Ordinances and similar statutes of the State of Ohio;

(8) Any alcohol violation under Chapter 612 of the Codified Ordinances and similar statutes of the State of Ohio;

(9) Any sex offense under Sections 666.06 (public indecency), 666.07 (procuring), 666.08 (soliciting), or 666.09 (prostitution) of the Codified Ordinances and similar statutes of the State of Ohio;

(10) Any offense against another person under Sections 636.02 (assault), 636.03 (negligent assault), 636.04 (aggravated menacing), 636.05 (menacing), 634.01 (endangering children), 634.03 (contributing to the unruliness and delinquency of a child) or 636.14 (threatening or harassing telecommunications) of the Codified Ordinances and similar statutes of the State of Ohio;

(11) Any offense against property under Sections 642.10 (criminal damaging or endangering) or 642.11 (criminal mischief) of the Codified Ordinances and similar statutes of the State of Ohio;

(12) Any littering or deposition of waste under Chapter 660.05 of the Codified Ordinances and similar statute of the State of Ohio or similar statutes of the State of Ohio;

(13) Any theft violation under Section 642.02 (theft) and 642.22 (receiving stolen property) of the Codified Ordinances and similar statutes of the State of Ohio including felonies;

(14) Any weapons, explosives, firearm or handgun violation under Chapter 672 of the Codified Ordinances and similar statutes of the State of Ohio;

(15) Any fireworks violation under Section 672.12 of the Codified Ordinances and similar statutes of the State of Ohio;

(16) Any open burning or recreational fires in violation of Section 660.20 of the Codified Ordinances and similar statutes of the State of Ohio.

(17) Any curfew violation under Section 634.04 of the Codified Ordinances and similar statutes of the State of Ohio.

(18) Any activity engaged in by a person under eighteen years of age which would constitute a violation of an offense listed in this section if committed by an adult.

(B) The Chief of Police or his designee, upon finding that three or more nuisance activities declared in Subsection (A) have occurred at a dwelling within any ~~twelve-month period~~ **calendar year**, shall cause a written notice and order to be served on the owner of the property declaring that such property is a nuisance property. The notice and order shall set forth the nature of the nuisances, the ~~estimated~~ costs to respond to and abate a similar future nuisance, and state that the owner may avoid being charged the costs of response and abatement by taking steps to prevent any further nuisance activities as set forth in this Section. The notice shall further state that if a fourth or subsequent nuisance activity as declared in Subsection (A) occurs within the ~~twelve months of the date~~ **same calendar year** of the earliest of the first three 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. Notice shall be served on the owner personally or by certified mail ~~and~~ **or** regular mail to the person's residence, regular place of business or last known address. If the certified or regular mail is returned undelivered, a copy shall be posted in a conspicuous place in or on the person's residence, regular place of business, last known

address, or the property affected. The underlying nuisance activity need not have been charged, nor is there a need for a previous finding of guilt, before there can be a finding that a nuisance activity had occurred.

(C) If within ~~twelve months~~ **one calendar year** after the first of the three nuisances referred to in Subsection (B) has occurred, a fourth or successive nuisance activity as declared in Subsection (A) occurs, the City may abate the nuisance by responding to the activities using administrative and law enforcement action and the costs of such abatement shall be assessed on the nuisance property. The costs of such response and abatement shall be calculated as set forth in Subsection (G). Any further nuisance activity that occurs within ~~twelve months~~ **the remainder of the calendar year** of a nuisance activity for which the owner has been given notice of assessment may be charged to the owner.

(D) The Chief of Police shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of response and abatement against the owner's property. 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 served as set forth in Subsection (B) of this section.

(E) The owner of a nuisance property who receives a notice from the Chief of Police or his designee pursuant to Subsection (B) or (D) may appeal such notice by submitting a written request for reconsideration to the Chief of Police within thirty (30) 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 request and refer the appeal for hearing by the Board of Nuisance Abatement. Any such appeal shall not stay any actions by the City to abate any nuisance activity.

(F) Board of Nuisance Abatement

(1) There is hereby created a Board of Nuisance Abatement which shall consist of the Director of Public Safety or his designee, the Chairperson of the Public Safety Committee of City Council or his designee, and three members of the community at large, appointed by the Mayor and subject to the approval of Council. The members of the community at large shall serve for three years and until a successor is appointed and qualified. Members shall serve without compensation.

(2) The Board of Nuisance Abatement shall hear any appeals referred from the Chief of Police as set forth in Subsection (E).

(3) Hearing of Appeal. 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 not have to show that there has been a conviction for a criminal offense to show the existence of a nuisance. The City shall be deemed to have failed to have met this standard if the owner demonstrates by a preponderance of evidence that:

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

(b) He 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

(c) He 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 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).

(4) Any appeal from a decision of the Board of Nuisance Abatement shall be made pursuant to R.C. Chapter 2506.

(G) ~~Costs of abatement shall be: assessed based upon the hourly wage of a senior patrol officer and the number of officers involved in the response to abate the nuisance activity, plus 75% multiplied by the number of hours required to abate the nuisance by police officers in hourly increments, with a minimum of one hour.~~

**(1) Each nuisance in a calendar year of three nuisances and up to and including five nuisances shall be assessed by the Chief of Police, or his or her designee, a service fee of one hundred dollars (\$100.00).**

**(2) Each nuisance in a calendar year in excess of five nuisances shall be assessed by the Chief of Police, or his or her designee, a service fee of two hundred dollars (\$200.00).**

**(3) If the owner of the property has been duly notified of said nuisances but has failed to take corrective action, and/or has failed to notify the Chief of Police of said corrective actions regarding the nuisances, and/or has failed to make restitution for said nuisances, the matter will be turned over to the office of the Law Director for consideration and/or authorization of charges.**

(H) All costs of abatement shall be reported to the Director of Finance, who shall mail a statement of the amount thereof to the owner of the property.

(1) If after thirty days such amount remains unpaid, the Director of Finance shall certify the total amount of the expenses, the name of the owner of the land and a sufficient description of the premises to the County Auditor, to be entered on the tax duplicate, to be a lien on the land from the date of entry and to be collected as other taxes and assessments and returned to the city pursuant to R.C. 731.54.

(I) 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, including nuisance abatement and assessment as provided by law.

**SECTION 2.** That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken 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 action were meetings open to the public in compliance with the law.

**SECTION 3.** That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, for the reason that these measures are necessary to help preserve comfortable enjoyment of life and property in the City's neighborhoods, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed \_\_\_\_\_ 2006

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Clerk of Council

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President of Council

Approved \_\_\_\_\_ 2006

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Mayor