# VILLAGE OF WEST MILTON, OHIO

## CODE OF ORDINANCES

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# WEST MILTON, OHIO
# CHARTER AND AMENDMENTS

## CHARTER AND AMENDMENTS

Section

## *ARTICLE I: NAME AND BOUNDARIES*

### § 1.01 NAME AND BOUNDARIES.

The present municipality, known as the Village of West Milton, Ohio, shall continue to be a body politic and corporate, under the name of the Village of West Milton, or the City of West Milton, as the population requires, and with the same boundaries with power and authority to change its boundaries and annex other territory in the manner authorized by the general laws of Ohio.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## *ARTICLE II: FORM OF GOVERNMENT*

### § 2.01 FORM OF GOVERNMENT.

The form of government provided under this Charter shall be known as the Council-Manager Plan.
(Adopted effective 1-1-1966)

## *ARTICLE III: POWERS*

### § 3.01 POWERS OF THE MUNICIPALITY.

The municipality shall have all powers possible for a municipality to have under the constitution and laws of this State as fully and completely as though they were specifically enumerated in this Charter.
(Adopted effective 1-1-1966)

### § 3.02 CONSTRUCTION.

The powers of the municipality under this Charter shall be construed liberally in favor of the municipality, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this article.
(Adopted effective 1-1-1966)

### § 3.03 INTERGOVERNMENTAL RELATIONS.

The municipality may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more states or civil divisions or agencies thereof, or the United States or any agency thereof.
(Adopted effective 1-1-1966)

## *ARTICLE IV: THE COUNCIL*

### § 4.01 NUMBER, SELECTION, TERM.

The Council shall consist of seven (7) members elected at large for four (4) year overlapping terms, one of whom shall be the Mayor-Councilmember and one of whom shall be the Vice-Mayor-Councilmember, as provided in § 4.04. All elections of Councilmembers shall be on a nonpartisan ballot. The terms of Councilmembers shall begin the first Tuesday after January first (1st) following their election.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

### § 4.02 QUALIFICATION OF MEMBERS.

Any qualified elector who has been a resident of the municipality or of territory annexed thereto for a period of one (1) year immediately prior to the date of election and who is not the occupant of an incompatible office under the Federal, State, County, or Municipal Government, shall be eligible to serve as a member of Council.

A Councilmember who ceases to be a qualified resident or who accepts and enters upon the performed of duties of an incompatible office shall automatically vacate the position of Councilmember.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.03 COMPENSATION AND EXPENSES.

The Council may change the salary of Councilmembers and the additional compensation paid to the Mayor-Councilmember by ordinance, but no ordinance changing such salary or additional compensation shall become effective until the date of commencement of the terms of Councilmembers elected at the next regular municipal election, provided that such election follows the adoption of such ordinance by at least six (6) months, Councilmembers may receive their actual and necessary expenses incurred in the performance of their duties of office. Nothing in this section shall be construed as prohibiting any Councilmember when so serving, from receiving additional compensation as may be provided for the position of Mayor-Councilmember.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.04 MAYOR-COUNCILMEMBER - VICE-MAYOR-COUNCILMEMBER - CHAIRPERSON.

(A) *Mayor-Councilmember - election - term - powers.* The Mayor-Councilmember shall be elected at the regular municipal election every four (4) years beginning in 1993 by direct vote of the people on a non-partisan ballot for a term beginning the first Tuesday after January 1, following their election. The incumbent shall continue until a successor has been qualified and elected for office, but in no case beyond the end of their term. The Mayor-Councilmember shall preside at Council meetings when present and shall have no power to veto. The Mayor-Councilmember shall be the ceremonial head of the municipality, but shall exercise no administrative authority. The Mayor-Councilmember shall be recognized as the head of the municipal government for military purposes.

(B) *Vice-Mayor-Councilmember - election - term - duties.* The Vice-Mayor-Councilmember shall be elected at the regular municipal election in 1993 for a two (2) year term and beginning in 1995 for four (4) terms thereafter by direct vote of the people on a non-partisan ballot for a term beginning the first Tuesday after January 1, following their election. The incumbent shall continue until a successor has been qualified and elected for office, but in no case beyond the end of their term. The Vice-Mayor-Councilmember shall have and exercise all powers of Mayor-Councilmember during the Mayor-Councilmember's absence.

(C) *Assumption of the responsibilities of the office of Mayor-Councilmember.* In the event of a vacancy in the office of Mayor-Councilmember following the regular municipal election of 1993, the Vice-Mayor-Councilmember shall assume the responsibilities of the Mayor-Councilmember, until the next regular and/or special municipal election when a Mayor-Councilmember shall be elected by direct vote of the people to fill the unexpired term. A Mayor-Councilmember elected under this provision shall be sworn into office at the next stated Council meeting.

(D) *Assumption of the responsibilities of the office of Vice-Mayor-Councilmember.* In the event of a vacancy in the office of Vice-Mayor-Councilmember following the regular municipal election of 1993, the Chairperson of Council shall assume the responsibilities of the Vice-Mayor-Councilmember, until the next regular and/or

special municipal election when a Vice-Mayor-Councilmember shall be elected by direct vote of the people to fill the unexpired term. A Vice-Mayor-Councilmember elected under this provision shall be sworn into office at the next stated Council meeting.

(E) *Chairperson of Council - selection and duties.* At the first organizational meeting of Council (Re. § 4.12) following the regular municipal election of 1993, and the seating of all Councilmembers, the Council shall select a Chairperson from among its own members to serve for a term of two (2) years. The Chairperson shall in absence of the Mayor-Councilmember and Vice-Mayor-Councilmember assume the responsibilities of the office until such time as the absentee returns or the office is declared vacant and filled under the provisions of § 4.04(C) or (D).

(F) *Right of Council to fill vacancies.* The provisions of § 4.04(A)(B)(C)(D) and (E) notwithstanding the Council shall have the option to fill the Council seats as provided by § 4.07(B). The appointed Councilmembers to serve until the next special and/or regular municipal election and the seating of the newly elected Mayor-Councilmember, Vice-Mayor-Councilmember or Councilmembers. Councilmembers who have assumed the office of Mayor-Councilmember and/or Vice-Mayor-Councilmember under the provisions of § 4.04(C)(D) shall retire to their previously held office and serve for the remainder of their unexpired term. (Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.05 GENERAL POWERS AND DUTIES.

All powers of the municipality shall be vested in the Council, except as otherwise provided by this Charter, and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the municipality by law.
(Adopted effective 1-1-1966)

## § 4.06 PROHIBITIONS.

(A) *Holding other office.* Except where authorized by this Charter, no Councilman shall hold any municipal office or employment during the term for which he was elected or appointed to the Council and no former Councilmember shall hold any compensated municipal employment until one (1) year after the expiration of the term for which he was elected or appointed to the Council.

(B) *Appointments and removals.* Other than in the legal exercise of its right to confirm neither the Council nor any of its members shall in any manner dictate the appointment or removal of any municipal administrative officers or employees whom the Manager or any of his subordinates are empowered to appoint, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to appointment and removal of such officers and employees.

(C) *Interference with administration.* Except for the purpose of investigations under § 4.10, the Council or its members shall communicate with municipal officers and employees who are subject to the direction and supervision of the Manager, concerning their public duties, solely through the Manager. Neither the Council nor its members shall give orders to any such municipal officer or employee, either publicly or privately.

(D) *Administrative code and Council rules.* No Councilmember shall violate any of the provisions contained within the Council Rules or contained within the Administrative Code. Any such violation shall be grounds for forfeiture of office pursuant to § 4.07(A)(7) of this Charter.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.07 VACANCIES, FORFEITURE OF OFFICE.

(A) A member of the Council shall be deemed to have vacated his office upon a declaration of the Council that such member shall:

(1) Not possess or has failed to maintain the qualifications to the office of member of Council as provided in this Charter (Re. § 4.02);

(2) Have resigned;

(3) Have failed to attend three consecutive regular meetings and/or workshops of the Council, unless any of such absences shall have been excused by a majority vote of the other members of the Council, no later than the next regular Council meeting;

(4) Have died; or

(5) Have been removed from office for malfeasance, misfeasance, or nonfeasance as provided by Federal, State, or Municipal law;

(6) Conviction for or plead guilty to any felony, or any misdemeanor involving moral turpitude, or any theft offense;

(7) Violates any express prohibition of this Charter.

Upon occurrence of any of the events described in Division (A)(1) through (A)(7) of this section, the Council shall declare the office of the affected member of Council to be vacated by a motion adopted by a majority vote of the Council. The Council shall provide written notice of its intention to consider whether to declare a vacancy in the Council to any affected Councilmember accused of conduct which gives rise to his removal for the reason stated in Division (A)(1), (A)(3), (A)(5), (A)(6) or (A)(7) of this section.

(B) *Filling of vacancies.*

(1) Whenever the office of Councilmember shall become vacant for any reason Council shall cause notice of that vacancy to be published. Vacancy shall not be filled by Council sooner than ten (10) days following publication of the notice of the vacancy. A vacancy in the Council shall be filled for the remainder of the unexpired term, if any, at the next regular and/or special municipal election following not less than one hundred twenty (120) days upon the occurrence of the vacancy, but the Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the term takes office. If the Council fails to do so within forty (40) days following the occurrence of the vacancy the Mayor-Councilmember shall fill it by appointment. Notwithstanding the requirements that a quorum of the

Council consists of four (4) members, if at any time the membership of the Council is reduced to less than four (4) the remaining members by majority action appoint additional members to raise the membership to four (4). Each Councilmember so elected or so appointed shall hold office until the next regular municipal election for Councilmembers to be elected for the unexpired term.

(2) When the office of Mayor-Councilmember or Vice-Mayor-Councilmember shall become vacant it shall be filled at the next regular and/or special municipal election for the remainder of the unexpired term. In the event the office of Mayor-Councilmember and Vice-Mayor-Councilmember should become vacant a the same time for any reason they shall be filled at the next regular and/or special municipal election as provided by § 4.04(A), (B) for the remainder of the unexpired term.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.08 JUDGE OF QUALIFICATIONS.

The Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one (1) week in advance of the hearing. Decisions made by the Council under this section shall be subject to review by the courts.
(Adopted effective 1-1-1966)

## § 4.09 MUNICIPAL CLERK.

The Council shall appoint an officer of the municipality who shall have the title of Municipal Clerk. The Municipal Clerk shall give notice of Council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned to the Clerk by this Charter or by the Council. Nothing in this Charter shall be construed as preventing the Municipal Clerk being employed or appointed to any other capacities by the Manager.
(Adopted effective 1-1-1966)

## § 4.10 INVESTIGATIONS.

The Council shall have the power to make investigations into the affairs of the municipality and the conduct of any municipal department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the Council shall be guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars ($100.00), or by imprisonment for not more than ten (10) days or both.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.11 INDEPENDENT AUDIT.

Council shall have the power to employ a public accountant to make an audit of the financial affairs of the municipality whenever such an audit is deemed necessary by the Council.
(Adopted effective 1-1-1966)

## § 4.12 PROCEDURE.

(A) *Meetings.* Council shall meet for their first organizational meeting on the first Tuesday after January 1st, following each regular municipal election. At said meeting, the newly elected members shall take the Oath of Office. The Council shall meet regularly at least once in every month at such times and places as the Council may prescribe by rule. Special meetings may be held on the call of the Mayor-Councilmember or of four (4) or more members and, whenever practicable, upon no less than twelve (12) hours notice to each member.

(B) *Meetings of village bodies.*

(1) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted under this section.

(2) As used in this section:

(a) "Public Body" means any legislative authority or board, commission, committee, agency, authority, or similar decision-making body of the Village of West Milton.

(b) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body must be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting. The minutes of a regular or special meeting of any such public body shall be promptly recorded and open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under this section.

(4) Every public body shall, by rule, establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four (24) hours advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall immediately notify the news media that have requested notification of the time, place, and purpose of the meeting. The rule shall provide that any person may, upon request and payment of a reasonable fee, obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(5) The members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll-call vote, to hold such a session and only at a regular or special meeting for the sole purpose of consideration of any of the following matters:

(a) To consider the appointment, employment, dismissal, discipline, promotion, demotion, compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee or regulated individual requests a public hearing. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of any elected official for conduct related to the performance of his official duties or for his removal of office. If a public body holds an executive session pursuant to Division (5)(a) of this section, the motion and vote to hold the executive session shall state which one or more of the approved purposes listed in Division (5)(a) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(b) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

(c) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject to pending or imminent court action.

(6) If a public body holds an executive session to consider any of the matters in Divisions (5)(a) through (5)(c) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters, listed in those Divisions are to be considered at the executive session.

(7) A resolution, rule or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in Division 5 of this section and considered at an executive session held in compliance with this section.

(8) Enforcement of the provisions of this section may be brought by any manner prescribed by law, including, but not limited to provisions of Ohio Revised Code Section 121.22.

(C) *Voting.* Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four (4) members of the Council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. No action of the Council, except as otherwise provided in the preceding sentence and § 4.07(B), shall be valid or binding unless, adopted by the affirmative vote of four (4) or more members of the Council.

(D) *Rules and journal.*

(1) Council shall determine its own rules and order of business.

(2) Council shall make no procedural rules in conflict with this Charter;

(3) Council shall provide for keeping a journal of its proceedings. This journal shall be a public record.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.13 ACTION REQUIRING AN ORDINANCE.

Council action shall be by ordinance or resolution. Ordinances shall prescribe permanent rules for the conducting of the Municipal Government. Resolutions shall be orders of the Council of a special or temporary nature, in addition to other acts required by specific provisions of this Charter to be done by ordinance, those acts of the Council shall be by ordinance which:

(1) Adopt or amend an administrative code or establish, alter or abolish any municipal department, office or agency;

(2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;

(3) Levy taxes, except as otherwise provided in Article VII with respect to the property tax levied by adoption of the budget;

(4) Grant, renew or extend a franchise;

(5) Regulate the rate charged for its services by a public utility;

(6) Authorize the borrowing of money;

(7) Convey, lease or authorize the conveyance or lease of any land of the municipality;

(8) Adopt with or without amendment ordinances proposed under the initiative power;

(9) Amend or repeal any ordinance previously adopted; and

(10) Fix salaries of all elected municipal officials and administrative department heads.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.14 ORDINANCES IN GENERAL.

(A) *Form.*

(1) Each proposed ordinance or resolution shall be introduced in typewriter or printed form, and shall not contain more than one subject, which shall be clearly stated in the title, but general appropriation ordinances shall contain the various subjects and accounts for which monies are to be appropriated.

The enactment clause of all ordinances shall be, "The Municipality of West Milton, Ohio hereby ordains". The enactment clause of all resolution shall be, "Be it resolved by the Municipality of West Milton, Ohio".

(2) Any ordinance which repeals or amends an existing ordinance or part of the municipal code shall be set out in full in the ordinance section or subsection to be repealed or amended and shall indicate matter to be omitted by strikeout type and shall indicate new matter by bold or italic type.

(B) *Procedure.*

(1) An ordinance may be introduced by any member of Council at any regular or special meeting of the Council.

(2) First reading. Each ordinance brought before Council (Other than emergency ordinances) shall receive two separate readings on separate days. The first reading shall be in its entirety. Following this first reading by Council, the ordinance shall be published in a newspaper of general circulation within the Municipality of West Milton. The publication shall be at least five (5) days prior to the time advertised for the second reading. The ordinance shall be available for public inspection at the municipal offices, together with a notation as to the time and place of its consideration for final adoption.

(a) Council shall have the opportunity to discuss generally a proposed ordinance at the time it is introduced. Changes in the proposed ordinance may be agreed upon by the Council at such meetings without prejudice to the valid introduction at that time.

(3) Second reading. For the second reading at the time and place so advertised such ordinance shall be read by title only, unless a member of Council present (or member of the public, directly affected by the ordinance) request reading in full. All interested persons shall be given the opportunity to be heard prior to the final vote. After such reading the Council may finally adopt such ordinance, except if an amendment changes it in substance. When an ordinance is amended as to substance it shall not be finally adopted until a notice of the time and place such amended ordinance be further considered. The time shall not be less than five (5) days after publication of the proposed amendment.

(4) Final adoption. The affirmative vote of at least four (4) members of Council shall be necessary for final passage of any ordinance unless otherwise provided by this Charter.

(5) Effective date. Unless the ordinance shall specify a later date, the effective date of any ordinance shall be ten (10) days after adoption except as otherwise provided by the Charter or the Construction of the State of Ohio.

(6) No ordinance shall be passed on the day on which it shall have been introduced, unless it be declared an emergency measure.

(C) *Resolutions.*

(1) A resolution may be introduced by any member of Council at any regular or special meeting of Council. The resolution shall be read and discussed by all interested persons and may be acted upon at the first reading.

(2) A resolution may be enacted on a formal motion and a majority vote of the members of the Council present unless otherwise provided by this Charter.

(3) A resolution takes effect immediately upon its adoption.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.15 EMERGENCY ORDINANCES.

To meet a public emergency affecting life, health, property or the public peace, the Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in § 7.07 (B). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five (5) members shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify.
(Adopted effective 1-1-1966)

## § 4.16 CODES OF TECHNICAL REGULATIONS.

The Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

(1) The requirements of § 4.14 (B) for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and

(2) A copy of each adopted code of technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the Municipal Clerk pursuant to § 4.17 (A).

Copies of any adopted code of technical regulations shall be made available by the Municipal Clerk for public reference or for purchase at a reasonable price.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 4.17 AUTHENTICATION AND RECORDING; CODIFICATION; PRINTING.

(A) *Authentication and recording.* The Municipal Clerk shall authenticate by his/her signature and record in full in a properly indexed book kept for that purpose all ordinances and resolutions adopted by the Council.

(B) *Codification.* Within five (5) years after adoption of this Charter and at least every ten (10) years thereafter, the Council shall provide for the preparation of a general codification of all ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and

shall be published promptly in bound or looseleaf form, together with this Charter and any amendments thereto, pertinent provisions of the Constitution and other laws of the State of Ohio, and such codes of technical regulations and other rules and regulations as the Council may specify. This compilation shall be known and cited officially as the West Milton Municipal Code. Copies of the Code shall be furnished to city officers, placed in libraries and public offices for free public reference and made available for purchase by the public at cost.

(C) *Printing of ordinances and resolutions.* The Council shall cause such ordinance and resolution having the force and effect of law and each amendment to this Charter to be printed promptly following its adoption, and the printed ordinances, resolutions and Charter amendments may be distributed or sold to the public at cost. Following publication of the first West Milton Municipal Code and at all times thereafter the ordinances, resolutions and Charter amendments will be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in, or additions to, the provisions of the Constitution and other laws of the State of Ohio, or the codes of technical regulations and other rules and regulations included in the Code.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## *ARTICLE V: MANAGER*

### § 5.01 APPOINTMENT; QUALIFICATIONS; COMPENSATION.

The Council shall appoint a Manager for an indefinite term and fix the compensation. The Manager shall be appointed solely on the basis of executive and administrative qualifications. The appointee need not be a resident of the municipality or state at the time of appointment, but may reside within the municipality within a six month time period.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

### § 5.02 REMOVAL.

The Council may remove the Manager from office in accordance with the following procedures:

(1) The Council shall adopt by affirmative vote of a majority of all its members plus (1) a preliminary resolution which must state the reasons for removal and may suspend the Manager from duty for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered promptly to the Manager.

(2) Within five (5) days after a copy of the resolution is delivered to the Manager, he may file with the Council a written request for a public hearing. This hearing shall be held at a Council meeting not earlier than fifteen (15) days nor later than thirty (30) days after the request is filed. The Manager may file with the Council a written reply, to the preliminary resolution, not later than five (5) days before the hearing.

(3) The Council may adopt a final resolution of removal which may be made effective immediately, by affirmative vote of a majority of all its members plus one (1) at any time after five (5) days from the date when a copy of the preliminary resolution was delivered to the Manager, if the Manager has not requested a public

hearing, or at any time after the public hearing if the Manager has requested one. The Manager shall continue to receive his salary until the effective date of a final resolution of removal. The action of the Council in suspending or removing the Manager shall not be subject to review by any court or agency.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 5.03 RESIGNATION OF THE MANAGER.

In the case of voluntary resignation of the Manager, the Council and the Manager shall agree upon the effective date of the resignation.
(Adopted effective 1-1-1966)

## § 5.04 ACTING MANAGER.

(A) *Temporary vacancy.* By letter filed with the Municipal Clerk the Manager shall designate, subject to the approval of the Council, a qualified individual to exercise the powers and perform the duties of Manager during his temporary absence or disability. During such absence or disability, the Council may revoke such designation at any time and appoint another qualified individual to serve until the Manager shall return or his disability shall cease.

(B) *Resignation or removal.* In the event of the resignation or removal of the Manager, the Council shall designate a qualified resident of the municipality to serve until a new Manager is appointed.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 5.05 POWERS AND DUTIES OF THE MANAGER.

The Manager shall be the chief administrative officer of the municipality. He shall be responsible to the Council for the administration of all municipal affairs placed in his charge by or under this Charter. He shall have the following powers and duties:

(1) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove all municipal employees and appointive administrative officers provided for by or under this Charter, except as otherwise provided by this Charter or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency.

(2) He shall direct and supervise the administration of all departments, offices and agencies of the municipality, except as otherwise provided by this Charter.

(3) He shall attend all Council meetings and shall have the right to take part in discussion but may not vote.

(4) He shall see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed.

(5) He shall prepare and submit the annual budget and capital program to the Council.

(6) He shall submit to the Council and make available to the public a complete report on the finances and administrative activities of the municipality as of the end of each fiscal year.

(7) He shall make such other reports as the Council may require concerning the operations of the municipal departments, offices and agencies subject to his direction and supervision.

(8) He shall keep the Council fully advised as to the financial condition and future needs of the municipality and make such recommendations to the Council concerning the affairs of the municipality as he deems desirable.

(9) He shall perform such other duties as are specified in this Charter or may be required by the Council. (Adopted effective 1-1-1966)

## *ARTICLE VI: ADMINISTRATIVE DEPARTMENTS*

### § 6.01 GENERAL PROVISIONS.

(A) *Creation of departments.* The administrative functions of the municipality shall be carried on by a Department of Law, Department of Finance, Department of Safety, Department of Service, and such other department as may be created by ordinance after consultation with the Manager.

(B) *Direction by manager.* All administrative departments, offices and agencies shall be under the direction and supervision of the Manager, and shall be administered by an officer appointed by the Manager, with the approval of Council, who shall be subject to the direction and supervision of the Manager. With the consent of Council, the Manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of two (2) or more of them.
(Adopted effective 1-1-1966)

### § 6.02 DEPARTMENT OF LAW.

The Department of Law shall be administered by the Director of Law, who shall be an Attorney-at-Law admitted to practice in the State of Ohio, and in good professional standing. He/she shall perform such duties as are assigned to the office of Solicitor by law, as well as those imposed by the administrative code. He/she shall be appointed by the Manager, with the approval of Council, for an indefinite term of office.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

### § 6.03 DEPARTMENT OF FINANCE.

The Department of Finance shall be administered by the Director of Finance, who shall perform those functions customarily performed by the Auditor and Treasurer under the general laws of Ohio. He/she shall be the fiscal officer of the municipality and shall be responsible for the accounting, collection and custody of public funds, and control of disbursements. He/she shall countersign all bonds and notes issued by the municipality,

and shall perform such other functions as may be assigned by ordinance or by order of the Manager. He/she shall be appointed by the Manager, with the approval of Council, for an indefinite term of office.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 6.04 DEPARTMENT OF SAFETY.

The Department of Safety shall be administered by the Director of Safety. He/she shall be responsible for the general supervision of the Fire Division and Police Division, and shall perform such other functions relative to fire and police protection as may be assigned by ordinance or by order of the Manager. He/she shall be appointed by the Manager, with the approval of Council, for an indefinite term of office.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 6.05 DEPARTMENT OF SERVICE.

The Department of Service shall be administered by the Director of Service. He/she shall be responsible for the general supervision, custody, care and maintenance of the public buildings, grounds, streets, sewers, municipal utilities, and cemeteries owned by the municipality. He shall perform such functions and duties with reference to the service department as may be assigned by ordinance or by order of the Manager. He/she shall be appointed by the Manager, with the approval of Council, for an indefinite term of office.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 6.06 ADMINISTRATIVE CODE.

Subject to the provisions of this Charter, and after consultation with the Manager, the Council shall adopt an administrative code which shall provide in detail the organization of the municipal government, define the powers and duties of each organizational unit, and determine the administrative procedures to be followed. Amendments to and revisions of the administrative code shall be made by the Council after consultation with the Manager. Where the administrative code is silent the officers and employees of the municipality shall have and may exercise all powers and duties provided for similar officers and employees under the laws of the State of Ohio. However, provisions of the administrative code shall supersede those of the general law of the State of Ohio in case of conflict.
(Adopted effective 1-1-1966)

## § 6.07 PERSONNEL SYSTEM.

(A) *Coverage.* The Personnel System is to be construed to apply to all employees of the municipality except the administrative department head.

(B) *Merit principle.* All appointments and promotions of municipal officers and employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.

(C) *Personnel director.* There shall be a Personnel Director appointed by the Manager as provided in § 6.01 (B) who shall administer the personnel system of the municipality.

(D) *Personnel board.* There shall be a Personnel Board consisting of three (3) members appointed by the Council for terms of three (3) years with the exception that one (1) of the three (3) members first appointed shall be designated by Council to serve a term of one (1) year and one (1) a term of two (2) years. The Council shall fill all vacancies by appointment for the unexpired term. Members of the Board shall be qualified electors of the municipality and shall hold no other municipal office. The Personnel Director shall provide necessary staff assistance for the Personnel Board.

(E) *Personnel rules.* The Personnel Director shall prepare personnel rules. The Manager shall refer such proposed rules to the Personnel Board which shall report to the Manager its recommendations thereon. When approved by the Manager, the rules shall be proposed to the Council, and the Council may by ordinance adopt them with or without amendment. These rules shall provide for:

(1) The placement of all municipal employees into competitive and noncompetitive positions; provided the members of the Fire and Police Divisions be placed in the competitive class, except the Fire Chief and Police Chief.

(2) The classification of all competitive municipal positions, based on the duties, authority, and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances;

(3) A pay plan for all municipal positions;

(4) Methods for determining the merit and fitness of candidates for appointment or promotion;

(5) The policies and procedures regulating reduction in force and removal of employees;

(6) The hours of work, attendance regulations and provisions for sick and vacation leave;

(7) The policies and procedures governing persons holding provisional appointments;

(8) The policies and procedures governing relationships with employee organizations;

(9) Policies regarding in-service training programs;

(10) Grievance procedures, including procedures for the hearing of grievances by the Personnel Board, which shall render decisions based on its findings to the Manager and Council with a copy to the aggrieved employee; and

(11) Other practices and procedures necessary to the administration of the municipal personnel system. (Adopted effective 1-1-1966)

## *ARTICLE VII: FINANCIAL PROCEDURES*

### § 7.01 FISCAL YEAR.

The Fiscal, Budget and Accounting Year of the municipal government shall be the calendar year. (Adopted effective 1-1-1966)

### § 7.02 SUBMISSION OF BUDGET AND BUDGET MESSAGE.

(A) *Annual budget.* On or before the first Council meeting in October of each year, the Manager shall submit to the Council a budget for the ensuing fiscal year and an accompanying message. For the purpose of submitting the budget the Manager shall obtain from the head of each department or agency of the municipality, plans for the work to be undertaken by such department during the next fiscal year, together with estimates of the cost of performing such work. The Department of Finance shall supply him with estimates of available revenue. From these data, the Manager shall prepare the consolidated estimates for the annual budget. The Council shall consider these estimates and adopt them, with or without amendments, as the budget of the municipality for the ensuing year and transmit them to the County Budget Commission in the form required by law. (As amended by Ordinance CM-293, approved by the voters November 5, 1974) (Report of Charter Commission approved by electorate, 11-3-2015)

(B) *Budget message.* The Manager's message shall explain the budget both in fiscal terms and in terms of work programs. It shall outline the proposed financial policies of the municipality for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, and summarize the municipality's debt position and include such other material as the Manager deems desirable. (Adopted effective 1-1-1966)

### § 7.03 CAPITAL PROGRAM.

(A) *Submission to council.* The Manager shall prepare and submit annually to Council a five (5)-year capital program at least three 3 months prior to the final date for submission of the budget.

(B) *Contents.* The capital program shall include:

(1) A clear general summary of its contents;

(2) A list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing with appropriate supporting information as to the necessity for such improvements;

(3) Cost estimates, method of financing and recommended time schedules for each such improvement; and

(4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

(C) *Capital improvement reserve fund.* Council may create and maintain a General Capital Improvement Reserve Fund, and may from time to time transfer or appropriate thereto all moneys accruing to any other fund of the municipality not needed for the purposes of such fund and available for transfer and also the unencumbered balance remaining in the General Fund of the municipality at the end of any fiscal year. Moneys in the General Capital Improvement Reserve Fund shall not be expended for any purpose except to purchase equipment, apparatus, or other property, or to construct buildings, structures, roads and other public improvements needed for the use of the municipality or to pay bonded obligations of the municipality by means of transfer to its Bond and Interest Retirement Fund. Council may also create and maintain Capital Improvement Funds for water, sewer, street, and other funds as needs dictate. Monies in these funds shall not be expended for any purpose except to purchase equipment, apparatus, property, construct buildings, structures, roads or transfer to its Bond and Interest Retirement Funds, and other public improvements as indicated in the ordinance which establishes these funds.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

## § 7.04 COUNCIL ACTION ON BUDGET.

In all instances not provided for by this Charter, the procedure for the preparation, hearing, advertising and adoption of the budget and the appropriation of municipal funds shall be governed by the General Laws of the State of Ohio pertaining to such matters.
(Adopted effective 1-1-1966)

## § 7.05 COUNCIL ACTION ON CAPITAL PROGRAM.

(A) *Notice and hearing.* The Council shall publish in one or more newspapers of general circulation in the municipality a notice stating:

(1) The times and places where copies of the capital program are available for inspection by the public, and

(2) The time and place, not less than two (2) weeks after such publication, for a public hearing on the capital program.

(B) *Adoption.* The Council, by resolution shall adopt the capital program with or without amendment after the public hearing, and on or before the first Council meeting of the fifth month of the current fiscal year.
(As amended by Ordinance CM-293, approved by the voters November 5, 1974)
(Adopted effective 1-1-1966)

## § 7.06 PUBLIC RECORDS.

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the municipality.
(Adopted effective 1-1-1966)

## § 7.07 AMENDMENT OF APPROPRIATIONS AND EMERGENCY APPROPRIATIONS.

(A) *Amendment of appropriations.* The Council, after conferring with the Manager, may at any time by ordinance transfer any unencumbered balance of an appropriation from one item or project to another under the same fund, or reduce or increase any item, provided the ordinance as amended does not authorize the expenditure of more money than is estimated will be available.

(B) *Emergency appropriations.* To meet a public emergency affecting life, health, property or the public peace, the Council may make emergency appropriations. Such appropriations may be made by emergency ordinances in accordance with the provisions of § 4.15. To the extent there are no available unappropriated revenues to meet such appropriations, the Council may by such emergency ordinance authorize the issuance of emergency notes which may be renewed from time to time, but the emergency notes and renewals of any fiscal year shall be paid not later than the last day of the fiscal year next succeeding that in which the emergency appropriation was made.
(Adopted effective 1-1-1966)

## § 7.08 LAPSE OF APPROPRIATIONS.

Every appropriation, except an appropriation for capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned. The purpose of any such appropriation may be deemed abandoned by resolution of Council.
(Adopted effective 1-1-1966)

## § 7.09 ADMINISTRATION OF THE BUDGET.

No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the Manager or his designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligation, and he shall also be liable to the municipality for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or

authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.
(Adopted effective 1-1-1966)

## *ARTICLE VIII: PLANNING*

### § 8.01 PLANNING DIRECTOR.

There shall be a Planning Department headed by a Director who shall be appointed by the Manager with the approval of Council as provided in § 6.01. The Planning Director shall have the following responsibilities:

(1) To advise the Manager on any matter affecting the physical development of the municipality.

(2) To formulate and recommend to the Manager a comprehensive plan and modifications thereof.

(3) To review and make recommendations regarding proposed council action implementing the comprehensive plan pursuant to § 8.04.

(4) To participate in the preparation and revision of the capital program provided for in § 7.03; and

(5) To advise the Planning Board in the exercise of its responsibilities and in connection therewith to provide necessary staff assistance.
(Adopted effective 1-1-1966)

### § 8.02 PLANNING BOARD.

There shall be a Planning Board consisting of five (5) members appointed by the Council for terms of three (3) years from among the qualified electors of the municipality. Members of the board shall hold no other municipal office. The board may make recommendations to the Manager and the Council on all matters affecting the physical development of the municipality, shall be consulted on the comprehensive plan and the implementation thereof as provided in §§ 8.03 and 8.04, and shall exercise all other responsibilities as may be provided by this Charter or ordinance.
(Adopted effective 1-1-1966)

### § 8.03 COMPREHENSIVE PLAN.

(A) *Content.* The Council shall adopt, and may from time to time modify, a comprehensive plan setting forth in graphic and textual form policies to govern the future physical development of the municipality. Such plan may cover the entire municipality and all of its functions and services or may consist of a combination of plans governing specific functions and services or specific geographic areas which together cover the entire municipality and all of its functions and services.

(B) *Adoption.* Upon receipt from the Manager of a proposed comprehensive plan or proposed modification of the existing plan, the Council shall refer such proposal to the Planning Board which shall, within a time specified by the Council, report its recommendations thereon. After receipt of the recommendations of the Planning Board, the Council shall hold a public hearing on the proposed comprehensive plan or modification thereof and shall thereafter adopt it by resolution with or without amendment.

(C) *Effect.* The comprehensive plan shall serve as a guide to all future Council action concerning land use and development regulations, urban renewal programs and expenditures for capital improvements.
(Adopted effective 1-1-1966)

## § 8.04 IMPLEMENTATION OF THE COMPREHENSIVE PLAN.

(A) *Land use and development regulations.* The Council may by ordinance adopt land use and development regulations, including but not limited to an official map and zoning and subdivision regulations.

(B) *Urban renewal.* The Council may by ordinance provide for redevelopment, rehabilitation, conservation and renewal programs for:

(1) The alleviation or prevention of slums, obsolescence, blight or other conditions of deterioration, and

(2) The achievement of the most appropriate use of land.

(C) *Council action.* Before acting on any proposed ordinance concerning land use and development regulations, urban renewal or expenditures for capital improvements, where such ordinance refers to a matter covered by the comprehensive plan the Council shall refer the proposal to the Planning Board, which shall within a time specified by the Council and prior to the public hearing on the proposed ordinance report its recommendations thereon. Upon adopting any such ordinance the Council shall make findings and report on the relationship between ordinance and the comprehensive plan and, in the event the ordinance does not accord with the comprehensive plan, the plan shall be deemed to be amended in accordance with such findings and report.
(Adopted effective 1-1-1966)

## § 8.05 BOARD OF ADJUSTMENT.

The Council shall by ordinance establish a Board of Adjustment and shall provide standards and procedures for such board to hear and determine appeals from administrative decision of the West Milton Planning Board and Building Official, and such other matters as may be required by ordinance of this Council. (As amended by Ordinance CM-293, approved by the voters November 5, 1974)
(Adopted effective 1-1-1966)

## *ARTICLE IX: NOMINATIONS AND ELECTIONS*

### § 9.01 NOMINATIONS.

There shall be no primary election for municipal offices. Nominations for elective offices of the municipality shall be made by petition only, signed by not less than thirty (30) qualified electors on the standard forms for the nomination of nonpartisan candidates for such office, filed with the Board of Elections at least ninety (90) days before the day of election. Each candidate shall file a separate petition; group petitions shall not be used. The signature of the candidate indicating his acceptance of the nomination and willingness to accept the office if elected shall appear on each copy of his petition. The petition may be in a number of parts but each part shall be verified under oath by the circulator as required by the election laws of the State of Ohio. (Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991) (Report of Charter Commission approved by electorate, 11-3-2015)

### § 9.02 BALLOTS.

The full names of all candidates nominated shall be printed on the official ballot without party designation. If two (2) candidates with the same surname, or with names so similar as to be likely to cause confusion, are nominated, the addresses of their places of residence shall be placed below their names on the ballot. The names of all candidates shall be rotated on the ballot as provided by law.
(Adopted effective 1-1-1966)

### § 9.03 ELECTIONS.

The regular municipal election shall be held on the first Tuesday after the first Monday in November of odd numbered years. The Council may by resolution order a special election to be held at any time, the purpose and date of which shall be set forth in the resolution. Such resolution shall be certified within five (5) days to the Board of Elections of Miami County which shall conduct the election at the time fixed in such resolution and in the manner provided by law.
(Adopted effective 1-1-1966)

### § 9.04 QUALIFICATIONS.

All citizens qualified by the constitution and laws of the State of Ohio to vote in the municipality, and who satisfy the requirements for registration prescribed by law, shall be qualified electors of the municipality within the meaning of this Charter.
(Adopted effective 1-1-1966)

## *ARTICLE X: INITIATIVE, REFERENDUM, AND RECALL*

### § 10.01 INITIATIVE.

Ordinances and other measures may be proposed by initiative petitions and adopted by election, to the extent and in the manner now or hereafter provided for the laws of Ohio.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

### § 10.02 REFERENDUM.

Ordinances and other measures adopted by Council shall be subject to referendum to the extent and in the manner now or hereafter provided by the Constitution or the laws of Ohio.
(Adopted effective 1-1-1966)

### § 10.03 RECALL.

Electors of the municipality shall have the power to remove from office by recall election any elected official of the municipality to the extent provided by the Constitution and laws of the State of Ohio.
(Adopted effective 1-1-1966)

## *ARTICLE XI: GENERAL PROVISIONS*

### § 11.01 PERSONAL FINANCIAL INTEREST.

Any municipal officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the municipality or in the sale of any land, material, supplies or services to the municipality or to a contractor supplying the municipality, shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as a municipal officer or employee in the making of such sale or in the making or performance of such contract. Any municipal officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge express or implied of the person or corporation contracting with or making a sale to the municipality shall render the contract or sale voidable by the Manager or the Municipal Council.
(Adopted effective 1-1-1966)

### § 11.02 PROHIBITIONS AND PENALTIES.

(A) *Prohibitions.*

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any municipal position or appointive municipal administrative office because of race, sex, political or religious opinions or affiliations.

(2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the personnel provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

(3) No person who seeks appointment or promotion with respect to any municipal position or appointive municipal administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his test, appointment, proposed appointment, promotion or proposed promotion.

(B) *Penalties.* Any person who by himself or with others willfully violates any of the provisions of paragraphs (1) through (3) shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than one hundred dollars ($100.00) or by imprisonment for not more than ten (10) days or both. Any person convicted under this section shall be ineligible for a period of five (5) years thereafter to hold any municipal office or position and, if an officer or employee of the municipality, shall immediately forfeit his office or position.
(Adopted effective 1-1-1966)

## § 11.03 CHARTER AMENDMENT.

(A) *Proposal of amendment.* Amendments to this Charter may be framed and proposed:

(1) In the manner provided by law, or

(2) By ordinance of the Council containing the full text of the proposed amendment and effective upon adoption, or

(3) By the electors of the municipality. Proposal of an amendment by the electors of the municipality shall be by petition containing the full text of the proposed amendment and shall be governed by the same procedures and requirements prescribed in Article X for initiative petitions until such time as a final determination as to the sufficiency of the petition is made, except that there shall be no limitation as to subject matter and that the petition must be signed by qualified electors of the municipality equal in number to at least twenty percent (20%) of the total number of qualified electors registered to vote at the last regular municipal election. The petitioners committee may withdraw the petition at any time before the 15th day immediately preceding the day scheduled for the municipal vote on the amendment, or

(4) By report of a Charter Commission created by ordinance.

(B) *Election.* Upon delivery to the municipal election authorities of the report of a Charter Commission or delivery by the Municipal Clerk of an adopted ordinance or a petition finally determined sufficient, proposing an amendment pursuant to subsection (A), the election authorities shall submit the proposed amendment to the

electors of the municipality at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one or more newspapers of general circulation in the municipality at least thirty (30) days prior to the date of the election. The election shall be held not less than sixty (60) days and not more than one hundred twenty (120) days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the Council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be within the discretion of the Council.

(C) *Adoption of amendment.* If a majority of the qualified voters of the municipality voting upon a proposed Charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, thirty (30) days after its adoption by the voters.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

### § 11.04 SEPARABILITY.

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.
(Adopted effective 1-1-1966)

### § 11.05 SALARIES.

(A) *Initial salary of Councilmember.* Members of the Council shall receive a salary of twelve dollars ($12.00) per meeting, not to exceed payment for more than one meeting per week.

(B) *Initial salary of Mayor-Councilmember.* The Mayor-Councilmember shall be paid, in addition to the compensation paid to him as a Councilmember, the sum of five hundred ($500.00) annually.
(Report of Charter Commission approved by electorate, 11-5-1991)
***Editor's Note:***
*Ordinance CM-03-25, passed in 2003, raised the compensation of Council members to $50 per meeting and the compensation of Mayor-Council member to $600 annually.*

## *ARTICLE XII: TRANSITIONAL PROVISIONS*

### § 12.01 CONTINUATION OF OFFICERS.

Members of Council holding office in 1991 and members of Council elected in the general municipal election of 1991 shall continue in office for their elected term except if a Councilmember seeks the seat of Mayor-Councilmember or Vice-Mayor-Councilmember in the general municipal election of 1993 their then current term of office will be terminated as of the date they are seated in their newly elected office. From the effective date of the Charter amendment creating the office of Mayor-Councilmember and Vice-Mayor-Councilmember and

until the provisions of Article IV - Section 4.01 and 4.04 become effective with the general municipal election of 1993 the selection of Mayor and Vice-Mayor shall remain with the Council.
(Adopted effective 1-1-1966) (Report of Charter Commission approved by electorate, 11-5-1991)

### § 12.02 CONTINUATION OF EMPLOYEES.

Every employee of the Municipal Government when this Charter takes effect shall be retained in his employment and shall thereafter be subject in all respects to the provisions of this Charter.
(Adopted effective 1-1-1966)

### § 12.03 DEPARTMENTS, OFFICES AND AGENCIES.

(A) *Transfer of powers.* If a municipal department, office or agency is abolished by this Charter, the powers and duties given it by law shall be transferred to the municipal department, office or agency designated in this Charter or, if the Charter makes no provision, designated by the Council.

(B) *Property and records.* All property, records and equipment of any department, office or agency existing when this Charter is adopted shall be transferred to the department, office or agency assuming its powers and duties but, in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records or equipment shall be transferred to one or more departments, offices or agencies designated by the Council in accordance with this Charter.
(Adopted effective 1-1-1966)

### § 12.04 PENDING MATTERS.

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the municipal department, office or agency appropriate under this Charter.
(Adopted effective 1-1-1966)

### § 12.05 CONTINUATION.

All ordinances, resolutions, orders and regulations of the municipality in effect at the time of adoption of this Charter, shall remain in effect except as superseded by the provisions of this Charter until they are amended or repealed.
(Adopted effective 1-1-1966)

### § 12.06 SCHEDULE.

(A) *First election.* At the time of its adoption, this Charter shall be in effect to the extent necessary in order that the first election of members of the Municipal Council may be conducted in accordance with the provisions of this Charter. The first election shall be held on the 2nd day of November, 1965. The existing Council shall

prepare and adopt temporary regulations applicable only to the first election and designed to insure its proper conduct and to prevent fraud and provide for recount of ballots in cases of doubt or fraud.

(B) *Preliminary meetings.* In order to take such steps and complete such preparations preliminary to the going into effect of this Charter as will facilitate the choice of a Municipal Manager, and the efficient establishment of the municipal services upon the basis provided in this Charter, the members elected to the first Council may effect a temporary organization at any time after the election, but they shall not be deemed to have entered into office or have any of the powers of Council until the organization meeting to be held on January 1, 1966.

(C) *Time of taking full effect.* This Charter shall be in full effect for all purposes on and after the date and time of the first meeting of the newly elected Council as provided in subsection (D).

(D) *First organizational meeting.* On the 1st day of January following the first election of Council members under this Charter, the newly elected members of the Council shall meet at 7:30 P.M. at the Municipal Council Room:

(1) For the purpose of electing the Mayor and Vice Mayor, appointing or considering the appointment of a Manager or acting Manager, and choosing, if it so desires, one of its members to act as temporary Clerk pending appointment of a Municipal Clerk pursuant to § 4.09.

(2) For the purpose of adopting ordinances and resolutions necessary to effect the transition of government under this Charter and to maintain effective municipal government during that transition.

(E) *Temporary ordinances.* In adopting ordinances as provided in subsection (D), the Council shall follow the procedures prescribed in Article IV, except that at its first meeting or any meeting held within sixty (60) days thereafter, the Council may adopt temporary ordinances to deal with cases in which there is an urgent need for prompt action in connection with the transition of government and in which the delay incident to the appropriate ordinance procedure would probably cause serious hardship or impairment of effective municipal government. Every temporary ordinance shall be plainly labelled as such, but shall be introduced in the form and manner prescribed for ordinances generally. A temporary ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. After adoption of a temporary ordinance, the Council shall cause it to be printed and published as prescribed for other adopted ordinances. A temporary ordinance shall become effective upon adoption or at such later time preceding automatic repeal under this subsection as it may specify, and the referendum power shall not extend to any such ordinance. Every temporary ordinance, including any amendments made thereto after adoption, shall automatically stand repealed as of the 91st day following the date on which it was adopted, and it shall not be readopted, renewed or otherwise continued except by adoption in the manner prescribed in Article IV for ordinances of the kind concerned.

(F) *Initial expenses.* The initial expenses of the Council, including the expense of recruiting a Municipal Manager, shall be paid by the municipality on vouchers signed by the Mayor.

(G) *Initial salary of councilmen.* Members of the Council shall receive a salary of twelve dollars ($12.00) per meeting, not to exceed payment for more than two (2) meetings per month.

(H) *Initial salary of mayor.* The Mayor shall be paid, in addition to the compensation paid to him as a Councilman, the sum of five hundred dollars ($500.00) annually.
(Adopted effective 1-1-1966)

***Editor's note:***

*At the request of the Village of West Milton, § 12.06 has been included for historical reference only.*

# TITLE I: GENERAL PROVISIONS

Chapter

# CHAPTER 10: RULES OF CONSTRUCTION; GENERAL PENALTY

Section



## § 10.01 INTERPRETATION.

(A) The provisions of this and subsequent chapters in this code shall constitute and be designated and cited as "The Code of Ordinances of West Milton, Ohio." The codification has been made in one ordinance under appropriate titles, chapters and sections by authority of the Revised Code of Ohio.

(B) Unless otherwise provided herein, or by law, or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of the Revised Code of Ohio.

(C) Where a section of this code is followed by a reference to the Revised Code, the reference indicates that the section is analogous or similar to the Revised Code Section. Footnotes, cross-references and other comments are by way of explanation only and should not be deemed a part of the text of any section.

(D) All provisions of this code are limited in application to the territorial boundaries of the municipal corporation although the same may not be so limited specifically.

## § 10.02 APPLICATION TO FUTURE LEGISLATION.

All of the provisions of Title I, not incompatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

## § 10.03 CAPTIONS.

Headings and captions used in this code, other than the title, chapter and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section.

## § 10.04 DEFINITIONS AND RULES OF INTERPRETATION.

(A) For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***AND*** or ***OR.*** Either conjunction shall include the other as if written ***AND/OR.***

***COUNCIL.*** The Council of West Milton.

***MONTH.*** A calendar month.

***OWNER.*** Applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership.

***PERSON.*** Its derivatives and the word ***WHOEVER*** shall include a natural person, partnership or a corporate body or any body of persons corporate or incorporate.

***PERSONAL PROPERTY.*** Every species of property, except real property.

***PROPERTY.*** Shall include real and personal property.

***REAL PROPERTY.*** Include lands, tenements and hereditament and shall embrace all chattels real.

***R.C.*** or ***REVISED CODE.*** The letters or the phrase shall refer to the Revised Code of Ohio.

***SHALL.*** Whenever it appears in this code it shall be considered mandatory and not directory, except as otherwise specifically provided.

***SIDEWALK.*** Except as provided in the Traffic Code, shall mean that portion of a street between the curb lines of the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians.

***STREET.*** Except as provided in the Traffic Code, shall mean the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right.

***THIS CODE*** or ***THIS CODE OF ORDINANCES.*** The municipal code as adopted hereby, and as hereinafter modified by amendment, revision and by adoption of new titles, chapters or sections.

***VILLAGE, MUNICIPAL CORPORATION*** or ***MUNICIPALITY.*** These nouns, when used in this code, shall denote the Municipality of West Milton irrespective of its population or legal classification.

(B) A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

(C) Whenever used in any clause prescribing and imposing a penalty, the term ***PERSON*** or ***WHOEVER*** as applied to any unincorporated entity shall mean the partners of members thereof, and as applied to corporations, the officers thereof.

(D) Words denoting the masculine gender shall be deemed to include the feminine and neuter genders.

(E) Words in the singular shall include the plural, and words in the plural shall include the singular.

## § 10.05 RULES OF SEPARABILITY.

Each chapter, section, or, whenever divisible, part section of this code of ordinance is declared to be separable, and the invalidity of any chapter, section or divisible part section, shall not be construed to affect the validity of any other chapter, section or part of this code.

## § 10.06 REFERENCE TO OTHER SECTIONS.

Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter be changed or materially altered by the amendment or revision.

## § 10.07 REFERENCES TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of the municipality, exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

## § 10.08 ERRORS AND OMISSIONS.

(A) If a manifest error is discovered consisting of the misspelling of any word, the omission of any word necessary to express the intention of the provisions affected, the use of a word to which no meaning can be attached, or the use of a word when another word was clearly intended to express the intent, such spelling shall be corrected and the word supplied, omitted or substituted as will conform with the manifest intention, and the provision shall have the same effect as though the correct word was contained in the text as originally published.

(B) No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

## § 10.09 COMPUTING TIME.

The time within which an act is required by any provision of this code or ordinance to be done shall be computed by excluding the first and including the last day; except that when the last day falls on Sunday or a legal holiday, then the act may be done on the next succeeding day which is not a Sunday or a legal holiday.

## § 10.10 SALARIES AND BONDS SAVED.

Whenever the salary or bond of an official or employee is referred to as "established by Council," the last ordinance enacted establishing such salary or bond is saved.

## § 10.99 GENERAL PENALTY.

(A) Penalties for misdemeanors are as set forth in Chapter 130 of this code.

(B) Unless specifically enumerated in this code, limitation of actions are set forth in § 130.05 of this code.

(C) Where an act or omission is prohibited or declared unlawful in this code or ordinances, and no penalty of fine or imprisonment is otherwise provided, the offender shall be fined not more than $100 for each offense or violation.

# TITLE III: ADMINISTRATION

Chapter

# CHAPTER 30: COUNCIL RULES

Section



## § 30.01 READING OF ORDINANCES AND RESOLUTIONS.

(A) Except as hereinafter provided, every ordinance, unless it is an emergency measure, shall be read in its entirety when introduced and shall lie over until the following regular meeting, or to such time as same may be assigned for further public hearing, at which time the ordinance shall be read by ordinance number and title only prior to its adoption, unless requested to be read in its entirety by a member of Council or member of the public directly affected by the ordinance.

(B) Except as hereinafter provided, every emergency ordinance shall be governed by § 4.15 of the Charter, and shall be fully and distinctly read aloud prior to its adoption.

(C) Except as hereinafter provided, every resolution shall be fully and distinctly read aloud prior to its adoption.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.02 WAIVER OF READING.

Council may, by an affirmative vote of four members, waive the full and complete reading of any ordinance or resolution. Council shall not waive the full and complete reading, however, should any citizen present directly affected, request that the ordinance or resolution be read.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.03 MEETING PLACE AND TIME.

(A) The regular meetings of the Council shall normally be held on the second and fourth Tuesdays of each consecutive calendar month at the Council Chambers of the Municipal Building, 701 South Miami Street, West Milton, Ohio, excluding the organizational meeting as required by Charter § 4.12.

(1) The first regular meeting of each month shall be the business meeting, starting at 7:30 p.m., during which Council will deliberate upon and conduct the legislative actions necessary to support and guide the operations of the municipality.

(2) The second meeting of each month shall be a less formal workshop session starting at 7:30 p.m., during which the administration and Council shall discuss the status of actions and consider pending matters. If necessary for the health and welfare of the municipality, the Council may take legislative or policy related actions at this meeting.

(3) Both meetings shall be open to the public and be duly advertised in accordance with the notification requirements established by Council and in accordance with applicable state law.

(B) However, when any regular meeting of the Council falls due on a legal holiday, or on an election day, the Council may by motion and upon the affirmative vote of at least five members, fix another day within the same calendar month for such regular meeting.
(Am. Ord. CM-1089, passed 6-9-1992; Am. Ord. CM-04-15, passed - -; Am. Ord. CM-12-03, passed 3-13-2012)

## § 30.04 MINUTES OF MEETINGS.

The Municipal Clerk shall record all proceedings at regular or special Council meetings in the minutes. The minutes shall be open to public inspection not later than the expiration of six municipal business days following the regular or special meeting. These minutes shall be “unofficial” and are marked “unofficial” until approved by action of Council.

## § 30.05 NOTIFICATION OF MEETINGS TO MEDIA; DEFINITIONS.

(A) Council has adopted the following rules, for the purposes of:

(1) Establishing a reasonable method for any person to determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings;

(2) Making provisions for giving advance notice of special meetings to the news media that have requested notification; and

(3) Making provisions for persons to request and obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. These rules apply to each public body, herein

named, as defined in division (B) of this section, and are in addition to any applicable legal requirements as to notices to members of a public body or to others in connection with specific meetings or specific subject matters.

(B) As used in this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CLERK.*** The Municipal Clerk.

***DAY.*** Calendar day.

***MEETING.*** Any prearranged discussion of the public business of the public body by a majority of the members of the public body having decision-making authority.

***PUBLIC BODY.*** Each of the following:

(a) Council of the municipality;

(b) West Milton Planning Board;

(c) Board of Adjustment;

(d) West Milton Park Board;

(e) Board of Tax Appeals;

(f) Water Review Board;

(g) Personnel Board;

(h) Enterprise Zone Tax Review Board;

(i) Committees of the above public bodies comprised of members of such bodies if such committees:

1. Are comprised of a majority of the members of the main public body; and

2. Have decision-making authority. The rules shall apply to all other public bodies as are determined by Council to be a public body and shall designate the same by amendment to this section.

(j) Workshop sessions:

1. The members of a committee of a public body may hold workshop sessions for the sole purpose of considering the subject matters for which the committee was constituted.

2. The members of a committee of a public body at a workshop session are without decision-making authority, and no ordinances, resolutions, motions, rules or formal action of any kind shall be valid.

3. Committees of public bodies holding workshop sessions in accordance with divisions (B) (4)(g)1. and 2. of this section shall be exempt from the notice and notification and all other requirements of this Council rule.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.06 NOTICE OF REGULAR AND ORGANIZATIONAL MEETINGS.

(A) The Clerk shall post a statement of the time and place of regular meetings of each public body for each calendar year not later than the second day preceding the day of the first regular meeting (other than the organizational meeting) of the calendar year of that public body. The Clerk shall check at reasonable intervals to ensure that the statement remains so posted during that calendar year. If at any time during the calendar year the time or place of regular meetings, or of any regular meeting, is changed on a permanent or temporary basis, a statement of the time and place of such changed regular meetings shall be so posted by the Clerk at least 24 (12 hours for Council) hours before the time of the first changed regular meeting.

(B) The Clerk shall post a statement of the time and place of any organizational meeting of a public body at least 24 hours before the time of such organizational meeting.

(C) Upon the adjournment of any regular or special meeting to another day, the Clerk shall promptly post notice of the time and place of such adjourned meeting.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.07 NOTICE OF SPECIAL MEETINGS.

(A) Except in the case of a special meeting referred to in § 30.08(D) the Clerk shall, no later than 24 (12 hours for Council) hours before the time of a special meeting of a public body, post a statement of the time, place, and purpose of such special meeting.
(Charter, § 4.12(A) and (B))

(B) The statement under this section and the notifications under § 30.08 shall state such specific or general purpose then known to the Clerk to be intended to be considered at such special meeting and may state, as an additional general purpose, that any other business as may properly come before such public body at such meeting may be considered and acted upon.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.08 NOTICE TO NEWS MEDIA OF SPECIAL MEETINGS.

(A) Any news medium organization that desires to be given advance notification of special meetings of a public body shall file with the Clerk a written request therefor, on a standard form to be provided by the Clerk.

Except in the event of an emergency requiring immediate official action as referred to in division (D) of this section, a special meeting shall not be held unless at least 24 (12 hours for Council) hours advance notice of the time, place and purpose of the special meeting is given to the news media that have requested the advance notification in accordance with division (B) of this section.

(B) News media requests for the advance notification of special meetings shall specify:

(1) The public body that is the subject of the request;

(2) The name of the medium;

(3) The name and address of the person to whom written notifications to the medium may be mailed, telegraphed or delivered; and

(4) The names, addresses, and telephone numbers (including addresses and telephone numbers at which notifications may be given either during or outside of business hours) of at least two persons to either one of whom oral notifications to the medium may be given, and at least one telephone number which the request identifies as being manned, and which can be called at any hour for the purpose of giving oral notification to such medium. Such request shall be effective for six months from the date of filing with the Clerk or until the Clerk receives written notice from such medium canceling or modifying such request, whichever is earlier. Each requesting news medium shall be informed of such period of effectiveness at the time it files its request. Such requests may be modified or extended only by filing a complete new request with the Clerk. A request shall not be deemed to be made unless it is complete in all respects, and such request may be conclusively relied on by the municipality and the public body that is the subject of such request, and the Clerk.

(C) The Clerk shall give such oral notification or written notification, or both, as the Clerk determines, to the news media that have requested such advance notification in accordance with division (B) of this section, of the time, place and purpose of each special meeting, at least 24 (12 hours for Council) hours prior to the time of such special meeting.

(D) In the event of an emergency requiring immediate official action, a special meeting may be held without giving 24 hours advance notification thereof to the requesting news media. The authorized person or persons calling the meeting shall immediately notify the Clerk, and the Clerk, on their behalf, shall immediately give oral notification or written notification, or both, as the person or persons giving the notification determine, of the time, place and purpose of such special meeting to such news media that have requested the advance notification in accordance with division (B) of this section. The minutes or the call, or both, of the special meeting shall state the general nature of the emergency requiring immediate official action.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.09 NOTIFICATION OF DISCUSSION OF SPECIFIC TYPES OF PUBLIC BUSINESS.

(A) Any person, upon written request and as provided herein, may obtain reasonable advance notification of all meetings at which any specific type of public business is scheduled to be discussed.

(B) The person may file a written request with the Clerk specifying: the person's name, and the address and telephone number at or through which the person can be reached during and outside of business hours; the specific type of public business of the discussion of which the person is requesting advance notification; the municipal body that is the subject; and the number of calendar months, not to exceed six, which the request covers. The request may be canceled by request from such person to the Clerk.

(C) Each such written request shall be accompanied by stamped self-addressed envelopes sufficient in number to cover the number of regular meetings during the time period covered by the request and an estimated number of three special meetings.

(D) The Clerk shall provide standard forms to be used for such requests and notices.

(E) Such requests may be modified or extended only by filing a complete new request with the Clerk. A request shall not be deemed to be made unless it is complete in all respects, and such request may be conclusively relied on by the municipality, public body that is the subject of such request, and the Clerk.

(F) The Clerk shall if possible give such advance notification under this section by written notification. If the written notification cannot be given or has not been given, the Clerk shall give oral notification.

(G) The contents of written notification under division (F) of this section shall be a copy of the agenda of the regular meeting or a notice of special or adjourned, or emergency meetings.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.10 GENERAL PROVISIONS ON NOTIFICATION.

(A) Any person may visit or telephone the office of the Clerk during that office's regular office hours to determine, based on information available at that office:

(1) The time and place of regular meetings;

(2) The time, place and purpose of any then known special meetings; and

(3) Whether the available agenda of such future meeting states that any specific type of public business, identified by such person, is to be discussed at such meeting.

(B) Any notification provided herein to be given by the Clerk may be given by any person acting in behalf of or under the authority of the Clerk.

(C) A reasonable attempt at notification shall constitute notification in compliance with these rules.

(D) At the commencement of each meeting, the Clerk or a member of the public body shall submit to the presiding officer a certificate of the Clerk as to compliance with these rules as to notice and notification. The certificate shall become a part of the minutes of the meeting and maintained therewith. A certificate by the Clerk as to compliance with these rules shall be conclusive upon this municipality and the municipal body involved.

(E) The Clerk shall maintain a record of the date and manner, and time if pertinent under these rules, of all actions taken with regard to notices and notifications under §§ 30.07 through 30.09, and shall retain copies of proofs of publication of any notifications or notices published thereunder.

(F) To ensure compliance with these rules as to notice and notification, it shall be the responsibility of the presiding officer, chairperson, secretary or designated member of a public body other than Council, or the person calling the meetings, to advise the Clerk of future meetings, and the subject matters to be discussed thereat, the location, time and place of regular meetings and as to special meetings the information required in § 30.07 (B), and any other information required by the Clerk to fulfill the responsibilities placed upon the Clerk by these rules, for the public body.

(G) Each public body shall prepare minutes of the regular or special meetings. The minutes shall be recorded and open to public inspection not later than the expiration of six public business days following the regular or special meeting. The minutes shall be "unofficial" and marked "unofficial," until approved by action of the public body.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.11 EXECUTIVE SESSION PROCEDURE.

