

NOTICE

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**CHAPTER 648
PEACE DISTURBANCES**

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CROSS REFERENCES

See section histories for similar State Law

Power to regulate peace disturbances - see Ohio R.C. 715.49

Cordoning off riot areas; prohibiting sales of firearms and explosives – see Ohio R.C. 3761.16

Suspension of beer and liquor sales by Ohio Director of Liquor Control during emergency – see Ohio R.C. 4301.251

Riot and civil disorder assistance by State Highway Patrol – see Ohio R.C. 5503.02(B)

Sirens, whistles and bells on motor vehicles - see TRAF. 438.19

Noisy mufflers - see TRAF. 438.20

Definitions generally – see GEN. OFF. 606.01

“Force” defined - see GEN. OFF. 606.01(a)

“Deadly force” defined - see GEN. OFF. 606.01(b)

Resisting arrest - see GEN. OFF. 606.17

Interfering with civil rights - see GEN. OFF. 606.21

Assault - see GEN. OFF. 636.02, 636.03

Menacing - see GEN. OFF. 636.04, 636.05

Arson - see GEN. OFF. 642.07

Criminal trespass – see GEN. OFF. 642.10

Desecration - see GEN. OFF. 642.21

Fireworks - see GEN. OFF. 672.04, 672.05

Emergency powers of Mayor – see GEN. OFF. 606.28

Disorderly persons on premises where alcoholic beverages are sold - see GEN. OFF. 612.04

SECTION 648.01 RIOT.

(a) No person shall participate with four or more others in a course of disorderly conduct in violation of Section 648.04:

- (1) With purpose to commit or facilitate the commission of a misdemeanor, other than disorderly conduct;

- (2) With purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede or obstruct a function of government;
- (3) With purpose to hinder, impede or obstruct the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at such institution.

(b) No person shall participate with four or more others with purpose to do an act with unlawful force or violence, even though such act might otherwise be lawful.

(c) Whoever violates this section is guilty of riot, a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02. (ORC 2917.03)

SECTION 648.02 FAILURE TO DISPERSE.

(a) Where five or more persons are participating in a course of disorderly conduct in violation of Section 648.04, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order.

(b) Nothing in this section requires persons to disperse who are peaceably assembled for a lawful purpose.

(c) Whoever violates 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 648.03 JUSTIFIABLE USE OF FORCE TO SUPPRESS RIOT.

A law enforcement officer or fireman engaged in suppressing riot or in protecting persons or property during riot:

- (a) Is justified in using force, other than deadly force, when and to the extent he has probable cause to believe such force is necessary to disperse or apprehend rioters;
- (b) Is justified in using force, including deadly force, when and to the extent he has probable cause to believe such force is necessary to disperse or apprehend rioters whose conduct is creating a substantial risk of serious physical harm to persons. (ORC 2917.05)

SECTION 648.04 DISORDERLY CONDUCT.

(a) No person shall recklessly cause inconvenience, annoyance or alarm to another, by doing any of the following:

- (1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;
- (2) Making unreasonable noise or offensively coarse utterance, gesture or display, or communicating unwarranted and grossly abusive language to any person;
- (3) Insulting, taunting or challenging another under circumstances in which such conduct is likely to provoke a violent response;
- (4) Hindering or preventing the movement of persons on a public street, road, highway or right of way, or to, from, within or upon public or private property, so as to interfere with the rights of others and by any act which serves no lawful and reasonable purpose of the offender;
- (5) Creating a condition which is physically offensive to persons or which presents a risk of physical harm to persons or property by any act which serves no lawful and reasonable purpose of the offender.

(b) No person, while voluntarily intoxicated shall do either of the following:

- (1) In a public place or in the presence of two or more persons engage in conduct likely to be offensive or to cause inconvenience, annoyance or alarm to persons of ordinary sensibilities, which conduct the offender, if he were not intoxicated, should know is likely to have such effect on others;
- (2) Engage in conduct or create a condition which presents a risk of physical harm to himself or another, or to the property of another.

(c) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft or other vehicle which under the influence of alcohol or any drug of abuse, is not a violation of subsection (b) hereof.

(d) When to an ordinary observer a person appears to be intoxicated, it is probable cause to believe such person is voluntarily intoxicated for purposes of subsection (b) hereof.

(e) Whoever violates this section is guilty of disorderly conduct, a misdemeanor of fourth degree. Punishment shall be as provided in Section 698.02. (Ord. 2699-76. Passed 7-13-76.)

SECTION 648.05 DISTURBING THE PEACE.

