

## CODIFIED ORDINANCES OF KETTERING

### PART SIX – GENERAL OFFENSES CODE

#### CHAPTER 606

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#### CROSS REFERENCES

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Disposition of unclaimed, abandoned and junk motor vehicles – see Ohio R.C. 737.32, 4513.61, et seq.

Burden and degree of proof – see Ohio Revised Code 2901.05.

Criminal law prosecution – see Ohio Revised Code 2901.11.

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## SECTION 606.01 DEFINITIONS

As used in these Codified Ordinances, unless otherwise expressly provided, or unless the context clearly indicates that a different meaning is intended:

- (a) “Force” means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.
- (b) “Deadly force” means any force which carries a substantial risk that it will proximately result in the death of any person;
- (c) “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration;

- (d) “Physical harm to property” means any tangible damage to property which, in any degree, results in loss to its value or interferes with its use or enjoyment. “Physical harm to property” does not include wear and tear occasioned by normal use.
- (e) “Serious physical harm to persons” means any of the following:
- (1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment.
  - (2) Any physical harm which carries a substantial risk of death;
  - (3) Any physical harm which involves some permanent incapacity, whether partial or total, or which involves some temporary, substantial incapacity;
  - (4) Any physical harm which involves some permanent disfigurement, or which involves some temporary, serious disfigurement.
  - (5) Any physical harm which involves acute pain of such duration as to result in substantial suffering, or which involves any degree of prolonged or intractable pain;
- (f) “Serious physical harm to property” means any physical harm to property which does either of the following:
- (1) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort or money to repair or replace;
  - (2) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time;
- (g) “Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist;
- (h) “Substantial risk” means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist;
- (i) “Offense of violence” means any of the following:
- (1) A violation of Ohio Revised Code 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.12, 2909.02, 2909.04, 2909.05, 2911.01, 2911.02,

2911.11, 2911.12, 2917.01, 2917.02, 2921.03, 2921.34, 2921.35, 2923.13, a felony offense under Ohio Revised Code 2909.03, 2917.31, or 2923.12, or a violation of Section 636.02, 636.04, 636.05, 642.07, 642.09, 648.01, 648.08 or 672.02 of this General Offenses Code.

- (2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section listed in Subsection (i)(1) hereof;
  - (3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;
  - (4) A conspiracy or attempt to commit, or complicity in committing, any offense under Subsection (i)(1), (2) or (3) hereof;
- (j)
- (1) “Property” means any property, real or personal, tangible or intangible, and any interest or license in such property. “Property” includes, but is not limited to, electronically processed, produced or stored data, data while in transit, computer programs in either machine or human readable form, and any original or copy of a document associated with computers.
  - (2) As used in this subsection, “computer”, “computer program” and “data” have the same meaning as in Section 642.01.
- (k) “Law enforcement officer” means any of the following:
- (1) A sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal police officer or state highway patrolman;
  - (2) An officer, agent or employee of the State, or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority.
  - (3) The Mayor, in his capacity as chief conservator of the peace within the Municipality.
  - (4) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of such member’s appointment or commission;

- (5) A person lawfully called, pursuant to Ohio Revised Code 311.07, to aid a sheriff in keeping the peace for the purposes and during the time when such person is called;
- (6) A person appointed by the Mayor, pursuant to Ohio Revised Code 737.10, as a special patrolman or officer during riot or emergency, for the purposes and during the time when such person is appointed;
- (7) A member of the organized militia of the State or the Armed Forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or to protect against domestic violence;
- (8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or the Municipal Prosecutor;
- (l) “Privilege” means an immunity, license or right conferred by law or bestowed by express or implied grant or arising out of status, position, office or relationship or growing out of necessity; (ORC 2901.01)
- (m) “Public official” means any elected or appointed officer or employee or agent of the state or municipality, whether in a temporary or permanent capacity and including, without limitation, legislators, judges and law enforcement officers;
- (n) “Public servant” means any of the following:
  - (1) Any public official;
  - (2) Any person performing ad hoc a governmental function including, without limitation, a juror, member of a temporary commission, master, arbitrator, advisor or consultant;
  - (3) A candidate for public office, whether or not he is elected or appointed to the office for which he is a candidate. A person is a candidate for the purposes of this subsection if he has been nominated according to law for election or appointment to public office or if he has filed a petition or petitions as required by law to have his name placed on a ballot in a primary, general or special election or, if he campaigns as a write-in candidate, in any primary, general or special election;
- (o) “Party official” means any person who holds an elective or appointive post in a political party in the United States or this State, by virtue of which he directs, conducts or participates in directing or conducting party affairs at any level of responsibility;