(A) Executive sessions shall be governed by § 4.12 of the Charter, but in no event shall any resolution, rules, regulations or final action of any kind be taken during any such executive session.

(B) The motion calling for executive session shall be stated as follows: "I hereby move that Council recess for executive session pursuant to § 4.12 of the Charter for the purpose of discussing _____ (herein specify the general subject matter for consideration)."

(C) If the general subject matter for consideration is already on the agenda prior to the motion calling for executive session, final action thereon may be taken by the Council at the same meeting at which Council actually went into executive session.

(D) If the general subject matter for consideration is not on the agenda at the time the motion calling for executive session is made, the matter to be discussed may be placed on the agenda at the same meeting at which Council actually went into executive session only upon affirmative vote of at least five members of Council.

(E) Otherwise, the general subject matter for consideration may be placed on the agenda only at a regular or special meeting following the meeting at which Council actually went into executive session.

(F) Pursuant to § 4.12 of the Charter, executive sessions shall be limited to members of Council and to the exclusion of the public. Within the discretion of Council, witnesses may be called for the purpose of supplying relevant data or information concerning the general subject matter under consideration.

## § 30.12 APPOINTMENTS.

All appointments to Boards, Commissions, and other arms of Council shall be made by Council as a whole by a majority vote. The Mayor shall not make appointments.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.13 NOTICE OF ABSENCE.

Any Councilmember, Mayor or Vice-Mayor shall notify the municipal offices, Mayor or Vice-Mayor when they will not be able to attend a Council meeting and/or work shop session. The notice shall be prior to the scheduled meeting. Council as a whole shall be informed as to why the absence exists, because Charter § 4.07(A)(3) requires action to excuse or not excuse absences.
(Am. Ord. CM-1089, passed 6-9-1992)

## § 30.14 COUNCIL INFORMATION.

Any Councilmember, Mayor or Vice-Mayor shall make every effort to share information relating to any Council business with all other Councilmembers. This free flowing of information is vital for Council to make informed decisions.
(Am. Ord. CM-1089, passed 6-9-1992)

# CHAPTER 31: WEST MILTON PARK BOARD

Section

## § 31.01 MEMBERSHIP; COMPENSATION; VACANCY.

(A) The Municipal Park Board shall consist of five members. The members shall be appointed by the Council. Five individuals shall be recommended to the Council for appointment as at-large members to the Municipal Park Board.

(B) The Secretary-Treasurer of the Park Board shall be compensated in the amount of $15 per meeting. The Secretary-Treasurer shall be recommended to Council by the Board. Council shall appoint the Secretary-Treasurer from the effective date of this section to December 31, 1994 for the first portion of the three-year term.

(C) In the case of death, resignation, or removal of a member of the Board or the Secretary-Treasurer the Council shall immediately appoint a successor to fill the vacancy for the unexpired term or the full term, whichever applies. The Council may remove, any member of the Board or the Secretary-Treasurer for incompetency or official misconduct.
(Am. Ord. CM-615, passed 4-13-1982; Am. Ord. CM-733, passed 5-14-1985; Am. Ord. CM-973, passed 9-11-1990; Am. Ord. CM-1069, passed 4-14-1992)

## § 31.02 APPOINTMENT; TERM.

(A) The members shall be appointed as follows:

(1) The Council shall appoint one at large member to serve from the effective date of this section to December 31, 1994.

(2) The Council shall appoint two at large members to serve from the effective date of this section to December 31, 1992.

(3) The Council shall appoint two at large members to serve from the effective date of this section to December 31, 1993.

(B) All subsequent appointments, after those set forth above, shall be for terms of three years. The Council may receive recommendations from the entire community for appointment of at-large members. Any one individual is not precluded from serving more than one term or successive terms. Any individual who resides within the municipality is eligible for appointment to the Park Board.
(Am. Ord. CM-615, passed 4-13-1982; Am. Ord. CM-656, passed 3-8-1983; Am. Ord. CM-1069, passed 4-14-1992)

## § 31.03 ORGANIZATION OF THE PARK BOARD.

The Park Board, after appointment and qualification of its members, shall elect a president, a vice-president, who in the absence or disability of the president shall perform his or her duties and exercise his or her powers and a secretary-treasurer. The Board shall make its own rules, its meetings shall be open to the public and all questions acted upon shall be decided by a yea and nay vote with the names of each member voting recorded on the journal. No question shall be decided unless it is approved by motion of a majority of the Board.

## § 31.04 CONTROL AND MANAGEMENT OF PARKS.

(A) The Park Board and Director of Service in accordance with the municipal zoning and subdivision code shall have the control and management of all park land, park entrance, parkways, boulevards, connecting viaducts, children's play grounds and public baths and stations of public comfort located in such parks, of all improvements thereon, and acquisition, construction, repair, and maintenance thereof. The Park Board shall exercise its powers and perform all its duties, in regard to the above property, under the Director of Service in accordance with Charter, Article VI, § 6.05 and § 33.60.

(B) The Park Board shall serve as an advisory board for the municipal park system. The Park Board shall recommend and advise the Director of Service and municipality about future plans, development, projects and ideas regarding the park system.

(C) The Director of Service shall inform the Park Board at their regular meeting of the activities, finances and other issues relating to the Municipal Park System for the preceding month.
(Am. Ord. CM-1069, passed 4-14-1992)

## § 31.05 EXPENDITURE OF MONEYS.

All monies expended on the park system of the municipality shall comply with all applicable municipal code sections.
(Am. Ord. CM-1069, passed 4-14-1992)

## § 31.06 RULES AND REGULATIONS.

The Park Board may, by affirmative vote of a majority of its members, recommend rules and regulations regarding traffic, parking, food, the proper use and protection of all property mentioned in § 31.04 and the improvements thereon and all other matters of concern to the parks. These recommended regulations shall be received by the Director of Service, who shall accept, reject or modify the regulations. Council shall then evaluate the proposed rules and regulations, and may enact them by amending Code.
(Am. Ord. CM-1069, passed 4-14-1992; Am. Ord. CM-93-34, passed 9-14-1993)

### § 31.07 EMPLOYEES OF PARK.

The municipality may employ general superintendent, engineer and other necessary employees for carrying into effect the purposes of the creation, and the municipality shall fix the compensation and term of service of such employees.
(Am. Ord. CM-1069, passed 4-14-1992)

### § 31.08 THE PARK FUND.

All moneys received or appropriated by the municipality from taxation or otherwise for the purposes of acquiring, constructing, equipping and maintaining park lands, parks entrances, parkways, boulevards, connecting viaducts, children's playgrounds and public baths, and stations of public comfort located in such parks, and all moneys received by the Park Board and the municipality from any other source and designated as park funds, shall be deposited in the Municipal Treasury and transferred by the Director of Finance to the credit of a fund designated as "the park fund." All expenditures incurred by such parks shall be paid by the Director of Finance upon receipt by him or her of a written voucher signed by the Director of Service authorizing such expenditure, and the Director of Finance shall keep an accurate record of all expenditures each year.
(Am. Ord. CM-1069, passed 4-14-1992)

### § 31.09 CONTRACTS.

The municipality, in the letting of contracts, shall be governed by the provisions of Chapter 33.
(Am. Ord. CM-1069, passed 4-14-1992)

### § 31.10 TRANSITION.

The existing Park Board at the time of passage of this section (April, 4, 1992), shall be disbanded when this section becomes effective by law. The Council then shall appoint the members in accordance with § 31.02. The Council may appoint persons from the existing Park Board to the new Park Board.
(Am. Ord. CM-1069, passed 4-14-1992)

## *PARK RULES AND REGULATIONS*

### § 31.20 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***PUBLIC PARK, PARK*** or ***PUBLIC PARKS.*** A park, reservation, playground, recreational center or any areas inside or outside the corporate limits of the city owned or used by the city and devoted to active or passive public recreation.

***PARK BOARD.*** The Park Board as established and defined in this chapter.

***INTOXICATING LIQUOR AND BEER*** and ***DRUGS OF ABUSE.*** Shall be defined by the pertinent Ohio Revised Code.

***FIREWORKS*** and ***FIREARMS.*** Shall be defined by the pertinent Ohio Revised Code section.

***MOTOR VEHICLE, VEHICLE, ALL-PURPOSE VEHICLE*** and ***SNOWMOBILE.*** Shall be as defined in Chapters 70 and 78 of this code of ordinances.
(Ord. CM-93-34, passed 9-14-1993)

## § 31.21 HOURS.

(A) Parks shall be open to the public during such hours as determined by the Park Board. The hours during which a park, or section thereof, shall be open to the public shall be posted at appropriate places in the park.

(B) The Municipal Manager, Service Director, Police Chief, Safety Director, Park Superintendent or their authorized agents shall be authorized to close a park, or any part thereof, if they determine that public safety or other emergency requires that closing.

(C) The park superintendent or other municipal workers shall be authorized to temporarily close such section or sections of a park to the general public as may be necessary to perform maintenance duties.
(Ord. CM-93-34, passed 9-14-1993)

## § 31.22 VEHICLES AND TRAFFIC.

(A) No person shall operate any vehicle except on a designated street, drive or parking area.

(B) No person shall park any vehicle except in those areas designated by the Park Board.

(C) No person shall operate a vehicle in such a manner as to endanger the operator, or any person, or any property.

(D) No person shall operate a vehicle in a park at a speed greater than the posted speed limit.

(E) No person shall park or leave a vehicle in an area of the park that is not at that time open to the public, without prior authorization of the Park Board. Any vehicle found in violation of this rule shall be subject to removal and impoundment.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

**§ 31.23 FIRES.**

(A) Fires shall be permitted only in fireplaces, barbecue grills or in certain areas as specifically authorized by the Park Board.

(B) No person shall start a fire and then leave the vicinity of said fire without fully extinguishing the fire.

(C) No person shall scatter or deposit hot coals or ashes in any place in a park.

(D) No evidence of a fire shall be permitted to remain in any park except in a fireplace or barbecue grill.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

**§ 31.24 WATER AREAS.**

(A) No person may swim or wade in any park water areas.

(B) No person may ice skate on any water area except as designated by the Park Board.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

**§ 31.25 FACILITIES.**

(A) Facilities shall be used for their designated purpose only.

(B) Organized teams shall practice and play scheduled games only on areas established for that purpose.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

**§ 31.26 SCHEDULING.**

(A) Scheduling of ball diamonds shall be done at the municipal offices. Only the party requesting the reservation and having the proper authorization form may then use the diamonds for the period of time requested.

(B) Scheduling and reservations for the shelter houses shall be done at the municipal offices. The party shall fill out the required form and pay the current permit fee for use of the particular shelter. If requested, a key to the restrooms shall be issued upon payment of a refundable deposit. A copy of reservation should be in possession of party holding said reservation to avoid any disputes.

(C) Scheduling of any large scale, organized activity shall be approved by a majority of the Park Board. A permit will be issued by the Park Board which shall contain the following information:

(1) Name of person or organization requesting permit;

(2) Address and telephone number;

(3) Name, address and telephone number of the person who shall be the chairman of such activity and who will be responsible for its conduct;

(4) Type of activity;

(5) The park or portion thereof for which the permit is desired;

(6) Date of activity;

(7) Estimate of expected attendance; and

(8) Time activity will start and terminate.

(D) The Park Board shall approve and a permit shall be issued by the Board if it finds the following:

(1) The proposed activity will not unusually interfere with or detract from the general public enjoyment of the park.

(2) The proposed activity will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.

(3) The facilities desired have not been previously reserved for other use on the date and time required in the application.

(4) The conduct of the activity will not substantially interrupt the safe and orderly flow of traffic.

(5) The conduct of the activity will not cause the diversion of the police officers of the municipality from providing normal police protection to the municipality.

(6) The conduct of the activity is not reasonably likely to cause injury to persons or property, incite violence, crime or disorderly conduct.

(7) The activity is not to be held for the sole purpose of advertising a product, goods or event, and is not designed to be held purely for profit.

(8) The permit fee has been paid.

(9) The activity will not violate the ordinances of the municipality.

(E) The Park Board shall have the authority to impose as a condition to issuance of any such permit such special conditions as the Board deems necessary or desirable to protect municipal property and to insure compliance with its rules and regulations. The conditions may include requiring such security deposits as the Board deems necessary and requiring the applicant to furnish additional police protection and liability insurance as the needs of the event may require.

(F) The Park Board shall act upon the application for a park permit at its next regular scheduled meeting after the filing of the application thereof. In the event that the Board fails to approve the permit, the applicant may file an appeal with the Municipal Council. The appeal must be in letter form and be filed with the Municipal Clerk within ten calendar days after the Board meeting.

(G) Any permit approved may be revoked by the Park Board, Council or by order of the Municipal Manager. Any revocation other than by Council may be appealed in the manner described in division (F) above.

(H) Each person or organization using the public parks as permitted in this section shall adhere to clean-up procedures as outlined in § 31.32.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.27 REMOVAL OR DESTRUCTION OF PROPERTY.

(A) No person shall remove any property, or part thereof, from a park without written authorization of the Park Board.

(B) No person shall write upon, cut, mutilate, deface or in any other manner damage any building, equipment or property controlled by the Park Board.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.28 REMOVAL OR DESTRUCTION OF NATURAL RESOURCES.

(A) No person shall dig, move or carry away any plant, rock, stone, sod, sand, earth, tree, wood, shrub, flower, nut or other seed in a park without written authorization of the Park Board.

(B) No person shall trample upon, injure, destroy, break, cut, chop or deface in any manner any stone, tree, shrub, plant or flower in a park.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.29 DEPOSIT OF MATERIALS.

(A) No person shall transport into, deposit or discard in a park any paper, garbage, fireplace or stove ashes, refuse or other noxious waste materials.

(B) No person shall, while in a park, discharge, throw, drop or cause to flow into park water any noxious or deleterious substance, either liquid or solid.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.30 ERECTION OF MATERIALS.

No person shall erect any sign in a park or attach any sign to property controlled by the Park Board, nor shall any person display any placard, notice, advertisement, circular, banner or statement without the written authorization of the Park Board.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.31 PROTECTION OF ANIMALS.

(A) No person shall hunt, trap or in any other way, abuse, molest, injure, chase or destroy any animal in a park.

(B) No person shall bring any animal into a park unless the animal is controlled by a leash or bridle or unless the animal is kept in a vehicle or properly caged.

(C) No person shall remove, move, injure or destroy any bird nest, duck nest, eggs or any other animal habitation in a park.

(D) No person shall bring any animal into a park and abandon that animal.

(E) Fishing, while not prohibited by these regulations, is subject to possession of a proper license.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.32 REQUIRED CLEAN-UP.

(A) Each person or organization using the public parks and playground's shall clean up any and all debris, extinguishing all fires, when such fires are permitted, and leave the premises in good order and the facilities in a neat and sanitary condition.

(B) Each person shall be responsible for the clean up of any and all animal waste deposited by any animal brought to the park.
(Ord. CM-93-34, passed 9-14-1993)

## § 31.33 PROHIBITED ACTS.

(A) Disorderly conduct, as defined by the Ohio Revised Code and/or municipal ordinance, shall be prohibited.

(B) No person shall solicit or procure participants for, engage in or promote, in a park, any game which is played for money or other thing of value, without prior authorization of the Park Board.

(C) No person shall loiter in the vicinity of, or within, rest rooms located in a park, and no person shall enter facilities in a park provided for the exclusive use of the opposite sex.

(D) No person shall resist, obstruct, or abuse a police officer or other municipal employee in a park while in the performance of a lawful execution of duty. For the purposes of these regulations the pertinent sections of the Ohio Revised Code shall define such an act or acts.

(E) No person shall purposely, willfully or maliciously throw or place any glass, tacks, metal, stone, earthenware or other substance likely to cause injury to pedestrians or animals.

(F) No person shall purposely, willfully or maliciously throw or place any glass, tacks, metal, stone, earthenware or other substance likely to cause damage to bicycles, automobiles or other vehicles.

(E)) No person shall prevent any other person or persons from lawfully using the park or any of its facilities.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.34 INTOXICATING LIQUOR, BEER AND DRUGS OF ABUSE.

(A) No person shall take into, have possession of or make use of any intoxicating liquor, beer or drugs of abuse while within the park property.

(B) No person shall enter or remain in a park while under the influence of any intoxicating liquor, beer or drugs of abuse.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.35 FIREARMS AND WEAPONS; FIREWORKS.

(A) No person shall carry on or about his or her person firearms of any description, or any device which propels a projectile by means of expulsion, combustion, compressed air or gas, or other mechanical contrivance while in a park.

(B) No person shall throw or discharge in a park any sling-shot or other missile-throwing device.

(C) No person shall shoot a bow and arrow in a park except in areas previously designated for archery purposes by the Park Board.

(D) No person shall bring into a park, or have in his or her possession in a park, any fireworks or explosives of any kind, unless authorized by the Park Board.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.36 COMMERCIAL ACTIVITIES.

(A) No person shall sell or offer for sale any article, privilege or service in a park, without authorization of the Park Board.

(B) No person shall beg, panhandle, or peddle while on park property.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.37 EMPLOYEES.

(A) Acts and conduct of police officers, members of the Park Board, municipal officials, employees of the municipality, or their authorized agents, to the extent necessary to perform their authorized duties, shall be exempt from the provisions of these regulations.

(B) Persons or organizations may be exempt from certain provisions of these regulations only with written authorization of the Park Board.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.38 EJECTION FROM PARK.

Police officers are authorized to order any person found in violation of any of the provisions of this chapter to leave the park.
(Ord. CM-93-34, passed 9-14-1993) Penalty, see § 31.99

## § 31.39 FEES.

(A) The Park Board shall promulgate and establish fees for the various items covered in this chapter. The current fee structure shall be recorded in the office recorded in the official Park Board Minutes, and a copy placed in the municipal building.

(B) The fee for rental of the Park Shelter is $30.
(Ord. CM-93-34, passed 9-14-1993; Am. Ord. CM-12-28, passed 10-9-2012) Penalty, see § 31.99

## § 31.99 PENALTY.

(A) Any person who violates any provision of this chapter shall be guilty of a minor misdemeanor and may be fined not more than $100.

(B) In addition to any other penalty provided in this chapter, in case of damage caused or resulting directly or indirectly from any omission or neglect to properly comply with the ordinances of the municipality or the rules and regulations of the Park Board, or from neglect or misconduct of any person or persons, any such person or persons negligent in respect thereof or causing such damages shall be liable to the municipality in a civil action for the payment of all costs and expenses of the municipality or the Park Board in restoring, repairing, or replacing such damages in the amount as determined by the municipality or the Park Board.
(Ord. CM-93-34, passed 9-14-1993)

# CHAPTER 32: PERSONNEL RULES

Section

***Employee Conduct***



***Discipline and Grievance Procedure***



***Employment Separation***



## *HIRING AND SELECTION*

### § 32.001 COMPETITIVE; NONCOMPETITIVE POSITIONS.

As required by Charter Article 6.07(E)(1) all employees shall be placed into competitive and noncompetitive positions, as follows:

(A) Noncompetitive positions shall include the director of each administrative department created by Charter, Article VI and shall include the Fire Chief and Police Chief.

(B) All employees whose salaries or benefits are paid in any part by non-municipal (i.e. state, federal, county, township) funds shall be classified in the noncompetitive class.

(C) All other municipal employees not specifically enumerated in division (A) or (B) of this section shall be classified as competitive positions.
(Am. Ord. CM-759, passed 4-8-1986; Am. Ord. CM-904, passed 9-12-1989)

(D) Regardless of whether an employee is in the competitive or noncompetitive class, employment with the municipality is employment at-will and no tenure right is guaranteed.
(Ord. CM-03-36, passed - -)

## § 32.002 MERIT SYSTEM EMPLOYER.

As an entity that receives grants, the municipality is committed to the concept of a merit system. Under the municipality's merit system, employees and applicants shall be evaluated solely on merit without regard to race, sex, religion, disability, national origin or any other factor prohibited by law.
(Ord. CM-03-36, passed - -)

## § 32.003 HIRING POLICY.

(A) As provided by § 5.05 of the Charter, the Municipal Manager is the appointing authority of all municipal employees and appointive administrative officers of the municipality and shall make such appointments as prescribed by the Municipal Charter, ordinances, resolutions and other applicable rules. The Municipal Manager may delegate recruitment, testing and interviewing procedures to other municipal employees or officers.

(B) All appointments and promotions shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.

(C) If the Municipal Manager and the head of the administrative department or line division determine that the work force needs to be expanded or a current employee leaves, the Municipal Manager will verify that the position is authorized and funds are available.

(1) *Filling new/existing positions.* When a new position has been created, due to an increased demand for municipal services or mandate by law, or if an existing position becomes vacant, the following procedures shall be followed.

(a) The vacancies shall be advertised in a newspaper of local circulation within the municipality for a period of one week for two consecutive weeks.

(b) Applications filed with the municipality within the last 12 months will be reviewed to determine if any applicants have filed for the opening or a similar position.

(c) The Manager and the head of the administrative department or division shall review all applicants to determine which ones meet the minimum established qualifications for the position and those persons may be invited to participate in the selection process.

(d) In order to determine the most qualified applicant such methods including written or oral exams, medical examinations, psychological examinations, experience and training evaluations or demonstrations of pertinent job skills may be employed. If more than ten persons participate in the testing a ranked listing shall be compiled and an appointment made from any one standing in the top ten. If less than ten persons participate in the testing, an appointment may be made from any of the applicants meeting the qualifications established.

(2) *Filling positions by promotion.* When a position is to be filled by promoting an employee from the next lower job classification, notice shall be posted at least two weeks before any examination or other method to determine the best applicant is undertaken. If no current employee wishes to apply for the position the procedures for a new hire shall be followed using the same optional methods of selection.

(D) Grievances by applicants and/or employees regarding scoring, ranking or other examination related grievances may be presented to the Personnel Board.

(E) When there are urgent needs for filling a vacancy, or in the event of certain special needs, the Municipal Manager may make such provisional or temporary appointments as deemed necessary. In such circumstances, the Municipal Manager will file a statement of the "urgency" with the Personnel Board.

(F) Noncompetitive positions are filled according to the Charter by the Municipal Manager appointing a person, by Council approving the appointment.
(Am. Ord. CM-904, passed 9-12-1989)
(Ord. CM-03-36, passed - -)

## § 32.004 PROMOTIONS; REALLOCATIONS; TRANSFERS.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***PROMOTION.*** A change in employment status from a position in one class to a position in another class with more responsible duties and a higher pay grade.

***REALLOCATION/RECLASSIFICATION.*** A reassignment in pay grade or a change in allocation of an individual position by raising it to a higher class, reducing it to a lower class or moving it to another class at the same level on the basis of a significant change in the kind, difficulty or responsibility of the work performed in such position which have occurred over a period of time or result from the assignment of substantially additional duties.

(B) Promotions shall be based strictly on merit and fitness as determined by competitive examinations and on records of merit, efficiency, character, conduct and seniority. Eligibility to take promotional exams may include employees in specific classifications in a number of departments, or they may be limited to employees

in the department having the vacancy depending upon the specialization required of the job. Employees who are promoted shall serve a probationary period of six months to determine their fitness for the new position.

(C) Whenever the duties of a position become significantly changed, the Municipal Manager, with Council approval, may reallocate/reclassify the position to a more appropriate class or pay grade based upon the required skills and responsibilities. In instances where the reclassification advances the position to a higher class, the incumbent of the position may be advanced thereto, provided he or she possess the minimum qualifications required by the classification. The advancement, at the discretion of the Municipal Manager, may require that the incumbent demonstrate qualifications by passing a noncompetitive examination for the class.

(D) The Municipal Manager may, at any time, transfer an employee to another position in the same or a comparable class. Transfers shall not be used to promote, reduce or increase or decrease the salary of an employee. No person shall be transferred to a position for which they do not possess the required minimum qualifications.
(Ord. CM-03-36, passed - -)

## § 32.005 EQUAL OPPORTUNITY EMPLOYER.

(A) All employees and applicants for employment will be recruited, hired, promoted, transferred, demoted, laid off, terminated, suspended, evaluated or otherwise dealt with in a fair and equitable manner based solely upon merit, fitness and such bona fide occupational qualifications as each individual might possess. No personnel decisions shall be based upon race, color, religion, sex, national origin, age or disability, except where such criteria constitute a bona fide occupational requirement.

(B) The municipality will not discriminate against any person based upon that individual's national origin except as required in conformance with the Immigration Reform and Control Act. There shall be no discrimination against any applicant intending to become a U.S. citizen, in accordance with the provisions of the Immigration Reform and Control Act policy.
(Ord. CM-03-36, passed - -)

## § 32.006 EEO/ADA COORDINATOR.

(A) The Municipal Manager shall be the municipal EEO/ADA Coordinator, and shall be responsible for providing information regarding the municipality's commitment to a workplace free of discrimination. The Municipal Manager shall also be responsible for reviewing and resolving confluent complaints involving alleged discrimination.

(B) It shall be the responsibility of the EEO/ADA Coordinator to ensure that no supervisor or management level employee makes any inquiry regarding an applicant or candidate's race, age, color, religion, sex, national origin or disability, except to the extent necessary in gathering voluntarily relinquished equal employment opportunity statistical data.
(Ord. CM-03-36, passed - -)

## § 32.007 AMERICANS WITH DISABILITIES ACT.

The municipality recognizes that federal and state law prohibit discrimination on the basis of disability, and vows to maintain facilities that are accessible to all, as required by law; and to maintain a work environment free of discrimination. For ADA purposes, the Coordinator and Ombudsperson shall be the Municipal Manager. (Ord. CM-03-36, passed - -)

## § 32.008 DISCRIMINATORY HARASSMENT.

(A) It is the policy of the municipality to maintain an environment free from all forms of discriminatory harassment for all employees, including gender-based discrimination due to sexual harassment.

(B) In order to maintain this environment, discriminatory harassment, whether committed by supervisors, co-workers or members of the public, of opposite or same gender is strictly prohibited.

(1) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***DISCRIMINATORY HARASSMENT.*** Any type of harassing conduct that is based upon an employee's race, color, sex, national origin, age, religion or disability.

***SEXUAL HARASSMENT.*** Includes, but is not limited to the following:

1. Repeated unwanted and/or offensive sexual flirtations, advances or propositions;

2. Repeated verbal abuse of a sexual nature;

3. Graphic or degrading verbal or written comments about an individual, the individual's appearance, or the individual's sexual orientation;

4. The display of sexually suggestive objects, pictures, or the display of same through other media;

5. The implication or threat that an employee's or applicant's employment, assignment, compensation, advancement, career development, or other condition of employment will depend on the employee or applicant's submission to sexual harassment in any form; and

6. Any offensive, abusive or unwanted physical contact.

(2) (a) It is the responsibility of all employees to aid the employer in maintaining a work environment free from discrimination, including sexual harassment. Therefore, it is the responsibility of each employee, including supervision and management, to immediately report any instances of discriminatory harassment to the proper authority (see Reporting Procedure, below). Any employee, who observes any conduct that may constitute

discriminatory harassment of any municipal employee, or vendor, but fails to report same, may be subject to disciplinary action.

(b) It is further the responsibility of each supervisor to ensure that all employees who report to the supervisor are aware of the policy against discriminatory harassment, that they are aware of the complaint and reporting procedures, and that they are aware of the consequences of engaging in discriminatory harassment.

(c) It is the responsibility of management to maintain an environment free from discriminatory harassment. Management shall ensure that its supervisors are sufficiently trained in recognizing discriminatory harassment, the complaint and reporting procedures, the proper methods of investigating complaints of sexual harassment, and the disciplinary procedure regarding sexual harassment.

(d) Management shall also ensure that all employees are aware of this policy and will ensure that all employees receive sufficient training to maintain an environment free from discriminatory harassment. Additionally, each newly hired employee will receive training in this policy as a part of their employee orientation.

(3) (a) Once a complaint of discriminatory harassment has been received, or an instance of sexual harassment has been reported (see Complaint Procedure, below), the proper member of management will immediately investigate the matter in accordance with the investigation procedure. The complaining employee and/or the reporting employee will be informed of the results of the investigation.

(b) If, after a thorough and prompt investigation, it is determined that sexual harassment has occurred, the employee who has been found to have committed discriminatory harassment will immediately be disciplined in accordance with the disciplinary procedure for sexual harassment. The complaining and/or reporting employee(s) will be informed of the results of the disciplinary procedure.

(c) If, after the investigation, it is determined that no discriminatory harassment occurred, or that there is insufficient evidence to determine whether or not sexual harassment has occurred, the complaining employee and/or reporting employee will be informed of same.

(4) Any employee who believes that he or she has been the subject of discriminatory harassment, and/or any employee who has witnessed an incident, or incidents of such harassment, should report the matter(s) to the proper authority immediately.

(a) 1. Any employee who believes that he or she has been the subject of or witness to sexual harassment should immediately report the alleged act(s) to his or her immediate supervisor, department head or the EEO Coordinator.

2. If the immediate supervisor, department head or EEO Coordinator is the subject of the complaint, the employee should report to the next higher ranking person in the department's table of organization. The employee should report the complaint to the Municipal Manager if all lower positions in the chain of command are implicated in the complaint. Should the Municipal Manager be the subject of the complaint, the employee should report the matter to a member of Council. Should a member of council be the subject of the complaint, the employee should report the matter to the Director of Law.

(b) The employee alleging discriminatory harassment shall complete the EEO Complaint form provided for that purpose. The employee should provide:

1. The employee's name;

2. The name of the subject of the complaint;

3. The act(s) complained of;

4. The date(s) of the act(s);

5. Any witnesses to the alleged acts; and

6. The remedy the employee is seeking.

(c) If the employee alleging discriminatory harassment is unwilling to complete the complaint, the matter should be addressed under the "duty to report" section and the form completed by the person to whom the verbal complaint was made.

(d) After the EEO Complaint form has been completed, the complaint will promptly be investigated by the EEO Coordinator or designee, or other authorities as stated in this section. This form should be completed by the employer as soon as possible, and no later that two working days after the date the alleged harassment occurred.

(e) If the investigation reveals that the complaint is valid, prompt action will be taken to end the harassment immediately.
(Ord. CM-03-36, passed - -)

## *EMPLOYMENT*

### § 32.020 EMPLOYMENT BY THE MUNICIPALITY.

(A) Employment with the municipality of West Milton is employment with a public agency. All employees and officers of the municipality are subject to the laws of the State of Ohio, the United States Government, the Municipal Charter, ordinances and policies established by the municipality as a condition of employment.

(B) Employees are at all times required to perform their assigned duties in a responsible, professional manner.

(C) It is the responsibility of all employees with the municipality to recognize that the chief function of this local government is to serve the best interests of the citizens of West Milton. Employees must also be cognizant of the fact that they represent the municipality both on and off duty.

(D) The provisions in these Personnel Rules apply to full-time employees except that policies regarding rules of conduct apply to all employees. None of these policies establish tenure or contractual rights for employees not required by law. Council by approved Employment Agreement may modify the benefits provided herein for exempt employees.
(Ord. CM-03-36, passed - -)

## § 32.021 CLASSIFICATION OF EMPLOYEES.

(A) The number and types of employees shall be determined by Council based upon the recommendation of the Municipal Manager and subject to budget appropriation.

(B) The Municipal Manager or his or her designee shall maintain a current roster of all Municipal employees, matching job or classification descriptions that assign duties, authorities and responsibilities and a record of which positions are presently filled or vacant and the pay grade assigned.

(C) The number of employees authorized for a specific classification may be exceeded, if necessary, to provide a training period for a new employee, to replace an employee on a temporary absence or in the case of an emergency for a period of not more than 30 days.

(D) As used in this chapter except for the purposes of reduction in force:

(1) A full-time employee is one who works a full workweek and whose employment is permanent in nature.

(2) A part-time employee is one who does not work a full work week and whose employment is permanent in nature.

(3) A temporary employee is an employee appointed for a limited period of time fixed by the Municipal Manager.

(4) A seasonal employee is an employee who works a certain regular season or period of each year performing some work or activity limited to that season or period of the year.

(5) An exempt employee is one who is employed in a salaried position and is exempt from overtime payment. These positions are identified as exempt by legislation, job description or letter from the Municipal Manager. A nonexempt employee is one who is employed in an hourly position eligible for overtime.
(Ord. CM-03-36, passed - -)

## § 32.022 PROBATIONARY PERIOD.

(A) Probationary employees shall be defined as those employees working with the municipality during their initial six months after their hire date for non-safety forces and one year after their hire date for safety forces. Probationary employees shall be entitled to all of the provisions and protections of these personnel rules except for §§ 32.100 and 32.101.

(B) Within ten days prior to the probationary employee's six-month anniversary (or one year for safety personnel), a work evaluation will be conducted by the supervisor of the administrative department or division and submitted to the Municipal Manager. If such an evaluation is favorable the hourly or salaried employee may be hired on a continuing basis and shall then become subject to all rights, protections and provisions of these personnel rules. At any time during the course of the probationary period, the employee may be terminated by the municipality.

(C) Successful completion of the probationary period does not guarantee job tenure. Employees of the municipality are employees at-will and thus have no job tenure.
(Ord. CM-03-36, passed - -)

## § 32.023 PERFORMANCE EVALUATION.

(A) The performance of all full-time employees will be reviewed annually in a manner determined by the Municipal Manager. An employee may be subjected to a special evaluation in addition to the annual evaluation when it is determined by the supervisor that the employee needs to demonstrate an immediate improvement in performance as determined by the annual evaluation or, if necessary, in conjunction with a promotion or reduction in force.

(B) The job performance of probationary employees shall be reviewed as outlined in § 32.022.

(C) Each employee will be provided a copy of his or her performance evaluation and the supervisor will discuss its contents with the employee and counsel the employee as necessary regarding any improvement in performance that appears desirable.

(D) Each employee will be required to sign his or her performance evaluation to certify that he or she has read it. If the employee disagrees with the content of the performance evaluation, the employee may prepare a written response that will be kept in the employee's file.
(Ord. CM-03-36, passed - -)

## § 32.024 TRAVEL.

(A) All travel outside of the municipality, except for the routine conduct of municipal business shall require the approval of the Municipal Manager who will consider each request on an individual basis. If such travel requires the employee to be away from the municipality during normal working times, such time may be considered "job related" and in no case shall it require the use of personal leave time.

(B) Use of municipal owned vehicles shall be restricted to municipal purposes only. Employees who operate municipal vehicles or other motorized equipment are required to have a proper and valid motor vehicle operator's license, or, if applicable, a commercial driver's license with appropriate endorsements. Employees shall not use or permit the use of municipal vehicles for any unauthorized purpose or permit unauthorized passengers to ride in municipal owned vehicles. Employees who operate municipal vehicles shall have an insurable driving record and are subject to any limitations imposed by the municipality's insurance carrier.

(C) If a municipal vehicle is not available and subject to the approval of the Municipal Manager or department/division supervisor, an employee may use their personal vehicle and will be reimbursed at the current federal rate per mile of vehicle use. In order to receive this travel allowance, an employee must request compensation promptly and submit in writing to the Municipal Manager a record of travel expense, which includes the destination, mileage and purpose of the trip. The employee must have a minimum of $100,000, $300,000 liability insurance coverage to use a personal vehicle to conduct municipal business.

(D) Employees that are on-call may be provided a municipal vehicle for their use. The purpose of this vehicle is to provide the employee a quick and ready access to transportation to investigate or respond to a matter of municipal business.

(E) All municipal employees must possess a valid State of Ohio operator's license of the appropriate class for their assigned job duties that shall be verified on an annual basis to include a driving record check.

(F) All municipal employees shall comply with appropriate traffic laws.
(Ord. CM-03-36, passed - -)

## § 32.025 EMPLOYEE ORGANIZATIONS.

Upon ascertaining the existence of a bona fide employee organization, the Municipal Manager, or his or her designee, shall be responsible for conducting all negotiations with the organization.
(Ord. CM-03-36, passed - -)

## *COMPENSATION AND BENEFITS*

## § 32.040 WAGES AND PAY PLAN.

(A) The Municipal Manager, in consultation with the Director of Finance and the director of each administrative department, shall periodically review the wages and benefits paid to municipal employees in comparison to similar positions in the community and in other like communities and make a recommendation to Council for wages to be paid each classification of municipal employees.

(B) The range of compensation for municipal employees, based upon job classification, shall be outlined in a resolution enacted by Council that establishes the pay plan for all municipal employees.

(C) New employees shall be hired at the minimum rate for their class. Progression to the top of the range shall be based upon satisfactory performance determined by periodic performance evaluation. Exceptions made by made by the Municipal Manager in the following cases: new employees having exceptional qualifications may be hired at other than the minimum of the range.

(D) All rules and regulations concerning the pay period shall be prescribed by the Finance Director.
(Ord. CM-03-36, passed - -)

## § 32.041 HOURS OF WORK.

(A) The standard workweek for full-time Municipal employees shall, ordinarily, be a 40 hours per seven day week, except for the Police Division. The Chief of Police may recommend to the Municipal Manager the method of scheduling that best meets the operational needs of the Police Division, based on the fact that a full-time employee is equivalent to 2,080 hours per year.

(B) New, employees having less than the minimum qualifications shall be employed as trainees in a lower classification at a pay grade determined by the Municipal Manager. New employees may be hired at the beginning range of the pay grade below that assigned to their classification until successful completion of their probationary period.
(Ord. CM-03-36, passed - -)

## § 32.042 ADJUSTMENTS IN PAY.

(A) An employee promoted to a position in a higher class shall be placed at the minimum range for the new grade or at a point within the pay range, as determined by the Municipal Manager, which will result in a minimum pay increase of 3%.

(B) An employee whose classification is reallocated to a higher pay grade may receive a pay adjustment only if such reallocation is based upon a significant increase in duties and responsibilities.

(C) An employee reduced for cause or whose position is reallocated to a lower class shall be paid at a rate set by the Municipal Manager.
(Ord. CM-03-36, passed - -)

## § 32.043 OVERTIME COMPENSATION.

(A) Certain administrative, supervisory managerial and professional positions are exempt from overtime payment. These salaried positions are identified as exempt positions. Individuals in exempt positions may have the workweek adjusted by the Municipal Manager.

(B) Nonexempt employees, with the exception of uniform safety personnel, shall receive overtime compensation at a rate of one and one-half times their regular hourly rate of pay for any hours in active pay status in excess of 40 in a seven day workweek. Active pay status includes all authorized paid absences, excluding sick leave.

(C) Nonexempt police safety employees shall receive overtime compensation at a rate of one and one-half times their regularly hourly rate of pay for any hours in active pay status as defined in (B) above only when the number of hours worked by the employee exceeds the maximum hours of the work period established by the Chief of Police (e.g. 40 hours within a 7 day work period, 80 hours in a 14 day work period or 171 hours within a 28 day work period, etc.)

(D) Overtime shall not normally be scheduled without the expressed approval of the Municipal Manager. In an emergency situation the administrative department/division level head, or someone acting in that capacity, may approve overtime. In the absence of the Chief of Police, the officer-in-charge may approve overtime. Submission of overtime pay on the employee's time sheet for hours not properly approved may be cause for disciplinary action.

(E) Full-time service personnel who trade shifts with the permission of their Supervisor shall not be eligible for any overtime attributable to the voluntary exchange of shift assignments. Police personnel may trade scheduled shifts with the approval of the Chief of Police and such trades when approved shall not result in an employee working more than 12 hours per day and none of the traded hours shall count as "working time" for overtime calculations.

(F) In computing overtime compensation, "working time" shall be calculated first. Whenever such time exceeds 40 hours during an established work-week the municipality will pay time and one-half for all excess working hours, except in those instances specifically exempted or which fall under other provisions of these personnel rules.

(G) Non-exempt employees called in and required to work at a time disconnected with their regularly scheduled hours of work shall be credited with a minimum of two hours worked.
(Ord. CM-03-36, passed - -)

## § 32.044 LONGEVITY PAY.

(A) Every full-time employee who has served with the municipality for ten or more years of current continuous service shall be eligible for longevity pay provided they receive a satisfactory job evaluation upon their annual review.

(B) Longevity pay shall be subject to all required withholdings and is payable on the anniversary date of the employee's hire based upon the following schedule.

(1) Ten to 14 years of service: $250.

(2) Fifteen to 19 years of service: $375.

(3) Twenty or more years of service: $500.
(Ord. CM-03-36, passed - -)

## § 32.045 UNIFORM ALLOWANCE.

(A) *Department of Safety-Police Division.* Upon hire uniformed officers of the Police Division shall be issued appropriate uniform and gear. Thereafter, each full-time officer shall be permitted to purchase uniforms from an annual uniform allowance. The rules and regulations regarding the utilization of the allowance including the amount and type of clothing that may be purchased is at the discretion of the Municipal Manager with

consultation from the Chief of Police. Part-time officers will be issued uniforms and gear as determined by the Chief of Police.

(B) *Department of Safety-Fire Division.* Upon hire and as needed thereafter, all members of the Fire Division shall be supplied with adequate protective clothing for their assigned duties. The Fire Chief shall include in his or her budget request each year funds necessary to provide the member's protective clothing and the municipality shall purchase said clothing based upon the availability of funds.

(C) *Department of Service.* Upon hire full-time employees of the Service Department will be provided adequate clothing to meet the requirements of their job. Thereafter, each full-time employee shall be permitted to purchase uniforms from an annual uniform allowance. The rules and regulations regarding the utilization of the allowance including the amount and type of clothing that may be purchased is at the discretion of the Municipal Manager with consultation from the division head.
(Ord. CM-03-36, passed - -)

## § 32.046 MEDICAL AND LIFE INSURANCE.

(A) The municipality shall provide each full-time employee and their dependents with medical insurance coverage. Such insurance may be provided on an employee participation basis and subject to such terms, conditions, amounts and requirements as the municipality or insurance carrier may impose.

(B) The municipality shall provide each full-time employee coverage under a group life insurance program in an amount not less than $15,000. Such insurance may be provided on an employee participation basis and subject to the terms, conditions and requirements as the municipality or insurance carrier may impose.

(C) In accordance with applicable law and the requirements of the insurance provider, the Finance Director will ensure that all employees' and their dependents are informed of their rights to continue under the municipality's coverage after cessation of employment, or certain other events stipulated within the law, through the assumption of premium costs by the employee.
(Ord. CM-03-36, passed - -)

## § 32.047 PERS AND PFDPF ALLOWANCE.

(A) All employees (full-time and part-time) will participate in the Ohio Public Employees Retirement System (PERS) or the Police and Fire Disability Pension Fund (PFDPF) in accordance with the regulations of the respective system.

(B) The amount of the PERS and the Police and Fire Disability Fund contribution is as follows:

(1) The full amount of the statutorily required employee's contribution to PERS and the statutorily required employee contribution to PFDPF shall be deducted from the gross pay of each person described in division (B)(4) below, and shall be "picked-up" (paid to PERS and PFDPF). This "pick-up" is, and shall be

designated as, public employees contributions and shall be in lieu of contributions to the PERS and the PFDPF by each person described in division (B)(4) below.

(2) Any "pick-up" of an employee's retirement contributions to PERS or PFDPF, as the case may be, shall be mandatory. No person subject to this "pick-up" shall have the option of choosing to receive the contributed amounts directly instead of having them "picked-up" and paid to PERS or PFDPF, as the case may be, or of being excluded from the "pick-up".

(3) The "pick-up" as provided by this division, shall apply to all employees of the municipality who are contributing members of PERS and PFDPF, unless otherwise specifically stated in the contract with any of the aforementioned persons or group of employees.

(4) The Finance Director is hereby directed to maintain an accurate accounting of all PERS or PFDPF funds, so as to enable all employees to obtain the resulting federal, state, and local tax deferments and other benefits.

(5) If employees have any questions regarding either program, they should contact the Finance Director for additional information.
(Am. Ord. CM-904, passed 9-12-1989)

(6) The Finance Director shall, in reporting and making remittance to PERS and PFDPF, report that the public employee's contributions for each person subject to this "pick-up" has been made as provided by statute.
(Ord. CM-03-36, passed - -)

## § 32.048 MEDICAL EVALUATION.

(A) A post-offer, pre-employment, medical examination by a licensed physician may be required of any selected candidate. The evaluation shall be based upon the objective criteria set forth in the position description. Th examination may include a screening for controlled substances.

(B) The municipality shall withdraw any offer of employment made to any individual who tests positive for controlled substances.

(C) After hire, any employee may be directed to submit to a "fitness for duty" examination to determine whether the employee, with or without a reasonable accommodation, is capable of performing the essential functions of his or her employment.
(Ord. CM-03-36, passed - -)

## *LEAVES AND ABSENCES*

### § 32.060 VACATION TIME.

(A) Vacation schedules for employees in all departments shall be approved by the director of the department or head of the division. Vacations shall be scheduled subject to the manning requirements of the municipality but shall not be unreasonably denied.

(B) If an employee desires, he/she may receive cash compensation in lieu of time off the job for an amount not to exceed one-half of one year's vacation time. Such vacation pay shall be paid at the employee's current rate of pay. Payment in lieu of vacation must be approved by the Municipal Manager and is subject to the availability of funds. Sworn employees of the Police Division are excluded from this provision.

(C) Any employee who voluntarily leaves the employ of the municipality shall be compensated for his or her unused vacation at their current rate of pay.

(D) Annual vacation leave for service to the municipality shall be:

(1) Hourly rated employees:

(a) 40 hours after one year service;

(b) 80 hours after two years of service;

(c) 120 hours after five years of service; and

(d) 160 hours after ten years of service.

(2) Salaried employees:

(a) 80 hours after one year of service;

(b) 120 hours after two years of service; and

(c) 160 hours after ten years.

(E) Employees may transfer service credit from pervious state or local government employment for the purpose of calculating vacation time upon employment with the municipality.

(F) Vacation time may not be accumulated from year to year and is forfeited if unused by the employee's anniversary date of hire, unless an emergency situation prohibits vacation time utilization. Any request by an employee to carry over vacation based on such an emergency must be approved by the Municipal Manager.
(Ord. CM-03-36, passed - -)

## § 32.061 HOLIDAYS AND PERSONAL DAYS.

(A) All full-time employees shall be entitled to receive their regular rate of pay for the following holidays (which shall be eight hours in length) except as set forth in division (F) below:

(1) New Year's Day;

(2) Martin Luther King Day;

(3) Memorial Day;

(4) Independence Day;

(5) Labor Day;

(6) Veteran's Day;

(7) Thanksgiving Day;

(8) Day after Thanksgiving;

(9) Christmas Eve; and

(10) Christmas Day.

(B) If any of the above holidays fall on Saturday, the holiday shall be observed on the preceding Friday, and if the holiday falls on Sunday the following Monday shall be observed as the holiday.

(C) In addition to these holidays the Manager shall have the authority, in the event of a natural disaster, day of mourning or other significant event, to grant all employees a day of paid special vacation to observe the day in an appropriate manner.

(D) In observance of each authorized holiday, full-time employees who are granted the day off from work shall receive eight hours straight time holiday pay for each authorized holiday. If a holiday is observed on the employee's regularly scheduled day off, the employee may elect to receive eight hours of straight time holiday pay or another scheduled day off with supervisory approval. Payment at such rate shall be excluded in the calculation of hours in active pay status. Employees who elect another scheduled day off must schedule the day off within 30 days immediately before or following the holiday.

(E) If a holiday is observed on an employee's regularly scheduled work day, and the employee is required to work that day, the employee shall receive one and one-half times their regular hourly rate of pay for each hour worked in addition to their regular pay except that Police Division employees who are regularly scheduled a shift in excess of eight hours shall receive holiday premium pay for only eight hours. Payment at such rate shall be excluded in the calculation of hours in active pay status.

(F) For sworn police division employees only all holidays listed in division (A), except for the day after Thanksgiving and the day before Christmas, shall be taken on that specific day. All hours worked are counted

for payroll purposes on the day upon which the shift begins. The day after Thanksgiving and the day before Christmas shall be construed as 16 more personal day hours.

(G) Each full-time employee shall be granted personal days annually. All nonprobationary employees are entitled to 16 personal leave hours per year. New employees whose probationary period ends in the second half of the year are due eight personal leave hours for the remainder of that year. Unused personal leave days are not carried over from year to year. Personal leave days must be taken as time off and cannot be converted to cash.

(H) Since personal leave is granted much the same way as vacation, it shall be accounted for in a similar manner. Personal leave shall be approved as all other leave before it is taken off.
(Ord. CM-03-36, passed - -; Am. Ord. CM-10-02, passed 3-9-2010)

**§ 32.062 SICK LEAVE.**

(A) Sick leave, for hourly and salaried employees, will be earned at the rate of ten hours per month (one day and one-fourth days) .0575 hours for each hour in active pay status (except overtime hours). Sick leave may be accumulated without limit. The director of each administrative department or the Personnel Director (or Municipal Manager if there is no Personnel Director), may require a physician's certificate before approving payment of sick leave. Transfer of sick leave from another state or local government will be honored upon completion of any probationary training period.

(B) Sick leave may be used for the following purposes:

(1) Illness, injury, pregnancy or childbirth-related conditions of the employee or of a member of the employee's immediate family when the employee's presence is reasonably necessary;

(2) Exposure of the employee or a member of the employee's immediate family to a contagious disease which would potentially jeopardize the health of the employee or the health of others;

(3) Death of a person not an immediate family member as defined herein with the approval of the Municipal Manager (not to exceed three days); and

(4) Medical examination of the employee; psychological, dental or optical examination by a licensed practitioner.

(C) Notification:

(1) When an employee is unable to work, he or she shall notify his or her immediate supervisor or the Municipal Manager (unless extenuating circumstances prohibit) prior to the time he or she is scheduled to report for work on each day of absence unless arrangements are made with the employee's supervisor.

(2) Employees who obtain medical attention while on sick leave shall attach a medical practitioner's statement to the request for leave of absence which must indicate the date and nature of the illness or injury, the date of the medical practitioner's examination, and the signature of the medical practitioner or designee.

(3) (a) If an illness or injury extends for more than three consecutive workdays, an employee must submit a licensed medical practitioner's statement with the request for leave of absence that must indicate the date and nature of the illness or injury. In cases of excessive use or a pattern of use of sick leave, an employee's department head may require a medical practitioner's statement that states the date(s) of the illness or injury; the nature of the illness or injury; and the date the employee is able to return to work and perform all essential functions of the employee's position. The doctor's certificate shall be presented to the department head no later than the sixth consecutive workday after the commencement of the employee's absence, or on the third day of the employee's absence, or upon the employee's return to work.

(b) ***IMMEDIATE FAMILY.*** The employee's: mother, father, brother, sister, child, stepchild, foster child, spouse, grandparent, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, legal guardian, or other person who stands in the place of a parent.

(4) The department head shall review each completed request for leave of absence form and the circumstances surrounding the absence. A recommendation for approval or denial of the sick leave shall be made and the appropriate signature placed on request for leave of absence form. If approved, the form shall be forwarded to the Finance Director.

(5) The department division head shall inform any employee whose sick leave request is denied of such decision and the reason therefore. The employee will not be paid for the absence, and may be subject to disciplinary action if the denial results from a violation of this policy.

(D) (1) Upon the death or retirement through PERS or PFDPF, a retiree may cash out up to 25% of his or her total hours of accrued but unused sick leave, not to exceed payment of 200 total hours.

(2) Such cash out shall forever eliminate all sick leave from the books so that none remains in the event that the retiree obtains reemployment with the municipality.
(Ord. CM-03-36, passed - -)

## § 32.063 DUTY INJURY LEAVE.

(A) Duty injury leave is defined as physical injury which interferes with an employee's ability to perform their normal duty, with the injury having occurred as a result of and while the employee was on duty acting non-negligently in the line of duty.

(B) All full-time employees shall be entitled to duty injury leave with pay for a period of up to 90 calendar days following the date of injury. An extension of 30 additional days may be granted by the Municipal Manager.

(C) Duty injury leave shall only be granted following the proper filing of an application (Appendix A attached to Ord. CM-95-05, passed 3-14-1995) for such, with supporting documentation from a licensed physician. The documentation shall describe the nature of the injury, and the estimated time to return to duty (limited and regular) and the extent of the injury or disability.

(D) Before approving an application, the Municipal Manager may require separate medical examination(s) by licensed physician(s) selected by the municipality and at the municipality's expense. During the course of the

injury duty leave, the municipality, and at its option, may require the employee to take additional physical examination(s) by doctor(s) of the municipality's choosing in matters relating to the injury. Any such examination(s), if so ordered by the municipality, shall be at the municipality's expense. If a third doctor's examination is necessary, both the employee and municipality will mutually select the third doctor.

(E) Simultaneous with the request for injury leave, the employee or his or her agent shall make application and actively prosecute a claim for benefits under worker's compensation law. If the worker's compensation claim is not favorably considered, the employee shall revert to sick leave status:

(1) For medical claims only, the employee shall be compensated for the actual hours lost, at regular pay, due to the duty injury and associated medical visits.

(2) For full compensation claims, if the application is favorably considered, the municipality's obligation for the use of injury leave shall be the monetary difference between the employee's regular rate of pay and the benefit received under worker's compensation law.

(F) The partially disabled employee may, at the municipality's option, if the physician's prognosis allows, perform limited duty. If such limited duty is available, the employee may be assigned such duty and duty injury leave will be suspended.

(G) When an employee is approved for duty injury leave, the employee shall receive their regular full pay up to the date when worker's compensation benefits start. Upon receipt of benefits from worker's compensation, the employee shall sign over all benefit checks to the Finance Director for this initial period. After benefits start, the employee shall receive only the amount estimated to be the difference between the employees's full pay based upon the employee's regular work-week, and the anticipated benefits under worker's compensation. After a formal determination of such benefits, the municipality shall pay the eligible employee an amount due to the employee for under payment of injury leave pay, and the eligible employee shall reimburse the municipality in the amount equal to overpayment of injury leave pay. (It is the intent of this method to ensure that the amount received by an employee from the municipality or injury leave pay and under worker's compensation law, when considering aggregate, is not more or less than the regular pay of such employee.) While on injury leave an employee shall not be charged with sick leave and shall not be eligible to draw additional pay for sick leave. If worker's compensation determines the leave is noncompensable, the employee's sick leave shall be reduced by the number of hours paid as injury leave hours.

(H) For the purpose of calculating overtime, duty injury leave shall not be considered time worked.
(Ord. CM-95-05, passed 3-14-1995)
(Ord. CM-03-36, passed - -)

## § 32.064 LEAVE WITHOUT PAY.

(A) Employees may be granted a leave of absence for a maximum duration of 30 days per year. Such a leave may not be renewed or extended beyond 30 days.

(1) Leave may be granted for personal reasons or for purposes of education, training, or specialized experience that would be of benefit to the municipality by improved performance at any level; or for voluntary service in any government-sponsored program of public betterment.

(2) The authorization of a leave of absence without pay is a matter of administrative discretion. The Municipal Manager will decide in each individual case if a leave of absence is to be granted. Non-paid leave requests will only be considered at such time as the employee has exhausted all accumulated personal and vacation leave. Additionally, leaves of absence for medical reasons will only be granted once personal, vacation and sick leave have been exhausted.

(3) The granting of any leave of absence is subject to approval of the department head and the Municipal Manager. Except for emergencies, employees will advise the department head and Municipal Manager 60 days prior to commencement of the desired leave, or give as much advanced notice as possible, so that the various functions may proceed properly.

(4) Upon completion of a leave of absence, the municipality will make every effort to place an employee into a classification for which they are qualified which may be in a different pay grade than the employee was in before.

(5) An employee may return to work before the scheduled expiration of leave if requested by the employee and agreed to by his or her supervisor. If an employee fails to return to work at the expiration of an approved leave of absence, a report of "failed to return from leave" is made unless an order of removal or disability leave is appropriate.

(B) Any such pre-arranged and approved leave without pay shall be granted only if municipal operations are not significantly affected due to the absence of the employee. The employee shall follow the normal request for leave policy. Employees who are on a leave of absence without pay will not accrue sick leave or vacation leave, and they are not entitled to premium pays such as holiday pay during such time. The Municipal Manager shall have the authority to determine if leave without pay is being abused, in which case, it shall be grounds for disciplinary action, including dismissal. Leave without pay is not to exceed 30 working days per year.
(Am. Ord. CM-904, passed 9-12-1989)
(Ord. CM-03-36, passed - -)

## § 32.065 LEAVE FOR MILITARY SERVICE.

(A) Military leave is governed by R.C. Chapter 5903. In general, any employee with more than 90 days' tenure who voluntarily or involuntarily enters any of the Armed Services of the United States shall be granted military leave of absence without pay. If not accepted for active duty, the employee shall be reinstated to his or her former position without loss of seniority or status or reduction in pay. Employees who complete their active duty obligation without voluntarily reenlisting or extending that obligation are entitled to their previous position within 30 days of their written request, provided such request is submitted within 90 days of discharge or release from active duty. If temporary physical disability precludes the employee's performing on the job, he or she shall be allowed up to one year from the date of application to overcome such disability and return to work. Employees returning to previously held positions under these provisions should receive credit for military service in areas

affecting status, rank, rating, increments, qualifications and the like, as though they had continued their employment with the municipality. This does not require that benefits for vacation and sick leave accrual be applied as part of total length of service. In the event the former job no longer exists, the employee shall be employed in such capacity for which he or she is qualified at salary comparable with that formerly received.

(B) A full-time employee who is a member of the Ohio National Guard, Ohio Military Reserve, Ohio Naval Militia, and the U.S. Armed Forces reserve component members, are entitled to leave of absence from their respective duties without loss of pay for such time as they are in the military service for training or active duty for periods not to exceed a total of 22 working days (176 hours) in any one calendar year. Time off for the purpose of attending military reserve training will not be considered as vacation leave.

(C) Employees called to military duty for a period in excess of the 22 working days in a calendar year because of an executive order issued by the President of the United States or an act of congress is entitled, during the period of the order, to a leave of absence, and to be paid during each monthly pay period of the leave the lesser of:

(1) The difference between the employee's gross monthly wage or salary and the employee's military pay and allowances received that month; or

(2) Five hundred dollars.

(D) No employee, however, will receive payments under this section if the amount of the military pay received in the period is in excess of the employee's gross wage or salary for that period.
(Ord. CM-03-36, passed - -)

**§ 32.066 FUNERAL LEAVE.**

(A) Funeral leave of three days shall be granted to all full-time employees, with pay at the employee's regular straight-time pay for eight hours, in the event of a death in the employee's immediate family. The time off shall be within a consecutive period of three scheduled workdays, one day of which shall include the day of the funeral. Funeral leave shall count as hours worked, for the calculation of overtime pay. Additional sick leave time may be taken off in accordance with § 32.062(B)(3).

(B) ***IMMEDIATE FAMILY.*** The employee's: mother, father, brother, sister, child, stepchild, foster child, spouse, grandparent, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, legal guardian or other person who stands in the place of a parent.

(C) Funeral leave may be granted to all full-time and part-time employees, with pay at the employee's regular straight-time pay for eight hours, in the event of a death of other family relations with the advanced approval of the Municipal Manager. The time off shall be within a consecutive period of three scheduled workdays, one day of which shall include the day of the funeral. Funeral leave shall count as hours worked, for the calculation of overtime pay. Additional sick leave time may be taken off in accordance with § 32.062(B)(3).
(Ord. CM-96-06, passed 3-12-96)(Ord. CM-03-36, passed - -)

## § 32.067 FAMILY AND MEDICAL LEAVE.

(A) Family and medical leave is an unpaid leave of absence (up to 12 weeks in one year), taken for specified reasons, during which the employer shall maintain the employee's health insurance in the same manner as if the employee remained in active pay status. During the leave, however, employees must continue to pay their share of the premium.

(B) Eligible employees shall be entitled to a total of 12 workweeks of family and medical leave during the 12 month period measured forward from the date the employee's first family and medical leave began. Leave may be taken for the following reasons:

(1) Birth of a child -of the employee and to care for a newborn child;

(2) Placement of a child with the employee by way of adoption or foster care;

(3) To care for the spouse, child, parent or one who stood in place of a parent of the employee, if that person has a serious health condition; or

(4) Because of a serious health condition that makes the employee unable to perform the essential functions of the employee's position.

(C) Employees may be required to use all accrued vacation, holidays, sick leave (if applicable), and other paid leave including Workers' Compensation, except compensatory time, prior to being granted an unpaid family and medical leave. The combined period of leave, including paid leave and unpaid family and medical leave shall not exceed the total of 12 workweeks during the 12 month period measured forward from the date the employee's family and medical leave began. The Employer will not designate short-term absences (one to five days) that qualify as an FML qualifying event. However, the Employer will designate and require the employee to use all accrued vacation, holidays, sick leave, Workers' Compensation, and other paid leave for long-term absences (exceeding five days). In other words, Family and Medical Leave and paid leave for conditions that qualify under the FML run concurrently. The entire 12 week FML is not tacked onto the end of the paid leave, just the remaining portion after the paid leave time is subtracted.

(D) Because employees of the municipality of West Milton do not meet the requirements set forth by Title 29 C.F.R. part 825.108, Department employees are not eligible to utilize family medical leave at this time. Questions regarding eligibility should be directed to the Financial Office.

(E) The eligibility requirements for Family Medical Leave are 50 or more employees within 75 miles of the worksite each working day during 20 or more weeks in the current or preceding calendar year.
(Ord. CM-03-36, passed - -)

## § 32.068 JURY DUTY.

(A) Employees called to and reporting for jury duty or witness duty shall be excused from regularly scheduled work-days and shall be paid at their regular rate of pay less jury or witness duty pay.

(B) Police officers subpoenaed for job related cases are prohibited from keeping witness fees, which shall be surrendered to the Finance Department.
(Ord. CM-03-36, passed - -)

### § 32.069 TRAINING LEAVE.

(A) The Municipal Manager may approve training leave with pay for employees to attend seminars, job training or other educational courses to further the employees' abilities to serve the municipality.

