

**AN ORDINANCE**

**of the City Council of the City of Berkley, Michigan**

**Amending Chapter 78 Nuisances,**

**of the Berkley City Code to Modify and Adopt**

**Regulations Relating to Birdfeeders in the City, and to Prescribe a Penalty for Violations.**

**THE CITY OF BERKLEY ORDAINS:**

**SECTION 1:** That Chapter 78 Nuisances, of the Berkley City Code be and hereby is amended, as follows:

**Sec. 78-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Nuisance:* Any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others;
- (2) Offends decency;
- (3) Is offensive to the senses;
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
- (5) In any way renders other persons insecure in life or the use of property;
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others; or
- (7) Tends to attract rodents or nuisance birds, such as pigeons, crows, seagulls, starlings or causes overcrowding of birds.

**Sec. 78-2. Illustrative enumeration.**

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, that this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (1) Noxious weeds and other rank vegetation.
- (2) The storage upon any property of building materials unless there is in force a valid building permit issued by the city for construction upon such property and such building materials are intended for use in connection with such construction; building materials shall include, but shall not be limited to, lumber, bricks, concrete or cinder blocks, plumbing materials, electrical wiring or equipment, shingles, mortar, concrete

- or cement, nails, screws, or any other materials used in constructing any structure (all unused building materials shall be removed from the premises by the contractor prior to issuance of any occupancy permit or final acceptance by the building inspector).
- (3) The storage or accumulation of junk, trash, rubbish or refuse of any kind, except domestic refuse stored in such a manner as not to create a nuisance. The term "junk" shall include parts of machinery or motor vehicles, unused stoves or other appliances stored in the open, remnants of wood, metal or any other material or other castoff material of any kind whether or not the material could be put to any reasonable use.
  - (4) Storage on any property of junk vehicles except in a completely enclosed building; for the purpose of this chapter the term "junk vehicles" shall include any motor vehicle which is inoperative for any reason such as being in a state of disassembly, disrepair, stripped, dismantled, unregistered or unlicensed. No vehicle shall undergo major overhaul or body work in a residential district of this city.
  - (5) The outdoor or open storage of any salable material, equipment or merchandise on any property, where such open storage is permitted in this city, shall be placed, stored or stacked in such a manner that it is not dangerous to human life or otherwise hazardous to the general public safety or welfare. If such hazardous conditions exist they are hereby deemed to be a public nuisance and unsafe and the city manager or his designee shall cause immediate compliance to remove the unsafe conditions. Further, the outdoor or open storage of any material, equipment, products, or merchandise on any property in this city, where such storage is permitted, shall be screened from public view, from a public street, and from adjoining properties not of a similar nature, by an enclosure consisting of an obscuring wall, as approved by the building inspector, so as to reduce or mitigate any blighting effects on the surrounding area.
  - (6) The existence of any structure or damaged partial structure which because of fire, wind or other natural disaster, or physical deterioration is no longer habitable if a dwelling, nor useful of any other purpose for which it may have been intended.
  - (7) The existence of any vacant building, garage or other outbuilding unless such buildings are kept securely locked, windows kept glazed or neatly boarded up and otherwise protected to prevent entrance thereto by vandals.
  - (8) The existence of any incomplete structures unless such structure is in the course of construction in accordance with a valid and subsisting building permit issued by the city and unless such construction is completed within a reasonable time.
  - (9) Any condition which provides harborage for rats, mice, snakes and other vermin.
  - (10) Any building material, containers, machinery, junk, raw materials, and similar items shall be stored on a paved surface or at least 18 inches above the ground, to prevent harborage for rats, mice, snakes and other vermin.
  - (11) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
  - (12) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.

- (13) The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (14) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (15) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (16) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- (17) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
- (18) Any public safety alarm system the activation of which has resulted in four or more false alarms in a calendar year.
- (19) No person shall feed wild birds other than by means of bird feeders elevated at least 48 inches above the ground levels. Birdfeeders shall be designed to be "rodent proof" or shall be properly installed with tray and baffle to prevent spillage onto the ground. No more than 5 birdfeeders may be placed on a lot or property.
- (20) Properties shall be kept free of dog droppings, uneaten food, and improperly composted waste.
- (21) No person shall leave pet or human food outside on the ground or in open containers where it is accessible to rats. No ground feeding.
- (22) All garbage stored outside shall be in watertight plastic or metal containers with tight fitting covers sufficient to keep rats out. Plastic bags are not rat proof and shall not be used for overnight outside storage except when placed at curbside for weekly trash pickup.

**Sec. 78-3. Prohibited generally.**

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

**Sec. 78-4. Notice to abate.**

Whenever a nuisance is found to exist within the city, the city manager or his designee shall give five days written notice to the owner or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance.

**Sec. 78-5. Contents of notice.**

The notice to abate a nuisance issued under the provisions of this chapter shall contain:

- (1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances;
- (2) The location of the nuisance, if the nuisance is stationary;
- (3) A description of what constitutes the nuisance;

- (4) A statement of acts necessary to abate the nuisance; and
- (5) A statement that if the nuisance is not abated as directed and no request for hearing is made before the city manager within the prescribed time, the city will abate such nuisance and assess the cost thereof against such person.

**Sec. 78-6. Service of notice.**

The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law.

**Sec. 78-7. Abatement by city.**

Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter to abate the nuisance, the city manager or his designee shall proceed to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.

**Sec. 78-8. Emergency abatement by city.**

When, in the opinion of the city manager or his designee, there is actual and immediate danger to the public or occupants of a particular premise caused by a nuisance on such premises, the city manager or his designee is hereby authorized and empowered, without any notice or hearing, to order and require such premises to be vacated. The city manager or his designee shall immediately post the premises, warning of the dangerous condition, and shall then abate such nuisance and prepare a statement of costs incurred in the abatement thereof.

**Sec. 78-9. City's costs.**

Any and all costs incurred by the city in the abatement of a nuisance under the provision of this chapter shall constitute a lien against the property upon which such nuisance existed, which costs shall be collected as a special assessment chapter 102.

**SECTION 2: Severability Clause**

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

**SECTION 3: Penalty**

All violations of this ordinance shall be misdemeanors and upon conviction thereof shall be punishable by a sentence of not more than ninety (90) days of confinement to jail or by a fine of not more than \$500, or both, in the court's discretion.

**SECTION 4: Effective Date**

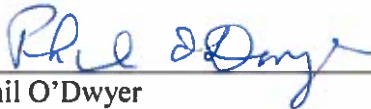
This Ordinance shall become effective 30 days following the date of adoption.


**SECTION 5:** Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, January 4, 2016.

Adopted on the Second Reading at the Regular City Council Meeting on Monday, February 1, 2016.

  
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Phil O'Dwyer  
Mayor

Attest:  
  
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Phommady A. Boucher  
City Clerk