(a) No person shall disturb the good order and quiet of the Municipality by clamors or noises, by intoxication, drunkenness, fighting, quarreling, wrangling, committing assault, assault and battery, using obscene or profane language in the streets and other public places to the annoyance of the citizens, or otherwise violate the public peace by indecent and disorderly conduct, by lewd and lascivious behavior or by making, continuing to make or causing to be made any unreasonable and unnecessary noise of such a character, intensity and duration as to disturb the peace and quiet of the community or to be detrimental to the life or health of any individual. (Ord. 2437-72. Passed 12-12-72.)

(b) Noises. This section is intended to protect persons from excessive noise levels, which interfere with the comfortable enjoyment of life, property, recreation, and commerce because excessive noise can interfere with sleep, communication, relaxation, and the full enjoyment of one's property.

(1) Definitions. The following words and phrases when used in this section shall have the meanings herein described:

- a) "Amplified sound" means any sound augmented by any electronic means that increases the sound level or volume.
- b) "Business establishment" means any commercial establishment, including, without limitation, establishments that are required to obtain a liquor permit.
- c) "Dwelling unit", also known as a "residence", means one or more rooms connected together and containing sleeping facilities, whether or not fit for temporary or overnight rental by one or more persons, and as defined in Ohio Revised Code Section 2909.01(c) as an "occupied structure".
- d) "Live music" means any sound comprised of instrumental music, song, or a combination of instrumental music and song, produced in whole or in part by a singer vocalizing or by a musician playing a musical instrument on the same premises as the sound source.
- e) "Person(s)" means any individual, association of individuals, business, or legal entity.

- f) “Plainly audible sound” means any sound for which the information content of the sound is unambiguously communicated to the listener, including, without limitation, understandable words, comprehensible musical rhythms, beat or cadence, bells, horns, whistles, or other unreasonably loud noises.
- g) “Receiving property” means any lot, parcel of land, public space, institution, or dwelling unit onto which sound, not originating therefrom, travels.
- h) “Recorded music” means any sound comprised of instrumental music or song, or combination thereof, produced and generated by a speaker, loudspeaker, radio, television, tape deck, phonograph, compact disc player, jukebox, or other sound-producing device.
- i) “Sound source” means the place from which amplified sound emanates including, without limitation, a speaker, loudspeaker, or any other sound-producing instrument or person.

(2) Unreasonably Loud Noise.

- a) No person shall recklessly cause any amplified sound, live music, recorded music, or other noise to cross real property boundaries at such a volume as to:
 - i. Disrupt the normal daily activities, including, without limitation, sleeping, studying, and dining of persons within a residence or disrupt the normal daily activities, including, without limitation, work of persons within a place of business.
 - ii. Noise shall be presumed “unreasonably loud” if uninvited noise is plainly audible at a residential receiving property, or part thereof, greater than 100 feet away from the property line of the sound source.
- b) No person shall recklessly cause an uninvited or disruptive level of plainly audible sound, amplified sound, live music, recorded music, or other noise, at a volume that causes actual interference with a person’s peaceful enjoyment of a residence or the peace and good order of the community.
 - i. A disruptive or uninvited level of amplified sound, live or recorded music, or other noise is any unreasonably loud or disturbing noise of a character, intensity, raucousness, or direction as to be detrimental to the life, health, or welfare

of any person, whether on a steady or intermittent basis. At all times, amplified sound, live music, recorded music, or other noise that is plainly audible and that meets either of the following criteria is prohibited:

1. Noise that is unreasonably loud or disturbing; or
 2. Noise that crosses real property boundaries and interferes with the peace, comfort, or enjoyment of persons residing in a dwelling unit or a residence or a person located at a receiving property.
- ii. In addition to the criteria set forth in division (2)(b)(i) of this section, additional restrictions shall be placed on business establishments which serve alcoholic beverages for consumption on premises. Because it is reasonable that quieter standards are expected during nighttime hours, between the hours of 10:00 p.m. and 7:00 a.m. from Sundays through Thursdays, inclusive, and between the hours of 11:30 p.m. and 7:00 a.m. on Fridays and Saturdays, sound emanating from such businesses must be contained entirely within the real property boundaries of the establishment or within the soundproof area located on the premises of the establishment.
- c) No person shall recklessly, on any public sidewalk, street, highway, park, or other public property, or in any vehicle located on any public street or property, use, operate, or play any radio, phonograph, stereo set, tape or CD player, television, sound amplifier, or other electronic audio device which produces or reproduces amplified sound, recorded music, or other plainly audible sound, at a level which is plainly audible at a distance of more than 50 feet or more from the sound source.