(B) Employees need not be compensated for training travel time or expenses when training is required by law to maintain a certification or requirement for their position.

(C) With prior approval by the Municipal Manager an employee may be reimbursed for training related expenses including mileage reimbursement, parking and tolls, meals and room accommodations subject to any limitations imposed by the Manager.
(Ord. CM-03-36, passed - -)

## *EMPLOYEE CONDUCT*

### § 32.080 ATTENDANCE; LUNCH BREAKS.

(A) The municipality will establish daily work schedules and maintain records of attendance. An employee is expected to maintain regular and reliable attendance, report to work as scheduled and remain at work during scheduled hours.

(B) The length and timing of an employee's lunch period will be determined by the department or division head. Lunch periods are not generally considered as work time and are not compensable. Exceptions exist when an employee is required to remain on duty throughout their lunch period or it is interrupted by a work requirement.

(C) The length and timing of employee breaks will be determined by the department or division head.
(Ord. CM-03-36, passed - -)

### § 32.081 USE OF MUNICIPAL TOOLS AND EQUIPMENT.

(A) When tools, supplies and equipment needed to perform job duties are provided by the municipality, it is the responsibility of each employee to properly use and maintain these items. The department/division head is responsible to ensure that tools and equipment are properly used and maintained and to authorize the use of municipal owned property.

(B) Misuse, neglect, theft and abuse of tools, supplies and equipment is prohibited. Accidents involving misuse of city tools or equipment may result in corrective action. Loss of tools or equipment may further result in corrective action and require payment by the employee for the tools or equipment loss.
(Ord. CM-03-36, passed - -)

## § 32.082 DRESS AND APPEARANCE.

(A) The municipality reserves the right to prescribe appropriate dress and appearance standards that it considers proper and appropriate. The general policy requires that clothing and overall appearance of the employee be in good taste and reflects the standards of the community. Employees who work around machinery and equipment or on construction sites must observe sound safety regulations including the use of appropriate safety clothing items.

(B) The municipality further reserves the right to require more specific standards of clothing and grooming that may be more stringent in certain departments, such as the Department of Public Safety, as may be necessary for the performance of the functions of that department. This may include such items as uniform and gear standards, hairstyles and physical standards.

(C) Have a personal interest in a contract with the municipality or use their position of authority to secure approval of a public contract in which the employee, a member of the employee's family or business associate has an interest.

(D) Use their position or authority to secure approval of the employment of a member of the employee's family or a business associate, or to obtain a pay increase, fringe benefit improvement, or a promotion for such individual.
(Ord. CM-03-36, passed - -)

## § 32.083 SOLICITATION AND DISTRIBUTION RULE.

(A) *Non-employee solicitation and distribution.* There shall be no solicitation or distribution by non-employees at any time on municipal property or in any work area. This does not apply to vendors transacting business with municipal officials.

(B) *Employee no solicitation rule.* There shall be no solicitation by any employees of other employees or non-employees during work time. Employees may solicit other employees during non-work time in non-work areas provided both employees are on non-work time.
(Ord. CM-03-36, passed - -)

## § 32.084 ETHICS IN PUBLIC EMPLOYMENT.

(A) All municipal employees shall maintain high ethical and moral standards in conducting municipal business.

(B) No employee shall:

(1) Use their position for personal gain or engage in any transaction that may conflict with the proper discharge of the employee's official duties;

(2) Use or disclose confidential or proprietary information concerning the property, government or affairs of the municipality without proper legal authorization;

(3) Solicit or accept anything of significant value, whether in the form of service, loan, item or promise from any person, firm or corporation interested directly or indirectly in conducting business dealings with the municipality;

(4) Accept from any person, firm or corporation doing business with the municipality, any material or service for the private use or benefit of the employee;

(5) Engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper performance of the employee's official duties, or would tend to impair independent judgment or action in the performance of the employee's official duties;

(6) While an employee, or for one year thereafter, represent another person before a public agency on any matter in which the employee personally participated as an employee through decision, approval, disapproval and the like; and

(7) Receive or agree to receive outside compensation for services rendered in a matter before any office or department of the municipality except as provided in R.C. § 102.04.
(Ord. CM-03-36, passed - -)

**§ 32.085 ALCOHOL AND DRUGS.**

(A) No employee, while on duty, shall use or consume alcohol, narcotics, barbiturates, amphetamines or hallucinogens except upon prescription of a licensed physician. No employee shall report for duty, emergency or otherwise, while under the influence of the above substances, or under any condition that will materially impair or interfere with the regular performance of the duties of the employee. Violation of this provision shall result in the suspension, dismissal or discipline of the employee by the Municipal Manger.

(B) Any employee who is taking any prescription drug that might impair concentration or cause drowsiness is under a duty to disclose this fact to their supervisor or department head.

(C) Post-offer, pre-employment testing of candidates for employment will be conducted at the discretion of the Municipal Manager.

(D) Whenever a supervisor or manager can document some quantum of individualized suspicion of use or impairment, the employee may be ordered to undergo testing at the municipality's expense. A positive test result, if unexplained, will result in discipline up to termination.

(E) (1) The municipality is concerned with the effects drug abuse can have on employees, employee's families and the ability of employees to perform their work safely and efficiently. The municipality believes that it is important to be a leader in the community in the war against drugs by establishing a policy prohibiting the manufacture, distribution, dispersion, possession or use of controlled substances in the workplace. The following policy is intended to meet the objectives and to comply with the provisions of the Drug Free Workplace Act of 1988.

(2) (a) As a condition of employment, all prospective employees will be provided a copy of the Employer's Drug Free Workplace statement and policy and will be required to sign an Acknowledgment of Receipt of Document form that will become a permanent part of the employee's personnel file.

(b) All prospective employees will be required to acknowledge that they are aware of the Employer's Drug Free Workplace policy and understand that it is a condition of employment.

(3) The unlawful manufacture, distribution, dispensation, possession or use of controlled substances by the employee that occurs in whole or in part in the employer's workplace is strictly prohibited and will result in criminal prosecution and discipline of the employee up to and including termination from employment.

(4) Any employee convicted of a violation of any federal, state or municipal criminal drug statute for a workplace related drug offense shall notify the Employer of such conviction within five calendar days of the conviction.

(5) The municipality will within 30 days after receiving notice of conviction from an employee or, upon concluding that an employee has violated the municipality's Alcohol and Drug Policy, shall:

(a) Take appropriate disciplinary action against such employee, up to and including termination; or

(b) Require the employee to satisfactorily participate in a drug rehabilitation program as provided herein.

(6) Any employee who fails to report a workplace related drug conviction may be disciplined up to and including termination.
(Ord. CM-03-36, passed - -)

## § 32.086 EMPLOYER INFORMATION AND COMPUTER AND E-MAIL USE.

(A) All information obtained by employees in the course of their employment with the municipality, and all municipal data, shall be considered confidential and proprietary. Such information and data, regardless of the form in which it is stored, shall not be shared with anyone other than those individuals who have a use for such information or data in order to complete their assigned tasks for the municipality or other authorized agencies.

(B) The municipality provides computers and licensed software programs for use by employees in the performance of their assigned duties. No employee shall consider information or data on computers as personal.

All information and data maintained on computers is the property of the municipality and may be viewed or removed by the appointing authority with or without notice.

(C) In order to protect against possible violations of software licensing agreements, exposure of computer programs to computer viruses and/or inappropriate use of information or data maintained on municipal owned computers; all employees are required to comply with the following regulations:

(1) Excessive use of municipal owned computers or software for other than work purposes is prohibited.

(2) Installation or use of privately owned computer programs, software, etc. on municipal owned computers is prohibited unless advance approval is obtained from the Municipal Manager. Installation of games on municipal owned computers is prohibited.

(3) Accessing confidential/proprietary information or data on a municipal owned computer, other than as required for work purposes, is prohibited.

(4) Removal of information or data from the municipality's premises without advance approval from the Municipal Manager or designee is prohibited.

(5) Misuse or improper care and maintenance of computer hardware or software is prohibited.

(6) Any violation of computer software licensing agreements is prohibited.

(7) Employees may access the Internet and e-mail through municipal owned computers for business purposes; use of e-mail for personal reasons should be kept to a minimum. Employees shall be prohibited from using the Internet to access pornography, obscene or offensive materials or information.

(D) Using confidential/proprietary information or municipal data for any purpose other than as required to complete assigned work tasks, discussing such confidential/proprietary information or data with anyone other than for work purposes, or removal of such information or data from the municipality's premises without authorization, will result in discipline of the employee.

(E) Security policy for electronic data use and storage shall consist of:

(1) Each employee assigned a password shall be responsible for maintaining the integrity of that password. Passwords are to be changed every six months and an updated list of the passwords will be kept in a sealed envelope for emergency use.

(2) The auto answer function of the modems will be turned off.

(3) All software must be licensed to each site in which it is installed. Anyone who discovers unlicensed software on their system must report it to the Municipal Manager.

(4) Each computer must be exited past the password and powered off at the end of each day unless the function of the system requires it to be left on.
(Ord. CM-03-36, passed - -)

## *DISCIPLINE AND GRIEVANCE PROCEDURE*

### § 32.100 DISCIPLINE AND APPEALS.

(A) Employees of the municipality are employees at-will and thus have no inherent job tenure. Except as otherwise provided by this chapter, any municipal employee may be disciplined, including oral and written reprimands, removal or suspension from their duty for any of the following reasons including, but not limited to:

(1) Incompetency;

(2) Inefficiency;

(3) Dishonesty;

(4) Insubordination;

(5) Failure of good behavior;

(6) Discourteous treatment of the public or fellow employees;

(7) Being habitually tardy or failing to maintain attendance standards;

(8) Being absent without leave;

(9) Neglect of duty;

(10) Falsification of employment records;

(11) Conviction of a crime of moral turpitude;

(12) Failure to immediately report an accident or personal injury;

(13) Violation of municipal rules, regulations or policies; and

(14) Acts of misfeasance, malfeasance or nonfeasance.

(B) The Municipal Manager will notify the employee in writing of the effective date of any disciplinary action, the duration as applicable, the grounds for the action and any internal appeal rights that may exist.

(C) Records of disciplinary action involving written or oral reprimands may be removed, with the approval of the Municipal Manager, after a period of 24 months providing there is no intervening discipline. Records of demotions, suspensions and terminations shall be maintained in accordance with the retention schedule established by the Records Commission.

(D) Any full-time municipal employee (excluding division or department heads) who receives an oral or written reprimand by the action of a superior may appeal such actions directly to the Municipal Manager. Such appeals shall be in writing and include a statement why the employee feels the action is unwarranted. The Municipal Manager shall rule on such appeals within seven working days of receipt and said decision shall be final.

(E) Any full-time employee in a competitive position who is removed, reduced for cause or suspended by action of the Municipal Manager may within five working days of receiving the notice request in writing, which sets forth their grounds for the appeal, a hearing before the Personnel Board in accordance with applicable rules and procedures.

(1) Notwithstanding the above, an employee may be placed on paid or unpaid administrative leave during such time not to exceed 30 days as necessary to complete an investigation of charges that may result in their suspension or dismissal. Before such action is taken, the employee will be advised of the nature of the investigation being conducted.

(2) Before administering any actions set forth in (E) above, the employee will be presented with an outline of the written charges which may be the basis for the disciplinary action and offered the opportunity for a conference with the Municipal Manager at which time they may provide a defense or an explanation of the alleged offense.
(Ord. CM-03-36, passed - -)

## § 32.101 GRIEVANCE PROCEDURES.

(A) A grievance is a dispute as to the interpretation or application of municipal regulations, divisional work rules, personnel or administrative policies. A grievance procedure is intended to promote good employee relations by minimizing and adjusting appropriate grievances, which if left unattended, may have a detrimental impact on employee attitudes, efficiencies or municipal services. All full-time municipal employees may access and utilize the procedures contained herein for resolution of grievances.

(1) At Step 1, the aggrieved employee shall make an oral presentation to their division head. If the division head fails to answer orally within one working day or their reply is unacceptable to the grievant, the grievant may proceed to Step 2.

(2) At Step 2, the grievance shall be reduced to writing, signed by the aggrieved employee and presented to the Municipal Manager’s office within five working days after the occurrence of facts upon which the grievance is based. The Municipal Manager will designate a neutral administrative officer not within the employee’s line of authority who will schedule a meeting with the aggrieved employee and other parties as

deemed necessary within five working days and render a decision within three working days of the meeting. Copies of the decision will be given to the employee, the division head and the Municipal Manager. If the aggrieved employee does not refer the grievance in writing to step 3 within three working days after receipt of an unacceptable decision rendered at this step it shall be deemed resolved.

(3) At Step 3, if the matter remains unresolved, the grievance, together with all the correspondence and records shall be submitted by the grievant to the Municipal Manager. If the Municipal Manager deems it necessary a meeting will be scheduled with the grievant and other necessary parties within five working days of submission of the grievance. Final deposition of the grievance by the Municipal Manager will be made within ten working days of its receipt or the final meeting, as applicable. Copies of the final disposition shall be sent to all concerned parties and the decision by the Municipal Manager is final.

(B) Upon mutual agreement of the parties, the time limits may be extended at any step. However, any complaint not answered within the prescribed time limit, or extension thereof, shall be considered to have been answered in the negative and may be advanced by the employee to the next step.
(Ord. CM-03-36, passed - -)

## *EMPLOYMENT SEPARATION*

### § 32.115 RESIGNATION.

In order to resign in good standing an employee shall provide the Municipal Manager two weeks advance written notice of such intent unless, due to extenuating circumstances, the Manager agrees to a shorter notice.
(Ord. CM-03-36, passed - -)

### § 32.116 JOB ABANDONMENT.

An employee who is absent from their scheduled duties for three or more work days without authorization for such absence, or an employee who fails to report for duty at the expiration of any leave of absence within three work days from the date of such leave shall be considered as having abandoned their position. This will be treated as a resignation without notice and the employee will forfeit payment for accumulated leave that may be payable.
(Ord. CM-03-36, passed - -)

### § 32.117 REDUCTION IN FORCE.

When the Director or Department Head of any administrative department, together with the Municipal Manager, determine for any valid reason, including lack of work or lack of funds, that a reduction in force is necessary, the following factors without priority shall be used to determine which employees will be reduced.

(A) Classification;

(B) Length of service; and

(C) Demonstrated knowledge and abilities.
(Ord. CM-03-36, passed - -)

## § 32.118 RETIREMENT.

(A) Employees are eligible to retire with established benefits provided they meet the requirements of the plan in which they are participating (e.g. PERS or PFDPF).

(B) Employees are requested to notify their supervisor in writing at least 60 days prior to the effective date of their anticipated retirement.
(Ord. CM-03-36, passed - -)

## § 32.119 DISABILITY/RETIREMENT.

(A) When an employee is declared by a licensed medical practitioner that they are unable to perform the essential functions of their position, with or without accommodation, because of either a physical or mental condition, the municipality will aid the employee in applying for disability retirement.

(B) The disability, whether mental or physical, must be presumed to be permanent. However, if the application is denied due to the finding by the retirement board's physician that the employee is physically and mentally capable of performing the essential functions of their position, the employee will be denied disability retirement benefits and required to return to work and perform all such functions at a competent level.
(Ord. CM-03-36, passed - -)

# CHAPTER 33: ADMINISTRATIVE CODE

Section

## *GENERAL PROVISIONS*

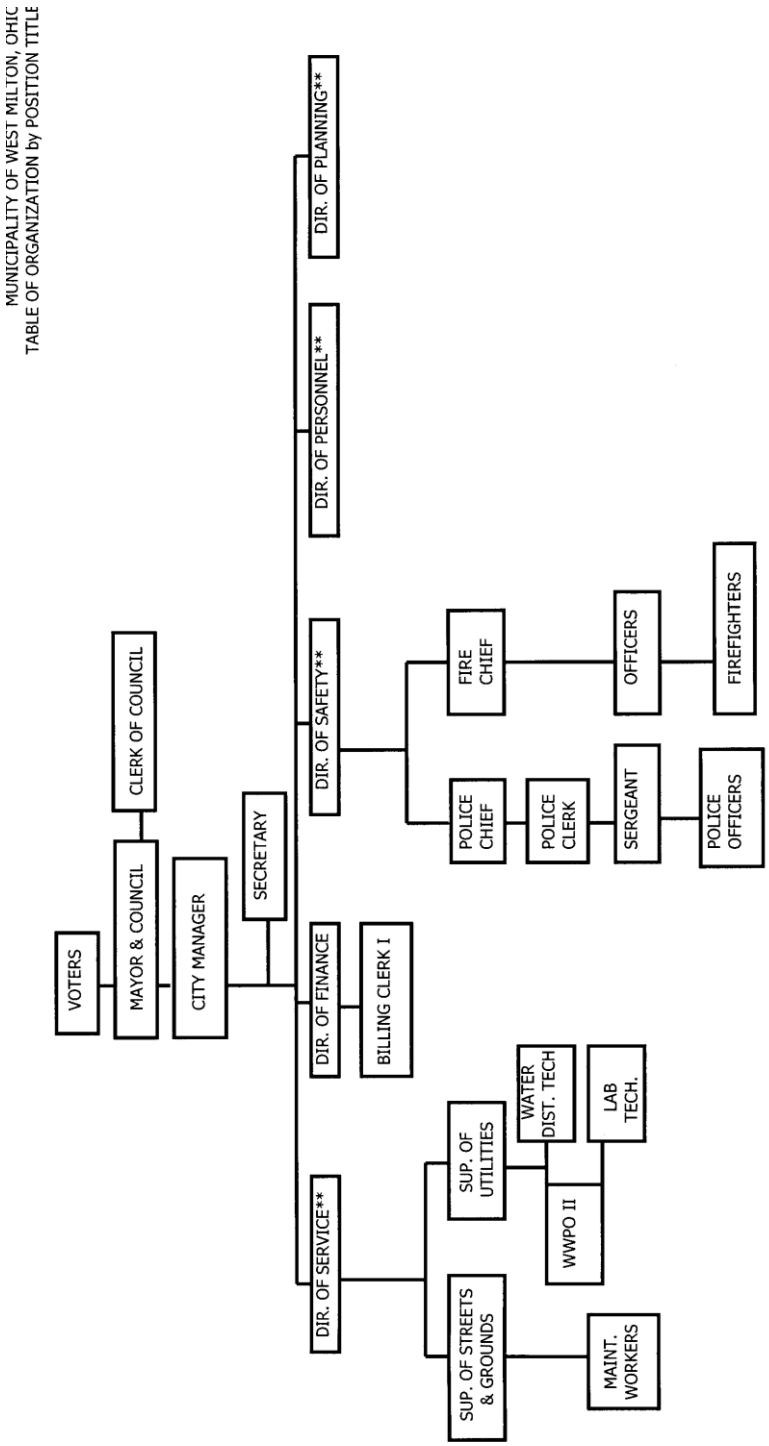
### § 33.01 SURETY BONDS.

All officers and employees of the municipality whose duties require them to handle public money shall be covered by a corporate surety bond to protect the municipality against loss due to their acts. Such bond shall be in the amount of $10,000 for each officer or employee, except where different amounts are provided for in this chapter. Officers and employees who can legally be covered by a blanket bond may be so covered. The premiums of such bonds shall be paid for from the funds of the municipality.

### § 33.02 ORGANIZATION CHART.

The chart (see Figure l), shall be the official organization chart of the government of the municipality.

FIGURE 1


MUNICIPALITY OF WEST MILTON, OHIO
TABLE OF ORGANIZATION by POSITION TITLE
VOTERS
MAYOR & COUNCIL
CLERK OF COUNCIL
CITY MANAGER
SECRETARY
DIR. OF FINANCE
BILLING CLERK I
DIR. OF SERVICE**
SUP. OF STREETS & GROUNDS
MAINT. WORKERS
SUP. OF UTILITIES
WWPO II
WATER DIST. TECH
LAB TECH.
DIR. OF SAFETY**
POLICE CHIEF
POLICE CLERK
SERGEANT
POLICE OFFICERS
FIRE CHIEF
OFFICERS
FIREFIGHTERS
DIR. OF PERSONNEL**
DIR. OF PLANNING**

### § 33.03 APPOINTMENT TO MORE THAN ONE OFFICE.

In accordance with Article VI, § 601(b) of the Charter, two or more departments, divisions or sections provided for in this chapter may be headed by the same person.

### § 33.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CHARTER.*** The Charter of the Municipality of West Milton, Ohio, submitted to the electors Tuesday, May 4, 1965, and approved, and any and all amendments thereto.

***ORDINANCE.*** Legislative action in the form of ordinances, resolutions, and codes unless otherwise specifically provided.

### § 33.05 PUBLIC RECORDS POLICY.

(A) Council hereby adopts a Public Records Policy for the Municipality as set forth in Administrative Regulation 9.0, attached to Ordinance CM-07-35, and made a part hereof.

(B) A public notice acknowledging the Municipality's responsibilities for the maintenance of public records used in the administration, and operation of the Municipality shall be in the area designated for the display of public notices.

(C) A copy of such Public Records Policy shall be included in the Policy Manual of the Municipality. (Ord. CM-07-35, passed 12-11-2007)

## *MUNICIPAL MANAGER*

### § 33.10 DUTIES; BOND.

(A) The Municipal Manager shall be the chief executive and administrative officer of the municipality. He shall perform the duties required of him by Article V, § 5.05 of the Charter, and such additional duties as may be prescribed herein.

(B) The Municipal Manager shall be covered by bond in the amount of $50,000.

## § 33.11 RULES AND REGULATIONS.

The Municipal Manager may prescribe such general rules and regulations as he may deem necessary or expedient for the general conduct of the administrative departments. The head of each department shall, upon approval of the Manager, in like manner prescribe such rules and regulations as he may deem necessary and expedient for the proper conduct of his department, not inconsistent with rules and regulations prescribed by the Municipal Manager.

## § 33.12 TRANSFER OF PERSONNEL AND WORK.

(A) The Municipal Manager may temporarily transfer employees from one department to another department in order to expedite the work of a department or to meet increased duties of a seasonal or periodic nature which may occur within a department.

(B) The Municipal Manager may direct any department to perform work for any other department.

## *DEPARTMENTS OF MUNICIPAL GOVERNMENT*

## § 33.15 DIVISION INTO DEPARTMENTS; HEADS.

(A) The administrative service of the municipality shall be divided, under the Manager, into the following departments with the following heads thereof:

(1) Department of Finance; Director of Finance.

(2) Department of Law; Director of Law.

(3) Department of Safety; Director of Safety (Chief of Police, Fire Chief).

(4) Department of Service; Director of Service.

(5) Department of Planning; Director of Planning.

(6) Department of Personnel; Director of Personnel.

(7) Department of Health; not staffed.

(B) The Department of Health shall not be staffed. Functions which would normally be performed by the Department of Health shall be provided by the Miami County Board of Health.

## § 33.16 DUTIES OF OFFICERS.

Each officer shall perform all duties required of his or her office by the Charter, by law, by this chapter, and municipal ordinances, and he shall perform such other duties not in conflict therewith as may be assigned by the Municipal Manager.

## § 33.17 RESPONSIBILITY OF DEPARTMENT HEADS.

(A) The heads of all departments shall:

(1) Be immediately responsible to the Municipal Manager for the effective administration of their departments and all activities assigned thereto;

(2) Keep informed as to the latest practices in their particular field and inaugurate, with the approval of the Municipal Manager, such new practices as appear to be of benefit to the service and to the public;

(3) Submit complete reports of the activities of their departments semi-annually, January 15 and July 15 of each year, and such other reports as requested by the Municipal Manager;

(4) Establish and maintain a system of records and reports in sufficient detail to furnish all information necessary for proper control of departmental activities and to form a basis for the reports submitted or required by the Municipal Manager;

(5) Have power, when authorized by the Municipal Manager and subject to Article VI, § 6.07 of the Municipal Charter, to appoint and remove their subordinates;

(6) Be responsible for the proper custody and maintenance of all municipal property and equipment used in their departments; and

(7) Account for and be responsible for all fees or other moneys collected by or coming into the possession of their departments. Each department head shall report to the Director of Finance daily all such fees and moneys coming into his possession during each day.

(B) Whenever for any reason a department head is unable to perform his duties, resigns or otherwise leaves municipal service, the Municipal Manager may name an acting department head until the disability is removed or the position is filled by appointment.

## § 33.18 PURCHASING AND SELLING PROCEDURES.

(A) General provisions:

(1) The Municipal Manager or his or her designated assistant shall act as purchasing agent for the municipality, making all purchases required by the various departments for equipment and materials.

(2) Whenever the head of a department determines it necessary or desirable that supplies, materials, equipment or contractual services be purchased or secured, the department head shall prepare and submit to the purchasing agent a requisition therefor, specifying the nature of the purchase desired, the quantity required,

estimated unit cost and the performance requirements to be met. Upon receipt of any such requisition the purchasing agent shall inquire of potential suppliers as to the cost of such purchase, in the form of informal offers to supply the items required.

(3) If the probable cost thereof will be more than $25,000, he or she shall resort to formal bidding, as hereinafter provided. If the probable cost will be $15,000 or less, he or she may award the purchase to the supplier offering the lowest and best bid among the informal bidders. If the cost will be $7,500 or more, at least three informal bids, or a statement why three bids are not available, shall be secured in writing and filed with the Director of Finance.

(4) The municipality shall comply with prevailing wage laws.

(5) Whenever formal bidding is necessary by reason of the probable amount involved, the Municipal Manager or his or her designated agent shall prepare or cause to be prepared specifications for the article or services required and shall advertise the requirements of the municipality for at least two consecutive weeks in a newspaper of general circulation in the municipality, or in professional or trade magazines appropriate for the purpose, inviting suppliers to tender bids in writing for the furnishing of such requirements, such bids to be publicly opened at a time and place not less than 15 days following the date of the first advertisement, at a time and place specified in the current published notice. The inclusion of an item to be purchased in the annual appropriation worksheet and specifically named in the five year capital improvement resolution shall be sufficient authority for the expenditure without the passage of any supplementary or specific ordinance by Council. If, however, the contemplated purchase shall not have been included in the annual appropriation worksheet and five year capital improvement resolution a supplementary appropriation ordinance shall be required authorizing the bidding and expenditure of funds. This provision, however, shall not be deemed to modify, or in any way affect Council's right to accept or reject the bids so received under this procedure.

(6) The Manager shall report to Council the bids and the results of any investigation of the responsibility of the bidders and shall recommend to Council the selection of the lowest and best bid, or, if he or she determines that the interest of the municipality would be better served, the rejection of all bids.

(7) No contract for the purchase of articles or services at a cost of more than $15,000 shall be made unless Council has, by ordinance or resolution, authorized and directed the Municipal Manager to do so. Contracts for the purchase of articles or services costing more than $15,000 shall be approved as to form by the Director of Law and submitted to the Director of Finance for certification as to the availability of funds.

(8) The Council acknowledges a desire to award contracts involving municipal concerns and funded by municipal money, to individuals and businesses which are located within the Municipality of West Milton. Where a preliminary analysis of the bids identifies a bid from a West Milton individual or business, the Council may give a preference to the West Milton bid and award the contract to the West Milton bidder when:

(a) Such bids within 5% of the lowest bid price (for a low bid of $50,000 or less) or within 2% of the lowest bid price (for a low bid price over $50,000); and

(b) But for the bid price, the West Milton bid would otherwise be considered the lowest and best bid by the municipality in its normal evaluation procedures in deciding whether or not to award the contract.

(9) The requirements of formal bidding may be waived by affirmative vote of five Council members upon a finding that:

(a) The purchase consists of goods or services, or any combination thereof, for which only one source of supply is reasonably available;

(b) The purchase of goods or services is made from another political subdivision, public agency, the state, of the federal government, or as a third-party beneficiary under a state or federal procurement contract;

(c) The purchase substantially involves services of a personal, professional, highly technical, or scientific nature, including but not limited to the services of an attorney, physician, surveyor, appraiser, investigator, adjuster, advertising consultant, or licensed broker, or involves the special skills or proprietary knowledge required for the servicing of specialized equipment owned by the city;

(d) The purchase consists of the good or services of a public utility; or

(e) There would be no benefit to the municipality to undertake formal bidding and the best interest of the municipality is served by waiving the formal bidding.

(B) Selling procedures:

(1) The Municipal Manager or his or her designated assistant shall act as selling agent for the municipality. He may dispose of all unused, worn out, surplus or obsolete equipment, materials, refuse, or other personal property of the municipality not needed for any municipal purpose. Whenever a head of a department determines that within his department such equipment, materials, refuse, or other personal property exists, he shall prepare a written list of those items and an estimated fair selling price for those items and submit the list to the selling agent, who shall review and determine the estimated fair purchase price.

(2) If the estimated fair selling price is $2,500 or less, the selling agent shall have the absolute and sole discretion of selling the property without Council's approval and without any bidding requirements.

(3) If the estimated fair selling price is more than $2,500 but less than $5,000, the selling agent shall resort to formal bidding and tabulation. However, if the highest bid is, in the opinion of the Municipal Manager, an acceptable bid, he or she may consummate the sale without any further action by Council.

(4) If the estimated fair selling price is $5,000 or more, the selling agent shall resort to formal bidding and tabulation. Provided, however, in such event, the Municipal Manager shall have no authority to consummate the sale until he or she has received authority by resolution of Council duly passed to accept the highest bid and authorize him or her to consummate the sale.
(Ord. CM-552, passed 10-7-1980; Am. Ord. CM-881, passed 3-14-1989; Am. Ord. CM-999, passed 3-12-1991; Am. Ord. CM-99-23, passed 6-8-1999; Am. Ord. CM-04-08, passed 3-9-2004; Am. Ord. CM-12-23, passed 8-14-2012)

## § 33.19 PURCHASE ORDERS.

Whenever formal bidding is followed pursuant to this chapter, the purchasing agent shall prepare a purchase order addressed to the successful bidder, directing him to supply the goods or services required in accordance with the terms agreed upon.
(Am. Ord. CM-12-23, passed 8-14-2012)

## § 33.20 INSPECTION.

The purchasing agent shall inspect or supervise, or cause to be inspected or supervised, the inspection of all deliveries of supplies, materials, equipment or contractual services, to determine their conformance with the specifications set forth in or referred to in the order or contract.
(Am. Ord. CM-12-23, passed 8-14-2012)

## § 33.21 PROCUREMENT OF DESIGN-BUILD CONSTRUCTION PROJECT.

(A) Whenever it is deemed to be necessary to complete a public improvement project utilizing a design-build firm, upon authorization from Council, the Municipal Manager shall develop, or contract for the development of, a scope-of-work statement for that public improvement which defines the public improvement and in the judgment of the Municipal Manager provides interested persons with sufficient information regarding the city's requirements for the public improvement to enable those persons to submit proposals for consideration which are consistent with the needs of the municipality. The scope-of-work statement may include preliminary criteria, design criteria, budget parameters, and schedule and delivery requirements for the public improvement. The municipality may consult with and seek input from citizens and interested persons; including but not limited to property owners, in preparing the scope-of-work statement and carrying out its other responsibilities under this chapter.

(B) If the municipality contracts for the development of a scope-of-work statement and uses a professional design firm to prepare the scope-of-work statement, the professional design firm that prepares the scope-of-work statement is ineligible to hold any interest in any design-build construction contract for that public improvement.

(C) The municipality may utilize either the one-step procurement process or the two-step procurement process as described in this section. The determination of whether to utilize a one-step or two-step procurement process shall be made upon consideration of the following factors:

(1) Whether the public improvement the city intends to construct is suited to the use of design-build services;

(2) Whether there exist enough capable and experienced design-build firms which will seek the award of the design-build construction contract such that the bidding process is competitive;

(3) Whether the municipality has the capability to manage the selection process and project under a design-build contract;

(4) How much time and money the municipality must expend for preliminary design work necessary to enable a design-build contractor to develop a price or cost proposal for the design-build construction contract;

(5) Whether a design-build construction contract is suitable given the time constraints for the construction of the public improvement;

(6) Whether the design-build process will provide the opportunity for public comment, if needed, as determined by both the Municipal Manager and Council; and

(7) Other factors established by the municipality.

(D) For both the one-step and the two-step procurement process, the municipality shall first advertise as generally described in § 33.18(A)(5) and may include forms of media, appropriate trade journals, and any other publications considered appropriate and may notify design-build firms believed to be interested in contracting for public improvements. The advertisement shall invite interested persons or firms to submit either:

(1) Proposals for consideration (in the case of one-step procurement process); or

(2) Statements of qualification (in the case of two-step procurement process).

(E) The advertisement shall include a general description of the public improvement, a statement of the professional design and construction services required for the public improvement, and the method by which a design-build firm may submit a proposal for consideration or statement of qualifications to be considered by the municipality in awarding the design-build construction contract.

(F) The advertisement shall either include the scope-of-work statement in the advertisement or a statement that interested persons may obtain the scope-of-work statement from the municipality.

(G) When the municipality is using the two-phase selection procedure, the advertisement shall request a statement of qualifications for the design-builder, and may request a statement of qualifications from any major subcontractors to be used on the project and a general response to the scope-of-work statement but shall not request the technical submission. When the municipality is using the one-phase selection procedure, the advertisement shall request a statement of qualification for the design-builder, and may request a statement of qualifications from any major subcontractors to be used on the project, a response to the scope-of-work statement, and in a separate sealed envelope, the submission of the technical submission. As used herein, the technical submission shall describe the technical nature of the design-build proposal, include design concepts and address the requirements set forth in the scope-of-work statement for that improvement, and may include the following items as deemed appropriate by the municipality:

(1) Line-item or unit cost proposal;

(2) Lump sum cost proposal and/or guaranteed maximum price;

(3) Schedule and date of substantial completion of the project upon which the contract price is based;

(4) Detailed response to the scope of work; and

(5) Such other information deemed appropriate by the municipality.

(H) In the two-phase procedure to select a design-build firm, the municipality shall next request from the most qualified firms selected a technical submission for the public improvement which includes design concepts and addresses the requirements set forth in the scope-of-work statement for that improvement.

(I) The municipality's request for a technical submission shall provide all of the following information:

(1) The estimated lump sum price of the public improvement;

(2) The criteria which the municipality will use in evaluating a technical submission; and

(3) The deadline for submitting a technical submission.

(J) (1) To the extent information contained in the technical submission of a design-build firm with whom the municipality does not enter into a construction contract can reasonably be considered a trade secret such information shall remain the property of the design-build firm. The firm shall prominently mark each document that it considers a trade secret as a trade secret.

(2) Each firm making a submission to the municipality shall grant the municipality an irrevocable, fully paid up license to use as it determines proper the information, concepts, ideas, techniques, processes, and similar information in its submission to the municipality. Except to the extent that the municipality enters into a contract with a design-build firm, the firm will have no responsibility or liability to the municipality, its employees, contractors and/or agents related to the use of such information, concepts, ideas, techniques, processes and/or similar information.

(K) The municipality shall evaluate any responses submitted to it pursuant of division (G) hereof on the basis of the professional design and construction qualifications and the technical approach to the scope-of-work statement of the design-build firms who submit a response. When evaluating the qualifications of a design-build firm in either the one-phase or two-phase procedure, the municipality shall consider all of the following factors relative to the design-build firm:

(1) Competence of the design-build firm to perform the required professional design and construction services as indicated by the technical training, education, and experience of the firm's personnel, especially the technical training, education and experience of the firm's employees who would be assigned to perform the services;

(2) Ability of the design-build firm in terms of the firm's workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design and construction services competently and expeditiously;

(3) Past performance of the design-build firm as reflected by the evaluations of the municipality and pervious clients with respect to such factors as control of costs, quality of work, and meeting of deadlines;

(4) Financial responsibility as evidenced by the capability to provide a letter of credit, a surety bond, certified check, or cashier's check in an amount equal to the value of the design-build construction contract, or by other means acceptable to the municipality;

(5) Other similar factors.

(L) For selecting a design-build firm after submission of the technical submission, the municipality shall rank firms in the order of their qualifications from the most to least qualified. The municipality may enter into negotiations for a design-build construction contract with the firm it ranks most qualified to perform the required professional design and construction services at a compensation the municipality and design-build firm determined to be fair and reasonable. The municipality, in ranking the firms and their technical submissions may consider the factors listed above as well as pricing, timing, and other matters deemed appropriate depending on the needs of the project.

(M) The municipality and the design-build firm the municipality ranks as most qualified shall enter into negotiations for a construction contract to ensure both of the following:

(1) The design-build firm and the municipality mutually understand the essential requirements involved in providing the required professional design and construction services.

(2) The design-build firm will make available the necessary personnel, equipment, and facilities to perform the professional design and construction services within the time required by the design-build construction contract.

(N) If the municipality fails to negotiate a construction contract with the design-build firm it ranks the most qualified, the municipality shall inform the firm in writing of the termination of negotiations. The municipality shall then enter negotiations with the next ranks qualified. If these negotiations fail, the municipality shall inform this firm in writing of the termination, and then shall enter to the next most until a design-build construction contract is negotiated or until the municipality exhausts the number it initially selected.

(O) If the municipality fails to negotiate a construction contract with any of the design-build firms selected and ranked it may do either of the following:

(1) Select additional design-build firms, rank those on the basis of their qualifications, and enter into negotiations with the firm it ranks most qualified, in the manner specified; or

(2) Use any other procedure permitted by law to contract for the construction of the public improvement.

(P) A design-build firm that is awarded a construction contract for the construction of a public improvement shall provide a letter of credit, a surety bond, certified check or cashier's check, of by other means acceptable to the municipality for not less than an amount equal to the amount of the contract minus the amount of the contract related to providing design services. The design-build firm shall have and maintain, or be covered by a professional liability insurance policy acceptable to the municipality. The bond and the liability insurance policy shall be provided by a company that is authorized to do business in this state.
(Ord. CM-12-23, passed 8-14-2012)

## § 33.22 COOPERATIVE PURCHASES.

Formal bidding is not required for any purchases through the Ohio Cooperative Purchasing Act, the Southwest Ohio Purchasers for Government Program, the Ohio Department of Transportation Cooperative Purchasing Program, the Miami Valley Fire/EMS Alliance Program, or any other cooperative purchasing programs offered or sponsored by any other political subdivision, regional council of government, pubic agency, the state, or the federal government, or as a third party beneficiary under a state or federal procurement contract. The Purchasing Agent is authorized to modify the procedures set out in this chapter, except as to authorization to purchase, as reasonably necessary to participate in these cooperative purchasing programs and to enter into such agreements as are necessary to participate in these programs.
(Ord. CM-12-23, passed 8-14-2012)

## § 33.23 EXECUTION OF CONTRACTS.

(A) Unless otherwise specifically stated by a resolution or ordinance of Council, all contracts made by and on behalf of this municipality shall be signed by the Municipal Manager, or by the person appointed to act in the absence of the Municipal Manager, and attested by the Clerk of Council.

(B) If a seal is provided for the municipality, the seal shall be affixed to all contracts referred to above. (Am. Ord. CM-12-23, passed 8-14-2012)

## § 33.24 PURCHASE OF SURPLUS COMMODITIES.

The purchasing agent may purchase any personal property from the federal or other state or local government whenever such property is offered, if he finds that such purchase can be made at prices less than would be obtained by taking bids as provided by law for purchases from private individuals. It shall not be necessary for him to advertise for bids, but he may make such purchase upon such formalities and such terms as are required by the vendor unit of government, irrespective of the amount of money involved.
(Am. Ord. CM-12-23, passed 8-14-2012)

## § 33.25 CLERK OF COUNCIL; DUTIES.

The Clerk of Council shall perform such duties as prescribed by Article IV, § 4.09 of the Charter, law, ordinance or as directed by the Municipal Council. Should the Clerk of Council be employed or appointed by the Manager for any other services, the Clerk will be responsible to the Manager for these services.

## § 33.26 CLERK OF COUNCIL; PRE-ASSESSMENT NOTICE.

At least 15 days prior to the consideration of a resolution of necessity by the Municipal Council to require the construction or repair of sidewalks, curbs, gutters, or driveway approaches within the municipal corporation by the owners of the lots and lands abutting thereon, the Clerk of Council shall cause notice to be sent by regular mail to such owner at his or her last known address or to the address to which tax bills are sent, informing them of Council's intention to consider legislation dealing with such possible assessment.

The form of the notice required will be substantially as follows:

To:_____

Please Take Notice That:

On the _____ day of _____, 19__, the Council of the Municipality of West Milton, Ohio, will consider Resolution No.
_____.

Said Resolution No. ____ declares the necessity of (constructing) (repairing) certain (sidewalks) (curbs) (gutters) (driveway approaches).

Under the provisions of said Resolution you would be required to (construct) (repair) the (sidewalks) (curbs) (gutters) (driveway approaches) abutting your property on the _____ side of _____, otherwise described by street address as No. _____, West Milton, Ohio, in accordance with the plans and specifications prepared and now on file in the office of the Clerk of Council of said Municipality.

In the event said (sidewalks) (curbs) (gutters) (driveway approaches) would not be (constructed) (repaired) within _____ (  ) days from the date of service of notice, after the passage of Resolution No. ____, the same to be done and the entire cost thereof would be assessed against your property in the manner provided by law.

The above matter will be considered by the Council at the Council Meeting held on the ____ day of _____, 19 __, at the Council Chambers, Municipal Building, ____ South Miami Street, West Milton, Ohio, at _____ o'clock ___.

Dated: _____

_____
Clerk of Council

## *DEPARTMENT OF FINANCE*

### § 33.30 DUTIES.

The Department of Finance shall be administered by the Director of Finance, who shall be accountable to the Municipal Manager. The Director of Finance shall perform duties as set forth in Article VI, § 6.03 of the Charter and in addition the following specific duties:

(A) Keep in proper books a full and accurate record of all moneys received and disbursed on behalf of the municipality and of all moneys due to and from the municipality upon contracts and orders upon which the municipality is obligated and otherwise;

(B) Receive and have custody of all moneys paid to the municipality and disburse all municipal moneys in accordance with the Charter and ordinances, signing all warrants upon the Municipal Treasury in making such disbursements;

(C) Render a monthly report to the Municipal Manager and for Council reflecting the financial condition of the municipality, showing monthly beginning balances, receipts, encumbrances, and outstanding balances of all funds;

(D) Certify that funds are available according to law to pay moneys provided by all contracts, agreements, or other obligations for the expenditure of municipal funds. No such contract, agreement, or other obligation shall be valid until so certified;

(E) Make payment of the interest and principal on the bonded debt when due, and keep accurate records of such debt and of such payments thereon;

(F) Prepare the municipal payrolls;

(G) Administer all employee pension and benefit funds, receiving such funds, acting as custodian thereof and making disbursements therefrom, signing warrants and checks for such purposes, according to law;

(H) Enter into contracts with legal depositories for the deposit of all funds of the municipality with such depositories, rent safety deposit boxes or otherwise provide for the safekeeping of securities and other documents for payment of money to the municipality, and maintain custody of all documents evidencing investments of the municipality and of pension and benefit funds of municipal employees;

(I) Prepare and submit such reports as may be required by law;

(J) Assist the Municipal Manager in the preparation of the annual budget;

(K) The Finance Director shall keep in custody a record of all maintenance and performance bonds posted and notify the Municipal Manager 30 days prior to the expiration date; and

(L) Maintain custody of all legal documents; by way of illustration and not limitation, contracts, agreements, deeds, leases and easements.

## § 33.31 CONTRACTS AND PURCHASE ORDERS.

(A) Every undertaking by the municipality involving the expenditure of municipal money shall be in writing, in the form of a purchase order or of a contract as may be appropriate. No officer or employee of the municipality shall have authority to enter into any oral or written agreement involving the expenditure of money. The Municipal Manager shall sign all contracts on behalf of the municipality, and the purchasing agent and the Director of Finance shall sign all purchase orders.

(B) The Director of Finance shall attach to each contract a certificate signed by the Director of Finance, and there shall be attached to or included in each purchase order a certificate of the Director of Finance that the estimated amount of money required to meet the obligation of the municipality by such contract has been lawfully appropriated and in the Municipal Treasury or in the process of collection to the credit of the fund involved, free from any prior encumbrance. In the case of a contract to continue beyond any current year and to involve expenditures of money in future years, the Director of Finance need only certify as to the money estimated to be paid by the municipality thereunder during the current year.

## § 33.32 PAYMENT OF FUNDS.

The Director of Finance may require invoices to be submitted to him, with written certificate thereon by the head of the department of the municipality concerned, to the effect that the goods or services for which the

invoice is rendered have been delivered or performed in the manner, quantity and quality specified, prior to the issuance of the municipality's warrant in payment thereof, whereupon the municipality's warrant shall be promptly issued in payment.

## § 33.33 PAYROLLS.

Payrolls shall be submitted to the department head for approval, when prepared by the Director of Finance, and, upon the department director's approval thereof, the Director of Finance shall issue his warrants in payment thereof when due. It shall not be necessary for the Director of Finance to encumber in advance or to certify as to the availability of funds appropriated for personal services except those obtained on a contractual basis, provided that upon issuance of such warrants the Director of Finance shall immediately cause the appropriate funds to be encumbered to the extent of the warrants issued.

## § 33.34 PAYMENT ON CONTRACTS.

Prior to the making of partial or final payments on contracts, the Municipal Manager shall certify that labor, equipment or material for which payment is to be made has been performed, delivered or supplied. In the case of partial payments, the payments shall be made on estimates of the amount and value of the work accomplished or material furnished; the certificates or estimates shall show the amount and value of all the work performed or material furnished and the amount of money paid on previous estimates or certificates. Only the difference in value between the latest estimates and amounts paid on previous estimates, less any money retained as guarantees or for other valid reasons, shall be paid as a partial payment, except in the case of a final payment. Upon receiving such certificates, estimates or invoices, properly certified, the Director of Finance shall then issue warrants in payment.

## § 33.35 BOND.

The Director of Finance shall be covered by a bond in the sum of $50,000.

## § 33.36 TREASURY INVESTMENT.

(A) *Investment of funds.* When the Director of Finance shall submit to the Municipal Manager a statement of moneys in the treasury or in process of collection and a schedule showing the proper requirements of money for the use of the municipality for the ensuing six-month period, together with a recommendation as to whether any moneys in the treasury shall be invested, the Manager together with the Director of Finance and Director of Law shall invest so much of the money as they determine be invested in the manner provided by law.

(B) *Treasury investment account.* The Director of Finance shall maintain an account to be known as the treasury investment account, in which shall be entered all transactions relating to the investment of treasury funds as herein provided, and shall furnish to the Municipal Manager a duplicate of all items entered thereon, as provided in R.C. § 731.58 and other applicable laws.

(C) *Custody of securities.* All securities belonging to the municipal treasury purchased in accordance with the provisions of this section shall be in the custody of the Director of Finance and shall be kept by him in a safety deposit box or fireproof safe as are other securities owned by the municipality, and properly segregated from other securities.

(D) *Bonds.* The officers named herein shall be bonded in amounts of not less than $10,000, but no officer who has already been covered by a bond in such an amount to the municipality shall be required to give an additional bond by reason of this duty.

## *DEPARTMENT OF LAW*

### § 33.40 DUTIES.

(A) The Department of Law shall be under the direction of the Director of Law accountable to the Municipal Manager.

(B) In addition to performing such duties as are assigned to the office of solicitor by law, he shall perform the following duties:

(1) Attend meetings of Council and boards and commissions when requested;

(2) Advise and render opinions to the Municipal Manager on all matters of law involving the municipality, officers and departments in the performance of their official duties;

(3) Approve all ordinances, contracts, resolutions and other documents of a legal nature to be made and entered into by the municipality, and approve the form thereof;

(4) Represent the municipality before all courts sitting within the state in actions at law in which the municipality is a party or has interest therein;

(E) Assist in the preparation of documents and transcripts for the issuance of bonds and notes of the municipality;

(F) Perform such other duties as may be assigned to the Department of Law by statute and as may be necessary and proper in the administration of the business of the municipality; and

(G) Prosecute in the courts of proper jurisdiction all cases based on affidavits filed therein by the Police Division and by other municipal officials, alleging violations of municipal ordinances or of state laws, and prosecute such cases based upon affidavits filed in such court by private parties as appear to the Solicitor to be meritorious.

### § 33.41 BOND COUNSEL.

Whenever Council proposes to issue bonds or notes to finance public improvements, or for any other purpose authorized by the laws of the state, the Municipal Manager may engage the services of a firm of recognized bond attorneys to assist the Director of Law in causing such bonds and notes to be issued and to render approving opinions thereon to purchasers of such bonds and notes.

## *DEPARTMENT OF SAFETY*

### § 33.45 DIRECTOR OF SAFETY; COMPOSITION OF DEPARTMENT.

The Department of Safety shall be administered by the Director of Safety. It shall be composed of the Division of Police and the Division of Fire. The Director of Safety shall be accountable to the Municipal Manager. The Director of Safety shall perform duties as provided for in Article VI, § 6.04 of the Charter.

### § 33.46 DIVISION OF POLICE.

The Police Division shall perform the following duties in providing police services to the municipality: be responsible for the preservation of the public peace and order; the prevention and detection of crime; the apprehension of offenders of law and ordinances; the protection of persons and property; and the enforcement of the criminal laws of the United States and the State of Ohio and the ordinances of the municipality.

### § 33.47 DIVISION OF FIRE.

The Division of Fire shall provide the following services to the municipality: be responsible for the prevention of fire and for the control and extinguishment thereof within the municipality and within other areas in accordance with any agreements or contracts which the municipality may now have or may enter into, and for the protection of lives and property endangered by fire.

### § 33.48 CHIEF OF POLICE AND FIRE CHIEF.

(A) The Police Chief and the Fire Chief shall each be in charge of his or her respective division and of the personnel thereof.

(B) Each shall be accountable to the Director of Safety. Each shall perform the following duties:

(1) Formulate and recommend to the Director of Safety, for approval, policies, procedures, rules and regulations for the government and operation of his division and its personnel;

(2) Be responsible for the performance by his division of the duties assigned to it by the Charter, by law, and by this chapter;

(3) Have control of the assignment of all personnel within his or her division;

(4) Provide for the training and instruction of personnel within his or her division; and

(5) Perform such other duties as the Director of Safety may prescribe.

## § 33.49 VOLUNTEER FIREMEN'S DEPENDENTS' FUND.

Under provisions of R.C. Chapter 146, a Volunteer Firemen's Dependents' Fund is established, which shall be administered by the Volunteer Firemen's Dependents' Board, to be constituted and to have such powers and duties as are set forth in the Ohio Revised Code.

## *DEPARTMENT OF SERVICE*

## § 33.55 DIRECTOR OF SERVICE; COMPOSITION OF DEPARTMENT.

(A) The Department of Service shall be administered by the Director of Service, who shall be accountable to the Municipal Manager. He or she shall perform duties as set forth in Article VI, § 6.05 of the Charter.

(B) The Department of Service shall include the following divisions:

(1) Division of Water;

(2) Division of Wastewater;

(3) Division of Streets and Storm Sewers;

(4) Division of Parks; and

(5) Division of Buildings.

## § 33.56 DIVISION OF WATER; FILTRATION; DISTRIBUTION; BILLING.

(A) The water treatment and filtration plant shall be under the direction of the chief operator, who shall be accountable to the Director of Service. The chief operator shall be a State of Ohio Certified Operator of the class necessary for the operation of the plant or be accountable to a person having the necessary certification. There

may be one or more employees under the direction of the chief operator. The division shall perform the following duties:

(1) Operate, repair and maintain the treatment facilities, including the building and pumping station;

(2) Maintain accurate records of all operations, including quantities of water pumped and sold to consumers; and

(3) Perform other duties required by the Director of Service or the Manager, which duties may include assignments to the other service departments or divisions.

(B) The water distribution section shall be under the direction of the Superintendent of Distribution who shall be accountable to the Director of Service. The Superintendent shall be a State of Ohio Certified Maintenance Class necessary for the operation of the distribution system or be accountable to a person having the necessary qualifications. There may be one or more employees under the direction of the Superintendent. The division shall perform the following duties:

(1) Operate, repair and maintain the water distribution system, including elevated storage towers, mains, services, meters, valves and fire hydrants and appurtenances thereto and to distribute water through the system to residents, hydrants and other places where such water is used within and without the municipality;

(2) Maintain accurate records of all operations, including a map of the system showing all gauges, valves, hydrants, mains, main sizes and type of material;

(3) Read all water meters and record the readings in the meter books; and

(4) Perform other duties required by the Director of Service or Manager, which duties may include assignments to the other service departments or divisions.

(C) The billing section shall be under the direction of the Billing Clerk, who shall be accountable to the Director of Service. There may be one or more employees under the direction of the Billing Clerk. The billing section shall perform the following duties:

(1) At each billing period prepare, record and mail water and sewage bills to each customer determined from meter readings in the route books;

(2) To collect all moneys and record in the cash book and consumer ledger, all moneys to be deposited with the Finance Director daily;

(3) Cash book and consumer ledger shall be balanced at the end of each pay period;

(4) Delinquent accounts shall be determined and made available to the Service Director for collection;

(5) To keep all necessary records which are customary to the billing section; and

(6) In addition to the above duties, perform other duties requested by the Director of Service or Manager, which may include assignments to other service departments or divisions.

## § 33.57 DIVISION OF WASTEWATER.

(A) The wastewater treatment plant shall be under the direction of the chief operator, who shall be accountable to the Director of Service. The chief operator shall be a State of Ohio Certified Operator of the class necessary for the operation of the plant or be accountable to a person having the necessary certification. There may be one or more employees under the direction of the chief operator.

(B) The division shall perform the following duties:

(1) Operate, repair and maintain the treatment facilities, including the building and grounds;

(2) Perform all tests necessary for the proper operation of the plant;

(3) Maintain accurate records of all operations including flows, tests and maintenance; and

(4) Perform other duties requested by the Director of Service or Manager, which duties may include assignments to the other service departments or divisions.

## § 33.58 DIVISION OF STREETS AND STORM SEWERS.

(A) The Division of Streets and Storm Sewers shall be under the direction of the Superintendent of Streets, who shall be accountable to the Director of Service. There may be one or more employees under the direction of the Superintendent of Streets.

(B) The Division shall perform the following functions:

(1) Maintain, repair, construct, improve and extend the public streets and storm sewer systems of the municipality.

(2) Erect, construct, apply and maintain all street signs and traffic-control signs and markings within the public right-of-way; and

(3) Perform other duties required by the Director of Service or the Municipal Manager which duties may include maintenance, repair and construction of any utility lines of the municipality.

## § 33.59 DIVISION OF BUILDING.

(A) The Division of Building shall be under the direction of the Building Official, who shall be accountable to the Director of Service. There may be one or more employees under the direction of the Building Official.

(B) The division shall perform the following duties:

(1) Administer the building code, including the issuance of permits, except that in the case of permits for other than one-, two- or three-family residences, the building plans shall be approved by the State of Ohio before a building permit is issued; and

(2) Administer the provisions of Ch. 153 insofar as that chapter relates to the erection, alteration, relocation or demolition of dwelling units within the municipality, or the zoning thereof.

## § 33.60 DIVISION OF PARKS.

(A) The Division of Parks shall be administered by the Director of Service.

(B) The control and management of parks shall be in accordance with the zoning and subdivision code and shall have the control and management of:

(1) All park lands, park entrances, parkways, boulevards, connecting viaducts, children's playgrounds and public baths and stations of public comfort located in such parks;

(2) Of all improvements thereon; and

(3) The acquisition, construction, repair and maintenance thereof. The Board shall exercise its powers and perform all its duties, in regard to the above property, under the Director of Service in accordance with Charter, Article VI, § 6.05.
(Am. Ord. CM-1069, passed 4-14-1992)

## *DEPARTMENT OF PLANNING*

## § 33.65 DEPARTMENT OF PLANNING, GENERAL.

(A) The Department of Planning is created and shall be administered by the Director of Planning, who shall be accountable to the Municipal Manager. He or she shall perform duties as set forth in §§ 33.16 and 33.17 as herein provided.

(B) The Director of Planning shall perform the following duties together with such other functions as the Municipal Manager may assign:

(1) To study and advise the Manager on any matter affecting the physical development of the municipality;

(2) To formulate and recommend to the Manager a comprehensive plan and modifications thereof;

(3) To review and make recommendations to the Manager regarding proposed Council action implementing the comprehensive plan pursuant to the Charter;

(4) To participate in the preparation and revision of the capital improvement program; and

(5) To advise the Planning Board and Board of Adjustments in the exercise of their responsibilities and in connection therewith to provide necessary staff assistance.

## § 33.66 COMPENSATION.

All Planning Board members shall be compensated at the rate of $25 per member per meeting attended, but in no event shall such compensation exceed $50 per member per month.
(Ord. CM-99-09, passed 3-9-1999)

# CHAPTER 34: INVESTMENT OF MUNICIPAL FUNDS

Section



## § 34.01 INVESTMENTS BY FINANCE DIRECTOR.

The Director of Finance is authorized to award and invest municipal funds as they become available in accordance with R.C. §§ 135.09 and 135.14.

## § 34.02 INTEREST FROM INVESTMENTS.

The Director of Finance is authorized and directed that all interest earned on public funds invested as interim deposit shall be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong.

# CHAPTER 35: SPECIAL FUNDS

Section



## § 35.01 FEDERAL ANTIRECESSION ASSISTANCE FUND.

(A) There is established a special and separate fund known as the "Federal Antirecession Assistance Fund" pursuant to 42 U.S.C. §§ 6721 *et seq.* (Subchapter II of the Public Works Employment Act of 1976 (Pub. Law No. 94-369)), authorized for state and local government.

(B) Only expenditures authorized under this Act shall be permitted to be expended from this fund, and all expenditures under this Act are subject to the state and local laws and procedures which govern the expenditure of funds according to law.

## § 35.02 CAPITAL PROJECT FUND.

(A) There is established a special fund known as the "Capital Project Fund" under the provisions of R.C. § 5705.09.

(B) All moneys appropriated and paid to said fund shall be expended therefrom according to law.

## § 35.03 FEDERAL GENERAL REVENUE SHARING TRUST FUND (FGRSTF).

(A) There is established a special fund known as the "Federal General Revenue Sharing Trust Fund" (FGRSTF) under the provisions of R.C. § 5705.12.

(B) All moneys paid to the municipality under 31 U.S.C. §§ 6701 *et seq.* shall be credited to this fund and expended in accordance with the terms and provisions of the federal act.

## § 35.04 EMPLOYEE PAYROLL DISBURSEMENT FUND.

(A) There is established a special and separate fund known as the "Employee Payroll Disbursement Fund".

(B) All moneys appropriated and paid to the fund shall be accounted for according to law.
(Ord. CM-568, passed 1-6-1981)

# TITLE V: PUBLIC WORKS

Chapter

# CHAPTER 50: STREETS AND SIDEWALKS

Section



## § 50.01 APPLICATION FOR EXCAVATION PERMIT.

No person may, in any manner or for any purpose, excavate or cause to be excavated, any street or alley in the municipality until the person has filed an application for and has been issued by the Director of Service a permit and bond therefor or cash or certified check in lieu of the bond for $200 conditioned that the excavation

will be done and refilled according to the terms of the application, permit, and Ord. 796, and that warnings shall be posted and maintained as provided herein.
(Am. Ord. CM-07-14, passed 4-10-2007) Penalty, see § 50.99

## § 50.02 PERMIT FEE.

The Director of Service shall issue permits provided for in § 50.01 when application therefor has been filed with him or her in writing with the fee of $5.

## § 50.03 EXCAVATING THROUGH PAVEMENT.

Excavation through pavement shall be performed with pneumatic tools or other equipment suitable to cause a clean break between the excavated and unexcavated portions of the pavement. Care shall be taken that the remaining pavement will not be damaged. The excavation shall be under the supervision and inspection of the Director of Service.

## § 50.04 FILLING EXCAVATION.

Earth from the excavation shall be hauled away and the excavation shall be backfilled with granular material to within 12 inches of the final grade, the gravel being tamped in six-inch layers with care being taken to protect the newly installed or repaired utility, the adjacent property, and other installations. The final 12 inches shall be filled with crushed material (State Highway specification 304) or other suitable material approved by the Municipal Engineer.

## § 50.05 MUNICIPALITY FILLING EXCAVATION.

(A) After allowing sufficient time for settling, the contractor shall repave the street with blacktop to a depth equal to that removed when the trench was dug.

(B) In case any person fails to properly replace the excavation in full conformity with the requirements herein provided for, then the municipality shall have the right to remove the excavation, and repair it at the expense of the one securing the permit or for whose benefit it was secured, and retain or recover the cost under the permit for check, cash or bond filed with the application for permit, and by suit at law, if the bond, cash or check is insufficient to cover the cost.

## § 50.06 FEE FOR MUNICIPALITY FILLING EXCAVATION.

Should the contractor not replace the blacktop or request that the municipality do this repair for him or her, the work shall be completed at a cost of $2 per square foot of blacktop necessary to repair the damaged area.

## § 50.07 BARRIERS AROUND EXCAVATIONS.

Any person engaged in or employing others in excavating, or opening any street, sidewalk, alley or other public way, shall have the excavation or opening fully barricaded at all times to prevent injury to persons or animals.
Penalty, see § 50.99

## § 50.08 WARNING LIGHTS.

Any person engaged in or employing others in excavating or otherwise in any manner obstructing a portion or all of any street, sidewalk, alley or other public way, at all times during the night season shall install and maintain at least two illuminated red lamps which shall be securely and conspicuously posted on, at, or near each end of such obstruction or excavation, and if the space involved shall exceed 50 feet in extent, then at least one additional lamp for each added 50 feet or portion thereof excavated or obstructed.
Penalty, see § 50.99

## § 50.09 SIDEWALK CONSTRUCTION AND ALTERATIONS.

(A) Where land abuts on a street where there is paved sidewalk or abuts on a crosswalk or driveway approach, the owner of the land shall be jointly and severally responsible for causing the paved sidewalk, driveway approach or crosswalk abutting the land to be kept in good repair and free from nuisance.