- (p) “Official proceeding” means any proceeding before a legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath and includes any proceeding before a referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with an official proceeding;
- (q) “Detention” means arrest or confinement in any facility for custody of persons charged with or convicted of crime or alleged or found to be delinquent or unruly or detention for extradition or deportation. Detention does not include supervision of probation or parole, nor constraint incidental to release on bail;
- (r) “Detention facility” means any place used for the confinement of a person charged with or convicted of crime or alleged or found to be delinquent or unruly. (ORC 2921.01) (Ord. No. 3049-83. Effective 3-16-83.)

#### SECTION 606.02 CULPABLE MENTAL STATES

(a) A person acts purposely when it is his specific intention to cause a certain result, or when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.

(b) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

(c) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist.

(d) A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial laps from due care, he fails to perceive or avoid a risk that such circumstances may exist.

(e) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element. (ORC 2901.22)

**SECTION 606.03 CLASSIFICATION OF OFFENSES**

As used in this General Offenses Code:

- (a) Offenses include misdemeanors of the first, second, third and fourth degree, minor misdemeanors and offenses not specifically classified.
- (b) Regardless of the penalty which may be imposed, any offense specifically classified as a misdemeanor is a misdemeanor.
- (c) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty.
- (d) Any offense not specifically classified is a minor misdemeanor if the only penalty which may be imposed is a fine not exceeding one hundred dollars (\$100.00). (ORC 2901.02)

**SECTION 606.04 OFFENSES DEFINED**

- (a) No conduct constitutes a criminal offense against the Municipality unless it is defined as an offense in this General Offenses Code or in any other ordinance or resolution, rule or regulation of the Municipality.
- (b) An offense is defined when one or more sections of this General Offenses Code state a positive prohibition or enjoin a specific duty and provide a penalty for violation of such prohibition or failure to meet such duty. (ORC 2901.03)

**SECTION 606.05 RULE OF CONSTRUCTION**

Sections of this General Offenses Code defining offenses or penalties shall be strictly construed against the Municipality and liberally construed in favor of the accused. (ORC 2901.04)

**SECTION 606.06 LIMITATION ON CRIMINAL PROSECUTIONS**

- (a) Except as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:
  - (1) For a misdemeanor other than a minor misdemeanor, two years;

(2) For a minor misdemeanor, six months.

(b) If the period of limitation provided in subsection (a) hereof has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of fiduciary duty, within one year after discovery of the offense either by an aggrieved person or by his legal representative who is not himself a party to the offense.

(c) If the period of limitation provided in subsection (a) hereof has expired, prosecution shall be commenced for an offense involving misconduct in office by a public servant at any time while the accused remains a public servant, or within two years thereafter.

(d) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

(e) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation or other process, unless reasonable diligence is exercised to execute the same.

(f) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

(g) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused absented himself from the State or concealed his identity or whereabouts is prima facie evidence of his purpose to avoid prosecution.

(h) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this State, even though the indictment, information or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal. (ORC 2901.13)

## **SECTION 606.07 REQUIREMENTS FOR CRIMINAL LIABILITY**

(a) Except as provided in subsection (b) hereof, a person is not guilty of an offense unless both of the following apply:



- (1) His liability is based on conduct which includes either a voluntary act or an omission to perform an act or duty which he is capable of performing;
- (2) He has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense.

(b) When the section defining an offense does not specify any degree of culpability and plainly indicates a purpose to impose strict criminal liability for the conduct described in such section, then culpability is not required for a person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.

(c) As used in this section:

- (1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have ended his possession.
- (2) Reflexes, convulsions, body movements during unconsciousness or sleep and body movements that are not otherwise a product of the actor's volition are involuntary acts.
- (3) "Culpability" means purpose, knowledge, recklessness or negligence, as defined in Section 606.02 or any other specific mental state required by any section of this General Offenses Code. (ORC 2901.21)

## **SECTION 606.08 ORGANIZATIONAL CRIMINAL LIABILITY**

(a) An organization may be convicted of an offense under any of the following circumstances:

- (1) The offense is a minor misdemeanor committed by an officer, agent or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.
- (2) A purpose to impose organizational liability plainly appears in the section defining the offense and the offense is committed by an officer, agent or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents or employees for

whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.