(3) Responsibility for Compliance; Complaint Procedures.

- a) For purposes of this section, any person(s) owning or having responsibility for management of a business or who is in control of a residential premise, and/or however temporarily; any paid performer or disc jockey producing amplified sound, live music, recorded music, or other plainly audible sound upon any business or residential premises or any person having control of volume knobs or levels; and the business as named on the certificate of occupancy or permit and/or the person controlling the residential premises, shall be jointly and severally liable for compliance with

this section and shall be responsible for any violations of this section.

- b) Complaints under this section may be made by telephone contact with the City of Kettering Police Department. Complainants shall identify themselves by name, address and telephone number and shall identify the general direction or vicinity of the apparent sound source, but shall not be required to meet personally with the investigating officer to sign a written complaint or otherwise participate in the investigation of the complaint. The investigating officer is authorized to verify information provided by the complainant. This provision provides no right of entry except as is to the public generally, or except as is provided by law.
- c) Under this section, the distance from a sound source to a receiving property shall be measured as follows:
 - i. In a straight line from the property boundary where the sound source is located to the property boundary of the receiving property; or
 - ii. if the sound source is within a walled and roofed structure, the measurement shall be taken in a straight line to the property boundary of the receiving property from one of the following:
 - 1. The exterior of the structure at the point that is closest to the receiving property; or
 - 2. If one or more doors or windows are present, any of such open doors or windows at the point that is closest to the receiving property.

(4) Exceptions. This section does not apply to any of the following circumstances:

- a) Emergency sirens and related apparatus used solely for public purposes;
- b) Sound emanating from scheduled events conducted, sponsored, or permitted in accordance with the Codified Ordinances by the City of Kettering or by a school district or other school chartered or accredited by the state of Ohio;
- c) Sound emanating from shows, concerts, and other formal events at the Frazee Pavilion;

- d) Construction operations occurring between the hours of 7:00 a.m. and 9:00 p.m., provided that all equipment is operated in accordance with the manufacturer's specifications and/or with all standard manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition;
- e) Construction and other operations conducted by the City;
- f) The loading and/or unloading of commercial waste receptacles between the hours of 7:00 a.m. and 9:00 p.m. within 500 yards of any residentially zoned property;
- g) Noise of safety signals, warning devices, emergency pressure relief valves, and church bells;
- h) Noise resulting from any authorized emergency vehicle;
- i) Motor Vehicles:
 - i. The sound amplification system of the motor vehicle is being operated to request medical or vehicular assistance or to warn others of a hazardous road condition.
 - ii. The motor vehicle is an emergency vehicle or public safety vehicle and is on an emergency run.
 - iii. The motor vehicle is owned and operated by the State, a political subdivision, or a public utility.
 - iv. The motor vehicle is participating in a parade for which the sponsors of the parade have obtained the proper permits from all political subdivisions within which the parade is held.
- j) Lawn mowers and other similar motorized landscaping equipment used between 7:00 a.m. and 9:00 p.m. when operated with all the manufacturer's standard muffler and/or sound reducing equipment in use and in proper operating condition;
- k) Emergency work as authorized by the city; and
- l) Noise related to the discharge of blank ammunition when conducted in conjunction with a funeral or event sponsored by the City.

(Ord. 4324-19. Passed 6-11-2019.)

(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. 2699-76. Passed 7-13-76.)

SECTION 648.06 DISTURBING A LAWFUL MEETING.

(a) No person, with purpose to prevent or disrupt a lawful meeting, procession or gathering, shall do either of the following:

- (1) Do any act which obstructs or interferes with the due conduct of such meeting, procession or gathering;
- (2) Make any utterance, gesture or display which outrages the sensibilities of the group.

(b) No person shall display any placard, sign, leaflet, exhibit, nor audio or visual presentation within 150 feet of or inside the Kettering Municipal Building 30 minutes before , during or 30 minutes after a meeting of Council, a Municipal Board or Commission without that body's prior consent.

(C) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree. Punishment shall be as provided in Section 698.02. (ORC 2917.12)

SECTION 648.07 MISCONDUCT AT AN EMERGENCY.

(a) No person shall knowingly:

- (1) Hamper the lawful operations of any law enforcement officer, fireman, rescuer, medical person or other authorized person, engaged in his duties at the scene of a fire, accident, disaster, riot or emergency of any kind;
- (2) Fail to obey the lawful order of any law enforcement officer engaged in his duties at the scene of or in connection with a fire, accident, disaster, riot or emergency of any kind.