(B) A state of disrepair and/or nuisance exists when it can be reasonably determined that the condition of the public sidewalk, driveway approach or crosswalk is such as would prevent its safe use by the public. The conditions shall include:

(1) A raise or depression between sections in the sidewalk, driveway approach or crosswalk in excess of one inch.

(2) Loose, chipped, cracked, broken or deteriorated portions of the concrete surface of the sidewalk, driveway approach or crosswalk that provides an unstable walking area conducive to tripping.

(3) Areas of sidewalk, driveway approach or crosswalk that have been caused to sink or tilt from its normal position due to undermining or sinking of subsurface that would provide unsafe walking conditions.

(4) Areas of sidewalk, driveway approach or crosswalk that have become broken, raised or tilted by roots of trees to such extent that the public safety would be compromised.

(C) When the Municipal Manager finds that such sidewalk, driveway approach or crosswalk is in a state of disrepair or is not free from nuisance, he or she shall notify the owner of the abutting property, in writing, to have the necessary construction, reconstruction or repairs made. This notice shall be served on the owner or his agent, personally or by registered mail sent to the last known address of the owner and by leaving a copy of the notice with the occupant of the premises if occupied or left in a conspicuous place on the premises if there is an

unoccupied structure. For purposes of such service, any person charged with the collection of rents or payment of taxes on the property or having general control of it in any way shall be considered the agent of the owner.

(D) The notice provided for above shall identify the property and give the location of the sidewalk, driveway approach or crosswalk, which shall be marked for identification purposes, and the period of time allowed the property owner to have the work done. The time shall be reasonable, but shall not be less than 30 days for construction and not less than five days for repairs.

(E) In case of emergency, the Municipal Manager is authorized to have temporary repairs made, or to barricade and caution mark the area as necessary to provide for the public safety. The reasonable cost of emergency repair and protection shall be charged against the abutting property and shall be collected as provided for in division (G) below.

(F) Upon completion by the Municipality of any sidewalk, driveway approach or crosswalk repair, construction or reconstruction as provided for within this section, the owner of the abutting property, or his or her agent shall be billed for the reasonable cost and expense of the work whether provided by private contractor or municipal personnel. The bill shall include:

(1) All labor and materials required for the construction and repair costs; and

(2) A charge for administrative costs of $10 or 10% of the construction costs, whichever is greater, not to exceed $25 for all bills to be applied to the outstanding balance of any bill not paid by the due date.

(G) Bills issued under the provisions of division (F) above shall be payable within 30 days from the date of the bill. Bills not paid within 30 days shall be certified to the Miami County Auditor to be an assessment against the abutting property.

(H) A property owner may protest any notice for non-emergency repairs or construction or reconstruction to the Board of Adjustment by filing written notice of an appeal within three working days of its receipt and prior to the time set for compliance. The Board shall hear the protest as soon as practicable without charge and without requiring public notice to be given. The Board may then affirm, modify or overturn the order by the Municipal Manager and waive any or all charges billed the property owner.

(I) All construction and repair of sidewalks, driveway approaches and crosswalks shall require a permit and shall be done in accordance with the general requirements of the municipality or the prepared plans and specifications applicable if the construction work is part of a larger public project.

(J) It shall be unlawful for the owner of any lot or land abutting upon any street to refuse, fail, or neglect to repair or keep in repair, the sidewalk in front of the lot or land after due notice ordering the repair of such sidewalk pursuant to the notice requirements of division (D) above.

(K) All sidewalks constructed and/or maintained within the municipality’s right-of-way shall not be altered or changed by painting, covering or applying any liquids or solids, excluding colorless concrete sealers, not in compliance with the construction standards as contained in § 152.16. Painting of a sidewalk is strictly prohibited unless done by municipal employees as authorized by appropriate authority.
(Ord. CM-04-36, passed 10-12-2004)

## § 50.10 UNLOADING ON STREET, SIDEWALK.

No person shall unload any heavy material in the streets of the municipality, by throwing or letting the same fall upon the pavement of any street, alley, sidewalk or other public way, without first placing some sufficient protection over the pavement.
Penalty, see § 50.99

## § 50.11 OBSTRUCTION OF SIDEWALKS AND STREETS.

No person shall obstruct any sidewalk or street, or the use of any sidewalk or street in the municipality, by placing thereon, any box, barrel, can, lumber or other articles that shall cause an obstruction to be and remain on any sidewalk or street in front of his property, except for such reasonable time not exceeding two hours, Sundays, except as may be necessary to load or unload it.
Penalty, see § 50.99

## § 50.12 WASTE FORBIDDEN ON SIDEWALKS.

No person shall throw or deposit upon the sidewalks or streets of the municipality, any wastepaper, rubbish or trash.
Penalty, see § 50.99

## § 50.13 SALE PERMIT OBTAINED FROM MANAGER.

No person shall obstruct the sidewalks of the municipality with machines, implements or property exhibited for sale without first having obtained permission.
Penalty, see § 50.99

## § 50.14 BURNING LEAVES ON STREET FORBIDDEN.

No person or persons shall burn any leaves, trash or rubbish upon paved streets of the municipality.
Penalty, see § 50.99

## § 50.15 OBSTRUCTION OF GUTTERS FORBIDDEN.

(A) No person shall place any rubbish, dirt or filth of any kind in or on the gutters of the municipality or having placed the same thereon, or if the dirt, rubbish, weeds or filth shall mash or accumulate therein shall permit it to remain to the annoyance or inconvenience of any person.

(B) Nothing in this section shall be construed so as to interfere with parties who have a permit from the Municipal Council to occupy the gutter temporarily for the improvement of abutting property.
Penalty, see § 50.99

## § 50.16 REMOVAL OF ICE AND SNOW.

It shall be the duty of the owner or of the occupant of each and every parcel of real estate in the municipality abutting on any sidewalk to keep the sidewalk abutting his premises free and clear of snow and ice, and to remove therefrom all snow and ice accumulated thereon within a reasonable time, which will ordinarily not exceed 12 hours after the abatement of any storm during which the snow and ice may have accumulated. Penalty, see § 50.99

## § 50.17 RAMPED CURBING FOR HANDICAPPED.

All new curbs that are authorized by the municipality, and all existing curbs which are part of any reconstruction, shall have a ramp with nonslip surface built into the curb at each pedestrian crosswalk so that the sidewalk and street blend to a common level. These ramps shall be not less than 40 inches wide and shall, insofar as feasible, be constructed in accordance with the standard drawings and specifications for curb ramps of the State Department of Transportation.
(R.C. § 729.12)

## § 50.18 REMOVAL OF VEHICLES FROM STREETS DURING PERIODS OF EMERGENCY.

(A) Whenever, in the opinion of the Director of Safety of the municipality, there is an actual or threatened local emergency, such as riot, fire, flood, excessive snowfall, other acts of God, common disaster or acts of the enemy, the Director of Safety may require the removal of motor vehicles parked upon the streets of the village. Snowfall in excess of two inches in a 24-hour period or if snowdrifts are formed which creates a serious obstruction to the movement of vehicles, both shall be considered excessive. Vehicles shall be removed from all streets until the streets have been cleared of snow the full width of the pavement from curb to curb. The Director of Safety shall inform the public of the aforementioned conditions through reasonable and usual methods of communication. If the owner or operator of a vehicle does not remove it within a reasonable time, the vehicle may be ticketed and or removed by the Police Department at the owner's expense.

(B) Whenever the Director of Safety finds, on the basis of falling snow, sleet or freezing rain, or on the basis of a forecast by the United States Weather Bureau or other weather service, of snow, sleet or freezing rain, that weather conditions will make it necessary that motor vehicle traffic be expedited and that parking on village streets be prohibited or restricted for snow plowing and other purposes, the Director of Safety shall declare a snow emergency and effect a parking restriction on all streets as set forth in division (A) above.

(C) Notwithstanding the provisions of division (B) above, a parking prohibition shall automatically go into effect on all streets within the village on which there has been an accumulation of snow and ice of two inches or more within a 24-hour period.
(Ord. CM-616, passed - -1983; Am. Ord. CM-96-13, passed 4-9-1996) Penalty, see § 50.99

## § 50.19 STALLED VEHICLE DURING SNOW EMERGENCY.

Whenever a motor vehicle becomes stalled, or will not start for any reason, on a street within the municipality during a snow emergency as declared pursuant to § 50.18, the owner or operator of the vehicle shall

take immediate action to have the vehicle towed or pushed off the street. No person shall abandon or leave his vehicle on the street during a snow emergency, except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or to a nearby garage, gasoline station, or other place of assistance and return without delay.
(Ord. CM-616, passed - -1983) Penalty, see § 50.99

## § 50.20 DECLARATIONS OF THE DIRECTOR OF SAFETY.

The Director of Safety shall make or cause to be made a record of each time and date when any declaration of emergency is announced to the public pursuant to § 50.18.
(Ord. CM-616, passed - -1983)

## § 50.21 POLICE AUTHORIZED TO REMOVE OR TICKET MOTOR VEHICLES.

Members of the Police Department are hereby authorized to remove or have removed any motor vehicle during a declared snow emergency or other emergency pursuant to § 50.18, in consultation with the Director of Safety, which motor vehicles shall be removed to the nearest garage or other place of safety, including another place on a street, after the police have first made a reasonable attempt to contact and notify the owner thereof. Or at the option of the Police Department in consultation with the Director of Safety, ticket(s) may be issued in lieu of removing any motor vehicle during a declared snow emergency or other emergency pursuant to § 50.18.
(Ord. CM-616, passed - -1983; Am. Ord. CM-96-13, passed 4-9-1996)

## § 50.22 PLACEMENT OF SNOW AND ICE ON STREETS AND PUBLIC RIGHT-OF-WAY PROHIBITED.

(A) No privately-operated snow removal service shall place nor leave any snow or ice in the public right-of-way of any dedicated street or alley within the corporation limits of the village.

(B) No individual shall cause snow to be shoveled, plowed, pushed or otherwise replaced upon any public right-of-way, creating a traffic or pedestrian obstruction, once the right-of-way has been cleared or snow removed by village employees.
(Ord. CM-616, passed - -1983) Penalty, see § 50.99

## § 50.23 OBSTRUCTION OF VILLAGE SNOW REMOVAL PROHIBITED.

No individual shall in any manner obstruct or prevent village employees from performing their duties.
(Ord. CM-616, passed - -1983) Penalty, see § 50.99

## § 50.24 ESTABLISHING STREET GRADE.

(A) *North Jay Street.* The grade of a part of North Jay Street from a point approximately 393 feet on the west side of Jay Street north from the centerline of Hayes Street and from a point approximately 316 feet on the

east side of Jay Street north from the centerline of Hayes Street, thence north on Jay Street to a point approximately 1664 feet from the centerline of Hayes Street.

(B) *Portion of South Main Street.*

(1) The grade of a part of South Main Street from Water Street to South Street for a distance of approximately 404 feet.

(2) The grade of a part of South Main Street from Market Street to South Street for a distance of approximately 350 feet.

(3) The grade of a part of South Main Street from Market Street to Front Street for a distance of approximately 750 feet.

(C) The street grades prepared by the Municipal Engineer and on file in the office of the Clerk of this Council establishing the grades for the above divisions (A) and (B) are accepted, approved and established.

(D) *Portion of Market Street.* The new street grade of a portion of Market Street from Miami Street to a point 561 feet west in accordance with drawings and specifications prepared by the Municipal Engineer and on file in the office of the Clerk of Council is approved and accepted, and the new street grade is established.

(E) *Portion of Forest Avenue.*

(1) The grade of a part of Forest Avenue from Jay Street to Poplar Street for a distance of approximately 1145 feet has been prepared and is on file in the office of the Municipal Clerk.

(2) The street grade prepared by the Municipal Engineer establishing the said grade for the above portion of street is accepted and hereby approved and established.

(F) *Portion of State Route 48 (South Miami Street).*

(1) The grade of a part of State Route 48 (South Miami Street) from south corporate limits on the east side to approximately 340 feet north of Duerr Drive for a distance of approximately 4950 feet has been prepared and is on file in the office of the Municipal Clerk.

(2) The street grade prepared by the Municipal Engineer establishing the said grade for the above portion of street is accepted and hereby approved and established.
(Ord. CM-261, passed 9-4-1973; Am. Ord. CM-541, passed 7-1-1980; Am. Ord. CM-588, passed 6-9-1981; Am. Ord. CM-617, passed 5-11-1982; Am. Ord. CM-716, passed 7-7-1984; Am. Ord. CM 818, passed 2-9-1988; Am. Ord. CM-905, passed 10-10-1989)

## § 50.99 PENALTY.

(A) Whoever violates any provisions of this chapter, for which another penalty is not already provided, shall be fined not more than $100.

(B) Any motor vehicle parked in violation of §§ 50.18 to 50.22 may be ticketed by leaving a ticket affixed in a visible location upon the vehicle. The owner or operator of the vehicle shall be subject to pay a prescribed fine in the sum of $50. The owner or operator of the vehicle may pay the fine by mail or by presenting the ticket and the prescribed fine to the Police Department within three days of the ticketing. The payment shall be deemed a plea of guilty, waiver of court appearance, and acknowledgment of conviction of the alleged offense, and may be accepted in full satisfaction of the prescribed penalty of the violation. If not paid within the third day period, the prescribed fine for violation shall be $75. The payment shall be accepted in full satisfaction of the prescribed penalty of the violation. If payment is not made within 30 days, a charge shall be filed in municipal court, and Clerk of Courts shall cause the issuance of summons upon the owner of the vehicle as prescribed by law and tax municipal court costs. Payment prior to the issuance of summons as aforesaid shall not be accepted by mail or at the Police Department if the owner or operator has been so convicted of this offense on two previous occasions within 60 days immediately preceding the date of violation.
(Ord. CM-96-13, passed 4-9-1996)

# CHAPTER 51: SEWER RULES AND REGULATIONS

Section

## § 51.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACCESSIBILITY.*** Sanitary sewer service shall be deemed accessible when a sanitary main is located in a street right-of-way or utility easement which abuts any parcel of the land to be serviced and which can be connected at the property owner's cost by traveling not more than the distance of 120 feet of the property line of the house, building or property.

***ADMINISTRATIVE CHARGE.*** Cost of utility system management and planning including meter reading, billing office expenses, and general system administration.

***BILLING PERIOD.*** The billing period shall be defined as a one-month period.

***B.O.D.*** (denoting biochemical oxygen demand.) The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20°C., expressed in milligrams per liter.

***BUILDING DRAIN.*** That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer which shall begin three feet outside the inner face of the building wall.

***BUILDING SEWER.*** The extension from the building drain to the public sewer or other place of disposal, sometimes referred to as the ***HOUSE SEWERS*** or ***SERVICE CONNECTIONS.***

***CHARGES.***

(1) ***DEBT SERVICE CHARGE.*** The amount to be paid each billing period for payment of interest, principle and coverage of outstanding indebtedness.

(2) ***REPLACEMENT.*** Expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(3) ***SERVICE CHARGE.*** The amount to be paid each billing period by all users of the wastewater system and facilities. The service charge shall be computed as outlined in § 51.22. The service charge shall be defined as the cost of utility system management and planning including meter reading, billing office expenses and general system administration.

(4) ***SURCHARGE.*** The assessment in addition to the basic user charge and debt service charge which is levied on those persons whose wastes are greater in strength than the established concentration values.

(5) ***USER CHARGE.*** The amount paid by each consumer connected to the sanitary sewerage system proportionate to the service provided. It shall be a charge levied on users of a treatment works to cover the cost of operation, maintenance and replacement.

***C.O.D. (Chemical Oxygen Demand) of sewage, sewage effluent, polluted waters or industrial wastes.*** A measure of the oxygen equivalent of that portion of the organic matter in a sample that is susceptible to oxidation by a strong chemical oxidant.

***COMBINED SEWER.*** A sewer designated by the municipality to carry sewage, storm water, surface waters and drainage, and which may carry unpolluted waste water and cooling water.

***COOLING WATER.*** The water discharged from any system of condensation, air conditioning, cooling, refrigeration or other such system, but which shall be free from odor and oil. It shall contain no polluting substances which produce B.O.D. or suspended solids each in excess of ten milligrams per liter.

***CUSTOMER.*** Any person, firm, corporation, company, association, society or group who owns improved real estate to whom sanitary sewer service is available and accessible or who has signed a contract with the municipality to become a customer without regard to whether or not such person makes use of the sanitary system by connecting to the system or not.

***DEPARTMENT OF HEALTH.*** The State Department of Health or Miami County Department of Health.

***GARBAGE.*** Solid wastes from the preparing, cooking and dispensing of food and from the handling, storing and selling of produce.

***INDUSTRIAL WASTES.*** The liquid wastes from industrial processes, as distinct from sanitary sewage.

***LATERALS.*** The service lines leading from the property owner's structure or premises to the sanitary mains. In some cases these are referred to as ***HOUSE SEWERS, SERVICE CONNECTION*** or ***BUILDING SEWERS.***

***MINIMUM CHARGE.*** The lowest sewer rate established by ordinance of the Council which shall be applicable to all customers.

***NATURAL OUTLET.*** Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

***NORMAL SEWAGE.*** Sewage which when analyzed shows by weight a daily average of not more than 2,917 pounds (350 parts per million) of suspended solids; not more than 2,500 pounds (300 parts per million) of B.O.D., and not more than 417 pounds (50 parts per million) of other soluble matter (grease and oil), each per million gallons of daily flow.

***NPDES PERMIT (National Pollutant Discharge Elimination System).*** A permit setting forth conditions for the discharge of any pollutant or combination of pollutants to the navigable waters of the United States pursuant to 33 U.S.C. § 1342 (§ 402 of Pub. Law No. 95-217).

***OEPA.*** Ohio Environmental Protection Agency.

***OM&R (Operation, Maintenance and Replacement).*** All costs direct and indirect (other than debt service) necessary to ensure adequate wastewater treatment on a continuing basis, conforming with related federal, state and local requirements and assuring optimal long term facilities management.

***pH.*** The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

***PUBLIC SEWER.*** Any sewer carrying sewage, serving two or more customers, located on public grounds, streets or alleys, or a utility easement for such purpose.

***REGULATORY AGENCY.*** An agency established by the federal government or the state having authority to govern the operations of municipal waste treatment facilities.

***SANITARY MAINS.*** Lines located in street rights-of-way or utility easements to which the customer's house sewers are connected.

***SANITARY SEWAGE.*** A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

***SANITARY SEWER.*** A sewer designated by the municipality to carry sewage, and to which storm, surface and ground water are not intentionally admitted.

***SANITARY SEWER SYSTEM.*** Sewage system means all facilities designated by the municipality for the collection, carriage, pumping, treatment and disposal of sewage, storm and surface waters and drainage.

***SERVICE DIRECTOR*** or ***DIRECTOR.*** The Director of Service of this municipality or his or her duly authorized agent.

***SEWAGE TREATMENT PLANT.*** Any arrangement of devices and structures used for treating sewage and controlled by the municipality.

***SEWER.*** A pipe or conduit for carrying sewage or drainage.

***STORM SEWER*** or ***STORM DRAIN.*** A sewer designated by the municipality to carry storm water, surface waters and drainage, excluding sewage and polluted wastes. It may, however, be used to carry unpolluted waste water and cooling water.

***SUSPENDED SOLIDS.*** Solids that either float on the surface of, or are in suspension in, water, sewage or other liquid and which are removable by laboratory filtering.

***TOTAL KJELDAHL NITROGEN (TKN).*** The amount of nitrogen in wastewater in the trinegative state, primarily comprised of ammonia nitrogen and organic nitrogen, as measured by standard laboratory procedures and reported in milligrams per liter (mg/l) as nitrogen.

***TRUNKLINE.*** The main line used for carrying sanitary sewage to the treatment plant. This line is used to take the sewage from the smaller lines located at different sections of the municipality and sometimes referred to as ***INTERCEPTOR LINES.***

***UNPOLLUTED WASTE WATER.*** Waste water which does not contain any

(1) Free or emulsified grease or oil;

(2) Acid or alkali;

(3) Phenols or other substances which impart taste or odor to receiving waters;

(4) Toxic or poisonous substances in suspension, colloidal state or solution;

(5) Noxious or odorous gases;

(6) Dissolved solids in excess of 10,000 milligrams per liter;

(7) Suspended solids in excess of ten milligrams per liter;

(8) B.O.D. in excess of ten milligrams per liter; or

(9) Color in excess of 50 units.

***USERS.*** A party or persons using the services of the sewage works in one of the following categories:

(1) ***COMMERCIAL USER.*** Engaged in the purchase or sale of goods, transaction of business or otherwise rendering a service.

(2) ***GOVERNMENT USER.*** A municipality or governmental subdivision or agency existing under federal or state statute.

(3) ***INSTITUTIONAL USER.*** Involved primarily in social, charitable, religious, educational or other special purpose activity.

(4) ***INDUSTRIAL USER.*** An industrial user is anyone engaged in a manufacturing or processing activity that discharges a trade or process wastewater as a result of these activities.

(5) ***RESIDENTIAL USER.*** One whose premises is used primarily as a domicile for one or more persons or whose waste originate from normal living activities.

***WATERCOURSE.*** A channel in which a flow of water occurs either continuously or intermittently.
(Am. Ord. CM-938, passed 3-13-1990; Am. Ord. CM-966, passed 9-11-1990; Am. Ord. CM-1038, passed 10-8-1991; Am. Ord. CM-98-31, passed 9-8-1998)

## § 51.02 STANDARD REFERENCES.

All measurements, tests and analyses of the characteristics and constituents of sewage, water and waste, to which reference is made in this chapter, to ascertain conformance with or violation of the provisions of this chapter, shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water, Sewage and Industrial Wastes," prepared and published jointly by A.P.H.A., A.W.W.A. and W.P.C.F.

## § 51.03 PROHIBITED DISCHARGE INTO SANITARY SEWERS AND CONNECTION PROCEDURE.

(A) No person shall discharge or cause to be discharged, either directly or indirectly, any storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted waste water into any sanitary sewer.

(B) The owner of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes, situated within the municipality and abutting on any street, alley, utility easement or right-of-way in which there is now located or may in the future be located sanitary or combined sewer of the municipality, is hereby required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this code of ordinances, within 60 days after the date of official written notice to do so, provided that said public sewer is within 120 feet of the property line, of the house, building or property is deemed to be accessible.
(Am. Ord. CM-1028, passed 9-10-1991)

## § 51.04 SPILLS.

(A) In the event of an accidental discharge or spill, the user shall immediately notify the municipality, by telephone, of the nature of the incident. This notification shall include the location, type of waste involved, volume and concentration actions being taken by the user, and corrective actions which could be taken by the municipality.

(B) Within five days following an accidental discharge, or spill, the user shall submit to the Service Director a detailed written report describing the cause of the discharge and measure taken by the user to prevent similar future occurrences. The notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of the discharge into the wastewater works, or for fish kills or other damage to persons or property. Nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed pursuant to these regulations, or state or federal laws.
(Am. Ord. CM-1028, passed 9-10-1991)

## § 51.05 PROHIBITED SUBSTANCES AND MATERIALS.

Except as hereinafter provided, no person shall discharge or cause to be discharged, either directly or indirectly, into any public sewer, any of the following substances, materials, waters or wastes:

(A) Liquid or vapor having a temperature higher than 150°F.;

(B) Gasoline, benzine, naphtha, fuel oil, mineral oil or other flammable or explosive liquid, solid or gas;

(C) Water or wastes containing the discharge of strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not;

(D) Noxious or malodorous gas or substance which, either singly or by interaction with other wastes, is capable of creating a public nuisance or a hazard to life or of preventing entry into the sewers for their maintenance and repair;

(E) Waters or wastes having a pH lower than 5.5 or higher than 9.0 or having any other corrosive property of causing damage or hazard to structures, equipment, or personnel of the sewerage system;

(F) Ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, hair and fleshings, entrails, lime slurry, lime or chemical or paint residues, cannery waste bulk solids or any other solid objects or viscous substances capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewerage system;

(G) Waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters of the sewerage system;

(H) Water or wastes containing emulsified oil and grease exceeding, on analysis, an average of 50 milligrams of oil and grease per liter determined as total ether-soluble matter;

(I) Garbage that has not been properly shredded to a degree that all particles will be carried freely under the flow condition of the sewer and with no particle greater than one-half-inch in any dimension;

(J) Waters or wastes containing dissolved or suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage plant;

(K) Waters or wastes containing in excess of two milligrams per liter of cyanides as CN; and

(L) Waters or wastes that contain phenols in excess of 0.50 milligram per liter.

## § 51.06 SPECIFICATIONS OF HOUSE SEWER.

(A) The written permission to construct a house sewer or drain or to make a connection to a public sewer or storm sewer shall specify the permissible use of the house sewer and connection and the specifications shall be governed by the following requirements.

(1) Sewage, including wastes from water closets, urinals, lavatories, sinks, bathtubs, showers, laundries, cellar floor drains, garbage disposal units, soda fountains, cuspidors, refrigerator drips, drinking fountains, stable floor drains and other objectionable wastes, shall be discharged into a sanitary or combined sewer and in no case into a storm water sewer.

(2) Industrial waste shall not be discharged into a storm water sewer but may be discharged into a sanitary sewer if the waste is of such character as not to be detrimental to the sewer system or to the sewage treatment system. Where the waste is detrimental to the sewer system or sewage treatment works it shall be otherwise disposed of in a satisfactory manner or so improved in character as not to be detrimental to the sewer system or sewage treatment works.

(3) Surface water, rain water from roofs, subsoil drainage, building and foundation drainage, cistern overflow, clean water from condensers, waste water from water and other clean and objectionable water shall empty into a storm sewer or combined sewer and in no case into a sanitary sewer.

(4) Connection with a cesspool or privy vault shall not be made into a sanitary, combined, or storm water sewer.

(5) No person shall discharge into a house sewer or tap a house sewer for the purpose of discharging into it any waste or drainage water prohibited by the provisions of this section. Any existing connection in violation shall be abandoned and removed.

## § 51.07 WASTE CONCENTRATION LIMITED; REQUIREMENTS.

(A) The Director of Service shall determine, establish and enforce limits on the discharge into any sanitary sewer or combined sewer of wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances or of wastes exceeding the chlorine requirement, to such extent and degree that the concentration of such material or chlorine requirement received in the composite sewage at the sewage treatment plant for any day as determined from proportioned daily composite samples or as computed from analyses of individual samples and corresponding rates of flow do not exceed the following:

| ***Toxic Substances*** | ***Average Value mg/l*** | ***One-Day Maximum mg/l*** |
|---|---|---|
| Cyanide | 1.000 | 1.900 |
| Cadmium | 0.170 | 0.700 |
| Chlorine[1] | 30.000 | ---- |
| Chromium | 4.000 | 7.000 |
| Copper | 1.600 | 2.700 |
| Iron | 15.000 | ---- |
| Lead | 0.400 | 0.600 |
| Mercury | ---- | ---- |
| Nickel | 2.600 | 4.100 |
| Silver | 0.700 | 1.200 |
| Zinc | 2.600 | 4.200 |

***Conventional pollutants***

| | | |
|---|---|---|
| Oil and grease[2] | ---- | 100[34] |
| pH (s.u.) | ---- | 6.0 - 10.0 |

***Conventional pollutant limits for surcharge calculations***

| | | |
|---|---|---|
| $BOD_5$ | 250 | ---- |
| Total suspended solids (SS) | 300 | ---- |
| Total phosphorous | 30 | ---- |
| Total kjeldahl nitrogen (TKN) | 30 | ---- |

*NOTES:*

1. Chlorine requirement defined as the amount of chlorine in mg/l which must be added to produce a residual of 0.1 mg/l after a contact period of 15 minutes.
2. Oil and grease, milligrams per liter; Freon Extractable (Title 40 C.F.R. part 136) 1974 EPA methods, page 229, 14th edition standard, page 515.
3. Floating oil and grease deemed a nuisance condition constitutes an authorized discharge according to these rules and regulations.
4. Discharges of biodegradable oil and grease in excess of 100 mg/l will be evaluated by the municipality.

(B) At no time shall the concentration in any individual sample taken at the sewage treatment plant exceed three times the concentration here given irrespective of rate of sewage flow.
(Am. Ord. CM-1028, passed 9-10-1991)

## § 51.08 REVIEW BY DIRECTOR OF SERVICE.

Any wastes containing any quantity of substances having the characteristics described in § 51.05 or any wastes containing any material or requirement described in § 51.07 in concentration or requirement greater than the limit set forth therein for concentration in sewage at the treatment plant, or any concentrated dye wastes, spent tanning solutions, or other wastes which are highly colored or wastes which are of unusual volume, concentration of solids, or composition of solids, as for example, in total suspended solids of inert nature (such as Fuller's earth) or in total dissolved solids (such as sodium chloride, calcium chloride or sodium sulphate) or unusual in B.O.D., shall be subject to special review by the Director of Service for:

(A) Approval or rejection of admission to the public sewers;

(B) Modification at the point of origin to permit admission;

(C) Pretreatment by the owner to permit admission to sanitary sewers or combined sewers; or

(D) Complete treatment by the owner to permit admission to storm sewers.

## § 51.09 WASTE PRETREATMENT AND COMPLETE TREATMENT.

(A) Pretreatment of wastes for admission to sanitary sewers or combined sewers shall be provided by the owner where:

(1) Pretreatment of wastes is required to eliminate or reduce objectionable characteristics or constituents to within the limits provided for in § 51.05;

(2) It is necessary to reduce concentrations of objectionable or toxic substances or to reduce chlorine requirement of wastes to limits which may be established or imposed under provisions of § 51.07;

(3) It is determined necessary by the Director of Service to reduce color or suspended solids or dissolved solids or B.O.D. or control rates of discharge of wastes.

(B) Complete treatment of wastes for admission of treated effluent to public storm sewers may be provided by an owner, at his or her expense, where approved in writing by the Director and under condition that any such discharge to a public storm sewer shall be subject to the provisions of § 51.14.

(C) All pretreatments shall comply with Title 40 C.F.R. part 403 (Pretreatment Standards), pursuant to 307(B) of the Clean Water Act, and with federal, state, or other pretreatment ordinances the municipality may adopt.

(D) Spills shall be monitored and comply with § 51.04.
(Am. Ord. CM-1028, passed 9-10-1991)

## § 51.10 APPROVAL OF TREATMENT FACILITY PLANS SUBMITTED BY CUSTOMER.

Plans, specifications, basis of design and any other pertinent information relating to proposed holding tanks or pretreatment or complete treatment facilities shall be submitted for the approval of the Director of Service and all regulatory agencies. Construction of such facilities shall not be commenced until these approvals are obtained in writing.

## § 51.11 MAINTAINING TREATMENT FACILITIES; MONTHLY REPORT.

(A) Where traps, interceptors, pretreatment or complete facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner, at his or her expense, and shall be subject to periodic inspection by the Director of Service.

(B) The owner shall maintain operating records and shall submit to the Director a monthly summary report of the character of the influent and effluent, as may be prescribed by the Director to show performance of the treatment facilities.

(C) Records of effluent may be required by the Director where in his opinion prohibited substances and materials or waste concentration may exist at levels above that which is permitted in this chapter, whether or not any traps, interceptors or pretreatment facilities exist. The frequency and number of these tests shall be prescribed by the Director, and shall be conducted at the expense of the owner.

## § 51.12 INTERCEPTORS AND TRAPS.

(A) Grease, oil and sand interceptors or traps shall be provided where, in the opinion of the Director of Service they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful materials. Grease and oil interceptors or traps shall be required if tests for vegetable fats and oils exceed 200 mg/l, and/or if mineral or petroleum greases and oils exceed 100 mg/l. All interceptors or traps shall be of a type, capacity and design approved by the Director, and shall be located so as to be readily and easily accessible for cleaning and inspection.

(B) All grease, oil and sand interceptors or traps shall be cleaned, inspected, and checked at least annually. If utilization of the grease, oil and sand interceptors or traps warrants, more frequent cleanings, inspections and checks shall be performed. Where installed, all grease, oil and sand interceptors or traps shall be maintained by the owner, at his or her expense, in continuously effective operation at all times.

(C) In addition to the reporting requirements in § 51.11, the owner of all grease, oil and sand interceptors or traps shall along with the required minimum bi-annual reports specified in § 51.11, provide the Director copies of all receipt for removal, cleaning and disposal of said interceptors or traps. The Director shall promulgate the required forms to be completed by the owner on a bi-annual basis.

(D) If tests find that the limits for vegetable fats and oils exceed 200 mg/l, and/or if mineral or petroleum greases and oils exceed 100 mg/l the owner shall be charged a surcharge in accordance with § 51.22 and assessed a penalty in accordance with § 50.99.
(Ord. CM-96-14, passed 4-9-1996)

## § 51.13 APPROVAL NOT FINAL.

Any approval by the Director of Service or by the regulatory agencies of pretreatment or complete treatment facilities or of an installation shall not relieve a person of the responsibility of revamping, enlarging or otherwise modifying an installation to accomplish an intended purpose or to accomplish higher degree treatment or removals than originally specified if such should be determined necessary.

## § 51.14 STORM SEWER DISCHARGE.

(A) The Director of Service shall determine, establish, and enforce limits upon all discharges from industrial or business establishments into any public storm sewer or ditch tributary thereto, of any waters or waste containing any polluting material or substance other than those defined in this chapter which may be cited by the Water Pollution Control Board of the Ohio Department of Health to cause pollution in the Stillwater River. Such control, by the Director, of individual contributions to storm sewers shall be to the extent and degree necessary

to prevent the combined discharges from public storm sewer interceptors from causing the concentration of any polluting material or substance in the river to exceed the limiting concentration which is or which may become established or tentatively established by the Water Pollution Control Board and for which pollution the municipality may be held responsible to the Water Pollution Control Board, by reason of municipal-owned storm sewers discharging into waters of the Stillwater River.

(B) It shall be unlawful to discharge to any natural outlet, storm sewer, storm drain or watercourse within the municipality, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this Code of Ordinances.

(C) Storm water and all unpolluted wastewater and all cooling water may be discharged to combined sewers or storm sewers or to a municipal approved natural outlet, in accordance with the provisions of this Code of Ordinances.
(Am. Ord. CM-1028, passed 9-10-1991)

## § 51.15 INSPECTION AND TESTING.

The Director of Service is designated to act in behalf of the municipality in all matters covered by this chapter. He or she and other duly authorized and identified employees of the municipality shall be permitted to enter upon all properties for the purpose of inspecting, observing, measuring, sampling and testing requisite for determining compliance with the provisions of this chapter.

## § 51.16 CONTROL MANHOLE MAY BE REQUIRED.

When required by the Director of Service, the owner of any property served by a building or plant sewer carrying industrial or other wastes shall install a suitable control manhole in the building or plant sewer to facilitate observing, sampling and measuring of the wastes. Such manhole, when required, shall be accessibly and safely located downstream from all waste contributions and shall be constructed in accordance with plans approved by the Director. The manhole shall be installed by the owner at his or her expense and shall be maintained by him or her so as to be safe and accessible at all times.

## § 51.17 PHOTOGRAPHIC AND VISUAL INSPECTIONS.

(A) The municipal engineer is directed, prior to final approval of any newly installed sewer system or reconstructed sewer, to require that any and all contractors or developers cause to be made photographs of the entire sewer system installed showing thereby that the sewer system has been constructed upon a sound engineering basis and that the sewer system is free of any and all accumulations of foreign substances and is of sound workmanship and that the passage of and flow of sanitary sewage is free and clear. If in the discretion of the municipal engineer the sewers are large enough for a visual inspection, it shall be made and a report of such inspection submitted to the municipality as a permanent record.

(B) The municipal engineer, upon inspection of such photographs or visual inspection reports, if satisfied that the sewer is free and clear of all foreign substances and is of sound workmanship and if there is nothing present to prevent free flow of sewage, is authorized to approve the same as a final inspection, placing in safekeeping all photographs or inspection reports for future reference by the municipality.

(C) The cost of such photographing and photographs or inspection reports shall be paid for entirely by the contractor or developer of the land or sewer system, and such photographs or inspection reports shall remain the property of the municipality.

## § 51.18 SERVICE TO NONRESIDENTS.

(A) The municipality shall not hereafter permit any properties located outside the municipality to become connected to the joint sanitary sewage system until such time as the municipal corporation within which such property proposed to be connected is situated makes financial arrangements with the municipality to fairly compensate the municipality for the additional responsibilities and burdens which will be placed upon it.

(B) The municipality reserves the right to enter into service agreements with user types including other political subdivisions for the purpose of providing collection and treatment of wastewater. These agreements shall be approved by Council in ordinance form. The municipality currently has and reserves the right and privileges to service all existing nonresident services in accordance with past practices.
(Am. Ord. CM-966, passed 9-11-1990)

## § 51.19 INFORMATION AVAILABLE TO CUSTOMERS.

The municipality shall make available upon request to any customer or applicant for service at its principal place of business any pertinent information regarding service rendered, including the following:

(A) ***RATES.*** A schedule of rates for sewer service.

(B) ***BILL ANALYSIS.*** A statement of the past reading of a customer's meter for a period of two years.

(C) ***RULES AND REGULATIONS.*** A copy of the general rules and regulations of the system and forms of contracts and applications applicable to the territory served from that office, at a nominal charge.

(D) ***RECORDS AND REPORTS.*** The Director shall have on file at his office suitable maps and drawings showing the following:

(1) Locations of all principal pumping stations;

(2) Character and location of all known mains; and

(3) Trunk lines, manholes and lampholes.

## § 51.20 CONTINUITY OF SERVICE.

(A) *Emergency interruptions.* The municipality shall make all reasonable efforts to prevent interruptions of service and, when such interruptions occur, shall endeavor to reestablish service, with the shortest possible delay, consistent with the safety of its consumers and the general public.

(B) *Scheduled interruptions.* Whenever the Director finds it necessary to schedule an interruption in service, all customers to be affected by the interruption shall be notified. The notice shall state the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide the least inconvenience to the customers.

(C) *Record of interruptions.* The Director shall keep a complete record of all interruptions on the entire system or on major divisions thereof. This record shall show the cause for interruptions, date, time, duration, remedy and steps taken to prevent recurrence.

(D) *Liability.* Due to the municipality not having absolute control of objects put into the sewer system by the customer, the municipality is not liable for any damage caused by an obstructed sewer.

(E) *Property owner responsibility.* It shall be the responsibility of the property owner to maintain the service lateral from the point of entry to the sewer main regardless of the location of the sewer main.

## § 51.21 ACCOUNTING PRACTICE AND PROCEDURE.

(A) A service charge for sewer service will be issued each billing period. The service charge, surcharge and usage charges will be shown on the same bill as the water bill. A usage charge is based upon the amount of water used. The usage charge will normally be determined from the difference between two consecutive meter readings. When, for any reason, a meter reading has not been obtained, the charge may be "estimated" from quantities of water used during previous periods. The minimum rate shall be charged to all ***CUSTOMERS*** as defined in § 51.01. The minimum rate for 1,000 gallons or less is established under the sewer rate ordinance, subject to revision by the Council.

(B) Charges covering less than the full billing period may either be calculated from previous meter readings (estimated) or may be prorated (based on days of service).

(C) The municipality shall endeavor to give proper notice of sewer service charges but by law cannot guarantee delivery of mail. Failure to receive notice by mail shall not excuse customers from prompt payment of charges. It shall be the established policy of the municipality to accept only total and complete payments for charges billed.

(D) All sewer charges are payable at the municipal office to the Director of Finance or to an agent thereof.

(E) Owners of property shall be held responsible for sewer charges to their premises; but payments will be accepted from tenants. In case a tenant does not pay in accordance with these rules and regulations, sewer service will be discontinued to the property.

(F) The municipality shall notify all customers annually in conjunction with a regular bill, a breakdown of the municipality's rate structure attributed to OM&R for the wastewater treatment and collection services.

(G) The municipality shall perform an annual audit of the sewer fund to ensure adequate revenue is being generated to cover OM&R costs for the wastewater treatment and collection services.

(H) All applications or permits for the use of sewer service must be made in writing by the owner of the premises or his or her agent to the municipality and filed with the Municipal Director of Finance on such form as are provided by the municipality.
(Am. Ord. CM-938, passed 3-13-1990; Am. Ord. CM-966, passed 9-11-1990; Am. Ord. CM-1038, passed 10-8-1991)

## § 51.22 SEWER RATE SCHEDULE IN MUNICIPALITY.

(A) There shall be levied and assessed upon each lot, parcel of land, building or premises to which a municipal sanitary sewer is accessible, even if a physical connection with a sewer does not exist for the discharge of household waste and sewage, industrial waste water or other liquid either directly or indirectly into such system, a service charge payable as provided in this section.

(B) The usage charge shall be based on the quantity of water used as measured by the water meters used, on all billing statements payable after the effective date hereinafter provided, and the sewer rates are fixed as follows:

(1) Effective with the April 2009 billing the sewer rates shall be composed of two parts:

(a) A service charge of $6.00 for each billing period.

(b) A per 1,000 gallon usage charge of $6.25.

(2) The service charge shall be levied, and a usage charge for each 1,000 gallons of water used shall be added to the service charge. Thus the minimum rate charged for 1,000 gallons in a billing period shall be $12.25.

(3) Ten percent of the total revenue generated from collection of charges shall be deposited in the Sewer Capital Improvement Fund. This Fund shall only be utilized for capital improvements to the sewage collection and treatment systems.

(4) If the municipality determines that certain customers are contributing sewage above the normal domestic strength for parameters such as COD, BOD, suspended solids, phosphorous, heavy metals, Total Kjeldahl Nitrogen (TKN), vegetable fat, vegetable oil, petroleum grease, petroleum oil and the like, as defined in § 51.07 and 51.12, the customer shall be charged on their bill, an additional conventional pollutant surcharge (CPS) as follows:

| *Parameter* | *Surcharge per Pound* |
|---|---|
| $BOD_5$ | $0.45 |
| SS | $0.50 |
| TKN | $2.40 |
| Vegetable Fat | $0.50 |
| Vegetable Oil | $0.50 |
| Petroleum Fat | $0.50 |
| Petroleum Oil | $0.50 |

(C) The sewer rates to be charged for sewer service furnished by the village to all customers whose principle dwelling, place of business, or work is situated outside the municipal limits shall be fixed at 130% of the rates charged to consumers within the corporate limits of the village, with the exception that the sewer rates to be charged for the sewer service furnished by the village to Memorial Holiness Camp, or its assigns or successors, shall be fixed at a rate of 115% of the rates charged for in-town users until such time the area is annexed into the municipality.

(D) The municipality shall allow for a sewer usage credit for the actual amount of water utilized to initially fill a customer's swimming pool once a year. The customer shall notify the municipality in advance of when the pool is to be filled. The customer shall then take an initial meter reading, prior to filling the and take a final

meter reading after filling the pool. These readings shall be supplied to the water and sewer billing departments within three working days. The total amount of water utilized to fill the pool shall be deducted from sewer charge on the customer's next regular bill. If, in the opinion of the municipality, the amount of water utilized is too high, the municipality has the right to require proof of the size of the swimming pool in gallons. Failure of the customer to provide this proof, when requested, will prohibit the municipality from crediting the sewer charge. All other water utilized to fill or maintain the pool shall be subject to the standard water and sewer rates as provided by this Code of Ordinances.

(E) No sewer charges shall be charged for any water that registers on the "watering meter" as long as the meter is used according to this Code of Ordinances. The customer shall not be billed for the billing period sewer service charge for the "watering meter".

(F) (1) The municipality shall make a final meter reading upon the request of the customer. If this final meter reading is for less than a standard billing period, the customer shall be charged for all water utilized during this reading. The customer shall also pay the full service charge, even if it is not a full billing period. All finals shall be paid by the due date printed on the bill. If payment is not received by the due date, a service charge of $30 shall be levied on the account. If the service is turned off due to failure to pay the final bill, an "off and on" fee of $20 shall be levied in accordance with § 52.136, in addition to all charges due.

(2) If a tenant fails to pay a final bill, the invoice shall be forwarded to the landlord of the property with a 14 day payment extension. If payment is not received within this extension, a $30 service charge shall be levied on the account and service can be disconnected with an "off and on" fee of $20.

(G) During the months of May through August, sewer charges above the "nonwatering months" (defined as September to April) highest usage plus 10% shall be credited for residential users who meet all the provisions of this section. For the purpose of calculation, the highest usage shall be rounded up or down to the nearest 1,000 gallons. (For example, if September through April's highest usage is 10,000 gallons, July usage is 12,000 gallons, sewer credit would be 1,000 gallons.)

(1) Residential users who do not have a previous year's history for "nonwatering months" (September to April) shall not be eligible for this credit, until a history has been established with the municipality.

(2) Residential users shall automatically receive this credit if they meet the requirements.

(3) All commercial, institutional, industrial and governmental users are not eligible for this credit. If a property or structure is used for both a residential use and any other use, excluding home occupation, this credit shall not apply.

(4) Any residential user who receives credit in accordance with division (C) above, shall not be eligible for this credit. Credit issued in accordance with division (D) above, shall not be eligible for a double credit on the portion of the bill relating to the initial filling of the swimming pool. Residential users with lawn watering meters shall not be eligible for this credit.

(5) Residential users must occupy the residence during the entire year. It is the intention of this credit to be only issued for external watering. If the municipality determines that the use and request for credit is not in compliance with this section, the credit shall be revoked immediately.
(Am. Ord. CM-564, passed 2-3-1981; Am. Ord. 629, passed 7-13-1982; Am. Ord. CM-938, passed 3-13-1990; Am. Ord. CM-966, passed 9-11-1990; Am. Ord. CM-1002, passed 4-9-1991; Am. Ord. CM-1038, passed 10-8-1991; Am. Ord. CM-1083, passed 5-12-1992; Am. Ord. CM-96-14, passed 4-9-1996; Am. Ord. CM-98-31, passed 9-8-1998; Am. Ord. CM-07-06, passed 2-19-2007; Am. Ord. CM-09-04, passed 3-10-2009; Am. Ord. CM-13-27, passed 12-10-2013; Am. Ord. CM-15-10, passed 3-10-2015)

## § 51.23 SEWER TAP FEES AND SPECIAL LINE ASSESSMENTS.

(A) For any lot, land, building or premises for which connection is hereafter made with the Municipal Sanitary Sewer System or which begins to discharge sewage, industrial waste or water into the village sanitary system, either directly or indirectly, there shall be levied a sewer tap fee as follows:

(1) For each single-family residence, a fee of $600.

(2) For each multi-family residence unit and other residence units occupied by more than a single family, a fee of$600 for each separate tap.

(3) For connections 3/4 inch or smaller, a tap fee of $600 shall be charged; for connections larger than 3/4 inch, the sewer tap-in fee shall be based on the size of the water meter service installed at the following rates:

| ***Service Connection*** | ***Fee*** |
|---|---|
| 1 inch | $1,000 |
| 1-1/2 inch | $1,500 |
| 2 inch | $3,000 |
| 4 inch | $5,000 |

(4) All meter installations in excess of a four-inch connection shall be charged a connection fee at the rate of $1,000 for each additional inch meter installed. Installation fees for connections between listed sizes shall be prorated.

(B) The above sewer tap fees shall be due and payable by the applicant and collected by the municipality at the time the building or zoning permit is issued to the applicant. Should any person or firm request an increase in the size of his or her water service, he or she shall be subject to a sewer connection fee which shall be the difference in the charges provided in division (A)(3) above for the meter of increased size and the size of the meter it replaces.

(C) For any lot, land, building or premises for which connection is hereafter made with the municipal sanitary sewer system or which begins to discharge sewage, industrial waste or water into the village sanitary system, either directly or indirectly, into a sanitary main that has been designated by Council by legislation as a special assessment sanitary line, there shall be levied a “Special Line Assessment” (SLA) in accordance with the contract negotiated.

(D) For any lot, land, building or premise for which connection is hereinafter made with the municipal sanitary sewer system south of Jones Run, which begins to discharge sewage, industrial waste, or water into the village sanitary sewer system, either directly or indirectly, there shall be levied a one time S.L.A. fee above and beyond the tap fee as noted in division (A) above:

(1) For each single family residential unit and each multi-family residential unit a fee of $1,000 per residential unit.

(2) For all other types of construction (non-residential) the fee shall be based upon the size of the water meter service installed at the following rates.

| ***Service Connection*** | ***Fee*** |
|---|---|
| 3/4" or smaller | $1,000 |
| 1" | $2,500 |
| 1-1/2" | $5,000 |
| 2" | $10,000 |
| 4" | $25,000 |
| 6" | $50,000 |
| 8" | 80,000 |

(3) All provisions of division (B) above shall apply and be applicable.

(4) Fifty percent of this S.L.A. fee shall be deposited in the Sewer Capital Improvements Fund to repay the previous expenses of the sanitary sewer construction. Fifty percent shall be deposited in the South Sewer Capital Improvements Fund to be used for repair, replacement or other new sanitary construction south of Jones Run, and the construction of a new interceptor from Jones Run north to the terminus of the 15 inch gravity sewer adjacent to Cedar Drive.
(Am. Ord. 1038, passed 10-8-1991; Am. Ord. CM-94-24, passed 9-13-1994; Am. Ord. CM-05-12, passed 4-12-2005)

## § 51.24 LICENSED WORKER.

No house sewer shall be constructed or connection made to a public sewer by any person who has not been authorized and licensed to perform the work.

## § 51.25 PAYMENT RELIEF.

The Finance Director shall request in writing on a case by case basis, to have water and/or sewer charges waived. This request shall show that there was substantial fault with the municipality's equipment or personnel to warrant the waiving of charges. The Municipal Manager, in writing, then may waive the charges if appropriate.
(Ord. CM-966, passed 9-11-1990; Am. Ord. CM-1002, passed 4-9-1991)

## § 51.26 SEWER CHARGES AND DELINQUENT ACCOUNTS.

(A) All charges rendered shall be paid by the 15th day of the month. Should the 15th of the month fall upon a weekend or holiday, the next business day will become the final date for net payment. After this day, a 10% penalty shall be charged.

(B) Customers whose bill has not been paid by the end of the month in which the bill was sent shall be issued a delinquent notice. If payment has not been received prior to the shut off date listed on the bill, a $30 service fee shall be levied on the account and customers shall be required to pay the entire account balance to avoid shut off. The customer has the right to appeal the disconnection under the provisions of § 52.121. If no appeal has been filed in accordance with § 52.121 and payment has not been received by the shut off date, service shall be disconnected without further notice and an "off and on" fee of $20 for service within the municipality, and $25 for service outside the municipality shall be charged.

(C) Customers that are disconnected due to non-payment are required to pay the entire account balance, including fees, before service is restored.
(Am. Ord. CM-830, passed 5-10-1988; Am. Ord. CM-13-27, passed 12-10-2013; Am. Ord. CM-15-08, passed 3-10-2015)

## § 51.27 CHARGES TO BE A LIEN.

Each sewer or rental charge under or pursuant to the provisions of this chapter is made a lien upon the corresponding lot, parcel of land, building or premises served by or having access to a connection to the sewerage system. If the charge is not paid when due and payable, it shall be certified to the Auditor of Miami County who shall place the charge on the tax duplicate as a tax lien or assessment against the lot, parcel of land, building or premises with interest and penalties allowed by law. The charge shall be collected in the same manner and at the same time as other taxes are collected.

## § 51.28 STANDARD CONSTRUCTION.

See the West Milton "Subdivision Design and Construction Standards", Chapter 152.

## § 51.29 ADMINISTRATION; RULES AND REGULATIONS.

The Director of Service is authorized and directed to make rules and regulations necessary for the safe, economical, and efficient management and protection of the sewerage system, sewage pumping, treatment, and disposal works. These rules and regulations shall have the same force and effect as ordinances, when not repugnant thereto or to the constitution or laws of the state. These rules and regulations shall be approved by the Manager.

## § 51.30 NOTICE TO ABATE VIOLATION; FAILURE TO ABATE PROHIBITED.

(A) Any person, firm or corporation who violates any of the provisions of this chapter shall be served by the Director of Service with written notice stating the nature of the violation and providing a reasonable time limit

for the satisfactory correction thereof. The offender shall, within the time stated in the notice, or as may be extended by the Director of Service, permanently cease all violations.

(B) No person shall continue any violation beyond the time limit provided in division (A) of this section.

## § 51.31 DIRECTOR OF SERVICE TO ADOPT, ENFORCE SPECIFICATIONS.

The Director of Service is authorized and directed to adopt and enforce specifications and regulations in accordance with the provisions of this chapter for the purpose of providing control of the installation of sewer connections and inspection thereof. The Director of Service shall maintain accurate and complete records of all permits issued for and inspections made of the construction of house sewers and connections to the public sewer. The Director is also empowered to require the abandonment and removal of connections to the public sewers which violate the provisions of this chapter.

## § 51.32 DECLARING STORM SEWER A COMBINED SEWER.

The Manager shall have the power to declare any existing storm sewer a combined sewer in the event of any emergency that in his opinion deems it necessary.

## § 51.33 FEDERAL ASSURANCES ON INDUSTRIAL WASTE RECOVERY SYSTEM.

The municipality has made offer and was accepted for federal grant for sewer treatment works under former 33 U.S.C. §§ 466 *et seq.* Condition 3 of the Offer and Acceptance provides:

(A) The applicant assures the water quality office that the municipality (as defined in the Federal Water Pollution Control Act) will comply with regulations relating to basin plans, regional or metropolitan plans, industrial waste treatment, and design of waste treatment plants in accordance with paragraphs 601.32, 601.33, 601.34 and 601.36 as published in the Federal Register on July 2, 1970.

(B) The municipality does not anticipate that the project will involve the treatment of industrial waste.

(C) The municipality assures the Environmental Protection Agency (E.P.A.) that a cost recovery system, satisfactory to the E.P.A., will be enacted if industrial waste should be treated by this municipality and that the municipality will comply with the conditions and requirements as set out in Condition 3 of the Offer and Acceptance and particularly the requirements of Title 40 C.F.R. part 35.835-5 (formerly Title 18 C.F.R. part 601.34(c)), or any applicable successor regulations should those provisions be repealed.

## § 51.34 UNSANITARY MATTER PROHIBITED.

It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the municipality or in any area under the jurisdiction of the municipality, any human or animal excrement, garbage or other objectionable waste.
(Am. Ord. CM-1028, passed 9-10-1991) Penalty, see § 51.99

## § 51.98 APPEAL PROCEDURES.

(A) The Finance Director shall hear any and all appeals of charges, on and off charges, and shut off orders in accordance with § 52.121.

(B) The Finance Director shall hear any and all appeals regarding: penalties disputes and violation of this chapter.

(1) The appeal shall be sent to the Finance Director in writing within ten days of the event which is being appealed.

(2) The Finance Director shall affirm, modify or revise the decision which is being appealed in writing within 15 days following the filing of the appeal.

(C) Should the interested person still feel aggrieved by the decision of the Finance Director, that person may make a final appeal to the Municipal Manager. This final appeal process shall follow the same guidelines as laid out in division (B).
(Am. Ord. CM-1028, passed 9-10-1991; Am. Ord. CM-13-27, passed 12-10-2013)

## § 51.99 PENALTY.

Whoever violates any provision of this chapter, for which another penalty is not already provided, shall be guilty of a minor misdemeanor and shall be fined not more than $100. Each day's violation shall constitute a separate offense.

# CHAPTER 52: WATER RULES AND REGULATIONS

Section

### *Water Main Extensions*



### *Service Line*



### *Meter Testing*



### *Accounting Practice and Procedure*



### *Regulatory Provisions*

## *GENERAL PROVISIONS*

### § 52.001 PURPOSE.

The purpose of this chapter is to provide standard rules and regulations governing the supply and service of water to customers, both within and without the municipality.

### § 52.002 RULES AND REGULATIONS GOVERNING CUSTOMERS .

The rules and regulations hereinafter provided shall be considered applicable to all water customers supplied with water through the water system of the municipality, and every customer shall be considered to express his, their or its consent to be governed hereby. The municipality reserves the right to alter, amend, or add to the rules and regulations at any time. Furthermore, the municipality has the right to shut off service without notice, owing to acts occurring beyond their control or because of delinquent accounts.

### § 52.003 DEFINITIONS .

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACCESSIBILITY.*** A distance from the nearest point of the water system to the property line nearest the water system of not greater than 120 feet. If the distance is greater than 120 feet, the water system shall be deemed not accessible.

***BILLING PERIOD.*** The billing period shall be defined as a one-month period.

***CHARGES.***

(1) ***DEBT SERVICE CHARGE.*** The amount to be paid each billing period for payment of interest, principle and coverage of outstanding indebtedness.

(2) ***REPLACEMENT.*** Expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(3) ***OPERATIONS CHARGE.*** The amount to be paid each billing period by all users of the water system and facilities. The operations charge shall be computed as outlined in § 52.116. The operations charge shall be defined as the cost of utility system management and planning including meter reading, distribution management, billing office expenses and general system administration.

(4) ***USER CHARGE.*** The amount paid by each consumer connected to the water system proportionate to the service provided. It shall be a charge levied on users of a treatment works to cover the cost of operation, maintenance and replacement.

***COUNCIL.*** The legislative authority of the municipality.

***CUSTOMER.*** Any person, firm or corporation who owns improved real estate and to whom water service is available and accessible, or who has signed a contract with the municipality to become a customer, without regard to whether or not such person, firm or corporation makes use of such water system or supply by connecting to the system or consumes water.

***DEPARTMENT OF HEALTH.*** The Department of Health of the State of Ohio and the Department of Health of Miami County, Ohio.

***DIRECTOR.*** The Director of Service or his or her authorized representative.

***DISTRIBUTION MAIN.*** One from which service connections with customers are taken at frequent intervals.

***METER.*** Any device used for the purpose of measuring the quantity of water delivered by the municipality to a customer.

***MINIMUM CHARGE.*** The lowest water rate as established by ordinance of the Council and shall be applicable to all customers.

***MUNICIPALITY.*** West Milton, Ohio.

***NPDES PERMIT (National Pollutant Discharge Elimination System).*** A permit setting forth conditions for the discharge of any pollutant or combination of pollutants to the navigable waters of the United States pursuant to 33 U.S.C. § 1342 (§ 402 of Pub. Law No. 95-217).

***O.E.P.A.*** The Ohio Environmental Protection Agency, or its representatives.

***OM&R (Operation, Maintenance, and Replacement).*** All costs direct and indirect (other than debt service) necessary to ensure adequate water treatment on a continuing basis, conforming with related federal, state and local requirements and assuring optimal long term facilities management.

***SERVICE CONNECTION.*** The points where the service line is connected to the distribution main and to the customer's plumbing.

***SERVICE LINE.*** The line between the distribution main and the point of consumption, and shall include all pipes, fittings and valves necessary to make the connection.

***TRANSMISSION MAIN.*** Is used for conveying water to the distribution system, reservoirs, tanks or stand pipes, and has generally no service connections with customers.

***USERS.*** A party or persons using the services of the sewage works in one of the following categories:

(1) ***COMMERCIAL USER.*** Engaged in the purchase or sale of goods, transaction of business, or otherwise rendering a service.

(2) ***INSTITUTIONAL USER.*** Involved primarily in social, charitable, religious, educational or other special purpose activity.

(3) ***INDUSTRIAL USER.*** An industrial user is anyone engaged in a manufacturing or processing activity.

(4) ***GOVERNMENT USER.*** A municipality or governmental subdivision or agency existing under federal or state statute.

(5) ***RESIDENTIAL USER.*** One whose premises is used primarily as a domicile for one or more persons and one who uses water from normal living activities.

***WATER SYSTEM.*** The municipality and its entire system of water supply.
(Am. Ord. CM-991, passed 1-8-1991; Am. Ord. CM-1038, passed 10-8-1991; Am. Ord. CM-98-31, passed 9-8-1998; Am. Ord. CM-13-32, passed 1-7-2014)

## § 52.004 INFORMATION AVAILABLE TO CUSTOMERS.

The municipality shall make available upon request to any customer or applicant for service at its principal place of business any pertinent information regarding the services rendered, including the following:

(A) *Characteristics of water.* A description in writing of the kind of water to be furnished, whether filtered or unfiltered and whether treated for bacteria or untreated.

(B) *Rates.* A schedule of rates for water service.

(C) *Reading meters.* Information about the method of reading meters.

(D) *Bill analysis.* A statement of the past reading of a customer's meter for a period of two years.

(E) *Rules and regulations.* A copy of the general rules and regulations of the system and forms of contracts and applications applicable to the territory served from that office, at a nominal charge.

(F) *Records and reports.* The Director shall have on file at his or her office suitable maps and drawings showing the following:

(1) Location of all principal pumping stations, filter plants, sources of supply storage facilities and size, character, and location of all known mains, including valves, pressure gauges and fire hydrants.

(2) Layout of all principal pumping stations and filter plants, to show size, location and character of all major equipment, pipe lines, connections, valves and other equipment used.

## *STANDARDS OF SERVICE*

### § 52.015 QUALITY OF WATER.

(A) The municipality shall provide water that is wholesome, potable and not harmful or dangerous to public health.

(B) The municipality shall conform to all legal requirements of the Department of Health or Ohio E.P.A. for construction and operation of its water system as pertains to sanitation and potability of the water.

(C) In the absence of comparable requirements of the Department of Health or Ohio E.P.A. the following rules shall apply:

(1) *Sources.* Water supplied by any utility shall be:

(a) Obtained from a source free from pollution and adequately protected from pollution;

(b) Adequately protected by artificial treatment;

(c) Free from objectionable color, turbidity, taste and odor;

(d) From a source reasonably adequate to provide a continuous supply of water; or

(e) Of such quality at all times as to meet the standards of purity for drinking water as promulgated and required by the Department of Health or the Ohio E.P.A., and amended from time to time.