- (3) The offense consists of an omission to discharge a specific duty imposed by law on the organization.
- (4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated or performed by the Board of Directors, trustees, partners or by a high managerial officer, agent or employee acting in behalf of the organization and within the scope of his office or employment.

(b) When strict liability is imposed for the commission of an offense, a purpose to impose organizational liability shall be presumed, unless the contrary plainly appears.

(c) In a prosecution of an organization for an offense other than the one for which strict liability is imposed, it is a defense that the high managerial officer, agent or employee having supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission. This defense is not available if it plainly appears inconsistent with the purpose of the section defining the offense.

(d) As used in this section, "organization" means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated association, estate, trust or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of governmental program. (ORC 2901.23)

#### **SECTION 606.09 PERSONAL ACCOUNTABILITY FOR ORGANIZATIONAL CONDUCT**

(a) An officer, agent or employee of an organization may be prosecuted for an offense committed by such organization if he acts with the kind of culpability required for the commission of the offense and any of the following applies:

- (1) In the name of the organization or in its behalf he engages in conduct constituting the offense or causes another to engage in such conduct or tolerates such conduct when it is of a type for which he has direct responsibility.
- (2) He has primary responsibility to discharge a duty imposed on the organization by law and such duty is not discharged.

(b) When a person is convicted of an offense by reason of this section, he is subject to the same penalty as if he had acted in his own behalf. (ORC 2901.24)

#### **SECTION 606.10 FALSIFICATION**

(a) No person shall knowingly make a false statement or knowingly swear or affirm the truth of a false statement previously made when any of the following applies:

- (1) The statement is made in any official proceeding;
- (2) The statement is made with purpose to incriminate another;
- (3) The statement is made with purpose to mislead a public official in performing his official function;
- (4) The statement is made with purpose to secure the payment of workmen's compensation, unemployment compensation, aid for the aged, aid for the blind, aid for the permanently and totally disabled, aid to dependent children, general relief, retirement benefits or other benefits administered by a governmental agency or paid out of a public treasury;
- (5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration or release;
- (6) The statement is sworn or affirmed before a notary public or other person empowered to administer oaths;
- (7) The statement is in writing on or in connection with a report or return which is required or authorized by law.
- (8) The statement is in writing and is made with purpose to induce another to extend credit to or employ the offender, or to confer any degree, diploma, certificate of attainment, award of excellence, or honor on the offender, or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom such statement is directed relies upon it to his detriment.

(b) It is no defense to a charge under subsection (a)(4) hereof that the oath or affirmation was administered or taken in an irregular manner.

(c) Where contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

(d) Whoever violates this section is guilty of falsification, a misdemeanor of the first degree. Punishment shall be provided in Section 698.02. (ORC 2921.13)

### **SECTION 606.11 COMPOUNDING A CRIME**

(a) No person shall knowingly demand, accept or agree to accept anything of value in consideration of abandoning or agreeing to abandon a pending criminal prosecution.

(b) It is an affirmative defense to a charge under this section when both of the following apply:

- (1) The pending prosecution involved is for a violation of Section 642.02, 642.14 or 642.15(b)(2) of this General Offenses Code or a felony offense under Ohio Revised Code 2913.02, 2913.11 or 2913.21(b)(2) of which the actor under this section was the victim.
- (2) The thing of value demanded, accepted or agreed to be accepted in consideration of abandoning or agreeing to abandon the prosecution did not exceed an amount which the actor reasonably believed due him as restitution for the loss caused him by the offense.

(c) When a prosecuting witness abandons or agrees to abandon a prosecution under subsection (b) hereof, such abandonment or agreement in no way binds the Municipality to abandoning the prosecution.

(d) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2921.21)

### **SECTION 606.12 FAILURE TO REPORT A CRIME**

(a) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(b) No physician, limited practitioner, nurse or person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by him, or any serious physical harm to persons which he knows or has reasonable cause to believe resulted from an offense of violence.