(b) Nothing in this section shall be construed to limit access or deny information to any news media representative in the lawful exercise of his duties.

(c) Whoever violates 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 648.08 INDUCING PANIC.

(a) No person shall cause the evacuation of any public place or otherwise cause serious public inconvenience or alarm by doing any of the following:

- (1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that such report or warning is false;
- (2) Threatening to commit any offense of violence;
- (3) Committing any offense with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

(b) Subsection (a)(1) hereof does not apply to any person conducting an authorized fire or emergency drill.

(c) Whoever violates this section is guilty of inducing panic, a misdemeanor of the first degree, provided violation of this section does not result in physical harm to any person. Punishment shall be as provided in Section 698.02. (ORC 2917.31)

SECTION 648.09 MAKING FALSE ALARMS.

(a) No person shall do any of the following:

- (1) Initiate or circulate a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm;
- (2) Knowingly cause a false alarm of fire or other emergency to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of physical harm to persons or property;
- (3) Report to any law enforcement agency an alleged offense or other incident within its concern, knowing that such offense did not occur.

(b) This section does not apply to any person conducting an authorized fire or emergency drill.

(c) Whoever violates this section is guilty of making false alarms, a misdemeanor of the first degree. Punishment shall be as provided in Section 698.02. (ORC 2917.32)

SECTION 648.10 LOITERING.

(a) No person shall loiter or prowl in any public or private place at a time, in a manner or under circumstances which warrant alarm for the safety of persons or security of property in the surrounding area.

(b) Without limitation, the following circumstances may be considered in determining whether such alarm is warranted:

- (1) The flight of a person upon the appearance of a police officer;
- (2) Attempted concealment by a person upon the appearance of a police officer;
- (3) The systematic checking by a person of doors, windows or other means of access to buildings, houses or vehicles.

(c) Unless flight by the actor or other circumstances make it impracticable, a police officer shall, prior to any arrest for an offense under this section, afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the police officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true, and if believed by the police officer at the time, would have dispelled the alarm.

(d) As used in this section:

- (1) "Loitering" includes the following activities: lingering, hanging around, delaying, sauntering and moving slowly about, where such conduct is not due to physical defects or conditions.
- (2) "Private place" means and includes places privately owned but open to the public generally, such as shopping centers, retail stores, transportation terminals, movie theaters, office buildings, restaurants and all distinctly private places such as homes or private residences and apartment houses.
- (3) "Public place" means and includes public streets and alleyways, public restrooms, public sidewalks, public parks, public buildings and Municipal airports.
- (4) "Surrounding area" means that area easily and immediately accessible to the person under observation.

(e) Whoever violates this section is guilty of a minor misdemeanor. Punishment shall be as provided in Section 698.02.

SECTION 648.11 PICKETING

(a) Declaration. It is hereby declared that the protection and preservation of the home is the keystone of democratic government; that the public health and welfare and the good order of the community require that members of the community be able to enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy, and when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings; that the practice of picketing that targets a particular individual at his residence or dwelling causes emotional disturbance and distress to the occupants, and obstructs and interferes with the free use of public sidewalks and public ways of travel; that such practice has as its object the harassing of such occupants; that without resort to such practice full opportunity exists, and under the terms and provisions of this ordinance will continue to exist, for the exercise of freedom of speech and other constitutional rights; and that the provisions of this section are necessary for the public interest to avoid the detrimental results set forth above. This section shall be enforced pursuant to the United States Supreme Court Opinion in *Frisby v. Schultz*, 487 U.S. 474 (1988), and the United States Court of Appeals for the Sixth Circuit opinion in *Vittitow v. City of Upper Arlington*, 43 F.3D 1100 (6th Cir. 1995), cert. denied, 1995 WL 231157.

(b) It is unlawful for any person to directly target an individual in the City of Kettering by engaging in picketing that takes place solely in front of the individual's residence or dwelling or in front of the residence, dwelling, or other property that abuts the individual's residence or dwelling on either side.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree. Punishment shall be as provided in § 698.02 of the Codified Ordinances.

Legislative History: Ord. 156; passed 7/13/54. Ord. 2437-72; passed 12/12/72. Ord. 2699-76; passed 7/13/76. Ord. 2844-79; passed 5/8/79. Ord. 3425-90; passed 1/23/90. Ord. 3683-95; passed 6/27/95. Ord. 4324-19; passed 6/11/2019.