(2) *Operation of water system.*

(a) The water supply system, including wells, reservoirs, pumping equipment, treatment works mains and service pipes shall be free from sanitary defects.

(b) No physical connection between the distribution system of the municipal water system and that of any other water supply shall be permitted, unless such other water supply maintains a safe, sanitary quality in accordance with this chapter and the interconnections of both supplies are approved by the Department of Health or Ohio E.P.A.

(c) The growth of algae in reservoirs or other basins, and in the water mains, shall be controlled by proper treatment.

(3) *Testing of water.* The municipality shall have representative samples of the water supplied by it examined by the Department of Health or by a competent chemist or bacteriologist skilled in the sanitary examination of water, under methods approved by the Ohio E.P.A., at intervals sufficient to insure a safe water supply.
Penalty, see § 52.999

## § 52.016 CONTINUITY OF SERVICE.

(A) The municipality shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety to its consumers and the general public. Where an emergency interruption of services affects the service to any public fire protection device, the Director shall immediately notify the Fire Chief or other public officials responsible for fire protection.

(B) Whenever the Director finds it necessary to schedule an interruption in service, all customers to be affected by the interruption shall be notified. The notice shall state the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customer. Where public fire protection is provided by the mains affected by the interruptions, the Director shall notify the Fire Chief or other officials responsible for fire protection of the interruption, stating the time and anticipated duration. In addition, the Fire Chief or other officials responsible for fire protection shall be notified immediately upon restoration of service.

(C) The Director shall keep a complete record of all interruptions on its entire system or on major divisions thereof. This record shall show the cause for interruption, date, time, duration, remedy and steps taken to prevent recurrence.

(D) In the event of interruptions, as set forth in division (A) of this section, the Director of Service is authorized to determine and fix special water and sewer adjustment of discount or rebate charges to customers affected by the interruption, based upon the quantity of water delivered to the customer, the rates fixed for such quantity, and upon the facts, circumstances and conditions of each customer.

(E) In order to accomplish the above, the Director of Service is further authorized to determine and fix such special water and sewer adjustment discount or rebate charges at a rate less than the water and sewer rates fixed by ordinance and currently in effect for such services and including "off and on" service charges and rebates for leaks as hereinafter set forth in §§ 52.137 and 52.138 respectively.

(F) In the event of emergency interruptions only, the Director of Service, after determining and fixing special water and sewer discount and rebate charges shall first get the approval of the Manager prior to putting any such special water and sewer charges into effect.

(G) (1) *Municipal Manager authority.* The Municipal Manager is hereby empowered to enforce the following rules, regulations and criteria to limit water usage at any time should the supply be inadequate to meet the demand, due to low pressure, water main breaks or emergency situations.

(2) *Criteria.*

(a) A voluntary curtailment shall be declared if demand is such that recovery of the water system to average capacity is not probable within the next 24 hours, as determined by the Municipal Manager or his or her designee.

(b) A mandatory ban shall be declared if the Municipal Manager or his or her designee determines that anticipated demand or actual demand exceeds the production capacity of any portion of the water treatment or distribution system so that depletion of supplies could endanger the peace, health, safety and general welfare of the municipality.

(3) *Rules and regulations.*

(a) Voluntary curtailment and mandatory bans shall be declared by the Municipal Manager or a designee and that declaration shall identify usages that are being controlled or precluded, as part of the ban or curtailment, according to the following priority schedule. The schedule identifies the order of ban or curtailment with the lowest priority listed first and highest priority listed last.

1. Bulk water;

2. Private swimming pools or any similar use;

3. Lawns and flower gardens or any similar use;

4. a. Public recreational facilities and privately-owned shrubs and trees; and

   b. Vegetable or fruit gardens or any similar use.

5. Light and heavy industrial use or any similar use;

6. Commercial business - retail or any similar use;

7. Residential usage, such as, laundry, baths, drinking and cooking water or any similar use;

8. Hospital, nursing home, critical care units, schools and licensed day care or any similar use; and

9. Fire department and emergency services or any similar use.

(b) At the discretion of the Municipal Manager or designee, a mandatory ban or curtailment may be declared according to the criteria set forth in division (G) herein.

(c) Upon declaration of a mandatory ban or curtailment, the Municipal Manager or his or her designee shall notify the Mayor and Village Council, and the news media, and post a notice of the ban or curtailment in a public place.

(d) The Chief of Police shall be directed by the Municipal Manager to issue warning citations to first offenders, and cite any additional violations, of any declared mandatory ban on water usage. Upon declaration that a mandatory ban or curtailment be made at a level under division (G)(3)(a) hereinabove, the Municipal Manager is hereby directed to notify all higher priority users of a voluntary curtailment.

(e) Penalties for violations of the ban will be added to the violators' monthly water bill.

(f) The Municipal Manager shall report to Council on the condition of the village's water system at the next Village Council meeting following the declaration of a mandatory ban or voluntary curtailment.

(g) Any classification or determination of similar use under the priority schedule shall be made by the Municipal Manager.

(h) A voluntary curtailment may be lifted at the discretion of the Municipal Manager or designee upon the determination of the Municipal Manager or designee that recovery of the water system to normal capacity is probable within the next 24 hours. A mandatory ban may be lifted at the discretion of the Municipal Manager or designee that anticipated demand or actual demand does not exceed the production capacity of any portion of the water treatment or distribution system so that the depletion of supplies could endanger the peace, health, safety and general welfare of the distribution system. Those parties previously notified of the imposition of the ban or curtailment shall be notified of the lifting of the ban or curtailment.

(i) Upon declaration of a mandatory ban or curtailment, Village Council shall have the authority to impose a moratorium on all new water expansions until the mandatory ban or curtailment is lifted.

(j) Upon declaration of a mandatory ban or curtailment, Village Council shall appoint a review board, consisting of three residents, who shall hear requests from water users to vary the rules and regulations or the abatement of assessments for individual circumstances.

(4) *Penalties.*

(a) Whoever violates a mandatory ban shall receive a warning upon the first occurrence. ***OCCURRENCE*** shall be defined as a violation, along with subsequent actual notice of said violation. Accordingly, once actual notice of a violation is received, the party is subject to an additional charge for another violation, even if it is an uninterrupted improper use of water.

(b) Whoever violates a mandatory ban on second and subsequent occurrences shall be assessed on their water bill an additional charge for improper water use the sum of $25 for the second occurrence and $100 for each subsequent occurrences.

(c) The above does not preclude the right of the municipality at any time to pursue injunctive relief to seek strict adherence to the criteria, rules and regulations set forth in divisions (G)(2) and (G)(3) hereinabove.
(Am. Ord. CM-845, passed 7-12-1988)

**§ 52.017 PRESSURES.**

(A) *Standard pressure.* The municipality may adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure." The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure, the municipality may divide its distribution system into districts, when division is necessary, due to difference of elevation or loss of pressure because of friction, or due to both of those causes; and may adopt a standard pressure for each division, or the municipality may establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressure in a district for which a standard has been adopted exceed 50% of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density the Director may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. In no event, however, should the pressure at the customer's service pipe under normal conditions fall below 15 psi nor should the static pressure exceed 200 psi.

(B) *Pressure gauges.* The municipality shall provide itself with one or more recording pressure gauges for the purpose of making pressure surveys as required by these rules. These gauges shall be suitable to record the pressure experienced on the system and shall be able to record a continuous 24-hour test. One of these recording pressure gauges shall be maintained in continuous service at some representative point on the mains.

(C) *Pressure surveys.* At regular intervals but not fewer than once annually, the municipality having recorded pressure gauges shall make a survey of pressure in its distribution system of sufficient magnitude to indicate the quality of service being rendered at representative points on its system. The pressure charts for these surveys shall show the date and time of beginning and end of test and the location at which the test was made. Records of these pressure surveys shall be maintained at the office of the Director.

## § 52.018 WATER SUPPLY MEASUREMENTS .

There is installed in the municipality a suitable measuring device, at the filtration plant, in order to record the quantity of water produced.

## *STANDARDS OF CONSTRUCTION*

## § 52.030 GENERAL.

(A) The municipal water plant shall be designed and operated to provide adequate and safe service to its consumers and shall conform to the requirements of the Department of Health and the O.E.P.A. with reference to sanitation and potability of water.

(B) All water mains, services and appurtenances thereof shall conform to the standards of the A.W.W.A. and the Subdivision Design and Construction Standards of the municipality. Whenever this chapter is more strict than the requirements of the A.W.W.A., this chapter shall apply.
(Am. Ord. CM-991, passed 1-8-1991) Penalty, see § 52.999

## § 52.031 DISTRIBUTION MAINS .

(A) *Installation.* The installation of water mains and service lines shall be constructed in accordance with the specifications for such installations on file at the Director's office.

(B) *Dead ends.* Insofar as practicable, the municipality shall design its distribution system so as to avoid dead ends in its mains. Where dead ends are known or necessary, the municipality shall cause hydrants or valves to be installed for the purpose of flushing the mains. Mains with dead ends shall be flushed as often as necessary to maintain the quality of the water; but in any event they shall be flushed at least once each year.

(C) *Segmentation of system.* Valves or stop cocks shall be provided at reasonable intervals in the main so the repairs may be effected by the municipality with interruptions to the services of the minimum number of customers that is practically feasible.

(D) *Disinfection of water mains.* All new mains shall be thoroughly disinfected before being connected to the water system. The method of disinfecting shall be in compliance with § 52.149.

(E) *Grid system.* Wherever economically feasible the distribution system shall be laid out in a grid so that in case of breaks or repairs, the interruptions of service to the customers would be at a minimum.
Penalty, see § 52.999

## § 52.032 SERVICE LINES.

(A) *Size.* The size, design and material and installation of the service line shall conform to such reasonable requirements of the municipality as may be incorporated in its rules and regulations. However, the minimum size of the line shall be not less than 3/4 inch nominal size. Any variance from this requirement shall be approved by the Director.

(B) *Inspection.* In the installation of a service line, the customer shall leave the trench open and pipe uncovered until it is inspected by the Director or his or her representative and shown to be free from any "T" branch connection, irregularity or defect. A 24-hour notice should be given for inspection.
Penalty, see § 52.999

## *CONSTRUCTION SPECIFICATIONS*

## § 52.040 GENERAL.

The system shall be adequate to deliver the water requirements of all customers and meet the requirements of § 52.017(A).

## § 52.041 DISTRIBUTION SYSTEM.

(A) *Minimum pipe sizes.* The distribution system shall be of adequate size and so designed in conjunction with related facilities as to maintain the minimum pressures required by § 52.017(A). In no case shall the minimum diameter be less than eight inches when a fire hydrant(s) is located on the main. The maximum length of any individual small pipe line without interconnection with larger mains shall not exceed the following:

| | ***Circulating*** | ***Noncirculating*** |
|---|---|---|
| 1 inch, Nominal Size | 200 feet | 150 feet |
| 1-1/2 inch, Nominal Size | 300 feet | 200 feet |
| 2 inch | 500 feet | 250 feet |

(B) *Fire protection.* Specifications, locations, installations and the responsibility for the maintenance of fire hydrants, public and private fire protection facilities, connecting mains, and their ownership may be subject to negotiations between the Director and the applicant. Fire hydrants and public and private fire protection facilities shall be installed to the requirements of the municipality and when owned by the municipality shall be subject to such conditions as may be determined based upon the compensation received for this service. All hydrants shall be spaced in accordance with § 152.004(F).
(Am. Ord. CM-991, passed 1-8-1991)

## § 52.042 TRANSMISSION SYSTEMS .

The transmission system from sources of supply shall be designed to deliver in combination with related storage facilities, and to the limits of the capacity of those sources of supply, the maximum requirements of that portion of the system which is dependent upon such transmission system.
Penalty, see § 52.999

## § 52.043 WATER SUPPLY REQUIREMENTS .

The quantity of water delivered to the distribution system from all source facilities should be sufficient to supply adequately, dependably and safely the total requirements of all customers under maximum consumption, and should be determined so as to maintain the specified pressures as required by § 52.017(A).
Penalty, see § 52.999

## § 52.044 MATERIALS AND SPECIFICATIONS .

All materials and specifications shall conform and comply with §§ 152.004 and 152.015.
(Am. Ord. CM-991, passed 1-8-1991) Penalty, see § 52.999

## *LAWN WATERING METERS*

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## § 52.055 LAWN WATERING METERS .

(A) The intent of this section is to define and outline the installation, use and conditions for watering meters.

(1) The watering meter shall be installed by placing a tee in the line immediately behind the existing pit or remote meter (regular meter). A separate shut off valve shall be installed for the water meter. The watering metering shall either be placed in a meter pit in the yard or next to the remote in the structure. An underground watering system may be utilized with the written approval of the Municipal Manager prior to installation.

(2) The outflow from the water meter shall be connected to only one external faucet (silcox) or approved lawn watering system. The silcox shall be a Woodford CP-25 vacuum breaking model or approved alternate.

(3) All lawn watering meters must have a water backflow prevention device installed before the watering meter and after the regular meter. This backflow device shall comply with § 52.154 or be approved by the Municipal Manager. The minimum device shall be a Watts 9-D double check valve with vent system or approved alternate.

(4) Each request for a watering meter shall be made in writing, and include a detailed sketch of the proposed installation. This sketch shall be utilized by municipal employees to inspect the installation upon completion. Application and fees must be completed/paid prior to any installation of the watering meter system.

(5) The customer shall pay the municipality one-half of the applicable service connection fee as stated in § 52.142, for the privilege of installing a watering meter. The municipality shall only provide a meter and pigtails. All other costs necessary for the installation shall be born by the customer.

(B) No water registered on the "watering meter" shall be utilized for potable sources, nor connected to the structure or any internal plumbing system whatsoever.
(Am. Ord. CM-966, passed 9-11-1990) Penalty, see § 52.999

## *SUPPLY*
## *" \f D*

### § 52.065 NO GUARANTEE .

The supply of water to any consumer for any purpose whatsoever is without guarantee to the consumer of a fixed quantity, quality, purity or temperature, these items being subject to the variable conditions which may arise in the operation and maintenance of the water system of the municipality.

## *WATER MAIN EXTENSIONS*

### § 52.075 EXTENSIONS OF WATER MAIN.

No extension of water mains or water supply or sanitary sewer within or without the municipality shall be made without prior approval by motion authorizing it by the Council.
Penalty, see § 52.999

### § 52.076 REQUIREMENTS OF WATER MAIN EXTENSIONS.

(A) All water main extensions, in areas primarily residential, shall be pipe of eight inches in diameter.

(B) All water main extensions in areas primarily business or industrial shall be pipe of 10 inches in diameter.

(C) Any one or more property owners may request the Director to determine the feasibility of installing a water main extension to be accessible to premises. Construction of an approved water main extension may proceed under one of the following plans as provided for in §§ 52.077 through 52.079.
(Am. Ord. CM-991, passed 1-8-1991) Penalty, see § 52.999

## § 52.077 PLAN NO. 1, PAYMENT OF ENTIRE COST IN ADVANCE.

If Council approves the proposed extension, the Director shall determine the estimated construction cost. The property owners may deposit with the municipality a sum equal to such estimated cost and the Director shall thereupon proceed with the construction. Any surplus in the deposit amount over and above the construction cost shall be refunded to the owner or his or her agent. Should the construction cost exceed the deposit amount, the owners shall pay this excess amount and no water taps shall be installed or water service rendered from the extension until the cost is paid in full.

## § 52.078 PLAN NO . 2, CONSTRUCTION BY OWNERS.

The Director may permit or require the owners to arrange for the laying of water main extensions by private contract; however, the work shall be done under the supervision of the Director, or his or her representative. In any such case, the Director shall require a deposit in the sum of 10% of the total estimated cost as a guarantee against defective workmanship or materials. The deposit, less any sums expended by the Department of Service for repair or replacement of defective work or materials, shall be refunded one year after the water main extension has been placed in service. No other refund or payment shall be made. Materials used for water main extension under Plan 2 must be approved by the Director.
Penalty, see § 52.999

## § 52.079 PLAN NO. 3, SPECIAL ASSESSMENT IN ACCORDANCE WITH REVISED CODE.

(A) The owners of property to be served by a proposed water main extension may petition for, or Council may authorize, the construction of such extension and the assessment of the cost thereof in accordance with the provisions of the Revised Code.

(B) No extension of water main will be approved for less than the entire footage of the premises to be served plus the necessary length of water main from the existing main to that frontage. Plans for subdivision shall be drawn by a registered engineer and must include complete circulation within the area and between the area and the existing system. Any variance from this requirement shall first be approved by the Director.

(C) All water mains and lines shall be installed to plan and profile in accordance with standard specifications of the Department of Service. The Department shall in all cases specify the depth, size and location of water main to be installed, as well as the number and location of valves, fire hydrants or other appurtenances thereto.

(D) All water mains extended or installed under these rules and regulations whether within or without the corporate limits of the municipality shall upon being supplied with water become the sole property of the municipality. All maintenance and repair costs and charges shall be assumed by the municipality upon formal acceptance of the utility by the Director.
Penalty, see § 52.999

## § 52.080 WATER MAIN REPLACEMENT .

The Director may replace any existing mains as necessary to improve the water distribution system. Such replacement may be in a different location from the main being replaced, but shall be designed so as to serve all properties already connected to the existing main by means of individual service branches. No charge will be made to these properties for such replacement.
Penalty, see § 52.999

## § 52.081 EXTENSION BY DIRECTOR .

(A) Whenever the Director shall determine that it would be to the best interest of the water system to construct a water main extension, he or she shall be authorized, with the approval of the Council, to construct such extensions. The size of the mains to be used in the construction of extensions shall in every case be determined by the Director.

(B) In any situation where there is reasonable doubt concerning the completion of building (construction), the Director may require that an amount equal to the cost of the main fronting the applicant's property shall be spent on the property before the extension is made.

(C) No water mains shall be constructed in any new subdivision street or in any undedicated street until such street has been approved by the proper authority and all ordinances and code requirements have been complied with.

(D) No pumps or other device shall be connected to the system, and no physical connection shall be permitted between the municipality's water system and any other water supply, either through cross-connections, auxiliary intakes or bypasses, except as follows:

(1) With another potable public water supply, approved by Council by ordinance.

(2) With a potable supply which is regularly examined as to its quality by those in charge of potable supplies to which the connection is made, approved by Council by ordinance.

(E) This will apply to all private systems whether inside or outside of any buildings.

(F) Before water mains or lines are laid in new subdivisions, the subdivider shall furnish the Director with a record plat or plan of the subdivision approved by the Planning Board, and construction drawings approved by the Municipal Engineer and the plat or plan shall be recorded in the Miami County Recorder's office.
(Am. Ord. CM-991, passed 1-8-1991) Penalty, see § 52.999

## *SERVICE LINE*

### § 52.090 SEPARATE WATER LINE, METER .

Wherever a water main is tapped or used to supply or service a separate residential, commercial, industrial or other building, a separate water line shall be run to a water main to supply the same and a separate water meter shall be installed.
Penalty, see § 52.999

### § 52.091 EXTENSIONS, FORBIDDEN WHEN .

No person shall make extensions of water lines or sanitary sewer lines from a residential commercial, or industrial building designed, intended or used as such, to another residential, commercial, industrial or other building, where the building to which extension or connection of the water or sewer line is made is located on a lot or parcel of land abutting a public way, street or alley.
Penalty, see § 52.999

### § 52.092 EXTENSIONS, EXCEPTIONS .

(A) Sections 52.090 and 52.091 shall not prohibit extension or connections to a garage or other outbuilding used in connection with the residential, commercial, industrial or other building mentioned in this section located on the same lot or parcel of land.

(B) A service line shall serve only the premises described on the application and each branch shall be metered. Each house or building shall have a separate and distinct curb stop located outside the premises opposite such premises and on public right-of-way. The Director may require properties or premises not so equipped to install additional services and/or curb stops at the expense of the property owner.

(C) In cases of service to complexes such as manufacturing, churches, schools and apartment buildings, a master may be installed to serve such complexes.
Penalty, see § 52.999

### § 52.093 PORTION INSTALLED AND MAINTAINED BY THE DEPARTMENT OF SERVICE .

The Department of Service will maintain the service line from the distribution main up to and including the curb box and valve, after one year from the date of acceptance. The Department of Service shall also maintain the water meter, remote, and meter yoke.
(Am. Ord. CM-991, passed 1-8-1991)

### § 52.094 PORTION INSTALLED AND MAINTAINED BY PROPERTY OWNER.

On all new installations or services, the service shall be installed from the distribution main to the point of connection with the building plumbing. The expense of installing and maintaining the meter pit including lid, the curb box, valve, and line to the building plumbing, shall be the sole expense of the property owner or his or her agent, and be maintained by the property owner or his or her agent. This service line shall have a minimum depth of 42 inches. Any variations of the above shall be approved by the Director, in writing.
(Am. Ord. CM-991, passed 1-8-1991) Penalty, see § 52.999

### § 52.095 FAILURE TO MAKE REPAIRS.

Failure of the property owner to make repairs when necessary may result in the water being turned off at the curb stop and the property owner charged for the estimated quantity of water wasted.

### § 52.096 DEFINITION.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

***SERVICE LINE.*** The line through which a customer receives water from a distribution main.

## *METER TESTING*

### § 52.105 METERING PRIVATE WELLS FOR SEWER SERVICE CHARGES.

(A) The Director shall provide for the registration of all wells and the metering of all water from wells that is discharged to any sewer, either storm, sanitary or combined.

(B) All water meters required shall be installed by and at the expense of the property owner, including the cost of this meter, as provided by ordinance or this chapter, after the property owner shall have made any necessary changes in the building plumbing to separate any well water that does not discharge to any sewer of the municipality. All water meters required to properly measure the flow of water to the sewer shall be owned and maintained by the municipality.

### § 52.106 TESTING METERS.

(A) It shall be the Director's responsibility to test and correct any meter which in his or her judgment is registering incorrectly, without the consent of the property owner. The municipality shall not be responsible for

breakage of pipes or valves occurring during removal or installation of meters, where such breakage is due to old or faulty plumbing.

(B) Upon request from an owner or consumer, and upon agreement to pay for test charge, the Director will remove any meter to the test shop for test, upon payment of a $50 fee for a 5/8-inch meter and for all other sizes a fee equal to the cost of removing and testing the meter. If, upon examination and test, it is found that the meter registers outside the tolerance limits of the following percentages of water through it, viz., 2% over or under on disc meters sizes five-inch to two-inch on flows from one to 20 gallons per minute, or 5% over or under on all other types and sizes of meters on flows from low to high rating, then it shall be considered "inaccurate" and the water charges will be adjusted upon basis of that test and no charge will be made for testing.
(Am. Ord. CM-816, passed 1-5-1988; Am. Ord. CM-13-27, passed 12-10-2013)

## *ACCOUNTING PRACTICE AND PROCEDURE*

### § 52.115 BILLING PRACTICE.

(A) A charge for water will be issued for each billing period. The charge will normally be determined from the difference between two consecutive meter readings. When, for any reason, a meter reading has not been obtained, the charge may be "estimated" from quantities of water used during previous periods.

(B) The minimum rate shall be charged to all "customers" as defined in this chapter. The minimum rate for 1,000 gallons or less is established under the water rate ordinance, subject to revision by the Council.

(C) Charges covering less than the full billing period may either be calculated from previous meter readings (estimated) or may be prorated (based on days of service).

(D) The municipality shall endeavor to give proper notice of water service charges but by law cannot guarantee delivery of mail. Failure to receive notice by mail shall not excuse customers from prompt payment of charges. It shall be the established policy of the municipality to accept only total and complete payments for charges billed.

(E) All water charges are payable at the municipal office to the Director of Finance, or to an agent thereof.

(F) Owners of property shall be held responsible for water charges to their premises; but payments will be accepted from tenants. In case the tenants do not pay in accordance with this chapter, water service will be discontinued to the property. All unpaid charges for water shall be a lien against the property served. (See § 52.134)

(G) The authority of a municipality to discontinue or refuse water service when sewer charges are delinquent has been upheld by courts of Ohio. This authority may be exercised even though payments of both accounts are not normally received from the same source.

(H) The municipality shall notify all customers annually in conjunction with a regular bill, a breakdown of the municipality's rate structure attributed to OM&R for the water distribution and treatment services.

(I) The municipality shall perform an annual audit of the water fund to ensure adequate revenue is being generated to cover OM&R costs for the water treatment and distribution services.
(Am. Ord. CM-991, passed 1-8-1991)

## § 52.116 WATER RATES AND MUNICIPALITY.

(A) There shall be levied and assessed upon each customer who owns improved real estate and to whom municipal water service is accessible, even if a physical connection with water does not exist, a service charge payable as provided in this section.

(B) The usage charge shall be based on the quantity of water used as measured by the water meters, on all billing statements payable after the effective date hereinafter provided, and the same are fixed as follows:

(1) Effective with the January 2016 billing, the water rates shall be as follows:

(a) An operational charge of $13.45 for each billing period.

(b) A per 1,000 gallon usage charge of $5.95.

(2) The operational charge shall be levied, then the per 1,000 gallon usage charge for each 1,000 gallons of metered water usage shall be added to the operations charge. Thus the minimum rate charged for 1,000 gallons in a billing period shall be $19.40.

(C) *Finals.*

(1) The municipality shall make a final meter reading upon the request of the customer. If this final meter reading is for less than a standard billing period, the customer shall be charged for all water utilized during this reading. The costumer shall also pay the full service charge, even if it is not a full billing period. All finals shall be paid by the due date printed on the bill. If payment is not received by the due date, a service charge of $30 shall be levied on the account. If the service is turned off due to failure to pay the final bill, an "off and on" fee of $20 shall be levied in accordance with § 52.136, in addition to all charges due.

(2) If a tenant fails to pay a final bill, the invoice shall be forwarded to the landlord of the property with a 14 day payment extension. If payment is not received within this extension, a $30 service charge shall be levied on the account and service can be disconnected with an "off and on" fee of $20.

(D) The customer shall be billed for the service charge or minimum rate charged for the watering meter only for those billing periods during the year where water was used. All water that registers on the watering meter shall be charged in accordance with the provisions of this Code of Ordinances.
(Am. Ord. CM-563, passed 2-3-1981; Am. Ord. CM-966, passed 9-11-1990; Am. Ord. CM-991, passed 1-8-1991; Am. Ord. CM-1002, passed 4-9-1991; Am. Ord. CM-1038, passed 10-8-1991; Am. Ord. CM-98-31, passed 9-8-1998; Am. Ord. CM-03-35, passed 12-9-2003; Am. Ord. CM-04-45, passed 1-11-2005; Am. Ord. CM-09-03, passed 3-10-2009; Am. Ord. CM-11-25, passed 11-8-2011; Am. Ord. CM-13-27, passed 12-10-2013; Am. Ord. CM-13-32, passed 1-7-2014; Am. Ord. CM-15-09, passed 3-10-2015; Am. Ord. CM-15-39, passed 12-8-2015)

## § 52.117 WATER RATES OUTSIDE MUNICIPALITY .

(A) The water rates to be charged for water furnished by the West Milton Department of Water to all customers whose principal dwelling, place of business, or work is situated outside the municipal limits on all billings payable after the first regular meter reading during the month of April, 1979, for water used during the months of February, 1979, and March, 1979, be and the same are fixed at 130% of the rates charged to consumers situated within the corporate limits of West Milton, Ohio. This surcharge shall not apply, however, to a customer who services an outbuilding, garage, or other accessory building with water, which buildings

happen to be located outside the municipal limits. However, this section does not supersede or in any manner affect, change, alter or modify Section 6 of the "Agreement between the Village of West Milton and Village of Ludlow Falls" for water facilities and services entered into by these villages on July 28, 1969, authorized by Ordinance CM-102, adopted June 3, 1969, by the Municipality of West Milton, Ohio, and authorized by Ordinance 131, adopted May 21, 1969, by the Municipality of Ludlow Falls, Ohio.

(B) The Village of Ludlow Falls, Ohio, is exempt from the minimum charge for water as set forth in § 52.116.

(C) Based upon the terms, provisions, and conditions of the agreement between the Municipality of West Milton, Ohio, and the Ludlow Falls Water Extension Service Area, dated July 28, 1969, and the Ludlow Falls, Ohio, Water Rate Study, the rates to be charged to consumers within the Ludlow Falls Water Extension Area shall be and are hereby established at 130% of the rates charged by the Municipality of West Milton to consumers within its boundaries, to be effective June 30, 1984.

(D) The municipality shall not hereafter permit any properties located outside the municipality, except as indicated in divisions (A), (B) and (C) above, to become connected to the water system until such time as the municipal corporation or unincorporated areas within which such property proposed to be connected is situated makes financial arrangements with the municipality for the additional responsibilities and burdens which will be placed upon it. Unincorporated areas may be required to annex into the municipal corporate limits prior to any extension of water services.

(E) The municipality reserves the right to enter into service agreements with user types including other political subdivisions for the purpose of providing distribution and treatment of water. These agreements shall be approved by Council in ordinance form. The municipality currently has and reserves the right and privileges to service all existing nonresident services.

(F) The water rates to be charged for the water furnished by the West Milton Department of Water to the Pine Brook Estates trailer park, or its subsequent owners, until annexation occurs, shall be and the same are fixed at 115% of the rates charged to customers situated within the corporate limits of the village.
(Ord. CM-710, passed 6-12-1984; Am. Ord. CM-991, passed 1-8-1991; Am. Ord. CM-1105, passed 11-10-1992)

(G) The water rates to be charged for the water service furnished by the West Milton Water Department to Memorial Holiness Camp, or its assigns or successors, shall be fixed at a rate of 115% of the rates charged for in-town users until such time the area is annexed into the municipality.
(Ord. CM-01-22, passed 9-18-2001)

## § 52.118 MINIMUM LARGE METER CHARGE.

The minimum large meter charges to be charged to all customers on all billing, payable after the effective date of this chapter, whether situated within or without the municipality are fixed as follows:

*LARGE METER CHARGE*

| *Size of Meter* | *Charges* |
|---|---|
| 1-inch | $3 |
| 1-1/2 inch | $5 |
| 2-inch | $7 |
| 3-inch | $9 |
| 4-inch | $12 |

(Am. Ord. CM-1038, passed 10-8-1991)

## § 52.119 PAYMENT RELIEF.

The Finance Director shall request in writing on a case by case basis, to have water and/or sewer charges waived. This request shall show that there was substantial fault with the municipality's equipment or personnel to warrant the waiving of charges. The Municipal Manager, in writing, then may waive the charges if appropriate.
(Ord. CM-1002, passed 4-9-1991)

## § 52.120 WATER CHARGES AND DELINQUENT ACCOUNTS.

(A) All charges rendered shall be paid by the 15th day of the month. Should the 15th of the month fall upon a weekend or holiday, the next business day will become the final date for net payment. After this date, a 10% penalty shall be charged.

(B) Customers whose bill has not been paid by the end of the month in which the bill was sent shall be issued a delinquent notice. If payment has not been received prior to the shut off date listed on the bill, a $30 service fee shall be levied on the account and customers shall be required to pay the entire account balance to avoid shut off. The customer has the right to appeal the disconnection under the provisions of § 52.121. If no appeal has been filed in accordance with § 52.121 and payment has not been received by the shut off date, service shall be disconnected without further notice and an "off and on" fee of $20 for service within the municipality and $25 for service outside municipality shall be charged.

(C) Customers that are disconnected due to non-payment are required to pay the entire account balance, including fees, before service is restored.
(Am. Ord. CM-815, passed 1-5-1988; Am. Ord. CM-830, passed 5-10-1988; Am. Ord. CM-13-27, passed 12-10-2013; Am. Ord. CM-15-08, passed 3-10-2015)

## § 52.121 APPEALS OF WATER AND SEWER BILLS.

(A) The Finance Director shall hear any and all appeals of any charges contained on the water and sewer statement or bill, including any penalty therein; any "on and off charges"; and any shut-off order.

(B) Any interested person feeling aggrieved by any matter contained in division (A) above may appeal such charge, penalty or order directly to the Finance Director in writing prior to the payment of such water or sewer

statement or bill by the 15th of the month in which the bill was sent, or within such additional reasonable time as determined by the Finance Director.

(C) The Finance Director shall affirm, modify or revise any such water or sewer statement or bill, shut off order, on and off charge or decision or action of the municipal staff which is being appealed and direct such appropriate corrective action to be taken not later than 15 days following the filing of the appeal.

(D) Upon filing of the appeal pertaining to any shut off order, the Finance Director may, but shall not be required to, suspend or delay any such shut off order, or may order the resumption of services until the appeal has been decided, upon the condition that all future charges not appealed are paid.

(E) No appeal shall be affected by any payment of water or sewer charges or the payment of any on/off charges, even if payment is made after the appeal is filed. As part of his decision regarding an appeal, the Finance Director may order refunds or credits for payments which have been made on disputed accounts.

(F) Should the interested person still feel aggrieved by the decision of the Finance Director, that person may make a final appeal to the Municipal Manager. This final appeal process shall follow the same guidelines as laid out in divisions (B) through (E).
(Am. Ord. CM-830, passed 5-10-1988; Am. Ord. CM-13-27, passed 12-10-2013)

## *REGULATORY PROVISIONS*

### § 52.130 RIGHT TO ENTER PREMISES.

The municipality reserves the right for its authorized agents to enter the premises to which its service extends, at all reasonable hours, for the purpose of reading, repairing, installing, removing or inspecting water meters, or for any other purposes which it may deem necessary to properly safeguard the interests of the municipality and the consumer. When such access is refused, the service shall be immediately discontinued and not continued again until the request of the municipality has been complied with and an “off and on” charge of $20 has been paid, for service within the municipality and $25 for services outside the municipality, or the municipality may require the meter to be relocated in an approved pit at such location as the municipality directs, or install a remote reader at the expense of the property owner.
(Am. Ord. CM-816, passed 1-5-1988)

### § 52.131 METER READING.

The reading of water meters will be monthly. On one unsuccessful attempt to read the meter, the municipality reserves the right to bill the consumer an estimated bill based upon the average use for the previous yearly consumption. It shall be mandatory that the customer make arrangements to have the meter read by the Department of Service at least six times a year, which time shall be during the regular working hours of the Department of Service.
(Am. Ord. CM-98-31, passed 9-8-1998)

## § 52.132 CONSTRUCTION WATER.

Construction water will be furnished for each tap fee received with a minimum quantity charged of 4,000 gallons at the rate established in § 52.116(A)(1)(b) times two. Any additional 1000 gallons above 4000 gallons shall be charged the rate established in § 52.116(A)(1)(b) times two.
(Am. Ord. CM-991, passed 1-8-1991)

## § 52.133 APPLICATION FOR WATER USAGE.

All applications or permits for the use of water service must be made in writing by the owner of the premises or his agent to the municipality and filed with the Municipal Director of Finance on such forms as are provided by the municipality.

## § 52.134 CHARGES A LIEN AGAINST PROPERTY.

All charges for water are assessed against the property to which the service is rendered, and are a lien against such property, collectable in the same manner as other taxes and assessments; and it shall be the duty of persons
purchasing property to ascertain if there are unpaid water charges standing against the property, or the municipality reserves the right not to give service to new owner until the lien is satisfied.

## § 52.135 OWNER MAY HAVE TENANT PAY FOR WATER.

(A) If the owner of any premises elects to have his or her tenant, occupant, or lessee pay the water charges as they accrue, such occupant, tenant or lessee for such purpose acts as the agent of the owner and such owner shall not thereby be relieved from the payment of any delinquencies that might occur, and the property shall be subject to the lien provisions as provided in § 52.134.

(B) Should a problem develop in the collecting from any tenant or premises where there is a single line of service entering the property, but where separate meters exist inside the building and there is one shut-off for such premises, the municipality, at its discretion, will notify the property owner and the bills shall revert to the owner's name and be sent directly to the property owner. This shall remain enforced until such time the property owner installs a separate shut-off per unit at their expense.
(Am. Ord. CM-13-27, passed 12-10-2013)

## § 52.136 REFUSAL OF SERVICE TO DELINQUENTS .

When water is turned "off" on account of delinquency, it will not be turned "on" again until all delinquencies have been paid, together with an "off and on" charge of $20 for service within the municipality and $25 for service outside the municipality.
(Am. Ord. CM-816, passed 1-5-1988)

**§ 52.137 FEES .**

No reconnection of water service for new accounts, previously delinquent accounts or for accounts with new meters shall be made until the following fees are paid (in addition to full payment of any balance due on previous accounts).

(A) Service fee: $30. This fee shall be charged at the discretion of the municipality for any service provided to the customer outside of normal billing, which includes requested disconnects/reconnects. It shall also be used for any customer that has an unpaid balance on the shut-off date printed on their bill.

(B) Meter check fee (customer requested): $30. Charged whenever a meter or usage check is requested. If the result of the check indicates that the meter is not functioning properly or within normal standards, this fee will be credited back to the customer. A customer's first request shall be free, while each subsequent requested meter check shall be charged.

(C) "Off and on" fee:

(1) Within the municipality: $20.

(2) Outside the municipality: $25.

(3) This fee shall not be charged to the customer if the "off and on" is due to a water leak in the customer's service line or structure or any other emergency as determined by the Director.

(D) Meter test fee:

(1) Five-eighths inch meter: $50.

(2) All other sizes: amount equal to cost.

(3) As referenced in § 52.106(B).

(E) Returned payment fee: $30.

(F) Unpaid final fee: $30.

(G) Extra bill print fee (at the discretion of the municipality): $2.
(Am. Ord. CM-991, passed 1-8-1991; Am. Ord. CM-13-27, passed 12-10-2013)

**§ 52.138 NO REBATE FOR LEAKS .**

It shall be the responsibility of the property owner to maintain piping and plumbing fixtures in good condition. The amount of water registered by any meter or otherwise shall be charged and paid for in full irrespective of whether such water, after having been registered, was lost by leakage, accident or otherwise. If such unknown leaks occur, the Director reserves the right to amend, alter, adjust or fix special rates in such cases, based upon the facts and circumstances of each case. In no case will rebates or discounts be allowed because of leaks or faucets open continuously.

## § 52.139 UNLAWFUL TO SELL WATER.

It shall be unlawful for any person, firm or corporation to sell water of the municipal water system or enter into contract with any persons for sprinkling of lots, streets or for any purpose whatsoever other than their own use, and when any such contract is known to exist they will be liable to be disconnected from all water service. Penalty, see § 52.999

## § 52.140 WATER SALES TO CASUAL USERS IN CONTAINERS FURNISHED BY THE USERS.

The municipality may sell water to a casual user in containers furnished by the user at the rate established in § 52.116(A)(1)(b) times two per each 1,000 gallons. The user must secure prior written permission from the Director. The person, firm, or corporation receiving the water shall pay for the same to the municipality before the water is secured.
(Am. Ord. CM-773, passed 11-12-1986; Am. Ord. CM-991, passed 1-8-1991) Penalty, see § 52.999

## § 52 .141 WATER SERVICE DISCONTINUED.

(A) *By user or property owner.* Any water user or property owner may discontinue water service by having the curb stop turned to the "off" or closed position by the Department of Service.

(B) *Department of Service.*

(1) Water service may be refused or discontinued to any person, whether tenant or owner, for failure to pay an unpaid water charge at any previous place of residence or ownership. This rule shall in no way reduce the responsibility of a property owner for water charge applicable to premises owned.

(2) Water service may be refused to a (property) owner at any given property in the event there are unpaid water charges at any other property of which he is the owner.

(3) Water service may be refused or discontinued to the residence of a property owner when there is a failure to pay a water charge at any other property of which he is the owner.

(4) Any water service abandoned by the property owner shall be shut "off" at the water main or curb box, at the option of the Director, at the owner's expense.

(5) In the event of a leak that is the responsibility of the property owner to repair.

(6) In the event of maintenance or repair to that part of service line maintained by the Service Department.
(Am. Ord. CM-991, passed 1-8-1991)

## § 52.142 SERVICE CONNECTION FEES AND SPECIAL LINE ASSESSMENTS.

(A) *Application and approval.* Prior to commencing construction of any work relating to water mains or appurtenances, any person, whether individual, corporate, partnership, or otherwise, shall furnish to the

Department of Service a complete set of plans and drawings of the water main, service lines, and appurtenances of the proposed development, the drawings showing points of connections and entry, size of connection, size of meter and size and kind of material to be used, and any other relevant information relating thereto, upon request of the Director of Service, upon the application form furnished by the Department of Service. Each application must be approved by the Director of Service, prior to commencing construction.

(B) *Permit fees.*

(1) Permit fees shall be applicable depending on the size of the service connection, as follows:

(a) For each single-family residence, a fee of $350.

(b) For each multi-family residence unit and other residence units occupied by more than a single family, a fee of $350 for the first unit, and $300 for each successive unit.

(c) For all other types of construction (nonresidential) the water connection fee shall be based on the size of the water meter service installed at the following rates:

| ***Service Connection*** | ***Fee*** |
|---|---|
| 3/4 inch or smaller | $600 |
| 1 inch | $1,000 |
| 1-1/2 inch | $1,500 |
| 2 inch | $3,000 |
| 4 inch | $5,000 |

(d) All meter installations in excess of a four-inch connection shall be charged a connection fee at the rate of $1,000 for each additional inch meter installed. Installation fees for connections between listed sizes shall be prorated.

(e) All meter installations between the transmission line from the master meter to the Water Distribution Plant shall be charged a connection fee of $1,500.

(2) The above tap fees shall be due and payable by the applicant and collected by the municipality at the time the building or zoning permit is issued to the applicant. Should any person or firm request an increase in the size of his or her water service he or she shall be subject to a water connection fee which shall be the difference in the charges provided in division (B)(1)(c) above for the meter of increased size and the size of the meter it replaces.

(C) *Responsibility of the Department of Service and the applicant.*

(1) The Department of Service in consideration for the payment of the permit fee shall purchase, for the applicant, a water meter of the size indicated on the application in relation to the permit fee paid, pigtails, remote, remote wire and meter yoke only.

(2) The Department of Service shall physically install the water tap on the water main on 3/4-inch through one-inch service connections only, and the applicant shall be required to employ a plumber, approved by the Director of Service, to physically install the water tap on the water main on 1-1/2-inch and larger service connections, at applicant’s own expense.

(3) The applicant shall be responsible for all expenses involved in the installation of a service line including, by way of illustration and not limitation, costs of uncovering and recovering the water main, pipe, fittings, corporation cock, valves, tapping saddle when necessary, meter yoke installation and all other materials.

(D) *General conditions.*

(1) In the installation of a service line, the applicant shall leave the trench open and the line and connection uncovered until the Director of Service has inspected and approved the installation of the service line. No service connection shall be made without at least a 24-hour notice given to the Department of Service, prior to the date on which the connection is requested to be made; and the connection shall be made within a reasonable time thereafter.

(2) A tapping saddle shall be required on each six-inch water main when the service connection is larger than one inch, and on each eight-inch water main when the service connection is larger than 1-1/2-inch, and on all transite mains, unless the requirement is expressly waived by the Director of Service for good cause.

(E) For any lot, land, building or premises for which connection is hereafter made with the municipal water system or which beings to utilize the water system, either directly or indirectly into a water main that has been designated by Council may legislation as a special assessment water line, there shall be levied a "special line assessment" (SLA) in accordance with the contract negotiated.
(Am. Ord. CM-991, passed 1-8-1991; Am. Ord. CM-1038, passed 10-8-1991; Am. Ord. CM-04-45, passed 1-11-2005; Am. Ord. CM-13-27, passed 12-10-2013) Penalty, see § 52.999

## § 52.143 WATER METERS AND YOKES.

(A) All water meters, with the exception of remote meters, shall be located at the property line in meter pits, the pit to consist of a tile not less than 20 inches in diameter and covered with an approved top (Ford type C3L-T or equal), all costs of the pit together with required materials to be at the expense of the applicant. The cost of all service connections for supplying water from the mains or distribution lines shall be paid by the applicant. This cost includes all material and labor required to bring the water from the main or distribution line to the point of consumption.

(B) All water meter yokes shall be Ford Y501 with Ford AV94-313W inlet valves, Ford AV94-313 outlet valves, and Ford ED-1-W expansion connectors (or equals), which shall be furnished by the municipality for all new construction as part of the tap fee indicated in § 52.142. All plumbing rehabilitations that involve relocation of the meter or piping shall require the installation of the above mentioned meter yoke equipment at the customer's sole expense.

(C) Each and every unit, business and/or apartment shall have a separate water meter. In the case of Home Occupation in a residential structure, no additional meter shall be required as set forth above.

(D) Multi-unit buildings shall require separate metering facilities for each unit. Each building is permitted a single service connection of the appropriate size into the main. This tap shall be in accordance with § 52.142.

Branch services including curb box, valve, meter and meter pit shall be constructed for each building unit. All water service lines shall be the sole responsibility of the owner in accordance with § 52.999.
(Am. Ord. CM-966, passed 9-11-1990; Am. Ord. CM-991, passed 1-8-1991)

### § 52.144 WATER AND SERVICE MAIN EXCAVATIONS .

Any excavation made on public right-of-way shall be filled with granular backfill and compacted to within ten inches of finished grade, and then eight inches of B-19 or equivalent and two inches 404 Hot Mix shall be applied. Care should be taken when backfilling to avoid damaging the newly installed or repaired utility, the adjacent property, and other installations. Should concrete or brick be encountered in the excavation, it should be replaced with concrete of the same thickness and allowed a three-day curing period before further building up of the excavation. Backfill shall be well tamped prior to applying the surface materials and the surface materials shall be properly applied, compacted, and rolled, the expense thereof to be the sole obligation of the applicant. A cash bond or certified check of $100 shall be required in all cases except new plats, conditioned upon the filling of the trench and restoration of the street surface, approved by the Director of Service. Inspection and tapping shall be done by the Department of Service, or its duly authorized agent. The applicant shall be responsible for maintenance and repair of the service line from the curb box or property line to the premises. All materials, including but not limited to backfilling materials, shall be at the site when the tap is made.
Penalty, see § 52.999

### § 52.145 TAPPING OF WATER MAINS .

No person except as otherwise permitted herein, shall be permitted to tap or make any connections with the water mains or distribution pipes of the municipal water system.
Penalty, see § 52.999

### § 52.146 SERVICE CONNECTIONS .

All service connections in streets between the mains and the curb box may be installed by the employees of the applicant and shall be inspected and approved by the Director or his or her representative.

### § 52.147 CURB AND CORPORATION COCKS UNDER CONTROL OF DEPARTMENT OF SERVICE.

Water may be turned on only by an authorized employee of the Department of Service, except that a licensed plumber, with permission of the Director, may turn on the water for testing purposes; however, it shall be shut off again when testing is completed.

### § 52.148 METER INSTALLATION SPECIFICATIONS.

(A) All meter installations shall be approved by the Director and shall be installed in accordance with the following specifications unless a variance is granted by the Director. In new houses and apartments, meters shall

be installed in pits. In commercial, institutional or industrial uses, meters may be installed in the building. The location shall be reasonably acceptable to allow space for maintenance by the Department of Service personnel and shall be protected from damage.

(B) Meters shall be installed in the horizontal position.

(C) The plumbing shall be of sufficient strength and rigid enough to carry the weight of the meter.

(D) Remote meters shall have a pipe or conduit line of at least 5/8-inch diameter, installed from the location of the meter to the outside wall at approximately 36 inches from the finished grade, on the front left or right side of the structure (as viewed from the right-of-way) and not more than six feet from the corner of the structure. The pipe or conduit shall not contain any 90-degree elbows, but may have sweep elbows. This is for the purpose of installing the remote cable. The remote cable shall not be stapled, nailed or in any manner fastened to any object. Two feet of extra remote cable shall be left at both the meter location and outside the wall. No obstructions, shrubbery or flower beds shall interfere or cause an inconvenience for reading the meter from this location.

(E) Pit meters shall be installed in a water meter pit, located within five feet of the right-of-way line (on private property), and not in any driveway, apron or sidewalk. The installation shall conform to all applicable code sections, rules and regulations promulgated.

(F) Stop valves shall be installed on both sides of the meter within the same space, water meter pit or room as the meter and within 24 inches of the meter. No electrical ground wire shall be attached to house plumbing for purposes of grounding electrical wiring.

(G) In no case will the municipality be responsible for any damage resulting from attaching or connecting any device to a water line.
(Am. Ord. CM-991, passed 1-8-1991; Am. Ord. CM-96-09, passed 3-12-1996) Penalty, see § 52.999

## § 52.149 SPECIFICATIONS FOR INSTALLATION OF DUCTILE PIPE AND FITTINGS.

(A) This specification applies to all material, workmanship and services necessary for and incidental to the furnishing, laying and installing of all ductile pipe and fittings.

(B) All ductile pipe will be Class 52 with push-on joints, tar-coated on the outside and cement-lined on the inside, and conform to ductile pipe specifications as defined by the latest amendment of the American Water Works Association (AWWA).

(C) The trenches in which the water pipes or appurtenances are to be constructed shall be excavated in all cases in such a manner and to such a width and depth as will give ample room for building the structures they are to contain. Bottoms of trenches shall be accurately graded to provide uniform bearing and support for the pipe on the solid and undisturbed trench bottom along its entire length between bell holes. Bell holes shall be of sufficient width and depth to provide ample room for properly making the joints. Pipes shall be laid at a depth

so as to provide a distance of 48 inches between top of pipe and the finished grade. Any variance of the 48-inch requirement shall have the written approval of the Municipal Engineer prior to the change being made.

(D) Before lowering into the trench, the interior of the pipes and castings shall be thoroughly cleaned of all foreign matter and shall be kept clean during laying operations. No trench water shall be allowed to enter the pipes, and when work is not in progress the open ends of all pipes shall be securely closed. The pipes shall be laid to true line and grade and where deflections are necessary, either horizontal or vertical, the joints shall be uniformly spaced to deflect uniformly, both horizontally and vertically. Maximum deflection at the joints will be as specified by the pipe manufacturer.

(E) After a section of pipe has been laid and before it is covered, the contractor shall, at his own expense, furnish proper appliances and shall test the pipe by filling it with water under a hydrostatic pressure of 150 pounds per square inch. Should the pressure appreciably diminish within two hours the cause shall be found and any defective pipe or joints replaced and made good at the expense of the contractor, with sound pieces in a satisfactory manner and the line again tested until proven satisfactory to the Engineer or Inspector. A leakage not in excess of that specified in A.W.W.A. C-600 will be considered satisfactory.

(F) After the pipes have been tested for leakage and accepted, trenches shall be backfilled with fine loose earth free from large clods or stones and carefully deposited on both sides of pipe. It shall be rammed and tamped on both sides of pipe until the earth fill covers 3/4 of the pipe diameter. The backfill shall be placed by hand from this point to a distance of four inches above the top of the pipe if the character of the backfill is such as to cause possible damage to the pipe unless protected in this manner.

(G) The remainder of the backfilling may be completed using scrapers or other usual methods. This position of the backfill may be puddled at the direction of the Engineer or Inspector but any settlement which occurs after the trenches have been backfilled shall be refilled and smoothed off to the original surfaces of the ground. The contractor will be responsible for maintaining the trench for one year after acceptance of the work.

(H) In streets or driveway crossings or at points indicated on the plans, backfill shall be tamped in four-inch layers up to the established ground surface grade using air-driven tampers, or other equipment of equal efficiency.

(I) As an alternate with optional acceptance by the contractor, the tamping and backfill requirements recited above covering streets and driveway crossings may be dispensed with, provided sand, bank-run gravel, quarry-run stone or material of similar structure be used to backfill the trench within the limits of streets or driveway crossings. When, for any reason, the work is left unfinished the trench and excavation shall be left fully protected.

(J) Ductile pipe shall not be laid on blocks. Ductile fittings shall be locked or anchored with Class “C” concrete as directed by the Engineer or Inspector to prevent movement of the pipe or fittings.

(K) Butterfly valves shall be Dressler “450" butterfly valves or equal and shall meet or exceed AWWA C-504 Standards. All valves shall be designed for a working pressure of 150 pounds per square inch and shall open by turning to the left (counter-clockwise). Valves shall be approved by the Engineer or Inspector prior to ordering and shall comply with A.W.W.A. specification C-500.

(L) Plastic valve boxes shall be of the standard ductile extension type of such lengths as to provide a cover of not less than 48 inches over the pipe. They shall be equal to Tyler 562-5 with the cover marked “water” and shall comply with A.W.W.A. specification C-500.

(M) (1) All fire hydrants shall be Dressler Traffic Model “500" or equal and have a 6-inch mechanical joint shoe connection and conform to A.W.W.A. specification C-500. The depth of trench is 48 inches and the hydrant shall have a six-inch mechanical joint shoe connection. Hydrants shall have a main valve opening of 5¼ inches and shall be of the compression type opening against pressure so that the main valve remains closed when the barrel is broken off. Hydrants are to be fully bronze-mounted and the mounting and the main valve seat will be bronze which is removed from the fire hydrant by unscrewing from another bronze-ring. The hydrant rod threads must be sealed by O-rings from the waterway and also from outside condensation. The threads have a reservoir so that they can be lubricated.

(2) The hydrant will have an automatic drain feature. All hydrants shall have two 2-l/2-inch discharge nozzles and one 4-1/2-inch steamer nozzle, each provided with caps. Threads on connections shall be of the same as those now used by the municipality. Hydrants shall be shop tested to 300 psi pressure with the main valve both opened and closed. Under test the valve shall not leak, the drain shall function, and leakage into the bonnet shall not occur.

(N) Upon completion of water mains or sections of mains, the contractors shall disinfect such mains in accordance with the procedure prescribed by the A.W.W.A. specification C601-53T, or as amended, using either chlorine or calcium hypochlorite such as “HTH,” “Perchloron,” “Pittchlor” or equal, except that the chlorine residual must be 50 ppm at the end of 24 hours.

(O) The Director of Service with the approval of the Municipal Engineer shall have the right to vary from the above specifications or those outlined in Chapter 152, Subdivision Design and Construction Standards, due to unusual circumstances and for the advancement of technology and materials. The variances shall be in writing. Variances made on a permanent basis due to advance in technology and materials shall be reviewed by Council and shall take effect and be in force 30 days after Council’s review, if no objections are raised. Penalty, see § 52.999

## § 52.150 BREAKING METER SEAL.

When upon inspection, any meter seal or lock has been found broken from any cause whatsoever, the water will be turned off, and the water will not be turned on until the sum of $30, or such amount as the Director determines to be the actual expense involved, has been paid to the municipality as liquidated damages, provided it becomes necessary to seal the meter or other fixtures of the Department of Service.
(Am. Ord. CM-13-27, passed 12-10-2013)

## § 52.151 METER REPAIRED AT EXPENSE OF OWNER.

Meter damaged by misuse, frost, accident or any act of carelessness or negligence will be repaired, or, if necessary, will be replaced by the municipality at the expense of the consumer at a charge of not less than $30 minimum and actual cost of repairs or replacement of the meter or connection thereof.
(Am. Ord. CM-13-27, passed 12-10-2013)

## § 52.152 REMOVAL OF METERS .

(A) A meter shall be removed by an authorized employee of the Department of Service only.

(B) No unauthorized person shall remove or tamper with meters.

(C) With prior permission of the Director, plumbers may remove and replace meters.
Penalty, see § 52.999

## § 52.153 OPERATING FIRE HYDRANTS UNLAWFULLY .

Operating of fire hydrants, valves or other control instruments and the drawing of water therefrom by unauthorized persons is strictly prohibited. Violators of this rule will be required to pay up to $50 fee to cover expense and damage or replacement cost incurred, as well as being subject to such other penalties as may be provided by law.
Penalty, see § 52.999

## § 52.154 WATER BACKFLOW PREVENTION PROCEDURE AND CROSS CONNECTION CONTROL.

(A) No person, firm or corporation shall establish or permit to be established, or maintain or permit to be maintained, any connection whereby a private, auxiliary or emergency water supply other than the regular public water supply of the Municipality of West Milton may enter the supply or distribution system of the municipality, unless the private, auxiliary or emergency water supply and the method of connection and use of the supply shall have been approved by the Director of Service of the Municipality of West Milton and by the Ohio Environmental Protection Agency.

(B) No person, firm or corporation shall establish or permit to be established or maintain or permit to be maintained any direct connection between the public water supply of the municipality and any potentially hazardous, toxic or injurious manufacturing process or any drainage or sewer system.

(C) The Director of Service of the municipality or his, her or its duly authorized representative shall have the right to enter at any reasonable time any property served by a connection to the public water supply or distribution system of West Milton for the purpose of inspecting the piping system or systems thereof. On demand the owner, lessees, or occupants of any property so served shall furnish to the Director of Service any information which he may request regarding the piping system or systems or water use on the property. The refusal of such information, when demanded, shall, within the discretion of the Director of Service, be deemed evidence of the presence of improper connections as provided in this section.

(D) If, in the judgment of the Director of Service, an approved backflow prevention device is necessary for the safety of the public water system, the Director of Service will give notice to the customer to install such an approved device immediately. The customer shall, at his or her own expense, install such an approved device at a location and in a manner approved by the Director of Service, and shall have inspections and tests made of the approved device as required by the Director of Service.

(E) The Director of Service is hereby authorized and directed to discontinue, after reasonable notice to the occupant thereof, the water service to any property wherein any connection in violation of the provisions of this section is known to exist, and to take such other precautionary measures as he or she may deem necessary to eliminate any danger of contamination of the public water supply distribution mains. Water service to the property shall not be restored until such conditions shall have been eliminated or corrected in compliance with the provisions of this section.

(F) An approved backflow prevention device shall be installed on each service line to a consumer's water system serving premises where any of the following conditions exist:

(1) Premises having an auxiliary water supply.

(2) Premises on which any substance is handled in such a fashion as to create an actual or potential hazard to the public potable water system. This shall include premises having sources or systems containing process fluids or waters originating from the public potable water system which are not longer under the sanitary control of the municipality.

(3) Premises having internal cross-connections that, in the judgment of the Service Director, or his or her duly authorized agent, are not correctable or intricate plumbing arrangements which make it impractical to determine whether or not cross-connections exist.

(4) Premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete cross-connection survey.

(5) Premises having a repeated history of cross-connection being established or re-established.

(G) An approved backflow prevention device shall be installed on each service line to a consumer's water system serving, but not necessarily limited to, the following types of facilities unless the Service Director, or his or her duly authorized agent, determine that no actual or potential hazard to the public potable water system exists:

(1) Hospitals, mortuaries, clinics, nursing homes;

(2) Laboratories;

(3) Sewage treatment plants, sewage pumping stations or storm water pumping stations;

(4) Food or beverage processing plants;

(5) Chemical plants;

(6) Metal plating industries;

(7) Petroleum processing or storage plants;

(8) Radioactive material processing plants or nuclear reactors;

(9) Car washes; and

(10) Others specified by the Service Director or his duly authorized agent.

(H) The type of backflow protection required under these rules and regulations shall depend on the degree of hazard which exists as follows:

(1) An approved air gap separation shall be installed where the public potable water system may be contaminated with substances that could cause a severe health hazard.

(2) An approved air gap separation or an approved reduced pressure principle backflow prevention device shall be installed where the public potable water system may be contaminated with a substance that could cause a system or health hazard.

(3) An approved air gap separation or an approved reduced pressure principle backflow prevention device or an approved double check valve assembly shall be installed where the public potable water system may be polluted with substances that could cause a pollutional hazard not dangerous to health.

(I) Backflow prevention devices required by these rules and regulations shall be installed to the specifications of, and at no cost to the water system.

(J) It shall be the duty of the consumer at any premises on which backflow prevention devices required by these rules and regulations are installed to have inspection, tests and overhaul made in accordance with the following schedule or more often when inspections indicate a need:

(1) Air separation shall be inspected at time of installation and at least once every 12 months thereafter.

(2) Backflow prevention assemblies shall be inspected and tested for tightness at time of installation and at least every 12 months thereafter. They shall be dismantled, inspected internally, cleaned, and repaired whenever needed on an annual basis.

(K) Inspections, tests and overhaul of backflow prevention devices shall be at the expense of the consumer and shall be performed only by persons approved by the Miami County Health Department as qualified to inspect, test and overhaul such devices.

(L) Backflow prevention devices found to be defective shall be repaired by the consumer without delay.

(M) The consumer must maintain a complete record of each backflow prevention device from purchase of retirement. This shall include a comprehensive listing that includes a record of all tests, inspections and repairs. Copies of all annual tests shall be submitted to the municipality. Failure to comply with this testing schedule shall be cause of the discontinuation of service until such time as the unit or units have been tested and approved.

(N) Backflow prevention devices shall not be by-passed, made inoperative, removed, or otherwise made ineffective without written authorization of the Service Director.

(O) A complete list of acceptable backflow devices is on file and available for examination at the municipal offices. Only those devices which appear on this list may be installed.
(Ord. CM-721, passed 10-9-1984; Am. Ord. 1029, passed 9-10-1991) Penalty, see § 52.999

**§ 52.999 PENALTY.**

(A) Whoever violates any provision of this chapter, for which another penalty is not already provided, shall be guilty of a minor misdemeanor and shall be fined not more than $100. Each day's violation shall constitute a separate offense.

(B) Whoever violates any provision of § 52.152 may be fined not more than $50.

# CHAPTER 53: GARBAGE, REFUSE AND RECYCLABLES

Section

## § 53.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***APPROVAL*** or ***APPROVED.*** The object of reference shall meet the approval of all duly constituted authorities having jurisdiction therein.

***COMMERCIAL OPERATOR.*** Persons, firms, partnerships or corporations who own or operate stores, restaurants, industries, institutions, and other similar places, public or private, charitable or noncharitable, and includes all responsible persons other than householders upon the premises upon which garbage or refuse or both is or are created or accumulated.