(c) Subsection (a) hereof does not require disclosure of information when any of the following applies:

- (1) The information is privileged by reason of the relationship between attorney and client, doctor and patient, licensed psychologist or licensed school psychologist and client, priest and penitent, or husband and wife;
- (2) The information would tend to incriminate a member of the actor's immediate family;
- (3) Disclosure of the information would amount to revealing a news source, privileged under Ohio Revised Code 2739.04 or 2739.12;
- (4) Disclosure of the information would amount to disclosure by an ordained clergyman of an organized religious body of a confidential communication made to him in his capacity as such by a person seeking his aid or counsel;
- (5) Disclosure would amount to revealing information acquired by the actor in the course of his duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency or organization registered pursuant to Ohio Revised Code 5122.51.

(d) No disclosure of information pursuant to subsection (a) or (b) hereof shall give rise to any liability or recrimination for a breach of privilege or confidence.

(e) Whoever violates this section is guilty of failure to report a crime. Violation of subsection (a) hereof is a misdemeanor of the fourth degree. Violation of subsection (b) hereof is a misdemeanor of the second degree. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2921.22)

#### **SECTION 606.13 FAILURE TO AID A LAW ENFORCEMENT OFFICER OR FIREMAN**

(a) No person shall negligently fail or refuse to aid a law enforcement officer when called upon for assistance in preventing or halting the commission of an offense or in apprehending or detaining an offender, when such aid can be given without a substantial risk of physical harm to the person giving it. (Ohio Revised Code 2921.23)

(b) It shall be the duty of every person, when called upon, to render all assistance in his power to the members and officers of the Fire and Police Departments, in order to

assist in the suppression of fires or to arrest and confine an offender against the laws of the State or the Ordinances of the City. No person shall refuse to render such assistance when called upon, or resist, delay or obstruct any member of such Departments in the discharge of his duty. (Ord. 617-58. Passed 10-28-58.)

(c) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the fourth degree. Punishment shall be as provided in Section 698.02. (Ord. 2844-79. Passed 5-8-79.)

#### **SECTION 606.14 OBSTRUCTING OFFICIAL BUSINESS**

(a) No person shall abuse a judge or the mayor in the execution of his office or knowingly and willfully obstruct or abuse a police officer, fireman or other public official in the execution of his office or duties.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02. (Ord. 2591-74. Passed 9-24-74.)

#### **SECTION 606.15 OBSTRUCTING JUSTICE**

(a) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction or punishment of another for crime, or to assist another to benefit from the commission of a crime, shall do any of the following:

- (1) Harbor or conceal such other person;
- (2) Provide such other person with money, transportation, a weapon, a disguise or other means of avoiding discovery or apprehension.
- (3) Warn such other person of impending discovery of apprehension;
- (4) Destroy or conceal physical evidence of the crime, or induce any person to withhold testimony or information or to elude legal process summoning him to testify or supply evidence;
- (5) Communicate false information to any person.

(b) Whoever violates this section is guilty of obstructing justice, a misdemeanor of the first degree, provided the crime committed by the person aided is not a felony. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2921.32)

**SECTION 606.16 TAUNTING, TEASING, PROVOKING OR INTERFERING WITH POLICE DOGS**

(a) No person shall act recklessly so as to taunt, tease or otherwise provoke a police dog in either of the following circumstances:

- (1) The police dog is assisting a law enforcement officer in the performance of his official duties at the time the taunting, teasing, or provocation takes place; or
- (2) The police dog is not assisting a law enforcement officer in the performance of his official duties at the time the taunting, teasing or provocation takes place, but facts and circumstances would lead non-negligent persons to believe that the animal is a police dog.

(b) No person, other than a law enforcement officer of this City, shall knowingly interfere with a police dog in the performance of its official duties.

(c) 'Police dog' means any dog that has been trained, and/or is used to assist law enforcement officers in the performance of their official duties.

(d) Whoever violates this section is guilty of a misdemeanor of the third degree. (Ord. 3621. Passed 10/12/93.)

**SECTION 606.17 RESISTING ARREST**

(a) No person, recklessly or by force, shall resist or interfere with the arrest of himself or another. (Ord. 2805-78. Passed 6/13/78.)

(b) Whoever violates this section is guilty of resisting arrest, a misdemeanor of the second degree. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2921.33)

**SECTION 606.18 HAVING AN UNLAWFUL INTEREST IN A PUBLIC CONTRACT**

(a) No public official shall knowingly do any of the following:

- (1) During his term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him or by a legislative body, commission or board of which he was a member at the time of authorization, and not let by competitive

bidding, or let by competitive bidding in which his is not the lowest and best bid;

- (2) Have an interest in the profits or benefits of a public contract entered into by or for the use of the Municipality.
- (3) Have an interest in the profits or benefits of a public contract which is not let by competitive bidding when required by law and which involves more than one hundred fifty dollars (\$150.00).