***COMMERCIAL PERMITTEE.*** Any person, firm or corporation who, in compliance with terms of this chapter, has applied for and received a permit for collection of garbage, refuse and recyclables from commercial operators within the corporate limits of the municipality. The word ***PERMITTEE*** shall extend to and include the employees or agents of the principal who holds the aforesaid permit.

***COMPOSTING.*** The breakdown of organic materials, such as leaves, grass, brush and other yard trimmings. Composting may be accomplished at the source as with backyard composting or at an approved facility in accordance with the Ohio Environmental Protection Agency composting rules and regulations contained at Ohio Administrative Code Chapters 3745-27 and 3745-37.

***CONSTRUCTION AND DEMOLITION DEBRIS.*** A "special" waste generated by construction, alteration and demolition of buildings and are those materials that form the structure, or are directly affixed to the structure, such as brick, concrete, dry-wall, stone, glass, wall coverings, plumbing fixtures, electrical wiring, framing and finishing lumber and further defined in the Ohio Environmental Protection Agency construction and demolition debris regulations contained at Ohio Administrative Code Chapter 3745-27.

***DEBRIS.*** Any nonputrescible waste such as earth, sand, stone, cinders, ashes, plaster or other substances which may result from construction or remodeling operations, or also known as construction and demolition debris.

***DUMP, PRIVATE OR PUBLIC.*** Any place within the corporate limits of the municipality not controlled and supervised by the municipality and on which place or places garbage, rubbish, ashes, animal or vegetable refuse, dead animals, animal offal and waste matter of any kind, is regularly or irregularly deposited and also any place in which fires are started after any deposit as aforesaid is made, which fires gives off offensive or unwholesome odors.

***GARBAGE.*** All putrescible wastes (except human excreta, sewage, and other water carried wastes) and shall include all vegetable and animal offal and carcasses of dead animals, and shall include all such substances from all public and private establishments and from all residences, excluding recyclables if a valid contract for their collection is in place, yard waste and construction and demolition debris.

***HOUSEHOLDER.*** The head of a family or one maintaining separate living quarters and shall include owners, tenants, and occupants of all "residential" and "residential; multi-family" units where garbage, refuse and recyclables is or are created. Nothing in this definition shall be construed to apply to commercial operators as hereinafter defined.

***RECYCLABLES.*** All items which are deemed recyclable by the municipality and are incorporated into the recyclable residential permittee's exclusive contract. The items currently classified as recyclable include: aluminum and bi-metal cans, steel food cans, glass bottles (all colors), old news print, old corrugated cardboard, shipboard, paper boxes (cereal, shoe, detergent and the like), wet strength cardboard (pop and beer carriers), plastics (PET 1, HDPE2, V3).

***REFUSE.*** Ashes, glass, crockery, rags and old clothing and all similar nonputrescible wastes. The words shall not include any material such as earth, sand, brick, stone, plaster or other substances that may accumulate as a result of construction or remodeling operations (construction and demolition debris) nor shall it include yard waste.

***RESIDENTIAL.*** Single-family residences, duplex residential structures, twin-single residential structures, garage apartments, and apartment houses with not more than three residential units.

***RESIDENTIAL; MULTI-FAMILY.*** Apartment houses with more than three units. Nothing in this definition shall be construed to apply to commercial operators as hereafter defined.

***RESIDENTIAL PERMITTEE.*** Any person, firm or corporation who, in compliance with terms of this chapter, has applied for and received an exclusive permit for collection of residential garbage, refuse and/or recyclables within the corporate limits of the municipality. The word ***PERMITTEE*** shall extend to and include the employees or agents of the principal who holds the aforesaid permit(s).

***YARDWASTE.*** Solid waste that includes only leaves, grass clippings, brush, garden waste, tree trimmings, holiday trees and/or prunings.
(Ord. CM-1020, passed 8-13-1991; Am. Ord. CM-93-50, passed 12-14-1993)

## § 53.02 ILLEGAL DUMPING.

(A) No person shall deposit within the municipality any garbage, refuse, recyclables, debris, ashes, animal offal, animal or vegetable refuse, dead animals or waste matter of any kind in any dump, private or public, which is not under control of the municipality.

(B) No one, other than the municipality, shall establish or permit to be established, maintained or operated upon his or her property any private or public dump within the limits of the municipality.
(Ord. CM-1020, passed 8-13-1991) Penalty, see § 53.99

## § 53.03 STORAGE OF GARBAGE, REFUSE AND RECYCLABLES.

(A) No household or commercial operator shall permit the accumulation of garbage, refuse and recyclables upon the premises for which he or she is responsible except in approved containers.

(B) All garbage shall be kept in rust-resistant, watertight, nonabsorbent and easily washable containers which are covered with close-fitting lids or plastic garbage disposal bags. Where practical, all garbage shall be drained of liquids and wrapped in paper before depositing in the garbage containers. The containers shall not be less than five-gallon capacity not more than 35 gallon capacity, nor shall the containers be filled to exceed 75 pounds in weight. Each container shall have two handles or a bail, either of which shall be adequate in size and strength to provide for the proper handling of the loaded container. Containers shall be provided in sufficient number to contain all garbage accumulating between collections. All garbage containers shall be washed and disinfected as often as necessary to prevent nuisance.

(C) All other refuse shall be stored in reasonably tight and substantial containers of such size as will permit the containers to be readily handled. The containers shall be of adequate capacity and provided in sufficient number to contain all refuse accumulating between collections. No container shall be filled exceeding 75 pounds in weight. Containers shall not be used for burning trash or combustible materials. Insofar as practical, all boxes papers, and odd articles shall be crushed and tied in bundles not exceed four feet in length, two feet in diameter, or 75 pounds in weight.

(D) No householder or commercial operator shall place any single object greater than four feet in length, two feet in diameter, or 75 pounds in weight for collection.

(E) All recyclables shall be kept in the container provided by the residential permittee, the municipality, or householder.
(Ord. CM-1020, passed 8-13-1991) Penalty, see § 53.99

## § 53.04 COLLECTIONS FROM HOUSEHOLDERS.

Collections of garbage, refuse and recyclables shall be made weekly throughout the municipality. The temporary closing of any street, alley or lane shall not be reason for the discontinuance of collections service to the areas so affected. Collections shall be made in accordance with schedules to be established, approved and provided to each householder. Collections shall not be made on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day, and the collection schedule for the weeks in which these days occur shall be so modified as to provide for community-wide collection in the days remaining in the week, Sunday excepted. Any other holidays shall be at the option of the permittee but must be approved by the municipality and handled as above.
(Ord. CM-1020, passed 8-13-1991)

## § 53.05 COLLECTIONS FOR COMMERCIAL OPERATORS.

Collection of garbage and refuse from commercial operators shall be made in accordance with a schedule to be established, approved and provided to each commercial operator. the schedule shall provide at least one

collection each week and as many additional daily collections as circumstances require. Collections shall not be made on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day, and the collection schedule for the weeks in which these days occur shall be so modified as to provide a sufficient number of collections in the days remaining in the week, Sunday excepted. Any other holidays shall be at the option of the permittee but must be approved by the municipality and handled as above.
(Ord. CM-1020, passed 8-13-1991)

## § 53.06 COLLECTION OF RECYCLABLES.

The municipality shall contract with a residential permittee for the collection of recyclables in accordance with this code. A separate contract may be executed for residential recyclable collection, and/or garbage and refuse collection. The municipality would seek to obtain one joint contract.
(Ord. CM-1020, passed 8-13-1991)

## § 53.07 JOINT USE OF CONTAINERS PROHIBITED.

The joint use of any garbage or refuse containers by any plural combination of householders or commercial operators is prohibited.
(Ord. CM-1020, passed 8-13-1991) Penalty, see § 53.99

## § 53.08 TRANSPORTATION OF GARBAGE, REFUSE AND RECYCLABLES.

All garbage, refuse, and recyclables transported on the streets or other public thoroughfares shall be in waterproof, all-steel, enclosed, compaction-type trucks. The permittee shall provide apparatus and appliances for thorough cleaning and purification of the vehicles and shall keep same clean and sanitary.
(Ord. CM-1020, passed 8-13-1991)

## § 53.09 RUBBISH AND GARBAGE FALLING FROM CONVEYANCE.

No operator of any conveyance, within the corporate limits, shall allow or permit to escape from the vehicle any garbage, rubbish, ashes, refuse, waste paper, recyclables or waste matter of any kind.
(Ord. CM-1020, passed 8-13-1991) Penalty, see § 53.99

## § 53.10 RESIDENTIAL PERMITTEE CARE AND DILIGENCE.

The permittee shall exercise all reasonable care and diligence in handling the householders' containers. The municipality will cooperate in requiring residents to provide and maintain suitable containers, and the permittee must exercise due care in preventing damage thereto. The permittee must report to the Municipal Manager any violations of trash storage ordinances or any unsanitary conditions.
(Ord. CM-1020, passed 8-13-1991) Penalty, see § 53.99

## § 53.11 SERVICE AND COMPLAINT.

(A) Any complaints to the resident permittee or Municipal Manager must be given prompt and courteous attention. In case of a missed scheduled collection, the permittee shall investigate and, if verified, shall arrange for pick-up of the refuse within 24 hours after the complaint is received. It is recognized that in rendering this type of service to the public it is impossible to avoid some service complaints whether justified or unjustified, and if it is shown that the permittee is performing with reasonable diligence the service requirements as a whole, it shall be construed that the performance requirements as to service have been met.

(B) Should the resident permittee fail wholly to collect or remove or properly dispose of garbage and other materials, in accordance with the terms of the contract, for a period of ten days the municipality may, at its option, cause the refuse to be collected and disposed of. Any expense incurred by the municipality may be charged against the permittee.

(C) If an alleged failure on the part of the permittee to wholly collect the materials continues for a period of beyond ten days, the municipality may cause to be forfeited all bonds posted by the permittee provided the failure is not due to strikes or acts of God, or other causes beyond the control of the permittee.
(Ord. CM-1020, passed 8-13-1991)

## § 53.12 PERMITS FOR COLLECTION REQUIRED.

No person shall engage in the business of hauling rubbish, garbage or recyclables within the corporate limits of the municipality unless he or she first obtains a permit therefor from the Municipal Manager.
(Ord. CM-1020, passed 8-13-1991) Penalty, see § 53.99

## § 53.13 EXCLUSIVE RIGHTS TO COLLECT.

To provide for residential garbage, refuse and recyclable collection, and to control truck traffic in the residential district, the municipality shall grant to the residential permittee(s) the exclusive rights to collect and dispose of garbage, refuse and recyclables from householders for no longer than a five-year period. The permittee(s) shall have the exclusive rights to haul this type of garbage or rubbish or recyclables over the streets of the municipality and no other person or agency shall be permitted to collect such material for hire in the municipality. The municipality shall have the right to establish conditions and requirements for collections in the contract(s).
(Ord. CM-1020, passed 8-13-1991)

## § 53.14 MAXIMUM RATE SCHEDULE TO BE FILED.

Each person, firm or corporation seeking a residential permit for garbage, refuse and recyclable collection within the corporate limits shall file a maximum rate schedule with the municipality. These rates are maximums and lower rates can apply for special circumstances and conditions. Before issuing a permit, Council shall approve the maximum rate schedule and the schedule shall remain in force until changed by Council. The

unavoidable change of conditions to other than those under which a permit has been granted shall be sufficient reason for any permittee to file a request for rate revisions.
(Ord. CM-1020, passed 8-13-1991)

## § 53.15 LIABILITY INSURANCE REQUIRED.

Each applicant shall furnish with the Municipal Manager a policy of liability insurance issued for the life of the license applied for, or longer, by a responsible insurance company, approved as to sufficiency by the Municipal Manager, and as to legality by the Director of Law, providing indemnity for or protection to the applicant against loss resulting from the operation of each vehicle to the extent of $300,000 on account of injury or death of one person in any one accident; $500,000 on account of injury or death or more than one person in any one accident; and $100,000 for property damage caused in any one accident.
(Ord. CM-1020, passed 8-13-1991)

## § 53.16 ISSUANCE OF PERMIT; APPLICATION.

(A) A residential permit shall be issued by the Municipal Manager with the approval of the Municipal Council and shall be valid for no longer than a five-year period. The permit may be revoked with just cause at any time during its validity.

(B) The Municipal Manager may issue permits for the collection of garbage and refuse from commercial operators. Each applicant for a commercial permit shall furnish the Municipal Manager with the name of each person in the employ of the hauler to be engaged in the collection of refuse in the municipality; and a policy or policies of liability insurance issued for the life of the license applied for, or longer, by a responsible insurance company, approved as to sufficiency by the Municipal Manger, and as to legality by the Director of Law, providing indemnity for or protection to the applicant against loss resulting from the operation of each vehicle to the extend of $300,000 on account of injury or death of one person in any one accident; $500,00 on account of injury or death of more than one person in any one accident; and $100,000 for property damage caused in any one accident.

(C) The Municipal Manager shall collect a fee of $100 for each commercial permit issued under the provisions of this chapter, which fee shall be for the calendar year for which the permit is issued.
(Ord. CM-1020, passed 8-13-1991)

## § 53.17 TRUCKS TO DISPLAY NAME OF HAULER.

Each truck used in the collection of refuse, garbage or recyclables shall display the name of the licensed hauler.
(Ord. CM-1020, passed 8-13-1991)

## § 53.18 EXTENSION OF CONTRACT.

Any contract entered into by the municipality and permittee may be automatically extended by mutual written consent.
(Ord. CM-1020, passed 8-13-1991)

## § 53.19 RIGHT TO SUBLET CONTRACT.

The residential permittee will not be permitted to sublet the contract or any part thereof without first having obtained written municipal approval. Subletting the contract or any part thereof will not relieve the permittee of any of his or her liabilities under the terms of the contract.
(Ord. CM-1020, passed 8-13-1991) Penalty, see § 53.99

## § 53.20 WEARING UNIFORMS.

All employees of the permittee engaged in actual collection of the garbage, refuse and recyclables will be required to wear uniforms, be well-groomed and perform duties in a respectful manner.
(Ord. CM-1020, passed 8-13-1991)

## § 53.21 COLLECTION RATES; BILL PAYMENT.

(A) Payment to the permittee or the municipality (if the municipality bills) shall be made by the householder no later than the established due date which appears on the bill. Types or classes of service which arise after approval of the rate schedule and are not included in or comprehended at the time of schedule approval, shall be charged for in accordance with the discretion of the permittee until Council approves the rate for the type or class of service.

(B) The permittee or the municipality (if the municipality bills) shall charge each householder, tenant, or owner the rate established by the contract(s) multiplied by the number of separate residential units. Thus a duplex would be charged two times the current rate. A six unit residential; multi-family building would be charged six times the current rate.

(C) The permittee shall be required to establish in its contract with the municipality, language that provides procedures which would permit reductions or abatement of rates for any householder, tenant or owner who has a substantial period of absence or vacancy with respect to their property.
(Ord. CM-1020, passed 8-13-1991; Am. Ord. CM-97-24, passed 8-12-1997)

## § 53.22 UNCOLLECTED GARBAGE AND REFUSE AND RECYCLABLES.

Permittees shall not be required to collect garbage, refuse or recyclables from any householder or commercial operator who is in arrears for a period exceeding one quarter. Each householder or commercial

operator shall have his or her garbage removed for disposal at least once each week and as often as necessary to prevent putrefaction, noxious odors or the attraction of rodents and insects. Fermenting, putrefying or odoriferous garbage, refuse or recyclables in containers or dumped in the open shall be prima facie evidence of violation of this chapter.
(Ord. CM-1020, passed 8-13-1991)

## § 53.23 PLACING GARBAGE, REFUSE AND RECYCLABLES FOR COLLECTION.

Garbage, refuse, and recyclables shall be placed for collection at the alley line where possible and at the curb line where necessary. Placement of garbage, refuse, and recyclables for collection shall be the responsibility of the householder. If the householder desires collections made from any other point, the permittee may make an extra charge therefor.
(Ord. CM-1020, passed 8-13-1991)

## § 53.24 CLEANING SPILLED MATERIALS.

Permittees shall be equipped to clean up and collect any waste material cost or spilled from containers during any collection and shall make such cleanups.
(Ord. CM-1020, passed 8-13-1991)

## § 53.25 HAULING DEBRIS.

No permittee acting under the terms of this chapter shall be required to collect and dispose of any materials which do not comply with definitions of garbage, refuse, recyclables. This provision, however, shall not prohibit any person, firm, corporation or permittee from hauling any debris not defined as garbage or refuse or recyclables.
(Ord. CM-1020, passed 8-13-1991)

## § 53.26 MANDATORY RESIDENTIAL COLLECTION.

(A) Each and every residential and residential; multi-family householder shall be required to contractually obtain, and pay for garbage, refuse and recycling collection from the residential permittee(s) with whom the municipality has a current contract with in accordance with this Code of Ordinances. A landlord may pay for all residential; multi-family householders under his control at the rates established by the contract(s).

(B) The residential permittee(s) or municipality (if the municipality bills) shall individually bill each residential and residential; multi-family householder in accordance with this Code of Ordinance and the contract(s) entered into with the municipality.

(C) In the event of a mixed residential and commercial use of a building, the householders and residential permittee(s) shall comply with divisions (A) and (B) above. The commercial operator must contract with a permitted commercial permittee for its garbage, refuse and recyclables collection in accordance with this Code of Ordinances.
(Ord. CM-1020, passed 8-13-1991; Am. Ord. CM-97-24, passed 8-12-1997)

## § 53.27 REFUSE FUND.

A Refuse Fund shall be established to deposit funds for the sole purpose of having the necessary funds available to provide for the collection of garbage, refuse and recyclables within the municipality.
(Ord. CM-15-37, passed 12-8-2015)

## § 53.28 HOUSE BILL 592.

(A) H.B. 592 required the Director of the Ohio EPA to establish restrictions on the types of solid wastes disposed of by landfilling for which alternative management methods are available. The Director of Ohio EPA established restrictions on yard waste, waste tires and lead/acid batteries to prohibit them from disposal in solid waste landfills and combustion in incinerators.

(B) The following table details the Director's implementation schedule:

| ***Restricted Waste Stream*** | ***Implementation Date*** |
|---|---|
| Whole waste tires | January 1, 1993 |
| Lead-acid batteries | January 1, 1993 |
| Yard waste | December 1, 1993 |
| Shredded and whole waste tires* | January 1, 1995 |

* Restriction does not apply to shredded tires disposed at monofills and monocells (within sanitary landfills).

(C) Compliance with H.B. 592 is required by all commercial operators, commercial permittees, householders, residents and residential permittees.
(Ord. CM-93-50, passed 12-14-1993)

## § 53.29 YARDWASTE DISPOSAL.

(A) Residential properties shall have the option to create a backyard composting facility for the disposal of yardwaste. All home backyard composting facilities shall comply with the Department of Health's requirements, OEPA requirements and not violate West Milton's nuisance sections.

(B) Various private, commercial and other parties may create various programs/composting facilities to dispose of yard wastes. These programs/composting facilities must comply with the Department of Health's requirements, OEPA rules, the Ohio Administrative Code, and not violate West Milton's nuisance sections. The municipality may encourage residential refuse and recyclable permittees to establish voluntary per bag programs to dispose of yardwaste through the private sector.
(Ord. CM-93-50, passed 12-14-1993)

## § 53.30 MIAMI COUNTY SOLID WASTE DISTRICT.

(A) H.B. 592 established the provisions to create solid waste districts. Miami County has created a single county solid waste district, and the municipality of West Milton supports and will participate in this solid waste district.

(B) When the law requires, all garbage refuse and construction and demolition debris shall be taken to the county transfer station, or other designated facilities.

(C) Yardwaste and recyclables are exempt from these flow control restrictions.
(Ord. CM-93-50, passed 12-14-1993)

## § 53.31 CHARGES TO BE A LIEN.

Each garbage, refuse and recycling charge under or pursuant to the provisions of this chapter is made a lien upon the corresponding lot, parcel of land, building or premises served by or having the use or availability of garbage, refuse and recycling services. If the charge is not paid when due and payable, it shall be certified to the Auditor of Miami County who shall place the charge on the tax duplicate as a tax lien or assessment against such lot, parcel of land, building or premises with interest and penalties allowed by law. The charge shall be collected in the same manner and at the same time as other taxes are collected.
(Ord. CM-97-24, passed 8-12-1997)

## § 53.32 MUNICIPAL BILLING PROVISIONS.

Should the municipality choose to bill the customers for garbage, refuse, and recycling services the following provisions shall apply:

(A) A bill for garbage, refuse, and recycling services will be issued for each billing period, as defined in § 52.003. A combined water, sewer, garbage, refuse and recycling bill will be issued.

(B) Customers will be billed for the current month of service. The monthly charge is an operational charge and will not be prorated. All charges rendered shall be paid by the 15th of the month. Should the fifteenth of the month fall upon a weekend or holiday, the next business day will become the final date for net payment. After this date, a 10% penalty shall be charged.

(C) The municipality shall endeavor to give proper notice of garbage, refuse and recycling charges but by law cannot guarantee delivery of mail. Failure to receive notice by mail shall not excuse customers from prompt payment of charges. It shall be the established policy of the municipality to accept only total and complete payment for charges billed.

(D) All garbage, refuse and recycling charges are payable at the municipal office to the Director of Finance, or to an agent thereof.

(E) Garbage, refuse and recycling charges shall be credited first on the combined utility bill.

(F) Owners of property shall be held responsible for garbage, refuse and recycling charges to their premises, but payments will be accepted from tenants. The garbage, refuse and recycling bill shall be sent to the same person, individual, firm, corporation who receives the water and sewer bill. No separate garbage, refuse and recycling accounts shall be established. Customers shall sign up for garbage, refuse and recycling service at the same time as the sign up for water and sewer service.
(Ord. CM-97-24, passed 8-12-1997; Am. Ord. CM-15-37, passed 12-8-2015)

## § 53.99 PENALTY.

Whoever violates any of the provisions of this chapter for which no other penalty is provided herein, is guilty of a minor misdemeanor on a first offense and shall be fined not more than $100; on a second offense and each subsequent offense, the person is guilty of a misdemeanor of the fourth degree, and shall be fined not more than $250 or imprisoned not more than 30 days, or both.
(Ord. CM-1020, passed 8-13-1991)

# CHAPTER 54: COMMERCIAL USE OF SIDEWALKS

Section



## § 54.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***PERSON.*** Its derivatives and the word ***WHOEVER*** shall include a natural person, partnership, tenant in common, tenant in partnership.

***SIDEWALK.*** In the Central Business District it shall mean the entire contiguous width, whether public or privately owned, between the boundary lines of the curb line and the parallel building front that is open to public use.
(Ord. CM-02-14, passed 6-11-2002)

## § 54.02 SIDEWALK DISPLAYS; USE FOR COMMERCIAL PURPOSES.

(A) (1) No person shall engage in the selling or display of merchandise or any other tangible personal property of any kind over or upon any sidewalk except as otherwise permitted in this section.

(2) The portion of the street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for use by pedestrians.

(B) No person shall utilize the sidewalk for the purpose of creating or preparing merchandise or handicrafts of any kind.

(C) Nothing in this section shall be construed to prevent the municipality from placing items of any kind on the sidewalks for the convenience of the public or to promote the public safety and welfare.
(Ord. CM-02-14, passed 6-11-2002)

## § 54.03 SPECIAL SIDEWALK SALES.

The Municipal Manager may permit the selling and display of merchandise upon the sidewalk at any location within the municipality for a period not to exceed five days in conjunction with organized sidewalk sales or for civic events and to prescribe such safety requirements as deemed necessary to protect the public health and welfare.
(Ord. CM-02-14, passed 6-11-2002)

## § 54.04 NEWS RACKS OR COMMERCIAL OR PRIVATE MAIL DROP-BOXES.

(A) (1) No person shall place and maintain upon any public walk in the village any news rack or commercial or private mail drop box without first providing to the Municipal Manager a release which agrees to indemnify and save harmless the village, its officers and employees against any loss or liability or damage including expenses and costs for bodily injury and for property damage sustained by any person as the result of the installation, use or maintenance of a news rack or commercial or private mail drop box within the municipality.

(2) No person shall place or maintain on any public sidewalk in the municipality a news rack or commercial or private mail drop box that does not comply with the following standards:

(3) Each news rack or commercial or private mail drop box shall be equipped with a coin-return mechanism in good working order.

(B) (1) Each news rack or commercial or private mail drop box shall have affixed to it in a readily visible place the name, address and phone number of the person responsible for its placement.

(2) Each news rack or commercial or private mail drop-box shall be maintained in a neat and clean condition and in good repair at all times.

(C) No person shall place or maintain a news rack or commercial or private mail drop-box on any public sidewalk in the Municipality except in compliance with the following provisions:

(1) No news rack or commercial or private mail drop-box shall be placed or maintained which projects onto any part of the roadway or in the area between the sidewalk and curb.

(2) No news rack or commercial or private mail drop-box shall be permitted to rest upon any public sidewalk when such installation, use or maintenance endangers the safety of persons or property, or unreasonably interferes with or impedes the flow of pedestrian or traffic or access to buildings.

(3) No news rack or commercial or private mail drop box shall be chained, bolted or otherwise attached to any fixture located on the public sidewalk except to other news racks or commercial or private mail drop-boxes that may be placed next to each other provided that no such grouping shall extend a distance of more than eight feet along a curb.

(4) No news rack or commercial or private mail drop-box shall be placed, installed used or maintained:

(a) Within three feet of any marked crosswalk;

(b) Within 12 feet of the curb return of any unmarked crosswalk;

(c) Within five feet of any fire hydrant;

(d) Within five feet of any driveway or alleyway; and

(e) At any location whereby the clear space for the passage of pedestrians is reduced to less than five feet.
(Ord. CM-02-14, passed 6-11-2002)

## § 54.05 CORRECTION ORDER; REMOVAL.

(A) Upon determination by the Chief of Police that a news rack or commercial or private mail drop-box has been installed, used or maintained in violation of the provisions of this chapter, a notice to correct the violation shall be issued to the person responsible for the placement of the news rack or commercial or private mail drop box. The notice shall be sent by certified mail and describe the violation and the necessary corrective action. Should the notice be returned or the person responsible for the placement of the news rack or commercial or private mail drop-box fail to properly correct the violation within five days after the mailing date, the news rack or commercial or private mail drop-box shall be summarily removed by the Municipality and held until properly claimed by the owner.

(B) In the event a news rack or commercial or private mail drop box remains empty for a period of 30 continuous days, the same shall be deemed abandoned and may be summarily removed by the municipality until properly claimed by the owner.
(Ord. CM-02-14, passed 6-11-2002)

## § 54.99 PENALTY.

Any person convicted of a violation of the provisions of this chapter shall be guilty of a minor misdemeanor. Each day’s failure to comply with any section herein shall constitute a separate and distinct offense.
(Ord. CM-02-14, passed 6-11-2002)

# TITLE VII: TRAFFIC CODE

Chapter

## OHIO LEGISLATIVE HISTORY REFERENCES – TITLE VII

| *Ohio Revised Code Section* | *2005 West Milton Code Section* |
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| 2921.331(A) - (C), (E), (F) | 70.02 |
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| 4503.11(D) | 71.01(F)(2) |
| 4503.111(A), (C) | 71.01(C) |
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| *Ohio Revised Code Section* | *2005 West Milton Code Section* |
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# CHAPTER 70: GENERAL PROVISIONS

Section

70.99 Penalty

***Cross-reference:***

*Jurisdiction in traffic violations, see § 33.01*
*Streets and sidewalks, general regulations, see Chapter 94*
*Unauthorized use of a motor vehicle, see § 131.09*
*Unclaimed and abandoned motor vehicles, see Chapter 95*

***Statutory reference:***

*Local traffic regulations, scope and authority, see R.C. § 4511.07*
*Notice of arrest of certain commercial drivers, see R.C. § 5577.14*
*Traffic law photo-monitoring devices, state regulations, see R.C. §§ 4511.092 et seq.*
*Uniform application and precedence of state traffic laws, see R.C. § 4511.06*

## *GENERAL PROVISIONS*

### § 70.01 DEFINITIONS.

Except as otherwise provided, the definitions set forth in R.C. § 4501.01 shall apply to this Title and the penal laws of the municipality. For the purpose of this Title, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***AGRICULTURAL TRACTOR.*** Every self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery, but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.

***ALLEY.*** A street or highway intended to provide access to the rear or side of lots or buildings in urban districts, and not intended for the purpose of through vehicular traffic, and any street or highway that has been declared an "alley" by the Legislative Authority of the municipality in which the street or highway is located.

***ARTERIAL STREET.*** Any United States or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

***BEACON.*** A highway traffic signal with one or more signal sections that operate in a flashing mode.

***BICYCLE.*** Every device, other than a device that is designed solely for use as a play vehicle by a child, that is propelled solely by human power upon which a person may ride, and that has two or more wheels, any of which is more than 14 inches in diameter.

***BUS.*** Every motor vehicle designed for carrying more than nine passengers, and used for the transportation of persons other than in a ridesharing arrangement, and every motor vehicle, automobile for hire, or funeral car, other than a taxicab or motor vehicle used in a ridesharing arrangement, designed and used for the transportation of persons for compensation.

***BUSINESS DISTRICT.*** The territory fronting upon a street or highway, including the street or highway, between successive intersections within the municipality, where 50% or more of the frontage between successive intersections is occupied by buildings in use for business, or within or outside the municipality where 50% or more of the frontage for a distance of 300 feet or more is occupied by buildings in use for business, and the character of the territory is indicated by official traffic-control devices.

***CHAUFFEURED LIMOUSINE.*** A motor vehicle that is designed to carry nine or fewer passengers and is operated for hire pursuant to a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route. "Prearranged contract" means an agreement, made in advance of boarding, to provide transportation from a specific location in an chauffeured limousine. The term does not include any vehicle that is used exclusively in the business of funeral directing. (R.C. § 4501.01(LL))

***CHILD DAY-CARE CENTER.*** Has the same meaning as set forth in R.C. § 5104.01.

***COMMERCIAL TRACTOR.*** Every motor vehicle having motive power designed or used for drawing other vehicles, and not so constructed as to carry any load thereon, or designed or used for drawing other vehicles while carrying a portion of the other vehicles, or the load thereon, or both.

***CONTROLLED-ACCESS HIGHWAY.*** Every street or highway in respect to which owners or occupants of abutting lands and other persons have no legal right or access to or from the same except at certain points only and in a manner as may be determined by the public authority having jurisdiction over the street or highway.

***CROSSWALK.***

(1) That part of a roadway at intersections ordinarily included within the real or projected prolongation of property lines and curb lines or, in the absence of curbs, the edges of the traversable roadway;

(2) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(3) Notwithstanding the foregoing provisions of this definition, there shall not be a crosswalk where the Legislative Authority has placed signs indicating no crossing.

***DRIVER.*** Any person who drives or is in actual physical control of a vehicle.

***EMERGENCY VEHICLE.*** Emergency vehicles of municipal, township or county departments or public utility corporations, when identified as such as required by law, the Director of Public Safety, or local authorities, and motor vehicles when commandeered by a police officer.

***EXPLOSIVES.*** Any chemical compound or mechanical mixture that is intended for the purpose of producing an explosion that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases, such that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb. Manufactured articles shall not be held to be explosives when the individual units contain explosives in limited quantities of such nature or in such packing that it is impossible to procure a simultaneous or a destructive

explosion of the units, to the injury of life, limb, or property by fire, friction, concussion, percussion, or by a detonator, such as fixed ammunition for small arms, firecrackers, or safety fuse matches.

***EXPRESSWAY.*** A divided arterial highway for through traffic with full or partial control of access with an excess of 50% of all crossroads separated in grade.

***FLAMMABLE LIQUID.*** Any liquid which has a flash point of 70°F or less, as determined by a tagliabue or equivalent closed cup test device.

***FREEWAY.*** A divided multi-lane highway for through traffic with crossroads separated in grade and with full control of access.

***FUNERAL ESCORT VEHICLE.*** Any motor vehicle, including a funeral hearse, while used to facilitate the movement of a funeral procession.

***GROSS WEIGHT.*** The weight of a vehicle plus the weight of any load thereon.

***HIGHWAY.*** The entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

***HIGHWAY MAINTENANCE VEHICLE.*** A vehicle used in snow and ice removal or road surface maintenance, including a snow plow, traffic line striper, road sweeper, mowing machine, asphalt distributing vehicle, or other such vehicle designed for use in specific highway maintenance activities.

***HIGHWAY TRAFFIC SIGNAL.*** A power-operated traffic control device by which traffic is warned or directed to take some specific action. The term does not include a power-operated sign, steadily illuminated pavement marker, warning light, or steady burning electric lamp.

***HYBRID BEACON.*** A type of beacon that is intentionally placed in a dark mode between periods of operation where no indications are displayed and, when in operation, displays both steady and flashing traffic control signal indications.

***INTERSECTION.***

(1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways that join at any other angle might come into conflict. The junction of an alley or driveway with a roadway or highway does not constitute an intersection unless the roadway or highway at the junction is controlled by a traffic control device.

(2) If a highway includes two roadways that are 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway constitutes a separate intersection. If both intersecting highways include two roadways 30 feet or more apart, then every crossing of any two roadways of such highways constitutes a separate intersection.

(3) At a location controlled by a traffic control signal, regardless of the distance between the separate intersections as described in division (2) of this definition:

(a) If a stop line, yield line, or crosswalk has not been designated on the roadway within the median between the separate intersections, the two intersections and the roadway and median constitute one intersection.

(b) Where a stop line, yield line, or crosswalk line is designated on the roadway on the intersection approach, the area within the crosswalk and any area beyond the designated stop line or yield line constitute part of the intersection.

(c) Where a crosswalk is designated on a roadway on the departure from the intersection, the intersection includes the area that extends to the far side of the crosswalk.

***LANED HIGHWAY.*** A highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

***LOCAL AUTHORITIES.*** Every county, municipal, and other local board or body having authority to adopt police regulations under the Constitution and laws of this state.

***MEDIAN.*** The area between two roadways of a divided highway, measured from edge of traveled way to edge of traveled way, but excluding turn lanes. The width of a median may be different between intersections, between interchanges, and at opposite approaches of the same intersection.

***MOTOR VEHICLE.*** Every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes and other equipment used in construction work, and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.

***MOTORCYCLE.*** Every motor vehicle, other than a tractor, having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including but not limited to motor vehicles known as “motor-driven cycle”, “motor scooter”, “autocycle”, “cab-enclosed motorcycle”, or “motorcycle” without regard to weight or brake horsepower.

***MOTORIZED BICYCLE*** or ***MOPED.*** Any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that may be pedaled, and that is equipped with a helper motor of not more than 50 cubic centimeters piston displacement that produces not more than one brake horsepower and is capable of propelling the vehicle at a speed of not greater than 20 miles per hour on a level surface.

***MOTORIZED WHEELCHAIR.*** Any self-propelled vehicle designed for, and used by, a person with a disability and that is incapable of a speed in excess of eight miles per hour.

***MULTI-WHEEL AGRICULTURAL TRACTOR.*** A type of agricultural tractor that has two or more wheels or tires on each side of one axle at the rear of the tractor, is designed or used for drawing other vehicles or wheeled machinery, has no provision for carrying loads independently of the drawn vehicles or machinery, and is used principally for agricultural purposes.

***OPERATE.*** To cause or have caused movement of a vehicle.

***OPERATOR.*** Any person who drives or is in actual physical control of a vehicle.

***PARKED*** or ***PARKING.*** The standing of a vehicle upon a street, road, alley, highway or public ground, whether accompanied or unaccompanied by a driver, but does not include the temporary standing of a vehicle for the purpose of and while actually engaged in loading or loading merchandise or passengers.

***PEDESTRIAN.*** Any natural person afoot. The term includes a personal delivery device as defined in R.C. § 4511.513 unless the context clearly suggests otherwise.

***PERSON.*** Every natural person, firm, partnership, association or corporation.

***POLE TRAILER.*** Every trailer or semitrailer attached to the towing vehicle by means of a reach, pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

***POLICE OFFICER.*** Every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

***PREDICATE MOTOR VEHICLE OR TRAFFIC OFFENSE.*** Any of the following:

(1) A violation of R.C. § 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.214, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78, or 4511.84;

(2) A violation of R.C. § 4511.17(A)(2), 4511.51(A) through (D), or 4511.74(A);

(3) A violation of any provision of R.C. §§ 4511.01 through 4511.76 for which no penalty otherwise is provided in the section that contains the provision violated;

(4) A violation of a municipal ordinance that is substantially equivalent to any section or provision set forth or described in division (1), (2), or (3) of this definition.

***PRIVATE ROAD OPEN TO PUBLIC TRAVEL.*** A private toll road or road, including any adjacent sidewalks that generally run parallel to the road, within a shopping center, airport, sports arena, or other similar business or recreation facility that is privately owned but where the public is allowed to travel without access restrictions. The term includes a gated toll road but does not include a road within a private gated property where access is restricted at all times, a parking area, a driving aisle within a parking area, or a private grade crossing.

***PRIVATE ROAD OR DRIVEWAY.*** Every way or place in private ownership used for vehicular travel by the owner, and those having express or implied permission from the owner, but not by other persons.

***PUBLIC SAFETY VEHICLE.*** Any of the following:

(1) Ambulances, including private ambulance companies under contract to a municipality, township, or county, and private ambulances and nontransport vehicles bearing license plates issued under R.C. § 4503.49;

(2) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state;

(3) Any motor vehicle when properly identified as required by the Director of Public Safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The State Fire Marshal shall be designated by the Director of Public Safety as the certifying agency for all public safety vehicles described herein;

(4) Vehicles used by fire departments, including motor vehicles when used by volunteer firefighters responding to emergency calls in the fire department service when identified as required by the Director of Public Safety;

(5) Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a public safety vehicle, shall be considered such a vehicle when transporting an ill or injured person to a hospital, regardless of whether such vehicle has already passed a hospital;

(6) Vehicles used by the Motor Carrier Enforcement Unit for the enforcement of orders and rules of the Public Utilities Commission as specified in R.C. § 5503.34.

***RAILROAD.*** A carrier of persons or property operating upon rails placed principally on a private right-of-way.

***RAILROAD SIGN OR SIGNAL.*** Any sign, signal, or device erected by authority of a public body or official or by a railroad, and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

***RAILROAD TRAIN.*** A steam engine or an electric or other motor, with or without cars coupled thereto, operated by a railroad.

***RESIDENCE DISTRICT.*** The territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of 300 feet or more, the frontage is improved with residences or residences and buildings in use for business.

***RIDESHARING ARRANGEMENT.*** Includes the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of a volunteer driver, and includes arrangements known as carpools, vanpools, and buspools.

***RIGHT-OF-WAY.*** Either of the following, as the context requires:

(1) The right of a vehicle or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it, he or she is moving, in preference to another vehicle or pedestrian approaching from a different direction into its, his or her path;

(2) A general term denoting land, property, or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, "right-of-way" includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority.

***ROAD SERVICE VEHICLE.*** Means wreckers, utility repair vehicles, and state, county, and municipal service vehicles equipped with visual signals by means of flashing, rotating, or oscillating lights.

***ROADWAY.*** That portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a highway includes two or more separate roadways, the term means any roadway separately, but not all the roadways collectively.

***RURAL MAIL DELIVERY VEHICLE.*** Every vehicle used to deliver United States mail on a rural mail delivery route.

***SAFETY ZONE.*** The area or space officially set apart within a roadway for the exclusive use of pedestrians, and protected or marked or indicated by adequate signs so as to be plainly visible at all times.

***SCHOOL BUS.*** Every bus designed for carrying more than nine passengers which is owned by a public, private, or governmental agency or institution of learning, and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function; provided the term does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipality, or within such limits and the territorial limits of municipalities immediately contiguous to the municipality, nor a common passenger carrier certified by the Public Utilities Commission unless the bus is devoted exclusively to the transportation of children to and from a school session or a school function, and the term does not include a van or bus used by a licensed child day-care center or Type A Family Day-Care Home to transport children from the child day-care center or Type A Family Day-Care Home to a school if the van or bus does not have more than 15 children in the van or bus at any time.

***SEMITRAILER.*** Every vehicle designed or used for carrying persons or property with another and separate motor vehicle so that in operation a part of its own weight or that of its load, or both, rests upon and is carried by another vehicle.

***SHARED-USE PATH.*** A bikeway outside the traveled way and physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent alignment. A shared-use path also may be used by pedestrians, including skaters, joggers, users of manual and motorized wheelchairs, and other authorized motorized and non-motorized users.

***SIDEWALK.*** That portion of a street between the curb lines, or the lateral line of a roadway, and the adjacent property lines, intended for the use of pedestrians.

***STANDING.*** When prohibited, means any halting of a vehicle, even momentarily, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

***STATE HIGHWAY.*** A highway under the jurisdiction of the Department of Transportation, outside the limits of municipalities, provided that the authority conferred upon the Director of Transportation in R.C. § 5511.01 to erect state highway route markers and signs directing traffic shall not be modified by R.C. §§ 4511.01 through 4511.79 and 4511.99.

***STATE ROUTE.*** Every highway which is designated with an official state route number and so marked.

***STOP.*** When required, means a complete cessation of movement.

***STOP INTERSECTION.*** Any intersection at one or more entrances of which stop signs are erected.

***STOPPING.*** When prohibited, means any halting of a vehicle, even momentarily, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

***STREET.*** The entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

***THROUGH HIGHWAY.*** Every street or highway as provided in R.C. § 4511.65, or a substantially equivalent municipal ordinance.

***THRUWAY.*** A through highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.

***TRAFFIC.*** Pedestrians, ridden or herded animals, vehicles, streetcars, and other devices, either singly or together, while using for purposes of travel any highway or private road open to public travel.

***TRAFFIC CONTROL DEVICE.*** A flagger, sign, signal, marking, or other device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.

***TRAFFIC CONTROL SIGNAL.*** Any highway traffic signal by which traffic is alternately directed to stop and permitted to proceed.

***TRAILER.*** Every vehicle designed or used for carrying persons or property wholly on its own structure, and for being drawn by a motor vehicle, including any vehicle when formed by or operated as a combination of a semitrailer and a vehicle of the dolly type, such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed greater than 25 miles per hour and a vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of more than ten miles or at a speed of more than 25 miles per hour.

***TRUCK.*** Every motor vehicle, except trailers and semitrailers, designed and used to carry property.

***TYPE A FAMILY DAY-CARE HOME.*** Has the same meaning as set forth in R.C. § 5104.01.

***URBAN DISTRICT.*** The territory contiguous to and including any street or highway which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-quarter of a mile or more, and the character of the territory is indicated by official traffic-control devices.

***VEHICLE.*** Every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that the term does not include any motorized wheelchair, any electric personal assistive mobility device, any personal delivery device as defined in R.C. § 4511.513, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power.
(R.C. § 4511.01)

## § 70.02 COMPLIANCE WITH ORDER OF POLICE OFFICER.

(A) No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.

(B) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

(C) (1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.

(2) A violation of division (A) of this section is a misdemeanor of the first degree.

(3) Except as provided in divisions (C)(4) and (C)(5) of this section, a violation of division (B) of this section is a misdemeanor of the first degree.

(4) Except as provided in division (C)(5) of this section, a violation of division (B) of this section is a felony and shall be prosecuted under appropriate state law if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that in committing the offense, the offender was fleeing immediately after the commission of a felony.

(5) (a) A violation of division (B) of this section is a felony and shall be prosecuted under appropriate state law if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:

1. The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property.

2. The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

(b) If a police officer pursues an offender who is violating division (B) of this section and division (C)(5)(a) of this section applies, the sentencing court, in determining the seriousness of an offender's conduct for purposes of sentencing the offender for a violation of division (B) of this section, shall consider, along with the factors set forth in R.C. §§ 2929.12 and 2929.13 that are required to be considered, all of the following:

1. The duration of the pursuit;

2. The distance of the pursuit;

3. The rate of speed at which the offender operated the motor vehicle during the pursuit;

4. Whether the offender failed to stop for traffic lights or stop signs during the pursuit;

5. The number of traffic lights or stop signs for which the offender failed to stop during the pursuit;

6. Whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required;

7. Whether the offender committed a moving violation during the pursuit;

8. The number of moving violations the offender committed during the pursuit;

9. Any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense.

(D) In addition to any other sanction imposed for a violation of division (A) of this section or a misdemeanor violation of division (B) of this section, the court shall impose a class five suspension from the range specified in R.C. § 4510.02(A)(5). If the offender previously has been found guilty of an offense under this section or under R.C. § 2921.331 or any other substantially equivalent municipal ordinance, in addition to any other sanction imposed for the offense, the court shall impose a class one suspension as described in R.C. § 4510.02(A)(1). The court may grant limited driving privileges to the offender on a suspension imposed for a misdemeanor violation of this section as set forth in R.C. § 4510.021. No judge shall suspend any portion of the suspension under a class one suspension of an offender's license, permit, or privilege required by this division.

(E) As used in this section:

***MOVING VIOLATION.*** Has the same meaning as in R.C. § 2743.70.

***POLICE OFFICER.*** Has the same meaning as in R.C. § 4511.01.

(R.C. § 2921.331(A) - (C), (E), (F))

***Cross-reference:***

*Resisting arrest, see § 136.08*

## § 70.03 EMERGENCY VEHICLES TO PROCEED CAUTIOUSLY PAST RED OR STOP SIGNAL.

(A) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign, shall slow down as necessary for safety to traffic, but may proceed cautiously past the red or stop sign or signal with due regard for the safety of all persons using the street or highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.03)

## § 70.04 EXCEPTIONS GENERALLY; EMERGENCY, PUBLIC SAFETY AND CORONER VEHICLES EXEMPT.

(A) The provisions of this traffic code, except for §§ 73.01 and 73.02, do not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway within an area designated by traffic-control devices, but apply to those persons and vehicles when traveling to or from such work.

(B) The driver of a highway maintenance vehicle owned by this state or any political subdivision of this state, while the driver is engaged in the performance of official duties upon a street or highway, provided the highway maintenance vehicle is equipped with flashing lights and such other markings as are required by law and such lights are in operation when the driver and vehicle are so engaged, shall be exempt from criminal prosecution for violations of R.C. §§ 4511.22, 4511.25, 4511.26, 4511.27, 4511.28, 4511.30, 4511.31, 4511.33, 4511.35, 4511.66, and 4513.02, and R.C. §§ 5577.01 through 5577.09, and any substantially equivalent municipal ordinance.

(C) (1) This section does not exempt a driver of a highway maintenance vehicle from civil liability arising from a violation of R.C. § 4511.22, 4511.25, 4511.26, 4511.27, 4511.28, 4511.30, 4511.31, 4511.33, 4511.35, 4511.66, or 4513.02 or R.C. §§ 5577.01 through 5577.09, or any substantially equivalent municipal ordinance.

(2) This section does not exempt a driver of a vehicle who is not a state employee and who is engaged in the transport of highway maintenance equipment from criminal liability for a violation of R.C. §§ 5577.01 through 5577.09, or any substantially equivalent municipal ordinance.

(D) As used in this section, ***ENGAGED IN THE PERFORMANCE OF OFFICIAL DUTIES*** includes driving a highway maintenance vehicle to and from the manufacturer or vehicle maintenance provider and transporting a highway maintenance vehicle, equipment, or materials to and from a work location.
(R.C. § 4511.04)

(E) The provisions of R.C. §§ 4511.12, 4511.13, 4511.131, 4511.132, 4511.14, 4511.202, 4511.21, 4511.211, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.62, 4511.66, 4511.68, 4511.681, and 4511.69, and any substantially equivalent municipal ordinances, do not apply to the driver of an emergency vehicle or public safety vehicle if the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and if the

driver of the vehicles is giving an audible signal by siren, exhaust whistle, or bell. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.
(R.C. § 4511.041)

(F) The provisions of R.C. §§ 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.35, 4511.36, 4511.37, 4511.38, and 4511.66, or any substantially equivalent municipal ordinances, do not apply to a coroner, deputy coroner or coroner's investigator operating a motor vehicle in accordance with R.C. § 4513.171 or a substantially equivalent municipal ordinance. This division does not relieve a coroner, deputy coroner or coroner's investigator operating a motor vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.
(R.C. § 4511.042)

## § 70.05 PERSONS RIDING OR DRIVING ANIMALS UPON ROADWAYS.

Every person riding, driving, or leading an animal upon a roadway is subject to the provisions of this traffic code, applicable to the driver of a vehicle, except those provisions of this traffic code which by their nature are inapplicable.
(R.C. § 4511.05)

## § 70.06 PROHIBITIONS AGAINST PEDESTRIANS AND SLOW-MOVING VEHICLES ON FREEWAYS.

(A) No person, unless otherwise directed by a police officer, shall:

(1) As a pedestrian, occupy any space within the limits of the right-of-way of a freeway, except: in a rest area; on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for pedestrian use; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle; or to obtain assistance;

(2) Occupy any space within the limits of the right-of-way of a freeway, with an animal-drawn vehicle, a ridden or led animal, herded animals, a pushcart, a bicycle, except on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for bicycle use, a bicycle with motor attached, a motor-driven cycle with a motor which produces not to exceed five brake horsepower, an agricultural tractor, or farm machinery, except in the performance of public works or official duties.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty

to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.051)
***Statutory reference:***
*Designation of a freeway, see R.C. § 4511.011*

## § 70.07 USE OF PRIVATE PROPERTY FOR VEHICULAR TRAVEL.

The provisions of this traffic code do not prevent the owner of real property, used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right, from prohibiting such use or from requiring additional conditions to those specified in this traffic code, or otherwise regulating such use as may seem best to the owner.
(R.C. § 4511.08)

## § 70.08 NAMES OF PERSONS DAMAGING REAL PROPERTY BY OPERATION OF VEHICLE TO BE PROVIDED TO OWNER.

(A) As used in this section, ***MOTOR VEHICLE*** has the same meaning as in R.C. § 4501.01.

(B) If damage is caused to real property by the operation of a motor vehicle in, or during the, violation of any section of the Ohio Revised Code or of any municipal ordinance, the law enforcement agency that investigates the case, upon request of the real property owner, shall provide the owner with the names of the persons who are charged with the commission of the offense. If a request for the names is made, the agency shall provide the names as soon as possible after the persons are charged with the offense.

(C) The personnel of law enforcement agencies who act pursuant to division (B) of this section in good faith are not liable in damages in a civil action allegedly arising from their actions taken pursuant to that division. Political subdivisions and the state are not liable in damages in a civil action allegedly arising from the actions of personnel of their law enforcement agencies if the personnel have immunity under this division.
(R.C. § 2935.28)

## § 70.09 LIMITED ACCESS HIGHWAYS; BARRIERS ALONG; VEHICLES TO ENTER AND LEAVE AT DESIGNATED INTERSECTIONS.

(A) No person, firm or corporation shall cut, injure, remove, or destroy any fence or other barrier designed and erected to prevent traffic from entering or leaving a limited access highway without the permission of the Director of Transportation, except in a case of emergency where life or property is in danger. No person, firm or corporation shall cause a vehicle of any character to enter or leave a limited access highway at any point other than intersections designated by the Director for such purposes, except in a case of emergency where life or property is in danger.
(R.C. § 3767.201)

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 3767.99(D))

## § 70.10 THROUGH HIGHWAYS.

(A) All state routes are hereby designated as through highways, provided that stop signs, yield signs, or traffic-control signals shall be erected at all intersections with such through highways by the Department of Transportation as to highways under its jurisdiction and by local authorities as to highways under their jurisdiction, except as otherwise provided in this section. Where two or more state routes that are through highways intersect, and no traffic-control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the Department or by local authorities having jurisdiction, except as otherwise provided in this section. Whenever the Director of Transportation determines on the basis of an engineering and traffic investigation that stop signs are necessary to stop traffic on a through highway for safe and efficient operation, nothing in this section shall be construed to prevent such installations. When circumstances warrant, the Director also may omit stop signs on roadways intersecting through highways under his or her jurisdiction. Before the Director either installs or removes a stop sign under this division, he or she shall give notice, in writing, of that proposed action to the affected local authority at least 30 days before installing or removing the stop sign.

(B) Other streets or highways, or portions thereof, are hereby designated as through highways if they are within the municipality, if they have a continuous length of more than one mile between the limits of the street or highway or portion thereof, and if they have stop or yield signs or traffic-control signals at the entrances of the majority of intersecting streets or highways. For purposes of this section, the limits of the street or highway, or portion thereof, shall be the municipal corporation line, the physical terminus of the street or highway, or any point on the streets or highway at which vehicular traffic thereon is required by regulatory signs to stop or yield to traffic on the intersecting street, provided, that in residence districts, the municipality may by ordinance designate such street or highway, or portion thereof, not to be a through highway and thereafter the affected residence district shall be indicated by official traffic-control devices. Where two or more through highways designated under this division intersect and no traffic-control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the Department or by local authorities having jurisdiction, except as otherwise provided in this section.

(C) The Department or local authorities having jurisdiction need not erect stop signs at intersections they find to be so constructed as to permit traffic to safely enter a through highway without coming to a stop. Signs shall be erected at such intersections indicating that the operator of a vehicle shall yield the right-of-way to or merge with all traffic proceeding on the through highway.

(D) Local authorities, with reference to highways under their jurisdiction, may designate additional through highways, and shall erect stop signs, yield signs, or traffic-control signals at all streets and highways intersecting such through highways, or may designate any intersection as a stop or yield intersection, and shall erect like signs at one or more entrances to the intersection.
(R.C. § 4511.65)

## § 70.11 OFFICER MAY REMOVE IGNITION KEY.

A law enforcement officer may remove the ignition key left in the ignition switch of an unlocked and unattended motor vehicle parked on a street or highway. The officer removing the key shall place notification upon the vehicle detailing his or her name and badge number, the place where the key may be reclaimed, and the procedure for reclaiming the key. The key shall be returned to the owner of the motor vehicle upon presentation of proof of ownership.
(R.C. § 4549.05)

## § 70.12 IMPOUNDING OF VEHICLES; REDEMPTION.

(A) Police officers are authorized to provide for the removal and impounding of a vehicle under the following circumstances:

(1) When any vehicle is left unattended on any street, bridge, or causeway and is illegally parked constituting a hazard or obstruction to the normal movement of traffic, or unreasonably interfering with street cleaning or snow removal operations, or is blocking fire lanes, or access to fire equipment or fire hydrants.

(2) When any vehicle is left on private property for more than 48 consecutive hours without the permission of the person having the right to the possession of the property, or on a public street or other property open to the public for purposes of vehicular travel or parking, or upon or within the right-of-way of any road or highway, for 48 consecutive hours or longer, without notification to the Police Chief of the reasons for leaving the vehicle in such place.

(3) When any vehicle has been stolen or operated without the consent of the owner.

(4) When any vehicle displays illegal license plates or fails to display the current lawfully required license plates.

(5) When any vehicle has been used in or connected with the commission of a felony.

(6) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this traffic code whereby its continued operation would constitute a condition hazardous to life, limb, or property.

(7) When any vehicle is left unattended due to the removal of an ill, injured, or arrested operator.

(8) When any vehicle has been operated by any person who has failed to stop in case of an accident or collision.

(9) When any vehicle has been operated by any person who is driving without a lawful license or while his license has been suspended or revoked.

(10) When any vehicle is found for which two or more citation tags for violations of this traffic code have been issued and the owner or operator thereof has failed to respond to such citation tags as lawfully required.

(B) The Police Division shall notify the registered vehicle owner of the fact of removal and impounding, the reasons therefor, and the place of storage. Any person desiring to redeem an impounded vehicle shall appear at the Police Division to furnish satisfactory evidence of identity and ownership or right to possession. Prior to issuance of a release form, the claimant, owner, or operator shall either pay the amount due for any fines for violations of which such vehicle was impounded or, as the court may require, post a bond in an amount set by the court to appear to answer to such violations. The pound operator shall release the vehicle upon the receipt of the release form and payment of all towage and storage charges.

(C) No owner or operator shall remove an impounded vehicle from the place of storage without complying with the above procedure. Possession of a vehicle which has been impounded and unlawfully taken from the place of storage by the owner or operator shall constitute prima facie evidence that it was so removed by the owner or operator.

## § 70.13 MOTOR VEHICLES USED BY TRAFFIC OFFICERS.

Any motor vehicle used by any member of the West Milton Police Division while the officer is on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this municipality, provided the offense is punishable as a misdemeanor, shall be marked in some distinctive manner or color. The Chief of Police shall determine the marking and color of police division vehicles.

## § 70.14 UNACCEPTED STREETS.

The provisions of this traffic code shall apply to the operation of vehicles and the traffic of pedestrians upon, and in all respects to, any dedicated but unaccepted street by whatever name known.

## § 70.15 REMOVAL OF VEHICLES AFTER ACCIDENTS.

(A) If a motor vehicle accident occurs on any highway, public street, or other property open to the public for purposes of vehicular travel and if any motor vehicle, cargo, or personal property that has been damaged or spilled as a result of the motor vehicle accident is blocking the highway, street, or other property or is otherwise endangering public safety, a public safety official may do either of the following without the consent of the owner but with the approval of the law enforcement agency conducting any investigation of the accident:

(1) Remove, or order the removal of, the motor vehicle if the motor vehicle is unoccupied, cargo, or personal property from the portion of the highway, public street, or property ordinarily used for vehicular travel on the highway, public street, or other property open to the public for purposes of vehicular travel.

(2) If the motor vehicle is a commercial motor vehicle, allow the owner or operator of the vehicle the opportunity to arrange for the removal of the motor vehicle within a period of time specified by the public safety official. If the public safety official determines that the motor vehicle cannot be removed within the specified period of time, the public safety official shall remove or order the removal of the motor vehicle.

(B) (1) Except as provided in division (B)(2) of this section, the Department of Transportation, any employee of the Department of Transportation, or a public safety official who authorizes or participates in the

removal of any unoccupied motor vehicle, cargo, or personal property as authorized by division (A) of this section, regardless of whether the removal is executed by a private towing service, is not liable for civil damages for any injury, death, or loss to person or property that results from the removal of that unoccupied motor vehicle, cargo, or personal property. Further, except as provided in division (B)(2) of this section, if a public safety official authorizes, employs, or arranges to have a private towing service remove any unoccupied motor vehicle, cargo, or personal property as authorized by division (A) of this section, that private towing service is not liable for civil damages for any injury, death, or loss to person or property that results from the removal of that unoccupied motor vehicle, cargo, or personal property.

(2) Division (B)(1) of this section does not apply to any of the following:

(a) Any person or entity involved in the removal of an unoccupied motor vehicle, cargo, or personal property pursuant to division (A) of this section if that removal causes or contributes to the release of a hazardous material or to structural damage to the roadway;

(b) A private towing service that was not authorized, employed, or arranged by a public safety official to remove an unoccupied motor vehicle, cargo, or personal property under this section;

(c) Except as provided in division (B)(2)(d) of this section, a private towing service that was authorized, employed, or arranged by a public safety official to perform the removal of the unoccupied motor vehicle, cargo, or personal property but the private towing service performed the removal in a negligent manner;

(d) A private towing service that was authorized, employed, or arranged by a public safety official to perform the removal of the unoccupied motor vehicle, cargo, or personal property that was endangering public safety but the private towing service performed the removal in a reckless manner.

(C) As used in divisions (A) and (B) of this section:

***HAZARDOUS MATERIAL.*** Has the same meaning as in R.C. § 2305.232.

***PUBLIC SAFETY OFFICIAL.*** Means any of the following:

(a) The sheriff of the county, or the chief of police in the municipal corporation, township, or township or joint police district, in which the accident occurred;

(b) A state highway patrol trooper;

(c) The chief of the fire department having jurisdiction where the accident occurred;

(d) A duly authorized subordinate acting on behalf of an official specified in divisions (a) to (c) of this definition.
(R.C. § 4513.66)

(D) If a towing service is removing a motor vehicle, and the removal was not authorized under R.C. § 4513.60, 4513.601, 4513.61, or 4513.66, or any substantially equivalent municipal ordinance, prior to removing the motor vehicle, the towing service shall provide a written estimate of the price for the removal to the operator of the motor vehicle, if requested.

(E) The towing service shall ensure that any estimate provided under division (D) of this section includes the fees, services to be rendered, and destination of the vehicle.

(F) If a towing service fails to provide a written estimate as required by this section, the towing service shall not charge fees for the towing and storage of the motor vehicle that exceed 25% of any applicable fees established by the public utilities commission in rules adopted under R.C. § 4921.25(B)(4) or, if the vehicle was towed within a municipal corporation that has established vehicle removal and storage fees, 25% of the fees established by the municipal corporation.

(G) Any storage facility that accepts towed vehicles shall conspicuously post a notice at the entrance to the storage facility that states the limitation on fees established under division (F) of this section.
(R.C. § 4513.68)

## *TRAFFIC-CONTROL DEVICES*

### § 70.20 OBEYING TRAFFIC-CONTROL DEVICES.

(A) (1) No pedestrian or driver of a vehicle shall disobey the instructions of any traffic-control device placed in accordance with the provisions of this traffic code, unless at the time otherwise directed by a police officer.

(2) No provision of this traffic code for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section of this traffic code does not state that signs are required, that section shall be effective even though no signs are erected or in place.
(R.C. § 4511.12(A))

(B) (1) Except as provided in division (C) of this section, any operator of a commercial motor vehicle, upon approaching a scale location established for the purpose of determining the weight of the vehicle and its load, shall comply with any traffic control device or the order of a peace officer directing the vehicle to proceed to be weighed or otherwise inspected.

(2) Any operator of a commercial motor vehicle, upon bypassing a scale location in accordance with division (C) of this section, shall comply with an order of a peace officer to stop the vehicle to verify the use and operation of an electronic clearance device.

(C) Any operator of a commercial motor vehicle that is equipped with an electronic clearance device authorized by the Superintendent of the State Highway Patrol under R.C. § 4549.081 may bypass a scale location, regardless of the instruction of a traffic control device to enter the scale facility, if either of the following apply:

(1) The in-cab transponder displays a green light or other affirmative visual signal and also sounds an affirmative audible signal;

(2) Any other criterion established by the Superintendent of the State Highway Patrol is met.

(D) Any peace officer may order the operator of a commercial motor vehicle that bypasses a scale location to stop the vehicle to verify the use and operation of an electronic clearance device.

(E) As used in this section, ***COMMERCIAL MOTOR VEHICLE*** means any combination of vehicles with a gross vehicle weight rating or an actual gross vehicle weight of more than 10,000 pounds if the vehicle is used in interstate or intrastate commerce to transport property and also means any vehicle that is transporting hazardous materials for which placarding is required pursuant to 49 C.F.R. parts 100 through 180.
(R.C. § 4511.121(A) - (C), (E))

(F) No person shall use an electronic clearance device if the device or its use is not in compliance with rules of the Superintendent of the State Highway Patrol.
(R.C. § 4549.081(B))

(G) (1) Except as otherwise provided in this division, whoever violates division (A) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A) of this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.12(B))

(2) Whoever violates division (B) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to a violation of division (B) of this section or any substantially equivalent state law or municipal ordinance, whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) of this section or any substantially equivalent state law or municipal ordinance, whoever violates division (B) of this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.121(D))

(3) Whoever violates division (F) of this section is guilty of a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense.
(R.C. § 4549.081(C))

***Statutory reference:***

*Placing traffic-control devices on state highways, permission required, see R.C. § 4511.10*
*Traffic-control devices to conform to the state manual and specifications, see R.C. § 4511.11*
*Uniform system of traffic-control devices, see R.C. § 4511.09*

## § 70.21 SIGNAL LIGHTS.

Highway traffic signal indications for vehicles and pedestrians shall have the following meanings:

(A) *Steady green signal indication.*

(1) (a) Vehicular traffic facing a circular green signal indication is permitted to proceed straight through or turn right or left or make a u-turn movement except as such movement is modified by a lane-use sign,

turn prohibition sign, lane marking, roadway design, separate turn signal indication, or other traffic control device. Such vehicular traffic, including vehicles turning right or left or making a u-turn movement, shall yield the right-of-way to both of the following:

1. Pedestrians lawfully within an associated crosswalk;

2. Other vehicles lawfully within the intersection.

(b) In addition, vehicular traffic turning left or making a u-turn movement to the left shall yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard during the time when such turning vehicle is moving across or within the intersection.

(2) Vehicular traffic facing a green arrow signal indication, displayed alone or in combination with another signal indication, is permitted to cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications displayed at the same time. Such vehicular traffic, including vehicles turning right or left or making a u-turn movement, shall yield the right-of-way to both of the following:

(a) Pedestrians lawfully within an associated crosswalk;

(b) Other traffic lawfully using the intersection.

(3) (a) Unless otherwise directed by a pedestrian signal indication, as provided in R.C. § 4511.14, pedestrians facing a circular green signal indication are permitted to proceed across the roadway within any marked or unmarked associated crosswalk. The pedestrian shall yield the right-of-way to vehicles lawfully within the intersection or so close as to create an immediate hazard at the time that the green signal indication is first displayed.

(b) Pedestrians facing a green arrow signal indication, unless otherwise directed by a pedestrian signal indication or other traffic control device, shall not cross the roadway.

(B) *Steady yellow signal indication.*

(1) Vehicular traffic facing a steady circular yellow signal indication is thereby warned that the related green movement or the related flashing arrow movement is being terminated or that a steady red signal indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection. The provisions governing vehicular operation under the movement being terminated shall continue to apply while the steady circular yellow signal indication is displayed.

(2) Vehicular traffic facing a steady yellow arrow signal indication is thereby warned that the related green arrow movement or the related flashing arrow movement is being terminated. The provisions governing vehicular operation under the movement being terminated shall continue to apply while the steady yellow arrow signal indication is displayed.

(3) Pedestrians facing a steady circular yellow or yellow arrow signal indication, unless otherwise directed by a pedestrian signal indication as provided in R.C. § 4511.14 or other traffic control device, shall not start to cross the roadway.

(C) *Steady red signal indication.*

(1) (a) Vehicular traffic facing a steady circular red signal indication, unless entering the intersection to make another movement permitted by another signal indication, shall stop at a clearly marked stop line; but if there is no stop line, traffic shall stop before entering the crosswalk on the near side of the intersection; or if there is no crosswalk, then before entering the intersection; and shall remain stopped until a signal indication to proceed is displayed except as provided in divisions (C)(1), (C)(2), and (C)(3) of this section.

(b) Except when a traffic control device is in place prohibiting a turn on red or a steady red arrow signal indication is displayed, vehicular traffic facing a steady circular red signal indication is permitted, after stopping, to enter the intersection to turn right, or to turn left from a one-way street into a one-way street. The right to proceed with the turn shall be subject to the provisions that are applicable after making a stop at a stop sign.

(2) (a) Vehicular traffic facing a steady red arrow signal indication shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make another movement permitted by another signal indication, shall stop at a clearly marked stop line; but if there is no stop line, before entering the crosswalk on the near side of the intersection; or if there is no crosswalk, then before entering the intersection; and shall remain stopped until a signal indication or other traffic control device permitting the movement indicated by such red arrow is displayed.

(b) When a traffic control device is in place permitting a turn on a steady red arrow signal indication, vehicular traffic facing a steady red arrow indication is permitted, after stopping, to enter the intersection to turn right, or to turn left from a one-way street into a one-way street. The right to proceed with the turn shall be limited to the direction indicated by the arrow and shall be subject to the provisions that are applicable after making a stop at a stop sign.

(3) Unless otherwise directed by a pedestrian signal indication as provided in R.C. § 4511.14 or other traffic control device, pedestrians facing a steady circular red or steady red arrow signal indication shall not enter the roadway.

(4) Local authorities by ordinance, or the Director of Transportation on state highways, may prohibit a right or a left turn against a steady red signal at any intersection, which shall be effective when signs giving notice thereof are posted at the intersection.

(D) *Flashing green signal indication.* A flashing green signal indication has no meaning and shall not be used.

(E) *Flashing yellow signal indication.*

(1) (a) Vehicular traffic, on an approach to an intersection, facing a flashing circular yellow signal indication, is permitted to cautiously enter the intersection to proceed straight through or turn right or left or make a u-turn movement except as such movement is modified by lane-use signs, turn prohibition signs, lane markings, roadway design, separate turn signal indications, or other traffic control devices. Such vehicular traffic, including vehicles turning right or left or making a u-turn movement, shall yield the right-of-way to both of the following:

1. Pedestrians lawfully within an associated crosswalk;

2. Other vehicles lawfully within the intersection.

(b) In addition, vehicular traffic turning left or making a u-turn to the left shall yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard during the time when such turning vehicle is moving across or within the intersection.

(2) (a) Vehicular traffic, on an approach to an intersection, facing a flashing yellow arrow signal indication, displayed alone or in combination with another signal indication, is permitted to cautiously enter the intersection only to make the movement indicated by such arrow, or other such movement as is permitted by other signal indications displayed at the same time. Such vehicular traffic, including vehicles turning right or left or making a u-turn, shall yield the right-of-way to both of the following:

1. Pedestrians lawfully within an associated crosswalk;

2. Other vehicles lawfully within the intersection.

(b) In addition, vehicular traffic turning left or making a u-turn to the left shall yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard during the time when such turning vehicle is moving across or within the intersection.

(3) Pedestrians facing any flashing yellow signal indication at an intersection, unless otherwise directed by a pedestrian signal indication or other traffic control device, are permitted to proceed across the roadway within any marked or unmarked associated crosswalk. Pedestrians shall yield the right-of-way to vehicles lawfully within the intersection at the time that the flashing yellow signal indication is first displayed.

(4) When a flashing circular yellow signal indication is displayed as a beacon to supplement another traffic control device, road users are notified that there is a need to pay additional attention to the message contained thereon or that the regulatory or warning requirements of the other traffic control device, which might not be applicable at all times, are currently applicable.

(F) *Flashing red signal indication.*

(1) Vehicular traffic, on an approach to an intersection, facing a flashing circular red signal indication, shall stop at a clearly marked stop line; but if there is no stop line, before entering the crosswalk on the near side of the intersection; or if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the provisions that are applicable after making a stop at a stop sign.

(2) Pedestrians facing any flashing red signal indication at an intersection, unless otherwise directed by a pedestrian signal indication or other traffic control device, are permitted to proceed across the roadway within any marked or unmarked associated crosswalk. Pedestrians shall yield the right-of-way to vehicles lawfully within the intersection at the time that the flashing red signal indication is first displayed.

(3) When a flashing circular red signal indication is displayed as a beacon to supplement another traffic control device, road users are notified that there is a need to pay additional attention to the message contained thereon or that the regulatory requirements of the other traffic control device, which might not be applicable at

all times, are currently applicable. Use of this signal indication shall be limited to supplementing stop, do not enter, or wrong way signs, and to applications where compliance with the supplemented traffic control device requires a stop at a designated point.

(G) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(H) This section does not apply at railroad grade- crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by R.C. §§ 4511.61 and 4511.62.
(R.C. § 4511.13)

## § 70.22 SIGNALS OVER REVERSIBLE LANES.

The meanings of lane-use control signal indications are as follows:

(A) *A steady downward green arrow.* A road user is permitted to drive in the lane over which the arrow signal indication is located.

(B) *A steady yellow "X".* A road user is to prepare to vacate the lane over which the signal indication is located because a lane control change is being made to a steady red "X" signal indication.

(C) *A steady white two-way left-turn arrow.* A road user is permitted to use a lane over which the signal indication is located for a left turn, but not for through travel, with the understanding that common use of the lane by oncoming road users for left turns also is permitted.

(D) *A steady white one-way left-turn arrow.* A road user is permitted to use a lane over which the signal indication is located for a left turn, without opposing turns in the same lane, but not for through travel.

(E) *A steady red "X".* A road user is not permitted to use the lane over which the signal indication is located and that this signal indication shall modify accordingly the meaning of other traffic controls present.
(R.C. § 4511.131)

## § 70.23 AMBIGUOUS OR NON-WORKING TRAFFIC SIGNALS.

(A) The driver of a vehicle who approaches an intersection where traffic is controlled by traffic control signals shall do all of the following if the signal facing the driver exhibits no colored lights or colored lighted arrows, exhibits a combination of such lights or arrows that fails to clearly indicate the assignment of right-of-way, or, if the vehicle is a bicycle, the signals are otherwise malfunctioning due to the failure of a vehicle detector to detect the presence of the bicycle:

(1) Stop at a clearly marked stop line, but if none, stop before entering the crosswalk on the near side of the intersection, or, if none, stop before entering the intersection;

(2) Yield the right-of-way to all vehicles in the intersection or approaching on an intersecting road, if the vehicles will constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways;

(3) Exercise ordinary care while proceeding through the intersection.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.132)

## § 70.24 PEDESTRIAN-CONTROL SIGNALS.

Whenever special pedestrian-control signals exhibiting the words “walk” or “don’t walk”, or the symbol of a walking person or an upraised palm are in place, these signals shall indicate the following instructions:

(A) A steady walking person signal indication, which symbolizes “walk”, means that a pedestrian facing the signal indication is permitted to start to cross the roadway in the direction of the signal indication, possibly in conflict with turning vehicles. The pedestrian shall yield the right-of-way to vehicles lawfully within the intersection at the time that the walking person signal indication is first shown.

(B) A flashing upraised hand signal indication, which symbolizes “don’t walk”, means that a pedestrian shall not start to cross the roadway in the direction of the signal indication, but that any pedestrian who has already started to cross on a steady walking person signal indication shall proceed to the far side of the traveled way of the street or highway, unless otherwise directed by a traffic control device to proceed only to the median of a divided highway or only to some other island or pedestrian refuge area.

(C) A steady upraised hand signal indication means that a pedestrian shall not enter the roadway in the direction of the signal indication.

(D) Nothing in this section shall be construed to invalidate the continued use of pedestrian control signals utilizing the word “wait” if those signals were installed prior to March 28, 1985.

(E) A flashing walking person signal indication has no meaning and shall not be used.
(R.C. § 4511.14)

## § 70.25 UNAUTHORIZED SIGNS AND SIGNALS PROHIBITED.

(A) (1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be, is an imitation of, or resembles a traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or hides from view or interferes with

the effectiveness of any traffic-control device or any railroad sign or signal, and no person shall place or maintain, nor shall any public authority permit, upon any highway any traffic sign or signal bearing thereon any commercial advertising. This section does not prohibit either the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for traffic-control devices, or the erection upon private property of traffic-control devices by the owner of real property in accordance with R.C. §§ 4511.211 and 4511.432.

(2) Every prohibited sign, signal, marking, or device is a public nuisance, and the authority having jurisdiction over the highway may remove the same or cause it to be removed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.16)

## § 70.26 ALTERATION, DEFACEMENT, OR REMOVAL PROHIBITED.

(A) No person, without lawful authority, shall do any of the following:

(1) Knowingly move, deface, damage, destroy, or otherwise improperly tamper with any traffic-control device, any railroad sign or signal, or any inscription, shield, or insignia on the device, sign, or signal, or any part of the device, sign, or signal;

(2) Knowingly drive upon or over any freshly applied pavement marking material on the surface of a roadway while the marking material is in an undried condition, and is marked by flags, markers, signs, or other devices intended to protect it;

(3) Knowingly move, damage, destroy, or otherwise improperly tamper with a manhole cover.

(B) (1) Except as otherwise provided in this division, whoever violates division (A)(1) or (A)(3) of this section is guilty of a misdemeanor of the third degree. If a violation of division (A)(1) or (A)(3) of this section creates a risk of physical harm to any person, the offender is guilty of a misdemeanor of the first degree. If a violation of division (A)(1) or (A)(3) of this section causes serious physical harm to property that is owned, leased, or controlled by a state or local authority, the offender is guilty of a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in this division, whoever violates division (A)(2) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A)(2) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A)(2) of this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.17)

## § 70.27 UNAUTHORIZED POSSESSION OR SALE OF DEVICES.

(A) As used in this section, ***TRAFFIC CONTROL DEVICE*** means any sign, traffic control signal or other device conforming to and placed or erected in accordance with the manual adopted under R.C. § 4511.09 by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic, including signs denoting the names of streets and highways, but does not mean any pavement marking.

(B) No individual shall buy or otherwise possess, or sell, a traffic control device, except when one of the following applies:

(1) In the course of the individual's employment by the state or a local authority for the express or implied purpose of manufacturing, providing, erecting, moving or removing such a traffic control device;

(2) In the course of the individual's employment by any manufacturer of traffic control devices other than a state or local authority;

(3) For the purpose of demonstrating the design and function of a traffic control device to state or local officials;

(4) When the traffic control device has been purchased from the state or a local authority at a sale of property that is no longer needed or is unfit for use; or

(5) When the traffic control device has been properly purchased from a manufacturer for use on private property and the person possessing the device has a sales receipt for the device or other acknowledgment of sale issued by the manufacturer.

(C) This section does not preclude, and shall not be construed as precluding, prosecution for theft in violation of R.C. § 2913.02, or a substantially equivalent municipal ordinance, or for receiving stolen property in violation of R.C. § 2913.51, or a substantially equivalent municipal ordinance.

(D) Whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.18)

## § 70.28 SIGNAL PREEMPTION DEVICES; PROHIBITIONS.

(A) (1) No person shall possess a portable signal preemption device.

(2) No person shall use a portable signal preemption device to affect the operation of a traffic-control device.

(B) Division (A)(1) of this section does not apply to any of the following persons and division (A)(2) of this section does not apply to any of the following persons when responding to an emergency call:

(1) A peace officer, as defined in R.C. § 109.17(A)(1), (A)(12), (A)(14), or (A)(19);

(2) A state highway patrol officer;

(3) A person while occupying a public safety vehicle as defined in R.C. § 4511.01(E)(1), (E)(3), or (E)(4).

(C) Whoever violates division (A)(1) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates division (A)(2) of this section is guilty of a misdemeanor of the first degree.

(D) As used in this section, ***PORTABLE SIGNAL PREEMPTION DEVICE*** means a device that, if activated by a person, is capable of changing a traffic-control signal to green out of sequence.
(R.C. § 4511.031)

## *LOCAL REGULATIONS*

### § 70.40 EFFECTIVE DATE AND FILING OF RULES AND REGULATIONS.

The written rules and regulations authorized hereby shall be in the form designated by the Director of Safety and shall be signed and dated by the Director of Safety. These rules and regulations shall be filed by the Director of Safety with the Municipal Manager, who shall cause such rules and regulations to be delivered to all members of Council without unnecessary delay. The rules and regulations shall also be filed by the Director of Safety with the Clerk of Council and shall take effect 31 days after they are so filed.

### § 70.41 AMENDMENTS AND REPEAL OF RULES AND REGULATIONS.

The Director of Safety may amend or repeal written rules and regulations promulgated under authority hereof, and the Council may amend or repeal by ordinance any rule or regulation promulgated by the Director of Safety under authority hereof.

### § 70.42 RECORDS TO BE MAINTAINED.

The Clerk of Council shall maintain a record of all rules and regulations filed in his office as well as amendments to and repeals of rules and regulations previously filed in accordance herewith.

### § 70.43 RESERVATION OF POWER TO COUNCIL.

Notwithstanding the provisions hereof, Council may override any decision of the Director of Safety made under the provisions hereof and may assume any of the powers delegated to the Director of Safety under the provisions hereof by resolution adopted by a vote of a majority of the members duly elected. Upon the adoption of such resolution, it may be changed only by an amending or repealing resolution adopted by Council.

## § 70.44 CONFLICT BETWEEN ORDINANCES AND RULES AND REGULATIONS.

In the event the provisions of any rules or regulations promulgated by the Director of Safety under authority hereof shall conflict with the provisions of any ordinance of the municipality, the rules and regulations shall prevail over the ordinance provision if the effective date of such rule or regulation is subsequent to the effective date of the ordinance. If prior to the effective date of the ordinance, the provision of the ordinance shall prevail and the rule or regulation shall be considered as repealed to the extent of such conflict.

## § 70.99 PENALTY.

(A) Whoever is convicted of or pleads guilty to a misdemeanor or minor misdemeanor shall be sentenced in accordance with § 130.99(B) through (G).

(B) Whoever violates any provision of this traffic code for which no penalty otherwise is provided in the section violated is guilty of one of the following:

(1) Except as otherwise provided in division (B)(2) or (B)(3) of this section, a minor misdemeanor;

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, a misdemeanor of the fourth degree;

(3) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle or traffic offenses, a misdemeanor of the third degree.
(R.C. § 4511.99)

***Cross-reference:***

*Imposing sentence for misdemeanor, see § 130.18*
*Multiple sentences, see § 130.19*

***Statutory reference:***

*Reimbursement for costs of confinement, see R.C. §§ 2929.36 et seq.*

# CHAPTER 71: LICENSING PROVISIONS

Section

***Statutory reference:***

*Commercial driver's licenses, see R.C. Chapter 4506*
*Driver's licenses, see R.C. Chapter 4507*
*Motor vehicle licensing, see R.C. Chapter 4504*
*Municipal motor vehicle license tax, see R.C. § 4504.06*
*Notice of arrest of certain commercial drivers, see R.C. § 5577.14*
*Proof of financial responsibility required; civil penalties; peace officers as agents of Registrar of Motor Vehicles; procedures and rules, see R.C. §§ 4509.101 et seq.*
*Suspension and revocation of driver's licenses, see R.C. Chapter 4510*
*Suspension of driver's licenses; municipal power to suspend for a period not to exceed time permitted or required by state law, see R.C. § 4510.05*

## *MOTOR VEHICLE LICENSING*

### § 71.01 DISPLAY OF LICENSE PLATES OR VALIDATION STICKERS; REGISTRATION.

(A) (1) No person who is the owner or operator of a motor vehicle shall fail to display in plain view on the front and rear of the motor vehicle a license plate that bears the distinctive number and registration mark assigned to the motor vehicle by the Ohio Director of Public Safety, including any county identification sticker and any validation sticker issued under R.C. §§ 4503.19 and 4503.191, except as follows:

(a) A manufacturer of motor vehicles or dealer therein, the holder of an in transit permit, and the owner or operator of a motorcycle, motorized bicycle or moped, motor-driven cycle or motor scooter, autocycle, cab-enclosed motorcycle, manufactured home, mobile home, trailer, or semitrailer shall display a license plate on the rear only.

(b) A motor vehicle that is issued two license plates shall display the validation sticker only on the rear license plate, except that a commercial tractor that does not receive an apportioned license plate under the international registration plan shall display the validation sticker on the front of the commercial tractor.

(c) An apportioned vehicle receiving an apportioned license plate under the international registration plan shall display the license plate only on the front of a commercial tractor and on the rear of all other vehicles.

(2) All license plates shall be securely fastened so as not to swing, and shall not be covered by any material that obstructs their visibility.

(3) No person to whom a temporary license placard or windshield sticker has been issued for the use of a motor vehicle under R.C. § 4503.182, and no operator of that motor vehicle, shall fail to display the temporary license placard in plain view from the rear of the vehicle either in the rear window or on an external rear surface of the motor vehicle, or fail to display the windshield sticker in plain view on the rear window of the motor vehicle. No temporary license placard or windshield sticker shall be covered by any material that obstructs its visibility.

(4) A law enforcement officer shall only issue a ticket, citation, or summons, or cause the arrest or commence a prosecution, for the failure to display a license plate in plain view on the front of a parked motor vehicle if the officer first determines that another offense has occurred and either places the operator or vehicle owner under arrest or issues a ticket, citation, or summons to the operator or vehicle owner for the other offense. (R.C. § 4503.21(A), (B))

(B) Except as otherwise provided by R.C. §§ 4503.103, 4503.173, 4503.41, 4503.43, and 4503.46, no person who is the owner or chauffeur of a motor vehicle operated or driven upon the public roads or highways shall fail to file annually the application for registration or to pay the tax therefor.
(R.C. § 4503.11(A))

(C) (1) Within 30 days of becoming a resident of this state, any person who owns a motor vehicle operated or driven upon the public roads or highways shall register the vehicle in this state. If such a person fails to register a vehicle owned by the person, the person shall not operate any motor vehicle in this state under a license issued by another state.

(2) For purposes of division (C)(1) of this section, ***RESIDENT*** means any person to whom any of the following applies:

(a) The person maintains their principal residence in this state and does not reside in this state as a result of the person's active service in the United States armed forces.

(b) The person is determined by the Registrar of Motor Vehicles to be a resident in accordance with standards adopted by the Registrar under R.C. § 4507.01.
(R.C. § 4503.111(A), (C))

(D) No person shall operate or drive upon the highways of this municipality a motor vehicle acquired from a former owner who has registered the motor vehicle, while the motor vehicle displays the distinctive number or identification mark assigned to it upon its original registration.
(R.C. § 4549.11(A))

(E) No person who is the owner of a motor vehicle and a resident of this state shall operate or drive the motor vehicle upon the highways of this municipality while it displays a distinctive number or identification mark issued by or under the authority of another state, without complying with the laws of this state relating to the registration and identification of motor vehicles.
(R.C. § 4549.12(A))

(F) (1) (a) Except as otherwise provided in division (f)(1)(b), whoever violates division (A) of this section is guilty of a minor misdemeanor.

(b) Whoever violates division (A) of this section by failing to display a license plate in plain view on the front of a motor vehicle as required under division (A) of this section while the motor vehicle is otherwise legally parked is guilty of a minor misdemeanor and may be fined not more than $100. A person who is subject to the penalty prescribed in this division (F)(1)(b) is not subject to the charging of points under R.C. § 4510.036.

(c) The offense established under division (A) of this section is a strict liability offense and R.C. § 2901.20 does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.
(R.C. § 4503.21(C))

(2) Whoever violates division (B) of this section is guilty of a minor misdemeanor.
(R.C. § 4503.11(D))

(3) (a) Whoever violates division (C) of this section is guilty of a minor misdemeanor.

(b) The offense established under division (F)(3)(a) of this section is a strict liability offense and strict liability is a culpable mental state for purposes of R.C. § 2901.20. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.
(R.C. § 4503.111(B))

(4) Whoever violates division (D) of this section is guilty of operation of a motor vehicle bearing license plates or an identification mark issued to another, a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense.
(R.C. § 4549.11(B))

(5) Whoever violates division (E) of this section is guilty of illegal operation by a resident of this state of a motor vehicle bearing the distinctive number or identification mark issued by a foreign jurisdiction, a minor misdemeanor.
(R.C. § 4549.12(B))

## § 71.02 IMPROPER USE OF NONCOMMERCIAL MOTOR VEHICLE.

(A) No person shall use a motor vehicle registered as a noncommercial motor vehicle for other than the purposes set forth in R.C. § 4501.01.

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4503.05)

## § 71.03 OPERATING MOTOR VEHICLE ORDERED IMMOBILIZED; FORFEITURE.

(A) No person shall operate a motor vehicle or permit the operation of a motor vehicle upon any public or private property used by the public for vehicular travel or parking knowing or having reasonable cause to believe

that the motor vehicle has been ordered immobilized pursuant to an immobilization order issued under R.C. § 4503.233.

(B) A motor vehicle that is operated by a person during a violation of division (A) of this section shall be criminally forfeited to the state in accordance with the procedures contained in R.C. § 4503.234.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the second degree. (R.C. § 4503.236)

## § 71.04 OPERATION OR SALE WITHOUT CERTIFICATE OF TITLE.

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

(1) Operate in this municipality a motor vehicle for which a certificate of title is required without having that certificate in accordance with R.C. Chapter 4505 or, if a physical certificate of title has not been issued for a motor vehicle, operate the motor vehicle in this state knowing that the ownership information relating to the vehicle has not been entered into the automated title processing system by a Clerk of a Court of Common Pleas;

(2) Display or display for sale or sell as a dealer or acting on behalf of a dealer, a motor vehicle without having obtained a manufacturer's or importer's certificate, a certificate of title, or an assignment of a certificate of title for it as provided in R.C. Chapter 4505;

(3) Fail to surrender any certificate of title or any certificate of registration or license plates upon cancellation of the same by the Registrar of Motor Vehicles and notice of the cancellation as prescribed in R.C. Chapter 4505;

(4) Fail to surrender the certificate of title to a Clerk of a Court of Common Pleas as provided in R.C. Chapter 4505 in case of the destruction or dismantling or change of a motor vehicle in such respect that it is not the motor vehicle described in the certificate of title;

(5) Violate any rules adopted pursuant to R.C. Chapter 4505;

(6) Except as otherwise provided in R.C. Chapters 4505 and 4517, sell at wholesale a motor vehicle ownership of which is not evidenced by an Ohio certificate of title, or the current certificate of title issued for the motor vehicle, or the manufacturer's certificate of origin, and all title assignments that evidence the seller's ownership of the motor vehicle, and an odometer disclosure statement that complies with R.C. § 4505.06 and subchapter IV of the "Motor Vehicle Information and Cost Savings Act", 86 Stat. 961 (1972), 15 U.S.C. § 1981;

(7) Operate in this state a motor vehicle knowing that the certificate of title to the vehicle or ownership of the vehicle as otherwise reflected in the automated title processing system has been canceled.

(B) This section does not apply to persons engaged in the business of warehousing or transporting motor vehicles for the purpose of salvage disposition.

(C) Whoever violates this section shall be fined not more than $200, imprisoned not more than 90 days, or both.
(R.C. § 4505.18)

## § 71.05 DISPLAY OF CERTIFICATE OF REGISTRATION.

(A) (1) The operator of a "commercial car", as defined in R.C. § 4501.01, when the commercial car is required to be registered under state law, shall, when operating the commercial car, trailer or semitrailer on the streets, roads, or highways of this municipality display inside or on the vehicle the certificate of registration for the commercial car, trailer or semitrailer provided for in R.C. § 4503.19, or shall carry the certificate on the operator's person and display it upon the demand of any peace officer.

(2) Every person operating a commercial car, trailer or semitrailer required to be registered under state law shall permit the inspection of the certificate of registration upon demand of any peace officer.

(B) Whoever violates division (A) of this section is guilty of a commercial car certificate of registration violation, a minor misdemeanor.
(R.C. § 4549.18)

## § 71.06 USE OF UNAUTHORIZED PLATES.

(A) No person shall operate or drive a motor vehicle upon the public roads and highways in this municipality if it displays a license plate or a distinctive number or identification mark that meets any of the following criteria:

(1) It is fictitious;

(2) It is a counterfeit or an unlawfully made copy of any distinctive number or identification mark;

(3) It belongs to another motor vehicle, provided that this section does not apply to a motor vehicle that is operated on the public roads and highways in this municipality when the motor vehicle displays license plates that originally were issued for a motor vehicle that previously was owned by the same person who owns the motor vehicle that is operated on the public roads and highways in this municipality during the 30-day period described in R.C. § 4503.12(A)(4).

(B) A person who fails to comply with the transfer of registration provisions of R.C. § 4503.12 and is charged with a violation of that section shall not be charged with a violation of this section.

(C) Whoever violates division (A)(1), (A)(2), or (A)(3) of this section is guilty of operating a motor vehicle bearing an invalid license plate or identification mark, a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense.
(R.C. § 4549.08)

## § 71.07 OPERATING WITHOUT DEALER OR MANUFACTURER LICENSE PLATES.

(A) No person shall operate or cause to be operated upon a public road or highway a motor vehicle of a manufacturer or dealer unless the vehicle carries and displays two placards, except as provided in R.C. § 4503.21, issued by the Director of Public Safety that bear the registration number of its manufacturer or dealer.

(B) Whoever violates division (A) of this section is guilty of illegal operation of a manufacturer's or dealer's motor vehicle, a minor misdemeanor.
(R.C. § 4549.10)

## *DRIVER'S LICENSES*

## § 71.10 PROHIBITED ACTS.

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

(1) Display or cause or permit to be displayed, or possess any identification card, driver's or commercial driver's license, temporary instruction permit, or commercial driver's license temporary instruction permit knowing the same to be fictitious, or to have been canceled, suspended, or altered;

(2) Lend to a person not entitled thereto, or knowingly permit a person not entitled thereto to use any identification card, driver's or commercial driver's license, temporary instruction permit or commercial driver's license temporary instruction permit issued to the person so lending or permitting the use thereof;

(3) Display, or represent as one's own, any identification card, driver's or commercial driver's license, temporary instruction permit, or commercial driver's license temporary instruction permit not issued to the person so displaying the same;

(4) Fail to surrender to the Registrar of Motor Vehicles, upon the Registrar's demand, any identification card, driver's or commercial driver's license, temporary instruction permit, or commercial driver's license temporary instruction permit that has been suspended or canceled;

(5) In any application for an identification card, driver's or commercial driver's license, temporary instruction permit, or commercial driver's license temporary instruction permit or any renewal or duplicate thereof, knowingly conceal a material fact or present any physician's statement required under R.C. § 4507.08 or 4507.081 when knowing the same to be false or fictitious.

(B) Whoever violates any division of this section is guilty of a misdemeanor of the first degree.
(R.C. § 4507.30)

***Statutory reference:***

*Use of license to violate liquor laws; suspension; procedures, see R.C. § 4510.33*

## § 71.11 PERMITTING MINOR TO OPERATE VEHICLE PROHIBITED; TEMPORARY INSTRUCTION PERMIT; PROBATIONARY LICENSE.

(A) No person shall cause or knowingly permit any minor to drive a motor vehicle upon a highway as an operator, unless the minor has first obtained a license or permit to drive a motor vehicle under R.C. Chapter 4507.
(R.C. § 4507.31(A))

(B) (1) No holder of a temporary instruction permit issued under R.C. § 4507.05(A) shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in violation of the conditions established under R.C. § 4507.05(A).

(2) (a) Except as provided in division (B)(2)(b) of this section, no holder of a temporary instruction permit that is issued under R.C. § 4507.05(A) and that is issued on or after July 1, 1998, and who has not attained the age of 18 years, shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of midnight and 6:00 a.m.

(b) The holder of a temporary instruction permit issued under R.C. § 4507.05(A) on or after July 1, 1998, who has not attained the age of 18 years, may operate a motor vehicle upon a highway or any public or private property used by the public for purposed of vehicular travel or parking between the hours of midnight and 6:00 a.m. if, at the time of such operation, the holder is accompanied by the holder's parent, guardian, or custodian, and the parent, guardian, or custodian holds a current valid driver's or commercial driver's license issued by this state, is actually occupying a seat beside the permit holder, and does not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine as provided in R.C. § 4511.19(A).
(R.C. § 4507.05(F))

(C) (1) (a) No holder of a probationary driver's license who has held the license for less than 12 months shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of midnight and 6:00 a.m. unless the holder is accompanied by the holder's parent or guardian.

(b) No holder of a probationary driver's license who has held the license for 12 months or longer shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking between the hours of 1:00 a.m. and 5:00 a.m. unless the holder is accompanied by the holder's parent or guardian.

(2) (a) Subject to division (E)(1) of this section, division (C)(1)(a) of this section does not apply to the holder of a probationary driver's license who is doing either of the following:

1. Traveling to or from work between the hours of midnight and 6:00 a.m., provided that the holder has in the holder's immediate possession written documentation from the holder's employer.

2. Traveling to or from an official function sponsored by the school the holder attends between the hours of midnight and 6:00 a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official of the school;

3. Traveling to or from an official religious event between the hours of midnight and 6:00 a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official affiliated with the event.

(b) Division (C)(1)(b) of this section does not apply to the holder of a probationary driver's license who is doing either of the following:

1. Traveling to or from work between the hours of 1:00 a.m. and 5:00 a.m., provided that the holder has in the holder's immediate possession written documentation from the holder's employer.

2. Traveling to or from an official function sponsored by the school the holder attends between the hours of 1:00 a.m. and 5:00 a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official of the school;

3. Traveling to or from an official religious event between the hours of 1:00 a.m. and 5:00 a.m., provided that the holder has in the holder's immediate possession written documentation from an appropriate official affiliated with the event.

(3) An employer, school official, or official affiliated with a religious event is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the fact that the employer, school official, or official affiliated with a religious event provided the holder of a probationary driver's license with the written documentation described in division (C)(2) of this section. The Registrar of Motor Vehicles shall make available at no cost a form to serve as the written documentation described in division (C)(2) of this section, and employers, school officials, officials affiliated with religious events, and holders of probationary driver's licenses may utilize that form or may choose to utilize any other written documentation to meet the requirements of that division.

(4) No holder of a probationary driver's license who has held the license for less than 12 months shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking with more than one person who is not a family member occupying the vehicle unless the probationary license holder is accompanied by the probationary license holder's parent, guardian, or custodian.

(D) It is an affirmative defense to a violation of division (C)(1)(a) or (C)(1)(b) of this section if, at the time of the violation, an emergency existed that required the holder of the probationary driver's license to operate a motor vehicle in violation of division (C)(1)(a) or (C)(1)(b) of this section or the holder was an emancipated minor.

(E) (1) If a person is issued a probationary driver's license prior to attaining the age of 17 years and the person pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed a moving violation during the six-month period commencing on the date on which the person is issued the probationary driver's license, the court with jurisdiction over the violation may order that the holder must be accompanied by the holder's parent or guardian whenever the holder is operating a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking for a period not to exceed six months or the date the holder attains the age of 17 years, whichever occurs first.

(2) Any person who is subject to the operating restrictions established under division (E)(1) of this section as a result of a first moving violation may petition the court for driving privileges without being accompanied by the holder's parent or guardian during the period of time determined by the court under that division. In granting the driving privileges, the court shall specify the purposes of the privileges and shall issue the person appropriate forms setting forth the privileges granted. If a person is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed a second or subsequent moving violation, the court with jurisdiction over the violation may terminate any driving privileges previously granted under this division.

(3) No person shall violate any operating restriction imposed under division (E)(1) or (E)(2) of this section.

(F) No holder of a probationary license shall operate a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking unless the total number of occupants of the vehicle does not exceed the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer, and each occupant of the vehicle is wearing all of the available elements of a properly adjusted occupant restraining device.

(G) A restricted license may be issued to a person who is 14 or 15 years of age under proof of hardship satisfactory to the Registrar of Motor Vehicles.

(H) Notwithstanding any other provisions of law to the contrary, no law enforcement officer shall cause the operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether each occupant of the motor vehicle is wearing all of the available elements of a properly adjusted occupant restraining device as required by division (F) of this section, or for the sole purpose of issuing a ticket, citation or summons if that requirement has been or is being violated, or for causing the arrest of or commencing a prosecution of a person for a violation of that requirement.

(I) Notwithstanding any other provision of law to the contrary, no law enforcement officer shall cause the operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether a violation of division (C)(1)(a) or (C)(1)(b) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for such a violation or for causing the arrest or commencing a prosecution of a person for such a violation.

(J) As used in this section:

***FAMILY MEMBER.*** A family member of a probationary license holder includes any of the following:

(a) A spouse;

(b) A child or stepchild;

(c) A parent, stepparent, grandparent, or parent-in-law;

(d) An aunt or uncle;

(e) A sibling, whether of the whole or half blood or by adoption, a brother-in-law, or a sister-in-law;

(f) A son or daughter of the probationary license holder's stepparent if the stepparent has not adopted the probationary license holder;

(g) An eligible adult, as defined in R.C. § 4507.05.

***MOVING VIOLATION.*** Means any violation of any statute or ordinance that regulates the operation of vehicles on the highways or streets. The term does not include a violation of R.C. § 4513.263 or a substantially equivalent municipal ordinance, or a violation of any statute or ordinance regulating pedestrians or the parking of vehicles, vehicle size or load limitations, vehicle fitness requirements, or vehicle registration.

***OCCUPANT RESTRAINING DEVICE.*** Has the same meaning as in R.C. § 4513.263.
(R.C. § 4507.071(B) - (I))

(K) (1) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 4507.31(B))

(2) Whoever violates divisions (B), (C)(1), (C)(4), (E)(3), or (F) of this section is guilty of a minor misdemeanor.
(R.C. §§ 4507.05(I), 4507.071(J))

## § 71.12 LICENSE REQUIRED AS DRIVER OR COMMERCIAL DRIVER ON PUBLIC OR PRIVATE PROPERTY; NONRESIDENT EXEMPTION.

(A) (1) (a) No person shall permit the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular travel or parking, knowing the operator does not have a valid driver's license issued to the operator by the Registrar of Motor Vehicles under R.C. Chapter 4507 or a valid commercial driver's license issued under R.C. Chapter 4506. Except as otherwise provided in this division, whoever violates this division is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to § 130.18, § 130.99 or R.C. §§ 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to § 130.99(E) or R.C. § 2929.26; notwithstanding § 130.99(G)(1)(b)1. and R.C. § 2929.28(A)(2)(a), the offender may be fined up to $1,000; and, notwithstanding § 130.99(F)(1)(c) and R.C. § 2929.27(A)(3), the offender may be ordered pursuant to § 130.99(F)(3) or R.C. § 2929.27(C) to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under R.C. § 2705.02(A) that may be filed in the underlying case.

(b) If, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(2) No person shall receive a driver's license, or a motorcycle operator's endorsement of a driver's or commercial driver's license, unless and until the person surrenders to the Registrar all valid licenses issued to the person by another jurisdiction recognized by this state. The Registrar shall report the surrender of a license to the issuing authority, together with information that a license is now issued in this state. The Registrar shall

destroy any such license that is not returned to the issuing authority. No person shall be permitted to have more than one valid license at any time.
(R.C. § 4507.02(A))

(B) (1) No person shall be required to obtain a driver's or commercial driver's license for the purpose of temporarily driving, operating, drawing, moving, or propelling a road roller or road machinery upon a street or highway.

(2) No person shall be required to obtain a driver's or commercial driver's license for the purpose of temporarily driving, operating, drawing, moving, or propelling any agricultural tractor or implement of husbandry upon a street or highway at a speed of 25 miles per hour or less.

(3) No person shall drive, operate, draw, move, or propel any agricultural tractor or implement of husbandry upon a street or highway at a speed greater than 25 miles per hour unless the person has a current, valid driver's or commercial driver's license.

(4) No person having a valid driver's or commercial driver's license shall be required to have a motorcycle operator's endorsement to operate a motorcycle having three wheels with a motor of not more than 50 cubic centimeters piston displacement.

(5) No person having a valid driver's or commercial driver's license shall be required to have a motorcycle operator's endorsement to operate an autocycle or a cab-enclosed motorcycle.

(6) Every person on active duty in the military or naval forces of the United States, when furnished with a driver's permit and when operating an official motor vehicle in connection with such duty, is exempt from the license requirements of R.C. Chapters 4506 and 4507. Every person on active duty in the military or naval forces of the United States or in service with the peace corps, volunteers in service to America, or the foreign service of the United States, is exempt from the license requirements of such sections for the period of the person's active duty or service and for six months thereafter, provided such person was a licensee under such sections at the time the person commenced the person's active duty or service. This section does not prevent such a person or the person's spouse or dependent from making an application, as provided in R.C. § 4507.10(C), for the renewal of a driver's license or motorcycle operator's endorsement or as provided in R.C. § 4506.14 for the renewal of a commercial driver's license during the period of the person's active duty or service.

(7) Whoever violates division (B)(3) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 4507.03)

(C) Nonresidents, permitted to drive upon the highways of their own state, may operate any motor vehicle upon any highway in this state without examination or license under R.C. §§ 4507.01 through 4507.39, inclusive, upon condition that such nonresident may be required at any time or place to prove lawful possession or their right to operate such motor vehicle, and to establish proper identity.
(R.C. § 4507.04)

## § 71.13 EMPLOYMENT OF A MINOR TO OPERATE A TAXICAB PROHIBITED.

(A) Notwithstanding the definition of "chauffeur" in R.C. § 4501.01, no person shall employ any minor for the purpose of operating a taxicab.

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4507.321)

## § 71.14 RESTRICTION AGAINST OWNER LENDING VEHICLE FOR USE OF ANOTHER.

(A) No person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply:

(1) The offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges;

(2) The offender knows or has reasonable cause to believe that the other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled under R.C. Chapter 4510 or any other provision of the Ohio Revised Code.

(3) The offender knows or has reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in R.C. Chapter 4509.

(4) The offender knows or has reasonable cause to believe that the other person's act of driving would violate R.C. § 4511.19 or any substantially equivalent municipal ordinance.

(5) The offender knows or has reasonable cause to believe that the vehicle is the subject of an immobilization waiver order issued under R.C. § 4503.235 and the other person is prohibited from operating the vehicle under that order.

(B) Without limiting or precluding the consideration of any other evidence in determining whether a violation of division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of this section has occurred, it shall be prima facie evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in a category described in division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of this section if any of the following applies:

(1) Regarding an operator allegedly in the category described in division (A)(1), (A)(3), or (A)(5) of this section, the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity.

(2) Regarding an operator allegedly in the category described in division (A)(2) of this section, the offender and the operator of the motor vehicle reside in the same household, and the offender knows or has reasonable cause to believe that the operator has been charged with or convicted of any violation of law or ordinance, or has committed any other act or omission, that would or could result in the suspension or cancellation of the operator's license, permit, or privilege.

(3) Regarding an operator allegedly in the category described in division (A)(4) of this section, the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense.

(C) Whoever violates this section is guilty of wrongful entrustment of a motor vehicle, and shall be punished as provided in divisions (C) to (H) of this section.

(1) Except as provided in division (C)(2) of this section, whoever violates division (A)(1), (A)(2), or (A)(3) of this section is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to § 130.18, § 130.99 or R.C. §§ 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to § 130.99(E) or R.C. § 2929.26; notwithstanding § 130.99(G)(1)(b)1. and R.C. § 2929.28(A)(2)(a), the offender may be fined up to $1,000; and, notwithstanding § 130.99(F)(1)(c) and R.C. § 2929.27(A)(3), the offender may be ordered pursuant to § 130.99(F)(3) or R.C. § 2929.27(C) to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under R.C. § 2705.02(A) that may be filed in the underlying case.

(2) (a) If, within three years of a violation of division (A)(1), (A)(2), or (A)(3) of this section, the offender previously has pleaded guilty to or been convicted of two or more violations of division (A)(1), (A)(2), or (A)(3) of this section, R.C. § 4511.203(A)(1), (A)(2), or (A)(3), or a substantially equivalent municipal ordinance, the offender is guilty of a misdemeanor of the first degree.

(b) Whoever violates division (A)(4) or (A)(5) of this section is guilty of a misdemeanor of the first degree.

(3) For any violation of this section, in addition to the penalties imposed under this Code or R.C. Chapter 2929, the court may impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7), and, if the vehicle involved in the offense is registered in the name of the offender, the court may order one of the following:

(a) Except as otherwise provided in division (C)(3)(b) or (C)(3)(c) of this section, the court may order, for 30 days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. If issued, the order shall be issued and enforced under R.C. § 4503.233.

(b) If the offender previously has been convicted of or pleaded guilty to one violation of this section, R.C. § 4511.203, or a substantially equivalent municipal ordinance, the court may order, for 60 days, the immobilization of the vehicle involved in the offense and the impoundment of that vehicle's license plates. If issued, the order shall be issued and enforced under R.C. § 4503.233.

(c) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, R.C. § 4511.203, or a substantially equivalent municipal ordinance, the court may order the criminal forfeiture to the state of the vehicle involved in the offense. If issued, the order shall be issued and enforced under R.C. § 4503.234.

(4) If title to a motor vehicle that is subject to an order for criminal forfeiture under division (C)(3)(c) of this section is assigned or transferred and R.C. § 4503.234(B)(2) or (B)(3) applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Automobile Dealers Association. The proceeds from any fine imposed under this division shall be distributed in accordance with R.C. § 4503.234(C)(2).

(D) If a court orders the criminal forfeiture of a vehicle under division (C)(3)(a) or (C)(3)(b) of this section, the court shall not release the vehicle from the immobilization before the termination of the period of

immobilization ordered unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(E) If a court orders the criminal forfeiture of a vehicle under division (C)(3)(c) of this section, upon receipt of the order from the court, neither the Registrar of Motor Vehicles nor any deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the order. The period of denial shall be five years after the date the order is issued, unless, during that five-year period, the court with jurisdiction of the offense that resulted in the order terminates the forfeiture and notifies the Registrar of the termination. If the court terminates the forfeiture and notifies the Registrar, the Registrar shall take all necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer the registration of the vehicle.

(F) This section does not apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in R.C. § 4549.65.

(G) Evidence of a conviction of, plea of guilty to, or adjudication as a delinquent child for a violation of this section shall not be admissible as evidence in any civil action that involves the offender or delinquent child who is the subject of the conviction, plea, or adjudication and that arises from the wrongful entrustment of a motor vehicle.

(H) For purposes of this section, a vehicle is owned by a person if, at the time of a violation of this section, the vehicle is registered in the person's name.
(R.C. § 4511.203)

## § 71.15 SUSPENSION OF DRIVER'S LICENSE; LICENSE SUSPENDED BY COURT OF RECORD.

(A) Except as otherwise provided in R.C. § 4510.07 or in any other provision of the Ohio Revised Code, whenever an offender is convicted of or pleads guilty to a violation of any provision of this code that is substantially equivalent to a provision of the Ohio Revised Code, and a court is permitted or required to suspend a person's driver's or commercial driver's license or permit for a violation of that provision, a court, in addition to any other penalties authorized by law, may suspend the offender's driver's or commercial driver's license or permit or non resident operating privileges for the period of time the court determines appropriate, but the period of suspension imposed for the violation of the provision of this code shall not exceed the period of suspension that is permitted or required to be imposed for the violation of the provision of the Ohio Revised Code to which the provision of this code is substantially equivalent.
(R.C. § 4510.05)

(B) Whenever a person is found guilty under the laws of this state or any ordinance of any political subdivision of this state, of operating a motor vehicle in violation of any such law or ordinance relating to reckless operation, the trial court of any court of record, in addition to or independent of all other penalties provided by law, may impose a class five suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(5).

(C) Suspension of a commercial driver's license under this section shall be concurrent with any period of suspension disqualification under R.C. § 3123.58 or 4506.16. No person who is disqualified for life from holding

a commercial driver's license under R.C. § 4506.16 shall be issued a driver's license under R.C. Chapter 4507 during the period for which the commercial driver's license was suspended under this section, and no person whose commercial driver's license is suspended under this section shall be issued a driver's license under R.C. Chapter 4507 during the period of the suspension.
(R.C. § 4510.15)

## § 71.16 DISPLAY OF LICENSE.

(A) The operator of a motor vehicle shall display the operator's driver's license, or furnish satisfactory proof that the operator has a driver's license, upon demand of any peace officer or of any person damaged or injured in any collision in which the licensee may be involved. When a demand is properly made, and the operator has the operator's driver's license on or about the operator's person, the operator shall not refuse to display the license. A person's failure to furnish satisfactory evidence that the person is licensed under R.C. Chapter 4507 when the person does not have the person's license on or about the person's person shall be prima facie evidence of the person's not having obtained a driver's license.

(B) (1) Except as provided in division (B)(2) of this section, whoever violates this section is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to § 130.18, § 130.99 or R.C. §§ 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to § 130.99(E) or R.C. § 2929.26; notwithstanding § 130.99(G)(1)(b)1. and R.C. § 2929.28(A)(2)(a), the offender may be fined up to $1,000; and notwithstanding § 130.99(F)(1)(c) and R.C. § 2929.27(A)(3), the offender may be ordered pursuant to § 130.99(F)(3) or R.C. § 2929.27(C) to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under R.C. § 2705.02(A) that may be filed in the underlying case.

(2) If, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of this section, R.C. § 4507.35, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.
(R.C. § 4507.35)

## § 71.17 PROHIBITION AGAINST FALSE STATEMENTS.

(A) No person shall knowingly make a false statement to any matter or thing required by the provisions of this traffic code.

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4507.36)

## § 71.18 DRIVING UNDER SUSPENSION OR IN VIOLATION OF LICENSE RESTRICTION; DRIVING UNDER SUSPENSION FOR FAILURE TO APPEAR IN COURT, FAILURE TO PAY A FINE OR FAILURE TO PAY CHILD SUPPORT.

(A) *Driving under suspension or in violation of license restriction.*

(1) Except as provided in division (A)(2) of this section, division (B) of this section, § 71.31 and in R.C. §§ 4510.111 and 4510.16, no person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any provision of the Ohio Revised Code, other than R.C. Chapter 4509, or under any applicable law in any other jurisdiction in which the person's license or permit was issued shall operate any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this municipality during the period of suspension unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges.

(2) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality in violation of any restriction of the person's driver's or commercial driver's license or permit imposed under R.C. § 4506.10(D) or 4507.14.

(3) Upon the request or motion of the prosecuting authority, a non-certified copy of the law enforcement automated data system report or a non-certified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A)(1) or (A)(2) of this section may be admitted into evidence as prima facie evidence that the license of the person was under suspension at the time of the alleged violation of division (A)(1) of this section or the person operated a motor vehicle in violation of a restriction at the time of the alleged violation of division (A)(2) of this section. The person charged with a violation of division (A)(1) or (A)(2) of this section may offer evidence to rebut this prima facie evidence.

(4) (a) Whoever violates division (A)(1) or (A)(2) of this section is guilty of a misdemeanor of the first degree. The court may impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7).

(b) 1. Except as provided in division (A)(4)(b)2. or (A)(4)(b)3. of this section, the court, in addition to any other penalty that it imposes on the offender and if the vehicle is registered in the offender's name and if, within three years of the offense, the offender previously has been convicted of or pleaded guilty to one violation of this section, R.C. § 4510.11, 4510.111 or 4510.16, or a substantially equivalent municipal ordinance, the court, in addition to or independent of any other sentence that it imposes upon the offender, may order the immobilization of the vehicle involved in the offense for 30 days and the impoundment of that vehicle's license plates for 30 days in accordance with R.C. § 4503.233.

2. If the vehicle is registered in the offender's name and if, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two violations of this section, or any combination of two violations of this section, R.C. § 4510.11, 4510.111 or 4510.16, or of a substantially equivalent municipal ordinance, the court, in addition to any other sentence that it imposes on the offender, may order the immobilization of the vehicle involved in the offense for 60 days and the impoundment of that vehicle's license plates for 60 days in accordance with R.C. § 4503.233.

3. If the vehicle is registered in the offender's name and if, within three years of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of this section, or any combination of three or more violations of this section or R.C. § 4510.11, 4510.111 or 4510.16, or of a substantially equivalent municipal ordinance, the court, in addition to any other sentence that it imposes on the offender, may order the criminal forfeiture of the vehicle involved in the offense to the state.

(5) Any order for immobilization and impoundment under this section shall be issued and enforced under R.C. §§ 4503.233 and 4507.02, as applicable. The court shall not release a vehicle from immobilization ordered under this section unless the court is presented with current proof of financial responsibility with respect to that vehicle.

(6) Any order of criminal forfeiture under this section shall be issued and enforced under R.C. § 4503.234. Upon receipt of the copy of the order from the court, neither the Registrar of Motor Vehicles nor a deputy registrar shall accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial shall be five years after the date of the order, unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the Registrar of the termination. The Registrar then shall take necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle.

(7) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to § 130.99(G) or R.C. § 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under this section.
(R.C. § 4510.11)

(B) *Driving under suspension in violation of other provisions.*

(1) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality whose driver's or commercial driver's license has been suspended pursuant to R.C. § 2151.354, 2151.87, 2935.27, 3123.58, 4301.99, 4510.032, 4510.22, or 4510.33, or a substantially equivalent municipal ordinance.

(2) Upon the request or motion of the prosecuting authority, a non-certified copy of the law enforcement automated data system report or a non-certified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (B)(1) of this section may be admitted into evidence as prima facie evidence that the license of the person was under suspension at the time of the alleged violation of division (B)(1) of this section. The person charged with a violation of division (B)(1) of this section may offer evidence to rebut this prima facie evidence.

(3) Whoever violates division (B)(1) of this section is guilty of driving under suspension and shall be punished as provided in division (B)(3)(a) or division (B)(3)(b) of this section.

(a) Except as otherwise provided in division (B)(3)(b) of this section, the offense is an unclassified misdemeanor. The offender shall be sentenced pursuant to § 130.18, § 130.99 or R.C. §§ 2929.21 to 2929.28,

except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to § 130.99(E) or R.C. § 2929.26; notwithstanding § 130.99(G)(1)(b)1. and R.C. § 2929.28(A)(2)(a), the offender may be fined up to $1,000; and, notwithstanding § 130.99(F)(1)(c) and R.C. § 2929.27(A)(3), the offender may be ordered pursuant to § 130.99(F)(3) or R.C. § 2929.27(C) to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under R.C. § 2705.02(A) that may be filed in the underlying case.

(b) If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of division (B)(1) of this section, or any combination of two or more violations of division (B)(1) of this section, R.C. § 4510.11, 4510.111 or 4510.16, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the fourth degree, and the offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then in addition to any other penalties provided by law, the court may order restitution pursuant to R.C. § 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under this section.
(R.C. § 4510.111)

(C) *Repeat traffic offender; point system suspension.* Any person whose driver's or commercial driver's license or permit or nonresident operating privileges are suspended as a repeat traffic offender under R.C. § 4510.037 and who, during the suspension, operates any motor vehicle upon any public roads and highways is guilty of driving under a twelve-point suspension, a misdemeanor of the first degree. The court shall sentence the offender to a minimum term of three days in jail. No court shall suspend the first three days of jail time imposed pursuant to this division.
(R.C. § 4510.037(J))

(D) It is an affirmative defense to any prosecution brought under division (A) of this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.
(R.C. § 4510.04)

## § 71.19 OPERATING MOTOR VEHICLE OR MOTORCYCLE WITHOUT VALID LICENSE.

(A) (1) No person, except those expressly exempted under R.C. §§ 4507.03, 4507.04, and 4507.05, shall operate any motor vehicle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality unless the person has a valid driver's license issued under R.C. Chapter 4507 or a commercial driver's license issued under R.C. Chapter 4506.

(2) No person, except a person expressly exempted under R.C. §§ 4507.03, 4507.04, and 4507.05, shall operate any motorcycle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality unless the person has a valid license as a motorcycle operator that was issued upon application by the registrar of motor vehicles under R.C. Chapter 4507. The license shall be in the form of an endorsement, as determined by the registrar, upon a driver's or commercial

driver's license, if the person has a valid license to operate a motor vehicle or commercial motor vehicle, or in the form of a restricted license as provided in R.C. § 4507.14, if the person does not have a valid license to operate a motor vehicle or commercial motor vehicle.

(B) Upon the request or motion of the prosecuting authority, a non-certified copy of the law enforcement automated data system report or a non-certified copy of a record of the registrar of motor vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A)(1) or (A)(2) of this section may be admitted into evidence as prima facie evidence that the person did not have either a valid driver's or commercial driver's license at the time of the alleged violation of division (A)(1) of this section or a valid license as a motorcycle operator either in the form of an endorsement upon a driver's or commercial driver's license or a restricted license at the time of the alleged violation of division (A)(2) of this section. The person charged with a violation of division (A)(1) or (A)(2) of this section may offer evidence to rebut this prima facie evidence.

(C) Whoever violates this section is guilty of operating a motor vehicle or motorcycle without a valid license and shall be punished as follows:

(1) If the trier of fact finds that the offender never has held a valid driver's or commercial driver's license issued by this state or any other jurisdiction, or, in a case involving the operation of a motorcycle by the offender, if the offender has never held a valid license as a motorcycle operator, either in the form of an endorsement upon a driver's or commercial driver's license or in the form of a restricted license, except as otherwise provided in this division, the offense is an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to § 130.18, § 130.99 or R.C. §§ 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to § 130.99(E) or R.C. § 2929.26; notwithstanding § 130.99(G)(1)(b)1. and R.C. § 2929.28(A)(2)(a), the offender may be fined up to $1,000; and, notwithstanding § 130.99(F)(1)(c) and R.C. § 2929.27(A)(3), the offender may be ordered pursuant to § 130.99(F)(3) or R.C. § 2929.27(C) to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under R.C. § 2705.02(A) that may be filed in the underlying case. If the offender previously has been convicted of or pleaded guilty to any violation of this section or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(2) If the offender's driver's or commercial driver's license or permit or, in a case involving the operation of a motorcycle by the offender, the offender's driver's or commercial driver's license bearing the motorcycle endorsement or the offender's restricted license was expired at the time of the offense, except as otherwise provided in this division, the offense is a minor misdemeanor. If within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(D) The court shall not impose a license suspension for a first violation of this section or if more than three years have passed since the offender's last violation of R.C. § 4510.12, this section, or a substantially equivalent municipal ordinance.

(E) If the offender is sentenced under division (C)(2) of this section, if within three years of the offense the offender previously was convicted of or pleaded guilty to one or more violations of R.C. § 4510.12, this section,

or a substantially equivalent municipal ordinance, and if the offender's license was expired for more than six months at the time of the offense, the court may impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7).
(R.C. § 4510.12)

## § 71.20 DRIVING UNDER OVI SUSPENSION.

(A) No person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under R.C. § 4511.19, 4511.191, or 4511.196 or under R.C. § 4510.07 for a conviction of a violation of a municipal OVI ordinance shall operate any motor vehicle upon the public roads or highways within this municipality during the period of the suspension.

(B) Whoever violates this section is guilty of driving under OVI suspension. The court shall sentence the offender under R.C. Chapter 2929, subject to the differences authorized or required by this section.

(1) Except as otherwise provided in division (B)(2) or (B)(3) of this section, driving under OVI suspension is a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(a) A mandatory jail term of three consecutive days. The three-day term shall be imposed, unless, subject to division (C) of this section, the court instead imposes a sentence of not less than 30 consecutive days of house arrest with electronic monitoring. A period of house arrest with electronic monitoring imposed under this division shall not exceed six months. If the court imposes a mandatory three-day jail term under this division, the court may impose a jail term in addition to that term, provided that in no case shall the cumulative jail term imposed for the offense exceed six months;

(b) A fine of not less than $250 and not more than $1,000;

(c) A license suspension under division (E) of this section;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, immobilization for 30 days of the offender's vehicle and impoundment for 30 days of the identification license plates of that vehicle. The order for immobilization and impoundment shall be issued and enforced in accordance with R.C. § 4503.233.

(2) If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to one violation of this section or one equivalent offense, driving under OVI suspension is a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(a) A mandatory jail term of 10 consecutive days. Notwithstanding the jail terms provided in R.C. §§ 2929.21 through 2929.28, the court may sentence the offender to a longer jail term of not more than one year. The 10-day mandatory jail term shall be imposed unless, subject to division (C) of this section, the court instead imposes a sentence of not less than 90 consecutive days of house arrest with electronic monitoring. The period of house arrest with electronic monitoring shall not exceed one year;

(b) Notwithstanding the fines provided for in R.C. Chapter 2929, a fine of not less than $500 and not more than $2,500;

(c) A license suspension under division (E) of this section;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, immobilization of the offender's vehicle for 60 days and the impoundment for 60 days of the

identification license plates of that vehicle. The order for immobilization and impoundment shall be issued and enforced in accordance with R.C. § 4503.233.

(3) If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of this section or two or more equivalent offenses, driving under OVI suspension is a misdemeanor. The court shall sentence the offender to all of the following:

(a) A mandatory jail term of 30 consecutive days. Notwithstanding the jail terms provided in R.C. §§ 2929.21 through 2929.28, the court may sentence the offender to a longer jail term of not more than one year. The court shall not sentence the offender to a term of house arrest with electronic monitoring in lieu of the mandatory portion of the jail term;

(b) Notwithstanding the fines set forth in R.C. Chapter 2929, a fine of not less than $500 and not more than $2,500;

(c) A license suspension under division (E) of this section;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, criminal forfeiture to the state of the offender's vehicle. The order of criminal forfeiture shall be issued and enforced in accordance with R.C. § 4503.234. If title to a motor vehicle that is subject to an order for criminal forfeiture under this division is assigned or transferred and R.C. § 4503.234(B)(2) or (B)(3) applies, the court may fine the offender the value of the vehicle as determined by publications of the National Automobile Dealers Association. The proceeds from any fine so imposed shall be distributed in accordance with division R.C. § 4503.234(C)(2).