(b) In the absence of bribery or a purpose to defraud, a public servant, member of his family or any of this associates shall not be considered as having an interest in a public contract or the investment of public funds when all of the following apply:

- (1) The interest of such person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization which is the contractor on the public contract involved, or which is the issuer of the security in which public funds are invested;
- (2) The shares owned or controlled by such person do not exceed five percent of the outstanding shares of the corporation, and the amount due such person as creditor does not exceed five percent of the total indebtedness of the corporation or other organization;
- (3) Such person, prior to the time the public contract is entered into, files with the Municipality an affidavit giving his exact status in connection with the corporation or other organization.

(c) This section does not apply to a public contract in which a public servant, a member of his family or one of his business associates has an interest, when all of the following apply:

- (1) The subject of the public contract is necessary supplies or services for the Municipality;
- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the municipality as part of a continuing course of dealing established prior to the public servant's becoming associated with the Municipality;
- (3) The treatment accorded the Municipality is either preferential to or the same as that accorded other customers or clients in similar transactions;



- (4) The entire transaction is conducted at arm's length, with full knowledge by the Municipality of the interest of the public servant, member of his family or business associate, and the public servant takes no part in the deliberations or decision of the Municipality with respect to the public contract.
- (d) As used in this section, "public contract" means any of the following:
  - (1) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the Municipality or any agency or instrumentality of the Municipality;
  - (2) A contract for the design, construction, alteration, repair or maintenance of any public property.
- (e) Whoever violates this section is guilty of having an unlawful interest in a public contract, a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2921.42)

#### **SECTION 606.19 SOLICITING OR RECEIVING IMPROPER COMPENSATION**

- (a) No public servant shall knowingly do any of the following:
  - (1) Solicit or receive compensation, other than that allowed by law, to perform his official duties;
  - (2) Solicit or receive greater fees or costs than are allowed by law to perform his official duties;
  - (3) Receive any fee or reward, or any part of the compensation of a public servant over whom he has supervisory authority, in consideration of appointing such public servant to public employment.
- (b) Whoever violates this section is guilty of soliciting or receiving improper compensation, a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02 and subsection (c) hereof.
- (c) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment or position of trust in the Municipality for a period of seven years from the date of conviction. (Ohio Revised Code 2921.43)

**SECTION 606.20 DERELICTION OF DUTY**

(a) No law enforcement officer shall negligently do any of the following:

- (1) Fail to service a lawful warrant without delay;
- (2) Fail to prevent or halt the commission of an offense or to apprehend an offender, when it is in his power to do so alone or with available assistance

(b) No law enforcement, ministerial or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.

(c) No officer, having charge of a detention facility, shall negligently do any of the following:

- (1) Allow the detention facility to become littered or unsanitary;
- (2) Fail to provide persons confined in the detention facility with adequate food, clothing, bedding shelter and medical attention;
- (3) Fail to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another;
- (4) Allow a prisoner to escape;
- (5) Fail to observe any lawful and reasonable regulation for the management of the detention facility.

(d) No public official of the Municipality shall recklessly create a deficiency, incur a liability or expend a greater sum than is appropriated by Council for the use in any one year of the department or agency of the Municipality.

(e) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to his office, or recklessly do any act expressly forbidden by law with respect to his office.

(f) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2921.44)

**SECTION 606.21 INTERFERING WITH CIVIL RIGHTS**

(a) No public servant, under color of his office, employment or authority, shall knowingly deprive or conspire or attempt to deprive, any person of a constitutional or statutory right or a right created by ordinance, resolution or regulation.

(b) whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2921.45)

**SECTION 606.22 CONSPIRACY**

(a) No person, with purpose to commit or to promote or facilitate the commission of any offense under these Codified Ordinances or a fourth degree felony offense under Ohio Revised Code 2907.22 (Promoting Prostitution) or 2913.03 (Unauthorized Use of a Vehicle), shall do either of the following:

- (1) With another person or persons, plan or aid in planning the commission of any such offense;
- (2) Agree with another person or persons that one or more of them will engage in conduct which facilitates the commission of any such offense.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by him or a person with whom he conspired, subsequent to the accused's entrance into the conspiracy. For purposes of this section, an overt act is substantial when it is of such character as to manifest a purpose on the part of the actor that the object of the conspiracy should be completed.

(c) When the offender knows or has reasonable cause to believe that a person with whom he conspires has also conspired or is conspiring with another to commit the same offense, then the offender is guilty of conspiring with such other person, even though his identity may be unknown to the offender.

(d) It is no defense to a charge under this section that, in retrospect, commission of the offense which was the subject of the conspiracy was impossible under the circumstances.

(e) A conspiracy terminates when the offense or offenses which are its objects are committed, or when it is abandoned by all conspirators. In the absence of abandonment, it is no defense to a charge under this section that no offense which was the object of the conspiracy was committed.

(f) A person who conspires to commit more than one offense is guilty of only one conspiracy, when such offenses are the object of the same agreement or continuous conspiratorial relationship.

(g) When a person is convicted of committing or attempting to commit a specific offense or of complicity in the commission of or attempt to commit such offense, he shall not be convicted of conspiracy involving the same offense.

(h) No person shall be convicted of conspiracy upon the testimony of a person with whom he conspired, unsupported by other evidence.

(i) the following are affirmative defenses to a charge of conspiracy:

- (1) After conspiring to commit an offense, the actor thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of his criminal purpose;
- (2) After conspiring to commit an offense, the actor abandoned the conspiracy prior to the commission of or attempt to commit any offense which was the object of the conspiracy, either by advising all other conspirators of his abandonment or by informing any law enforcement authority of the existence of the conspiracy and of his participation therein.

(j) This section does not define a separate conspiracy offense or penalty where conspiracy is defined as an offense by one or more sections of these Codified Ordinances or of the Ohio Revised Code, other than this section. In such case, however:

- (1) With respect to the offense specified as the object of the conspiracy in such other section or sections, subsection (a) hereof defines the voluntary act or acts and culpable mental state necessary to constitute the conspiracy;
- (2) Subsections (b) through (i) hereof are incorporated by reference in the conspiracy offense defined by such other section or sections of these Codified Ordinances or of the Ohio Revised Code.

(k) Whoever violates this section is guilty of conspiracy, an offense of the next lesser degree than the offense which is the object of the conspiracy. Conspiracy to commit a minor misdemeanor is not an offense under this section. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2923.01)

**SECTION 606.23 ATTEMPT**

- (a) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct which, if successful, would constitute or result in the offense.
- (b) It is no defense to a charge under this section that, in retrospect, commission of the offense which was the object of the attempt was impossible under the circumstances.
- (c) No person who is convicted of committing a specific offense, of complicity in the commission of such offense, or of conspiracy to commit such offense, shall be convicted of an attempt to commit the same offense in violation of this section.
- (d) It is an affirmative defense to a charge under this section that the actor abandoned his effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.
- (e) Whoever violates this section is guilty of an attempt to commit an offense, an offense of the next lesser degree than the offense attempted. In the case of an attempt to commit an offense not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense under this section. Punishment shall be as provided in Section 698.02. (Ohio Revised Code 2923.02)

**SECTION 606.24 COMPLICITY**

- (a) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:
- (1) Solicit or procure another to commit the offense;
  - (2) Aid or abet another in committing the offense;
  - (3) Conspire with another to commit the offense in violation of Section 606.21;
  - (4) Cause an innocent or irresponsible person to commit the offense.
- (b) It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.

(c) No person shall be convicted of complicity under this section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of Section 606.22.

(d) No person shall be convicted of complicity under this section solely upon the testimony of an accomplice, unsupported by other evidence.

(e) It is an affirmative defense to a charge under this section that, prior to the commission of or attempt to commit the offense, the actor terminated his complicity under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(f) Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were the principal offender. A charge of complicity may be stated in terms of this section or in terms of the principal offense. (Ohio Revised Code 2923.03)

#### **SECTION 606.25 DETENTION OF SHOPLIFTERS**

A merchant, or his employee or agent, who has probable cause for believing that items offered for sale by a mercantile establishment have been unlawfully taken by a person, may, in order to recover such items without search or undue restraint or in order to cause an arrest to be made by a police officer until a warrant can be obtained, detain such a person in a reasonable manner for a reasonable length of time within such mercantile establishment or the immediate vicinity thereof.

Any police officer may, within a reasonable time after such alleged unlawful taking has been committed, arrest without a warrant, any person he has probable cause for believing has committed such unlawful taking in a mercantile establishment. (Ohio Revised Code 2935.041; Ord. 2057-69. Passed 11-25-69.)

#### **SECTION 606.26 DISPOSITION OF PROPERTY HELD BY POLICE DEPARTMENT**

(a) Property that has been lost, abandoned, stolen, or lawfully seized or forfeited, and that is in the custody of the Police Department, shall be safely kept pending the time it is no longer needed as evidence and shall be disposed of pursuant to this ordinance.

(b) The Police Department shall make a reasonable effort to locate the persons entitled to possession of property in its custody and to notify them when and where it may be claimed. If after a period of 90 days the Police Department is unable to identify or locate the owner of property in its custody, or, once notified, the owner fails to claim such property, that property shall be considered "unclaimed property" and disposed of pursuant to this ordinance.

- (c) Unclaimed property in the custody of the Kettering Police Department that was “found” and placed into the custody of the Department by a person not employed by the City of Kettering may be returned to the “finder” after a period of 90 days provided:
- (1) The property is not a weapon, firearm or dangerous ordnance.
  - (2) The property is not drugs, drug paraphernalia, obscene material, beer, intoxicating liquor or alcohol, or any other dangerous or illegal material;
  - (3) The owner of the found property is unknown, or cannot be located, or fails to claim the property within 90 days after a reasonable attempt to locate the owner is made by the Police Department;
  - (4) The person who found the property and turned it over to the Police Department signs an affidavit that they are the finder of the property in question and that they did not obtain this property illegally, and that they have fully and truthfully informed the Police Department of all the circumstances surrounding the finding of this property.
- (d) A person loses any right he may have to possession of property;
- (1) That was the subject of, or was used in a conspiracy or attempt to commit or in the commission of, an offense, other than a traffic offense, and such person is a conspirator, accomplice, or offender with respect to the offense;
  - (2) When a court determines that the property should be forfeited because, when in light of the nature of the property or the circumstances of such person, it is unlawful for him to acquire or possess it.
- (e) Unclaimed and forfeited property in the custody of the Police Department shall be disposed of on application to and order of any court of record that has territorial jurisdiction within the municipality as follows:
- (1) Drugs shall be destroyed, or shall be placed in the custody of the Secretary of the Treasury of the United States for disposal or use for medical or scientific purposes under applicable federal law.
  - (2) Firearms and dangerous ordnance suitable for police work may be given to the Police Department for that purpose. Firearms suitable for sporting use, or as museum pieces or collector’s items, may be sold at public auction pursuant to Section E-5 of this ordinance, or donated for

public display to a museum open to the general public. Other firearms and dangerous ordnance shall be destroyed.

- (3) Obscene materials shall be destroyed.
- (4) Beer, intoxicating liquor, or alcohol seized from a person who is not the holder of a permit issued under Chapters 4301 and 4303 of the Revised Code, or is an offender, and forfeited to the state under Section 4301.45 or 4301.53 of the Revised Code, shall be destroyed or turned over to the Department of Liquor Control to be sold by the Department of Liquor Control pursuant to Section 2933.41 D-4 of the Revised Code.
- (5) Other unclaimed or forfeited property may be sold at public auction, or disposed of as the court considers proper in the circumstances, or turned over to the City and converted to City ownership.
- (6) Vehicle and vehicle parts forfeited under Sections 4549.61 to 4549.63 of the Revised Code may be given to a law enforcement agency for use in the performance of its duties. Such parts may be incorporated into any other official vehicle. Parts that do not bear vehicle identification numbers or derivatives thereof may be sold or disposed of as provided by rules of the director of highway safety. Parts from which a vehicle identification number or derivative thereof has been removed, defaced, covered, altered, or destroyed and that are not suitable for police work or incorporation into an official vehicle shall be destroyed and sold as junk or scrap.

(f) The Police Department may dispose of certain property in its possession in accordance with its own policy and procedures provided that:

- (1) The property is of little or no monetary value and would normally be considered as trash or rubbish.
- (2) The property is a small sample or specimen collected as evidence and is no longer needed as evidence.
- (3) The property is a dangerous ordnance, explosive or incendiary device, volatile fluid, chemical agent, biological or nuclear material, or any other unsafe material that by its nature threatens the public safety and needs to be destroyed or disposed of in order to provide for the safety of the public or public safety officials.

(g) The proceeds from property disposed of pursuant to Section (e)(5) of this ordinance shall be dispersed as follows:



- (1) 25% of the net proceeds shall be used for funding of citizen reward program pursuant to Section 2933.41(E) of the Revised Code.
- (2) 75% of the net proceeds shall be placed in the general fund of the municipality.

(h) This ordinance does not apply to the collection, storage or disposal of abandoned junk motor vehicles.

(i) For the purposes of this ordinance, a reasonable effort by the Police Department to locate the persons entitled to possession of property within the Department's custody may include one or more of the following:

- (1) A phone call to the last known phone number of the suspected owner of the property;
- (2) A letter to the last known address of the suspected owner of the property.
- (3) An advertisement in a newspaper of general circulation in the municipality or county briefly describing the nature of the property in custody and inviting persons to view and establish their right to it;
- (4) A brief investigation or inquiry by employees of the Department for the purpose of locating or identifying the owner of the property. (Ord. 3206-86. Passed 2-11-86)

**SECTION 606.27** This Section Reserved.

**SECTION 606.28 EMERGENCY POWERS OF MAYOR**

(a) The Mayor may, in times of public emergency or when existing circumstances or the state of facts present imminent and substantial danger of bodily harm to large numbers of people and/or widespread destruction of property, such as, but not limited to, natural disorders caused by an act of God, explosions, fires, tumult, diffusing explosive vapors, diffusing dangerous chemicals or liquids, civil emergency, power failures or aircraft accidents, proclaim in writing a state of emergency. Coincident with the proclamation, the Mayor shall issue notice of a special meeting of Council to be held within twelve hours of the time of the proclamation.

(b) As part of such proclamation or by subsequent written order after such proclamation is issued, the Mayor may, in his discretion as he deems necessary to the public safety:

- (1) Delineate the boundaries of any area threatened by emergency condition and restrict or prohibit persons from entering such area except when carrying on necessary and legitimate pursuits, and control and regulate movement within and from such area;
- (2) Establish a curfew within such area under regulations set by the Mayor or Council and prohibit persons from being out-of-doors during such curfew; and
- (3) Prohibit the sale, offering for sale, dispensing, and regulate or control the transportation of firearms and other deadly weapons, ammunition, dynamite and other dangerous explosives, incendiary devices and any necessary ingredient thereof.

(c) When the danger has passed, the Mayor or Council shall forthwith make a proclamation that the emergency has ended and any proclamation, order or regulation issued pursuant to this section shall then become void.

(d) The powers conferred by this section are in addition to any other power which may be conferred by law and nothing in this section shall be construed to modify or limit such authority, powers, duties and responsibilities of any officer or public official as may be provided by law. Nothing in this section shall be construed to permit suspension of the privilege to a writ of habeas corpus. (Ord. 1934-69. Passed 3-11-69).

(e) Whoever violates any of the provisions of, or knowingly fails to perform any duty required by, a proclamation, order or regulation issued and in effect pursuant to this section is guilty of a misdemeanor of the fourth degree. Punishment shall be provided in Section 698.02.

## **SECTION 606.29 MAINTENANCE EXPENSE**

Every person convicted of an offense other than a minor misdemeanor and who is confined to a county or city jail or workhouse shall reimburse the City for its expenses incurred by reason of confinement. Reimbursable expenses shall include, but are not limited to, the expenses relating to the provision of food, clothing, shelter and medical expenses during confinement and during any time that the person is incarcerated before sentencing that is credited against the term of confinement. (Ord. 3146-84. Passed 11-20-84.)

**Legislative history:** Ord. 617-58; passed 10/28/58. Ord. 1934-69; passed 3/11/69. Ord. 2057-69; passed 11/25/69. Ord. 2437-72; passed 12/12/72. Ord. 2591-74; passed 9/24/74. Ord. 2805-78; passed 6/13/78. Ord. 2844-79 passed 5/8/79. Ord. 3049-83; passed 3/16/83. Ord. 3146-84; passed 11/20/84. Ord. 3206-86; passed 2/11/86. Ord. 3565-92; passed 8/25/92. Ord. 3621-93; passed 10/12/93. Ord. 3850-00; passed 10/10/00.