(C) (1) No court shall impose an alternative sentence of house arrest with electronic monitoring under division (B)(1) or (B)(2) of this section unless, within 60 days of the date of sentencing, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the jail term imposed, the offender will not be able to begin serving that term within the 60-day period following the date of sentencing.

(2) An offender sentenced under this section to a period of house arrest with electronic monitoring shall be permitted work release during that period.

(D) Fifty percent of any fine imposed by a court under division (B)(1), (B)(2), or (B)(3) of this section shall be deposited into the municipal Indigent Drivers Alcohol Treatment Fund under the control of that court, as created by the municipality pursuant to R.C. § 4511.191(H).

(E) In addition to or independent of all other penalties provided by law or ordinance, the trial judge of any court of record or the mayor of a mayor's court shall impose on an offender who is convicted of or pleads guilty to a violation of this section a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7).

(1) When permitted as specified in R.C. § 4510.021, if the court grants limited driving privileges during a suspension imposed under this section, the privileges shall be granted on the additional condition that the offender must display restricted license plates, issued under R.C. § 4503.231, on the vehicle driven subject to the privileges, except as provided in R.C. § 4503.231(B).

(2) A suspension of a commercial driver's license under this section shall be concurrent with any period of suspension or disqualification under R.C. § 3123.58 or R.C. § 4506.16. No person who is disqualified for life from holding a commercial driver's license under R.C. § 4506.16 shall be issued a driver's license under R.C. Chapter 4507 during the period for which the commercial driver's license was suspended under this section, and no person whose commercial driver's license is suspended under this section shall be issued a driver's license under R.C. Chapter 4507 during the period of the suspension.

(F) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to § 130.99(G) or R.C. § 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense that is a misdemeanor of the first degree under this section for which the offender is sentenced.

(G) As used in this section:

***ELECTRONIC MONITORING.*** Has the same meaning as in R.C. § 2929.01.

***EQUIVALENT OFFENSE.*** Means any of the following:

(a) A violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to division (A) of this section;

(b) A violation of a former law of this state that was substantially equivalent to division (A) of this section.

***JAIL.*** Has the same meaning as in R.C. § 2929.01.

***MANDATORY JAIL TERM.*** Means the mandatory term in jail of 3, 10, or 30 consecutive days that must be imposed under division (B)(1), (B)(2), or (B)(3) of this section upon an offender convicted of a violation of division (A) of this section and in relation to which all of the following apply:

(a) Except as specifically authorized under this section, the term must be served in a jail.

(b) Except as specifically authorized under this section, the term cannot be suspended, reduced, or otherwise modified pursuant to any provision of the Ohio Revised Code.
(R.C. § 4510.14)

(H) It is an affirmative defense to any prosecution brought under this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.
(R.C. § 4510.04)
***Statutory reference:***
*Immobilization of vehicle; impoundment of license plates; criminal forfeiture of vehicle, see R.C. § 4510.161*

## § 71.21 DRIVING UNDER FINANCIAL RESPONSIBILITY LAW SUSPENSION OR CANCELLATION; DRIVING UNDER A NONPAYMENT OF JUDGMENT SUSPENSION.

(A) No person, whose driver's or commercial driver's license or temporary instruction permit or nonresident's operating privilege has been suspended or canceled pursuant to R.C. Chapter 4509, shall operate any motor vehicle within this municipality, or knowingly permit any motor vehicle owned by the person to be operated by another person in the municipality, during the period of the suspension or cancellation, except as specifically authorized by R.C. Chapter 4509. No person shall operate a motor vehicle within this municipality, or knowingly permit any motor vehicle owned by the person to be operated by another person in the municipality, during the period in which the person is required by R.C. § 4509.45 to file and maintain proof of financial responsibility for a violation of R.C. § 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle.

(B) No person shall operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this municipality if the person's driver's or commercial driver's license or temporary instruction permit or nonresident operating privilege has been suspended pursuant to R.C. § 4509.37 or 4509.40 for nonpayment of a judgment.

(C) Upon the request or motion of the prosecuting authority, a non-certified copy of the law enforcement automated data system report or a non-certified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A) or (B) of this section may be admitted into evidence as prima facie evidence that the license of the person was under either a financial responsibility law suspension at the time of the alleged violation of division (A) of this section or a nonpayment of judgment suspension at the time of the alleged violation of division (B) of this section. The person charged with a violation of division (A) or (B) of this section may offer evidence to rebut this prima facie evidence.

(D) Whoever violates division (A) of this section is guilty of driving under financial responsibility law suspension or cancellation and shall be punished as provided in this division (D). Whoever violates division (B) of this section is guilty of driving under a nonpayment of judgment suspension and shall be punished as provided in this division (D).

(1) Except as otherwise provided in division (D)(2) of this section, the offense is an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to § 130.18, § 130.99 or R.C. §§ 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to § 130.99(E) or R.C. § 2929.26; notwithstanding § 130.99(G)(1)(b)1. and R.C. § 2929.28(A)(2)(a), the offender may be fined up to $1,000; and, notwithstanding § 130.99(F)(1)(c) and R.C. § 2929.27(A)(3), the offender may be ordered pursuant to § 130.99(F)(3) or R.C. § 2929.27(C) to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under R.C. § 2705.02(A) that may be filed in the underlying case.

(2) If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of this section, or any combination of two violations of this section, R.C. § 4510.11, 4510.111 or 4510.16, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the fourth degree.

(3) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then in addition to any other penalties provided by law, the court may order restitution pursuant to R.C. § 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under this section.
(R.C. § 4510.16)

(E) (1) It is an affirmative defense to any prosecution brought under this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.

(2) It is an affirmative defense to any prosecution brought under this section that the order of suspension resulted from the failure of the alleged offender to respond to a financial responsibility random verification request under R.C. § 4509.101(A)(3)(c) and that, at the time of the initial financial responsibility random verification request, the alleged offender was in compliance with R.C. § 4509.101(A)(1) as shown by proof of financial responsibility that was in effect at the time of that request.
(R.C. § 4510.04)
***Statutory reference:***
*Immobilization of vehicle; impoundment of license plates; criminal forfeiture of vehicle, see R.C. § 4510.161*

## § 71.22 FAILURE TO REINSTATE LICENSE.

(A) No person whose driver's license, commercial driver's license, temporary instruction permit, or nonresident's operating privilege has been suspended shall operate any motor vehicle upon a public road or highway or any public or private property after the suspension has expired unless the person has complied with all license reinstatement requirements imposed by the court, the bureau of motor vehicles, or another provision of the Ohio Revised Code.

(B) Upon the request or motion of the prosecuting authority, a non-certified copy of the law enforcement automated data system report or a non-certified copy of a record of the registrar of motor vehicles that shows the name, date of birth, and social security number of a person charged with a violation of division (A) of this section may be admitted into evidence as prima facie evidence that the license of the person had not been reinstated by the person at the time of the alleged violation of division (A) of this section. The person charged with a violation of division (A) of this section may offer evidence to rebut this prima facie evidence.

(C) Whoever violates this section is guilty of failure to reinstate a license, and shall be punished as follows:

(1) Except as provided in division (C)(2) of this section, whoever violates this section is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to § 130.18, § 130.99 or R.C. §§ 2929.21 to 2929.28, except that the offender shall not be sentenced to a jail term; the offender shall not be sentenced to a community residential sanction pursuant to § 130.99(E) or R.C. § 2929.26; notwithstanding § 130.99(G)(1)(b)1. and R.C. § 2929.28(A)(2)(a), the offender may be fined

up to $1,000; and, notwithstanding § 130.99(F)(1)(c) and R.C. § 2929.27(A)(3), the offender may be ordered pursuant to § 130.99(F)(3) or R.C. § 2929.27(C) to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt under R.C. § 2705.02(A) that may be filed in the underlying case.

(2) If, within three years of a violation of division (A) of this section, the offender previously has pleaded guilty to or been convicted of two or more violations of this section, R.C. § 4510.21 or a substantially equivalent municipal ordinance, the offender is guilty of a misdemeanor of the first degree.

(3) In all cases, the court may impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary driver's license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7).
(R.C. § 4510.21)

(D) It is an affirmative defense to any prosecution brought under this section that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency.
(R.C. § 4510.04)

## *COMMERCIAL DRIVER'S LICENSES*

### § 71.25 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALCOHOL CONCENTRATION.*** The concentration of alcohol in a person's blood, breath or urine. When expressed as a percentage, it means grams of alcohol per the following: 100 milliliters of whole blood, blood serum, or blood plasma; 210 liters of breath; or 100 milliliters of urine.

***COMMERCIAL DRIVER'S LICENSE.*** A license issued in accordance with R.C. Chapter 4506 that authorizes an individual to drive a commercial motor vehicle.

***COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM.*** The information system established pursuant to the requirements of the "Commercial Motor Vehicle Safety Act of 1986", 100 Stat. 3207-171, 49 U.S.C. App. 2701.

***COMMERCIAL MOTOR VEHICLE.*** Except when used in R.C. § 4506.25, any motor vehicle designed or used to transport persons or property that meets any of the following qualifications:

(1) Any combination of vehicles with a gross vehicle weight or combined gross vehicle weight rating of 26,001 pounds or more, provided that the gross vehicle weight or gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds;

(2) Any single vehicle with a gross vehicle weight or gross vehicle weight rating of 26,001 pounds or more;

(3) Any single vehicle or combination of vehicles that is not a Class A or Class B vehicle, but is designed to transport 16 or more passengers including the driver;

(4) Any school bus with a gross vehicle weight or gross vehicle weight rating of less than 26,001 pounds that is designed to transport fewer than 16 passengers including the driver;

(5) Is transporting hazardous materials for which placarding is required under 49 C.F.R. part 172, subpart F, as amended; or

(6) Any single vehicle or combination of vehicles that is designed to be operated and to travel on a public street or highway and is considered by the Federal Motor Carrier Safety Administration to be a commercial motor vehicle, including but not limited to a motorized crane, a vehicle whose function is to pump cement, a rig for drilling wells, and a portable crane.

***CONTROLLED SUBSTANCE.*** Includes all of the following:

(1) Any substance classified as a controlled substance under the "Controlled Substances Act", 80 Stat. 1242 (1970), 21 U.S.C. § 802(6), as amended;

(2) Any substance included in Schedules I through V of 21 C.F.R. part 1308, as amended;

(3) Any drug of abuse.

***CONVICTION.*** An unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated.

***DISQUALIFICATION.*** Means any of the following:

(1) The suspension, revocation, or cancellation of a person's privileges to operate a commercial motor vehicle;

(2) Any withdrawal of a person's privileges to operate a commercial motor vehicle as the result of a violation of state or local law relating to motor vehicle traffic control other than parking, vehicle weight, or vehicle defect violations;

(3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. § 391.

***DOMICILED.*** Having a true, fixed, principal, and permanent residence to which an individual intends to return.

***DOWNGRADE.*** Any of the following, as applicable:

(1) A change in the commercial driver's license, or commercial driver's license temporary instruction permit, holder's self-certified status as described in R.C. § 4506.10(A)(1);

(2) A change to a lesser class of vehicle;

(3) Removal of commercial driver's license privileges from the individual's driver's license.

***DRIVE.*** To drive, operate or be in physical control of a motor vehicle.

***DRIVER.*** Any person who drives, operates or is in physical control of a commercial motor vehicle or is required to have a commercial driver's license.

***DRIVER'S LICENSE.*** A license issued by the Bureau of Motor Vehicles that authorizes an individual to drive.

***DRUG OF ABUSE.*** Any controlled substance, dangerous drug as defined in R.C. § 4729.01, or over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes.

***ELECTRONIC DEVICE.*** Includes a cellular telephone, a personal digital assistant, a pager, a computer, and any other device used to input, write, send, receive, or read text.

***ELIGIBLE UNIT OF LOCAL GOVERNMENT.*** A village, township, or county that has a population of not more than 3,000 persons according to the most recent federal census.

***EMPLOYER.*** Any person, including the federal government, any state, and a political subdivision of any state, that owns or leases a commercial motor vehicle or assigns a person to drive such a motor vehicle.

***ENDORSEMENT.*** An authorization on a person's commercial driver's license that is required to permit the person to operate a specified type of commercial motor vehicle.

***FARM TRUCK.*** A truck controlled and operated by a farmer for use in the transportation to or from a farm, for a distance of not more than 150 miles, of products of the farm, including livestock and its products, poultry and its products, floricultural and horticultural products, and in the transportation to the farm, from a distance of not more than 150 miles, of supplies for the farm, including tile, fence and every other thing or commodity used in agricultural, floricultural, horticultural, livestock, and poultry production, and livestock, poultry, and other animals and things used for breeding, feeding, or other purposes connected with the operation of the farm, when the truck is operated in accordance with this definition and is not used in the operations of a motor carrier, as defined in R.C. § 4923.01.

***FATALITY.*** The death of a person as the result of a motor vehicle accident occurring not more than 365 days prior to the date of death.

***FELONY.*** Any offense under federal or state law that is punishable by death or imprisonment for a term exceeding one year and includes any offense specifically classified as a felony under the law of this state, regardless of the penalty that may be imposed.

***FOREIGN JURISDICTION.*** Any jurisdiction other than a state.

***GROSS VEHICLE WEIGHT RATING.*** The value specified by the manufacturer as the maximum loaded weight of a single or a combination vehicle. The gross vehicle weight rating of a combination vehicle is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of each towed unit.

***HAZARDOUS MATERIALS.*** Any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under 49 C.F.R. part 172, subpart F or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73, as amended.

***IMMINENT HAZARD.*** The existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of death, illness, injury, or endangerment.

***MEDICAL VARIANCE.*** One of the following received by a driver from the Federal Motor Carrier Safety Administration that allows the driver to be issued a medical certificate:

(1) An exemption letter permitting operation of a commercial motor vehicle under 49 C.F.R. part 381, subpart C or 49 C.F.R. § 391.64;

(2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. § 391.49.

***MOBILE TELEPHONE.*** A mobile communication device that falls under or uses any commercial mobile radio service as defined in 47 C.F.R. part 20, except that mobile telephone does not include two-way or citizens band radio services.

***MOTOR VEHICLE.*** A vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

***OUT-OF-SERVICE ORDER.*** A declaration by an authorized enforcement officer of a federal, state, local, Canadian, or Mexican jurisdiction declaring that the driver, commercial motor vehicle, or commercial motor carrier operation is out of service as defined in 49 C.F.R. § 390.5.

***PEACE OFFICER.*** Has the same meaning as in R.C. § 2935.01.

***PORTABLE TANK.*** A liquid or gaseous packaging designed primarily to be loaded onto or temporarily attached to a vehicle and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means.

***PUBLIC SAFETY VEHICLE.*** Has the same meaning as in R.C. § 4511.01(E)(1) and (E)(3).

***RECREATIONAL VEHICLE.*** Includes every vehicle that is defined as a recreational vehicle in R.C. § 4501.01 and is used exclusively for purposes other than engaging in business for profit.

***RESIDENCE.*** Any person's residence determined in accordance with standards prescribed in the rules adopted by the Registrar.

***SCHOOL BUS.*** Has the same meaning as in R.C. § 4511.01.

***SERIOUS TRAFFIC VIOLATION.*** Any of the following:

(1) A conviction arising from a single charge of operating a commercial motor vehicle in violation of any provision of R.C. § 4506.03;

(2) (a) Except as provided in division (2)(b) of this definition, a violation while operating a commercial motor vehicle of a law of this state, or any municipal ordinance or county or township resolution, or any other substantially equivalent law of another state or political subdivision of another state, prohibiting either of the following:

1. Texting while driving;

2. Using a handheld mobile telephone.

(b) It is not a serious traffic violation if the person was texting or using a handheld mobile telephone to contact law enforcement or other emergency services.

(3) A conviction arising from the operation of any motor vehicle that involves any of the following:

(a) A single charge of any speed in excess of the posted speed limit by 15 miles per hour or more;

(b) Violations of R.C. § 4511.20 or R.C. § 4511.201 or any substantially equivalent ordinance or resolution, or of any substantially equivalent law of another state or political subdivision of another state;

(c) Violation of a law of this state or an ordinance or resolution relating to traffic control, other than a parking violation, or of any substantially equivalent law of another state or political subdivision of another state, that results in a fatal accident;

(d) Violation of R.C. § 4506.03 or a substantially equivalent municipal ordinance or county or township resolution, or of any substantially equivalent law of another state or political subdivision of another state, that involves the operation of a commercial motor vehicle without a valid commercial driver's license with the proper class or endorsement for the specific vehicle group being operated or for the passengers or type of cargo being transported;

(e) Violation of R.C. § 4506.03 or a substantially equivalent municipal ordinance or county or township resolution, or of any substantially equivalent law of another state or political subdivision of another

state, that involves the operation of a commercial motor vehicle without a valid commercial driver's license being in the person's possession;

(f) Violation of R.C. § 4511.33 or R.C. § 4511.34, or any municipal ordinance or county or township resolution substantially equivalent to either of those sections, or any substantially equivalent law of another state or political subdivision of another state;

(g) Violation of any other law of this state, any law of another state, or any ordinance or resolution of a political subdivision of this state or another state that meets both of the following requirements:

1. It relates to traffic control, other than a parking violation;

2. It is determined to be a serious traffic violation by the United States Secretary of Transportation and is designated by the director as such by rule.

***STATE.*** A state of the United States and includes the District of Columbia.

***TANK VEHICLE.*** Any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks that are either permanently or temporarily attached to the vehicle or its chassis and have an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more. The term does not include a commercial motor vehicle transporting an empty storage container tank that is not designed for transportation, has a rated capacity of 1,000 gallons or more, and is temporarily attached to a flatbed trailer.

***TESTER.*** Means a person or entity acting pursuant to a valid agreement entered into pursuant to R.C. § 4506.09(B).

***TEXTING.*** Manually entering alphanumeric text into, or reading text from, an electronic device. Texting includes short message service (SMS), e-mail, instant messaging, a command or request to access a world wide web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication. Texting does not include the following:

(1) Using voice commands to initiate, receive, or terminate a voice communication using a mobile telephone;

(2) Inputting, selecting, or reading information on a global positioning system or navigation system;

(3) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(4) Using, for a purpose that is not otherwise prohibited by law, a device capable of performing multiple functions, such as a fleet management system, a dispatching device, a mobile telephone, a citizens band radio, or a music player.

***TEXTING WHILE DRIVING.*** Texting while operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Texting while driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and is stopped in a location where the vehicle can safely remain stationary.

***UNITED STATES.*** The 50 states and the District of Columbia.

***UPGRADE.*** A change in the class of vehicles, endorsements, or self-certified status as described in R.C. § 4506.10(A)(1) that expands the ability of a current commercial driver's license holder to operate commercial motor vehicles under this chapter or R.C. Chapter 4506.

***USE OF A HANDHELD MOBILE TELEPHONE.*** Means:

(1) Using at least one hand to hold a mobile telephone to conduct a voice communication;

(2) Dialing or answering a mobile telephone by pressing more than a single button; or

(3) Reaching for a mobile telephone in a manner that requires a driver to maneuver so that the driver is no longer in a seated driving position, or restrained by a seat belt that is installed in accordance with 49 C.F.R. § 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

***VEHICLE.*** Has the same meaning as in R.C. § 4511.01.
(R.C. § 4506.01)

## § 71.26 USE OF ACTUAL GROSS WEIGHT IN LIEU OF RATING.

For purposes of this subchapter, the actual gross weight of a vehicle or combination of vehicles may be used in lieu of a gross vehicle weight rating to determine whether a vehicle or combination of vehicles qualifies as a commercial motor vehicle if the gross vehicle weight rating specified by the manufacturer for the vehicle of combination of vehicles is not determinable, or if the manufacturer of the vehicle has not specified a gross vehicle weight rating.
(R.C. § 4506.011)

## § 71.27 PROHIBITED ACTS.

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

(1) Drive a commercial motor vehicle while having in the person's possession or otherwise under the person's control more than one valid driver's license issued by this state, any other state, or by a foreign jurisdiction;

(2) Drive a commercial motor vehicle on a highway in this municipality in violation of an out-of-service order while the person's driving privilege is suspended, revoked, or cancelled, or while the person is subject to disqualification;

(3) Drive a motor vehicle on a highway in the municipality under the authority of a commercial driver's license issued by another state or a foreign jurisdiction, after having been a resident of this state for 30 days or longer;

(4) Knowingly give false information in any application or certification required by R.C. § 4506.07.

(B) The municipality shall give every conviction occurring out of this state and notice of which was received by the state Department of Public Safety after December 31, 1989, full faith and credit and treat it for sanctioning purposes under this chapter as though the conviction had occurred in this state.
(R.C. § 4506.04(A), (B))

(C) No person shall drive any commercial motor vehicle for which an endorsement is required under R.C. § 4506.12 unless the proper endorsement appears on the person's commercial driver's license or commercial driver's license temporary instruction permit. No person shall drive a commercial motor vehicle in violation of a restriction established under R.C. § 4506.12 that appears on the person's commercial driver's license or commercial driver's license temporary instruction permit.
(R.C. § 4506.12(I))

(D) (1) Whoever violates division (A)(1), (A)(2) or (A)(3) of this section is guilty of a misdemeanor of the first degree.

(2) Whoever violates division (A)(4) of this section is guilty of falsification, a misdemeanor of the first degree. In addition, the provisions of R.C. § 4507.19 apply.
(R.C. § 4506.04(C))

(3) (a) Whoever violates division (C) of this section is guilty of a misdemeanor of the first degree.

(b) The offenses established under division (C) of this section are strict liability offenses and R.C. § 2901.20 does not apply. The designation of these offenses as strict liability offenses shall not be construed to imply that any other offense for which there is no specified degree of culpability, whether in this section or another section of this code or the Ohio Revised Code, is not a strict liability offense.
(R.C. § 4506.12(J))

## § 71.28 PREREQUISITES TO OPERATION OF COMMERCIAL MOTOR VEHICLE.

(A) Except as provided in divisions (B) or (C) of this section, the following shall apply:

(1) No person shall drive a commercial motor vehicle on a highway in this state unless the person holds, and has in the person's possession, any of the following:

(a) A valid commercial driver's license with proper endorsements for the motor vehicle being driven, issued by the Registrar of Motor Vehicles or by another jurisdiction recognized by this state;

(b) A valid examiner's commercial driving permit issued under R.C. § 4506.13;

(c) A valid restricted commercial driver's license and waiver for farm-related service industries issued under R.C. § 4506.24;

(d) A valid commercial driver's license temporary instruction permit issued by the Registrar, provided that the person is accompanied by an authorized state driver's license examiner or tester or a person who has been issued and has in the person's immediate possession a current, valid commercial driver's license and who meets the requirements of R.C. § 4506.06(B).

(2) No person's commercial driver's license temporary instruction permit shall be upgraded, and no commercial driver's license shall be upgraded, renewed, or issued to a person until the person surrenders to the registrar of motor vehicles all valid licenses and permits issued to the person by this state or by another jurisdiction recognized by this state. If the license or permit was issued by any other state or another jurisdiction recognized by this state, the Registrar shall report the surrender of a license or permit to the issuing authority, together with information that a license or permit is now issued in this state. The Registrar shall destroy any such license or permit that is not returned to the issuing authority.

(3) No person who has been a resident of this state for 30 days or longer shall drive a commercial motor vehicle under the authority of a commercial driver's license issued in another jurisdiction.

(B) Nothing in division (A) of this section applies to any qualified person when engaged in the operation of any of the following:

(1) A farm truck;

(2) Fire equipment for a fire department, volunteer or nonvolunteer fire company, fire district, or joint fire district;

(3) A public safety vehicle used to provide transportation or emergency medical service for ill or injured persons;

(4) A recreational vehicle;

(5) A commercial motor vehicle within the boundaries of an eligible unit of local government, if the person is employed by the eligible unit of local government and is operating the commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, but only if either the employee who holds a commercial driver's license issued under R.C. Chapter 4506 and ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle, or the employing eligible unit of local government determines that a snow or ice emergency exists that requires additional assistance;

(6) A vehicle operated for military purposes by any member or uniformed employee of the armed forces of the United States or their reserve components, including the Ohio National Guard. This exception does not apply to United States reserve technicians;

(7) A commercial motor vehicle that is operated for nonbusiness purposes. "Operated for nonbusiness purposes" means that the commercial motor vehicle is not used in commerce as "commerce" is defined in 49 C.F.R. § 383.5, as amended, and is not regulated by the Public Utilities Commission pursuant to R.C. Chapter 4905, 4921, or 4923;

(8) A motor vehicle that is designed primarily for the transportation of goods and not persons, while that motor vehicle is being used for the occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise;

(9) A police SWAT team vehicle;

(10) A police vehicle used to transport prisoners.

(C) Nothing contained in division (B)(5) of this section shall be construed as preempting or superseding any law, rule or regulation of this state concerning the safe operation of commercial motor vehicles. (R.C. § 4506.03(A) - (C))

(D) Notwithstanding any other provision of law, a person may drive a commercial motor vehicle on a highway in this municipality if all of the following conditions are met:

(1) The person has a valid commercial driver's license or commercial driver's license temporary instruction permit issued by any state or jurisdiction in accordance with the minimum standards adopted by the Federal Motor Carrier Safety Administration under the "Commercial Motor Vehicle Safety Act of 1986", 100 Stat. 3207-171, 49 U.S.C. App., for issuance of commercial driver's licenses;

(2) The person's commercial driver's license or temporary instruction permit is not suspended, revoked, or canceled, and the person has the appropriate endorsements for the vehicle that is being driven;

(3) The person is not disqualified from driving a commercial motor vehicle;

(4) The person is not subject to an out-of-service order;

(5) The person is medically certified as physically qualified to operate a commercial motor vehicle in accordance with R.C. Chapter 4506.

(a) A person who submitted a medical examiner's certificate to the Registrar in accordance with R.C. § 4506.10(A)(1) and whose medical certification information is maintained in the commercial driver's license information system is not required to have the medical examiner's certificate in the person's possession when on duty.

(b) A person whose medical certification information is not maintained in the commercial driver's license information system shall have in the person's possession when on duty the original or a copy of the current medical examiner's certificate that was submitted to the Registrar. However, the person may operate a commercial motor vehicle with such proof of medical certification for not more than 15 days after the date the current medical examiner's certificate was issued to the person.

(c) A person who has a medical variance shall have in the person's possession the original or copy of the medical variance documentation at all times while on duty.

(E) No person shall drive a commercial motor vehicle on a highway in this municipality if the person does not meet the conditions specified in division (D) of this section.

(F) Except as set forth in 49 C.F.R. §§ 390.3(f), 391.2, 391.62, 391.67, and 391.68, no person holding a commercial driver's license temporary instruction permit or a commercial driver's license issued under R.C. Chapter 4506 may drive a commercial motor vehicle in interstate commerce until the person is at least 21 years of age.
(R.C. § 4506.05(A) - (C))

(G) (1) Whoever violates this section is guilty of a misdemeanor of the first degree.

(2) The offenses established under divisions (D), (E) and (F) of this section are strict liability offenses and R.C. § 2901.20 does not apply. The designation of these offenses as strict liability offenses shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.
(R.C. §§ 4506.03(D), 4506.05(D))

## § 71.29 PHYSICAL QUALIFICATION TO OPERATE COMMERCIAL MOTOR VEHICLES.

(A) No person who holds a valid commercial driver's license shall drive a commercial motor vehicle unless the person is physically qualified to do so.

(1) Any person applying for a commercial driver's license or commercial driver's license temporary instruction permit, the renewal or upgrade of a commercial driver's license or commercial driver's license temporary instruction permit, or the transfer of a commercial driver's license from out of state shall self-certify to the Registrar for purposes of 49 C.F.R. § 383.71 one of the following in regard to the applicant's operation of a commercial motor vehicle, as applicable:

(a) 1. If the applicant operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and is subject to and meets the requirements under 49 C.F.R. part 391, the applicant shall self-certify that the applicant is non-excepted interstate and shall provide the Registrar with the original or a copy of a medical examiner's certificate and each subsequently issued medical examiner's certificate prepared by a qualified medical examiner to maintain a medically certified status on the applicant's commercial driver licensing system driver record;

2. If the applicant operates or expects to operate a commercial motor vehicle in interstate commerce, but engages in transportation or operations excepted under 49 C.F.R. §§ 390.3(f), 391.2, 391.68, or 398.3 from all or parts of the qualification requirements of 49 C.F.R. part 391, the applicant shall self-certify that the applicant is excepted interstate and is not required to obtain a medical examiner's certificate;

(b) 1. If the applicant operates only in intrastate commerce and is subject to state driver qualification requirements, the applicant shall self-certify that the applicant is non-excepted intrastate;

2. If the applicant operates only in intrastate commerce and is excepted from all or parts of the state driver qualification requirements, the applicant shall self-certify that the applicant is excepted intrastate.

(2) Notwithstanding the expiration date on a person's commercial driver's license or commercial driver's license temporary instruction permit, every commercial driver's license or commercial driver's license

temporary instruction permit holder shall provide the Registrar with the certification required by this section on or after January 30, 2012, but prior to January 30, 2014.

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4506.10(A), (E))

## § 71.30 CRIMINAL OFFENSES.

(A) No person who holds a commercial driver's license or commercial driver's license temporary instruction permit or who operates a motor vehicle for which a commercial driver's license or permit is required shall do any of the following:

(1) Drive a commercial motor vehicle while having a measurable or detectable amount of alcohol or of a controlled substance in the person's blood, breath, or urine;

(2) Drive a commercial motor vehicle while having an alcohol concentration of 0.04% or more by whole blood or breath;

(3) Drive a commercial motor vehicle while having an alcohol concentration of .048% or more by blood serum or blood plasma;

(4) Drive a commercial motor vehicle while having an alcohol concentration of .056% or more by urine;

(5) Drive a motor vehicle while under the influence of a controlled substance;

(6) Drive a motor vehicle in violation of R.C. § 4511.19 or a municipal OVI ordinance as defined in R.C. § 4511.181;

(7) Use a vehicle in the commission of a felony;

(8) Refuse to submit to a test under R.C. § 4506.17 or R.C. § 4511.191, or any substantially equivalent municipal ordinance;

(9) Operate a commercial motor vehicle while the person's commercial driver's license or permit or other commercial driving privileges are revoked, suspended, cancelled, or disqualified;

(10) Cause a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the offenses of aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter;

(11) Fail to stop after an accident in violation of R.C. §§ 4549.02 to 4549.03, or any substantially equivalent municipal ordinance;

(12) Drive a commercial motor vehicle in violation of any provision of R.C. §§ 4511.61 through 4511.63 or any federal or local law or ordinance pertaining to railroad-highway grade crossings;

(13) Use a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance as defined in R.C. § 3719.01 or the possession with intent to manufacture, distribute, or dispense a controlled substance.
(R.C. § 4506.15(A))

(B) No person shall refuse to immediately surrender the person's commercial driver's license or permit to a peace officer when required to do so by R.C. § 4506.17.
(R.C. § 4506.17(H))

(C) (1) Within the jurisdictional limits of the appointing authority, any peace officer shall stop and detain any person found violating division (A) of this section without obtaining a warrant. When there is reasonable ground to believe that a violation of division (A) of this section has been committed and a test or tests of the person's whole blood, blood plasma or blood serum, breath or urine is necessary, the peace officer shall take the person to an appropriate place for testing. If a person refuses to submit to a test after being warned as provided in R.C. § 4506.17(C), or submits to a test that discloses the presence of a controlled substance or an alcohol concentration of 0.04% or more by whole blood or breath, an alcohol concentration of .048% or more by blood serum or blood plasma, or an alcohol concentration of .056% or more by urine, the peace officer shall require that the person immediately surrender the person's commercial driver's license to the peace officer.

(2) As used in this division (C), ***JURISDICTIONAL LIMITS*** means the limits within which a peace officer may arrest and detain a person without a warrant under R.C. § 2935.03, except that the Superintendent and the troopers of the State Highway Patrol may stop and detain, without warrant, any person who, in the presence of the Superintendent or any trooper, is engaged in a violation of any of the provisions of this subchapter or R.C. Chapter 4506.
(R.C. § 4506.23)

(D) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. §§ 4506.15(B), 4506.17(N))
***Statutory reference:***
*Alcohol or controlled substance testing, disqualification of drivers, see R.C. § 4506.17*
*Disqualification of drivers for violations, see R.C. § 4506.16*

## § 71.31 APPLICATION OF FEDERAL REGULATIONS.

(A) The provisions of 49 C.F.R. part 383, subpart C (Notification Requirements and Employer Responsibilities), as amended, shall apply to all commercial drivers or persons who apply for employment as commercial drivers. No person shall fail to make a report to the person's employer as required by this section.

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4506.19)

## § 71.32 EMPLOYMENT OF DRIVERS OF COMMERCIAL VEHICLES.

(A) Each employer shall require every applicant for employment as a driver of a commercial vehicle to provide the applicant's employment history for the ten years preceding the date the employment application is submitted to the prospective employer. The following information shall be submitted:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was the operator of a commercial motor vehicle;

(2) The dates the applicant was employed by these employers;

(3) The reason for leaving each of these employers.

(B) No employer shall knowingly permit or authorize any driver employed by the employer to drive a commercial motor vehicle during any period in which any of the following apply:

(1) The driver's commercial driver's license is suspended, revoked, or cancelled by any state or a foreign jurisdiction;

(2) The driver has lost the privilege to drive, or currently is disqualified from driving, a commercial motor vehicle in any state or foreign jurisdiction;

(3) The driver, the commercial motor vehicle the driver is driving, or the motor carrier operation is subject to an out-of-service order in any state or a foreign jurisdiction;

(4) The driver has more than one driver's license.

(C) No employer shall knowingly permit or authorize a driver to operate a commercial motor vehicle in violation of R.C. § 4506.15.

(D) No employer shall knowingly permit or authorize a driver to operate a commercial motor vehicle if the driver does not hold a valid, current commercial driver's license or commercial driver's license temporary instruction permit bearing the proper class or endorsements for the vehicle. No employer shall knowingly permit or authorize a driver to operate a commercial motor vehicle in violation of the restrictions on the driver's commercial driver's license or commercial driver's license temporary instruction permit.

(E) (1) Whoever violates division (A), (B) or (D) of this section is guilty of a misdemeanor of the first degree.

(2) Whoever violates division (C) of this section is guilty of a felony to be prosecuted under appropriate state law.
(R.C. § 4506.20)

## *LOCAL REGULATIONS*

### § 71.45 LICENSE PLATES TO BE UNOBSTRUCTED.

No person shall operate a motor vehicle, upon which license plates are required by law to be displayed, unless the license plates legally registered and issued for such vehicle shall be fastened in such a manner, and not

covered, obscured or concealed by any part or accessory of such vehicle or by any foreign substance or material, to be readable in their entirety from left to right.

## § 71.46 DRIVING WITH TEMPORARY INSTRUCTION PERMIT WITHOUT LICENSED DRIVER.

No person who is the holder of a temporary instruction permit issued by the Registrar of Motor Vehicles pursuant to R.C. § 4507.05 shall drive a motor vehicle upon a street or highway, except when having such permit in his or her immediate possession and when accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

## § 71.99 PENALTY.

Whoever violates any provision of this chapter for which no penalty otherwise is provided in the section that contains the provision violated is guilty of a misdemeanor of the first degree.
(R.C. §§ 4506.99, 4507.99)

# CHAPTER 72: TRAFFIC RULES

Section

***Grade Crossings***



***Prohibitions***



***School Buses***

***Local Regulations***



***Statutory reference:***

*Notice of arrest of certain commercial drivers, see R.C. § 5577.14*

## *GENERAL PROVISIONS*

### § 72.01 LANES OF TRAVEL UPON ROADWAYS.

(A) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction, or when making a left turn under the rules governing such movements;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) When driving upon a roadway divided into three or more marked lanes for traffic under the rules applicable thereon;

(4) When driving upon a roadway designated and posted with signs for one-way traffic;

(5) When otherwise directed by a police officer or traffic-control device.

(B) (1) Upon all roadways any vehicle proceeding at less than the prevailing and lawful speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, and far enough to the right to allow passing by faster vehicles if such passing is safe and reasonable, except under any of the following circumstances:

(a) When overtaking and passing another vehicle proceeding in the same direction;

(b) When preparing for a left turn;

(c) When the driver must necessarily drive in a lane other than the right-hand lane to continue on the driver's intended route.

(2) Nothing in division (B)(1) of this section requires a driver of a slower vehicle to compromise the driver's safety to allow overtaking by a faster vehicle.

(C) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use the lanes, or except as permitted under division (A)(2) of this section. This division shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.25)

## § 72.02 DRIVING THROUGH SAFETY ZONE.

(A) No vehicle shall at any time be driven through or within a safety zone.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.60)

## § 72.03 VEHICLES TRAVELING IN OPPOSITE DIRECTIONS.

(A) Operators of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each operator shall give to the other one-half of the main traveled portion of the roadway or as nearly one-half as is reasonably possible.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.26)

## § 72.04 RULES GOVERNING OVERTAKING AND PASSING OF VEHICLES.

(A) The following rules govern the overtaking and passing of vehicles proceeding in the same direction:

(1) The operator of a vehicle overtaking another vehicle proceeding in the same direction shall, except as provided in division (A)(3) of this section, signal to the vehicle to be overtaken, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle. When a motor vehicle overtakes and passes a bicycle, three feet or greater is considered a safe passing distance.

(2) Except when overtaking and passing on the right is permitted, the operator of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle at the latter's audible signal, and the operator shall not increase the speed of the operator's vehicle until completely passed by the overtaking vehicle.

(3) The operator of a vehicle overtaking and passing another vehicle proceeding in the same direction on a divided highway as defined in R.C. § 4511.35, a limited access highway as defined in R.C. § 5511.02, or a highway with four or more traffic lanes is not required to signal audibly to the vehicle being overtaken and passed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.27)

## § 72.05 PERMISSION TO OVERTAKE AND PASS ON THE RIGHT.

(A) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn; or

(2) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(B) The driver of a vehicle may overtake and pass another vehicle only under conditions permitting the movement in safety. The movement shall not be made by driving off the roadway.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.28)

## § 72.06 DRIVING TO LEFT OF CENTER LINE.

(A) No vehicle shall be driven to the left of the center of the roadway in overtaking and passing traffic proceeding in the same direction, unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event, the overtaking vehicle must return to an authorized lane of travel as soon as practicable, and in the event the passing movement involves the use of a lane authorized for the traffic approaching from the opposite direction, before coming within 200 feet of any approaching vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.29)

## § 72.07 PROHIBITION AGAINST DRIVING UPON LEFT SIDE OF ROADWAY.

(A) No vehicle shall be driven upon the left side of the roadway under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the highway, where the operator's view is obstructed within such a distance as to create a hazard in the event traffic might approach from the opposite direction;

(2) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel; or

(3) When approaching within 100 feet of or traversing any intersection or railroad grade crossing.

(B) This section does not apply to vehicles upon a one-way roadway, upon a roadway where traffic is lawfully directed to be driven to the left side, or under the conditions described in R.C. § 4511.25(A)(2) or a substantially equivalent municipal ordinance.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.30)

## § 72.08 HAZARDOUS ZONES.

(A) The Department of Transportation may determine those portions of any state highway where overtaking and passing other traffic or driving to the left of the center or center line of the roadway would be especially hazardous, and may, by appropriate signs or markings on the highway, indicate the beginning and end of such zones. When signs or markings are in place and clearly visible, every operator of a vehicle shall obey the directions of the signs or markings, notwithstanding the distances set out in R.C. § 4511.30.

(B) Division (A) of this section does not apply when all of the following apply:

(1) The slower vehicle is proceeding at less than half the speed of the speed limit applicable to that location.

(2) The faster vehicle is capable of overtaking and passing the slower vehicle without exceeding the speed limit.

(3) There is sufficient clear sight distance to the left of the center or center line of the roadway to meet the overtaking and passing provisions of R.C. § 4511.29, considering the speed of the slower vehicle.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.31)

## § 72.09 ONE-WAY HIGHWAYS AND ROTARY TRAFFIC ISLANDS.

(A) (1) Upon a roadway designated and posted with signs for one-way traffic, a vehicle shall be driven only in the direction designated.

(2) A vehicle passing around a rotary traffic island shall be driven only to the right of the rotary traffic island.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.32)

## § 72.10 RULES FOR DRIVING IN MARKED LANES.

(A) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within the municipality traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

(1) A vehicle shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from the lane or line until the driver has first ascertained that the movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for the two-way movement of traffic, a vehicle shall not be driven in the center lane, except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, or when preparing for a left turn, or where the center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding, and is posted with signs to give notice of such allocation.

(3) Official signs may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction, regardless of the center of the roadway, or restricting the use of a particular lane to only buses during certain hours or during all hours, and drivers of vehicles shall obey the directions of such signs.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.33)

## § 72.11 SPACE BETWEEN MOVING VEHICLES.

(A) (1) The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicle and the traffic upon and the condition of the highway.

(2) The driver of any truck, or motor vehicle drawing another vehicle, when traveling upon a roadway outside a business or residence district, shall maintain a sufficient space, whenever conditions permit, between the vehicle and another vehicle ahead so an overtaking motor vehicle may enter and occupy the space without danger. This division does not prevent overtaking and passing nor does it apply to any lane specially designated for use by trucks.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade shall maintain a sufficient space between the vehicles so an overtaking vehicle may enter and occupy the space without danger. This division shall not apply to funeral processions.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.34)

## § 72.12 DIVIDED ROADWAYS.

(A) Whenever any highway has been divided into two roadways by an intervening space, or by a physical barrier, or a clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, and no vehicle shall be driven over, across, or within any dividing space, barrier, or section, except through an opening, crossover, or intersection established by public authority. This section does not prohibit the occupancy of the dividing space, barrier, or section for the purpose of an emergency stop, or in compliance with an order of a police officer.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.35)

## § 72.13 RULES FOR TURNS AT INTERSECTIONS.

(A) The driver of a vehicle intending to turn at an intersection shall be governed by the following rules:

(1) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of the center line where it enters the intersection, and, after entering the intersection, the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left hand lane of the roadway being entered lawfully available to traffic moving in that lane.

(B) The Department of Transportation and local authorities may cause markers, buttons, or signs to be placed within or adjacent to intersections, and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed, no operator of a vehicle shall turn the vehicle at an intersection other than as directed and required by the markers, buttons, or signs.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.36)

## § 72.14 U-TURNS AND TURNING IN ROADWAY PROHIBITED.

(A) Except as provided in R.C. § 4511.13 and division (B) of this section, no vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, if such vehicle cannot be seen within 500 feet by the driver of any other vehicle approaching from either direction.

(B) The driver of an emergency vehicle or public safety vehicle, when responding to an emergency call, may turn the vehicle so as to proceed in the opposite direction. This division applies only when the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle, and when the driver of the vehicle is giving an audible signal by siren, exhaust whistle, or bell. This division does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.37)

## § 72.15 STARTING AND BACKING VEHICLES.

(A) (1) No person shall start a vehicle which is stopped, standing, or parked until the movement can be made with reasonable safety.

(2) Before backing, operators of vehicles shall give ample warning, and while backing they shall exercise vigilance not to injure person or property on the street or highway.

(3) No person shall back a motor vehicle on a freeway, except:

(a) In a rest area;

(b) In the performance of public works or official duties;

(c) As a result of an emergency caused by an accident or breakdown of a motor vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.38)

## § 72.16 TURN AND STOP SIGNALS.

(A) (1) No person shall turn a vehicle or move right or left upon a highway unless and until the person has exercised due care to ascertain that the movement can be made with reasonable safety, nor without giving an appropriate signal in the manner hereinafter provided.

(2) When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning, except that in the case of a person operating a bicycle, the signal shall be made not less than one time but is not required to be continuous. A bicycle operator is not required to make a signal if the bicycle is in a designated turn lane, and a signal shall not be given when the operator's hands are needed for the safe operation of the bicycle.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear, when there is opportunity to give a signal.

(4) Any stop or turn signal required by this section shall be given either by means of the hand and arm, or by signal lights that clearly indicate to both approaching and following traffic the intention to turn or move right or left, except that any motor vehicle in use on a highway shall be equipped with, and the required signal shall be given by, signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet, whether a single vehicle or a combination of vehicles.

(5) The signal lights required by this section shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty

to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.39)

### § 72.17 HAND AND ARM SIGNALS.

(A) Except as provided in division (B) of this section, all signals required by the provisions of this traffic code, when given by hand and arm, shall be given from the left side of the vehicle in the following manner, and the signals shall indicate as follows:

(1) Left turn, hand and arm extended horizontally;

(2) Right turn, hand and arm extended upward;

(3) Stop or decrease speed, hand and arm extended downward.

(B) As an alternative to division (A)(2) of this section, a person operating a bicycle may give a right turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.40)

## *RIGHT-OF-WAY*

### § 72.20 RIGHT-OF-WAY AT INTERSECTIONS.

(A) When two vehicles approach or enter an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(B) The right-of-way rule declared in division (A) of this section is modified at through highways and otherwise as stated in this traffic code or R.C. Chapter 4511.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the

fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.41)

## § 72.21 RIGHT-OF-WAY WHEN TURNING LEFT.

(A) The operator of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.42)

## § 72.22 RIGHT-OF-WAY AT THROUGH HIGHWAYS; STOP SIGNS; YIELD SIGNS.

(A) Except when directed to proceed by a law enforcement officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

(B) The driver of a vehicle approaching a yield sign shall slow down to a speed reasonable for the existing conditions, and if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways. Whenever a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, the collision shall be prima facie evidence of the driver's failure to yield the right-of-way.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.43)

## § 72.23 STOP AT SIDEWALK AREA; STOP SIGNS ON PRIVATE ROADS AND DRIVEWAYS.

(A) The driver of a vehicle emerging from an alley, building, private road, or driveway within a business or residence district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, road, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon. (R.C. § 4511.431(A))

(B) The owner of a private road or driveway located in a private residential area containing 20 or more dwelling units may erect stop signs at places where the road or driveway intersects with another private road or driveway in the residential area, in compliance with all of the following requirements:

(1) The stop sign is sufficiently legible to be seen by an ordinarily observant person and meets the specifications of and is placed in accordance with the manual adopted by the Department of Transportation pursuant to R.C. § 4511.09;

(2) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, stop signs have been posted and must be obeyed, and the signs are enforceable by law enforcement officers under state law. The sign required by this division, where appropriate, may be incorporated with the sign required by R.C. § 4511.211(A)(2), or any substantially equivalent municipal ordinance.

(C) The provisions of R.C. § 4511.43(A) and R.C. § 4511.46, or any substantially equivalent municipal ordinance, shall be deemed to apply to the driver of a vehicle on a private road or driveway where a stop sign is placed in accordance with division (B) of this section and to a pedestrian crossing such a road or driveway at an intersection where a stop sign is in place.

(D) When a stop sign is placed in accordance with division (B) of this section, any law enforcement officer may apprehend a person found violating the stop sign and may stop and charge the person with violating the stop sign.

(E) As used in this section, and for the purpose of applying R.C. § 4511.43(A) and R.C. § 4511.46, or any substantially equivalent municipal ordinance, to conduct under this section:

***INTERSECTION.*** Means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two private roads or driveways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different private roads or driveways joining at any other angle may come in conflict.

(b) Where a private road or driveway includes two roadways 30 feet or more apart, then every crossing of two roadways of such private roads or driveways shall be regarded as a separate intersection.

***OWNER.*** Has the same meaning as in R.C. § 4511.211.

***PRIVATE RESIDENTIAL AREA CONTAINING 20 OR MORE DWELLING UNITS.*** Has the same meaning as in R.C. § 4511.211.

***ROADWAY.*** Means that portion of a private road or driveway improved, designed or ordinarily used for vehicular travel, except the berm or shoulder. If a private road or driveway includes two or more separate roadways, the term means any such roadway separately but not all such roadways collectively.
(R.C.§ 4511.432(A) - (C), (E))

(F) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. §§ 4511.431(B), 4511.432(D))

## § 72.24 RIGHT-OF-WAY ON PUBLIC HIGHWAY.

(A) The operator of a vehicle about to enter or cross a highway from any place other than another roadway shall yield the right-of-way to all traffic approaching on the roadway to be entered or crossed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.44)

## § 72.25 PEDESTRIAN ON SIDEWALK HAS RIGHT-OF-WAY.

(A) The driver of a vehicle shall yield the right-of-way to any pedestrian on a sidewalk.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.441)

## § 72.26 RIGHT-OF-WAY OF PUBLIC SAFETY VEHICLES.

(A) Upon the approach of a public safety vehicle or coroner’s vehicle, equipped with at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front

of the vehicle, and the driver is giving an audible signal by siren, exhaust whistle, or bell, no driver of any other vehicle shall fail to yield the right-of-way, immediately drive if practical to a position parallel to, and as close as possible to, the right edge or curb of the highway clear of any intersection, and stop and remain in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

(B) This section does not relieve the driver of a public safety vehicle or coroner's vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(C) This section applies to a coroner's vehicle only when the vehicle is operated in accordance with R.C. § 4513.171, or a substantially equivalent municipal ordinance. As used in this section, ***CORONER'S VEHICLE*** means a vehicle used by a coroner, deputy coroner or coroner's investigator that is equipped with a flashing, oscillating or rotating red or blue light and a siren, exhaust whistle or bell capable of giving an audible signal.

(D) Except as otherwise provided in this division or division (E), whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree on a first offense. On a second offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree, and, on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the second degree.
(R.C. § 4511.45)

(E) (1) When the failure of a motor vehicle operator to yield the right-of-way to a public safety vehicle as required by division (A) of this section impedes the ability of the public safety vehicle to respond to an emergency, any emergency personnel in the public safety vehicle may report the license plate number and a general description of the vehicle and the operator of the vehicle to the law enforcement agency exercising jurisdiction over the area where the alleged violation occurred.

(2) (a) Upon receipt of a report under division (E)(1) of this section, the law enforcement agency may conduct an investigation to attempt to determine or confirm the identity of the operator of the vehicle at the time of the alleged violation.

(b) If the identity of the operator at the time of an alleged violation of division (A) of this section is established, the law enforcement agency has probable cause to issue either a written warning or a citation for that violation, and the agency shall issue a written warning or a citation to the operator.

(c) If the identity of the operator of the vehicle at the time of the alleged violation cannot be established, the law enforcement agency may issue a written warning to the person who owned the vehicle at the time of the alleged violation. However, in the case of a leased or rented vehicle, the law enforcement agency shall issue the written warning to the person who leased or rented the vehicle at the time of the alleged violation.

(3) (a) Whoever violates division (A) of this section based on a report filed under division (E)(1) of this section is guilty of a minor misdemeanor and shall be fined $150.

(b) If a person who is issued a citation for a violation of division (A) of this section based on a report filed under division (E)(1) of this section does not enter a written plea of guilty and does not waive the person's right to contest the citation but instead appears in person in the proper court to answer the charge, the trier of fact cannot find beyond a reasonable doubt that the person committed that violation unless the emergency personnel who filed the report appears in person in the court and testifies.

(4) As used in this division (E):

***LICENSE PLATE.*** Includes any temporary license placard issued under R.C. § 4503.182 or similar law of another jurisdiction.

***PUBLIC SAFETY VEHICLE.*** Does not include an unmarked public safety vehicle or a vehicle used by a public law enforcement officer or other person sworn to enforce the criminal and traffic laws of the state or a vehicle used by the motor carrier enforcement unit for the enforcement of orders and rules of the public utilities commission.
(R.C. § 4511.454)

## § 72.27 FUNERAL PROCESSION HAS RIGHT-OF-WAY.

(A) As used in this section, ***FUNERAL PROCESSION*** means two or more vehicles accompanying the cremated remains or the body of a deceased person in the daytime when each of the vehicles has its headlights lighted and is displaying a purple and white or an orange and white pennant attached to each vehicle in such a manner as to be clearly visible to traffic approaching from any direction.

(B) Excepting public safety vehicles proceeding in accordance with R.C. § 4511.45 or a substantially equivalent municipal ordinance, or when directed otherwise by a police officer, pedestrians and the operators of all vehicles shall yield the right-of-way to each vehicle that is a part of a funeral procession. Whenever the lead vehicle in a funeral procession lawfully enters an intersection, the remainder of the vehicles in the procession may continue to follow the lead vehicle through the intersection, notwithstanding any traffic-control devices or right-of-way provisions of the Ohio Revised Code, provided that the operator of each vehicle exercises due care to avoid colliding with any other vehicle or pedestrian.

(C) No person shall operate any vehicle as a part of a funeral procession without having the headlights of the vehicle lighted and without displaying a purple and white or an orange and white pennant in such a manner as to be clearly visible to traffic approaching from any direction.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.451)

## § 72.28 PEDESTRIANS YIELD RIGHT-OF-WAY TO PUBLIC SAFETY VEHICLE.

(A) Upon the immediate approach of a public safety vehicle, as stated in R.C. § 4511.45 or a substantially equivalent municipal ordinance, every pedestrian shall yield the right-of-way to the public safety vehicle.

(B) This section shall not relieve the driver of a public safety vehicle from the duty to exercise due care to avoid colliding with any pedestrian.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.452)

## § 72.29 PEDESTRIAN ON CROSSWALK HAS RIGHT-OF-WAY.

(A) When traffic-control signals are not in place, not in operation, or are not clearly assigning the right-of-way, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, or if required by R.C. § 4511.132 or a substantially equivalent municipal ordinance, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

(B) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.

(C) Division (A) of this section does not apply under the conditions stated in R.C. § 4511.48(B), or a substantially equivalent municipal ordinance.

(D) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(E) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.46)

## § 72.30 RIGHT-OF-WAY YIELDED TO BLIND PERSON.

(A) (1) As used in this section ***BLIND PERSON*** or ***BLIND PEDESTRIAN*** means a person having not more than 20/200 visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200, but with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(2) The driver of every vehicle shall yield the right-of-way to every blind pedestrian guided by a guide dog, or carrying a cane which is predominantly white or metallic in color, with or without a red tip.

(B) No person, other than a blind person, while on any public highway, street, alley, or other public thoroughfare, shall carry a white or metallic cane, with or without a red tip.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.47)

## § 72.31 RIGHT-OF-WAY YIELDED BY PEDESTRIAN.

(A) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(B) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all traffic upon the roadway.

(C) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(D) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(E) This section does not relieve the operator of a vehicle from exercising due care to avoid colliding with any pedestrian upon any roadway.

(F) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.48)

## *PEDESTRIANS*

### § 72.35 PEDESTRIAN MOVEMENT IN CROSSWALKS.

(A) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.49)

### § 72.36 PEDESTRIAN WALKING ALONG HIGHWAY.

(A) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(B) Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.

(C) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk only on the left side of the roadway.

(D) Except as otherwise provided in R.C. §§ 4511.13 and 4511.46, or any substantially equivalent municipal ordinances, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

(E) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.50)

### § 72.37 PROHIBITION AGAINST SOLICITING RIDES; RIDING ON OUTSIDE OF VEHICLE.

(A) No person while on a roadway outside a safety zone shall solicit a ride from the driver of any vehicle.

(B) (1) Except as provided in division (B)(2) of this section, no person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.

(2) The Legislative Authority, by ordinance, may authorize the issuance of a permit to a charitable organization to allow a person acting on behalf of the organization to solicit charitable contributions from the occupant of a vehicle by standing on a highway, other than a freeway as provided in R.C. § 4511.051(A)(1), that is under the jurisdiction of the municipality. The permit shall be valid for only one period of time, which shall be specified in the permit, in any calendar year. The Legislative Authority also may specify the locations where contributions may be solicited and may impose any other restrictions on or requirements regarding the manner in which the solicitations are to be conducted that the Legislative Authority considers advisable.

(3) As used in division (B)(2) of this section, ***CHARITABLE ORGANIZATION*** means an organization that has received from the Internal Revenue Service a currently valid ruling or determination letter recognizing the tax-exempt status of the organization pursuant to IRC § 501(c)(3).

(C) No person shall hang onto or ride on the outside of any motor vehicle while it is moving upon a roadway, except mechanics or test engineers making repairs or adjustments, or workers performing specialized highway or street maintenance or construction under authority of a public agency.

(D) No operator shall knowingly permit any person to hang onto or ride on the outside of any motor vehicle while it is moving upon a roadway, except mechanics or test engineers making repairs or adjustments, or workers performing specialized highway or street maintenance or construction under authority of a public agency.

(E) No driver of a truck, trailer, or semitrailer shall knowingly permit any person who has not attained the age of 16 years to ride in the unenclosed or unroofed cargo storage area of the driver's vehicle if the vehicle is traveling faster than 25 miles per hour, unless either of the following applies:

(1) The cargo storage area of the vehicle is equipped with a properly secured seat to which is attached a seat safety belt that is in compliance with federal standards for an occupant restraining device as defined in R.C. § 4513.263(A)(2), the seat and seat safety belt were installed at the time the vehicle was originally assembled, and the person riding in the cargo storage area is in the seat and is wearing the seat safety belt; or

(2) An emergency exists that threatens the life of the driver or the person being transported in the cargo storage area of the truck, trailer, or semitrailer.

(F) No driver of a truck, trailer, or semitrailer shall permit any person, except for those workers performing specialized highway or street maintenance or construction under authority of a public agency, to ride in the cargo storage area or on a tailgate of the driver's vehicle while the tailgate is unlatched.

(G) (1) Except as otherwise provided in this division, whoever violates any provision of divisions (A) through (D) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates any provision of divisions (A) through (D) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates any provision of divisions (A) through (D) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates division (E) or (F) of this section is guilty of a minor misdemeanor.
(R.C. § 4511.51)

## § 72.38 PEDESTRIAN ON BRIDGE OR RAILROAD CROSSING.

(A) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given.

(B) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.511)

## § 72.39 PERSONS OPERATING MOTORIZED WHEELCHAIRS.

Every person operating a motorized wheelchair shall have all of the rights and duties applicable to a pedestrian that are contained in this chapter, except those provisions which by their nature can have no application.
(R.C. § 4511.491)

## § 72.40 INTOXICATED OR DRUGGED PEDESTRIAN HAZARD ON HIGHWAY.

(A) A pedestrian who is under the influence of alcohol, any drug of abuse, or any combination of them to a degree that renders the pedestrian a hazard shall not walk or be upon a highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.481)

## § 72.41 OPERATION OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES.

(A) (1) Electric personal assistive mobility devices may be operated on the public streets, highways, sidewalks, and paths and portions of roadways set aside for the exclusive use of bicycles in accordance with this section.

(2) Except as otherwise provided in this section, those sections of this Traffic Code that by their nature are applicable to an electric personal assistive mobility device apply to the device and the person operating it

whenever it is operated upon any public street, highway, sidewalk, or path or upon any portion of a roadway set aside for the exclusive use of bicycles.

(3) The municipality may regulate or prohibit the operation of electric personal assistive mobility devices on public streets, highways, sidewalks, and paths, or portions of roadways set aside for the exclusive use of bicycles, under its jurisdiction.

(B) No operator of an electric personal assistive mobility device shall do any of the following:

(1) Fail to yield the right-of-way to all pedestrians and human-powered vehicles at all times;

(2) Fail to give an audible signal before overtaking and passing a pedestrian;

(3) Operate the device at night unless the device or its operator is equipped with or wearing both of the following:

(a) A lamp pointing to the front that emits a white light visible from a distance of not less than 500 feet;

(b) A red reflector facing the rear that is visible from all distances from 100 feet to 600 feet when directly in front of lawful lower beams of head lamps on a motor vehicle;

(4) Operate the device on any portion of a street or highway that has an established speed limit of 55 miles per hour or more;

(5) Operate the device upon any path set aside for the exclusive use of pedestrians or other specialized use when an appropriate sign giving notice of the specialized use is posted on the path;

(6) If under 18 years of age, operate the device unless wearing a protective helmet on the person's head with the chin strap properly fastened;

(7) If under 16 years of age, operate the device unless, during the operation, the person is under the direct visual and audible supervision of another person who is 18 years of age or older and is responsible for the immediate care of the person under 16 years of age.

(C) No person who is under 14 years of age shall operate an electric personal assistive mobility device.

(D) No person shall distribute or sell an electric personal assistive mobility device unless the device is accompanied by a written statement that is substantially equivalent to the following: "WARNING: TO REDUCE THE RISK OF SERIOUS INJURY, USE ONLY WHILE WEARING FULL PROTECTIVE EQUIPMENT – HELMET, WRIST GUARDS, ELBOW PADS, AND KNEE PADS".

(E) Nothing in this section affects or shall be construed to affect any rule of the Director of Natural Resources or a board of park district commissioners governing the operation of vehicles on lands under the control of the Director or board, as applicable.

(F) Penalty.

(1) Whoever violates division (B) or (C) of this section is guilty of a minor misdemeanor and shall be punished as follows:

(a) The offender shall be fined $10;

(b) If the offender previously has been convicted of or pleaded guilty to a violation of division (B) or (C) of this section or a substantially equivalent state law or municipal ordinance, the court, in addition to imposing the fine required under division (F)(1)(a) of this section, shall do one of the following:

1. Order the impoundment for not less than one day but not more than 30 days of the electric personal assistive mobility device that was involved in the current violation of that division. The court shall order the device to be impounded at a safe indoor location designated by the court and may assess storage fees of not more than $5 per day; provided the total storage, processing, and release fees assessed against the offender or the device in connection with the device's impoundment or subsequent release shall not exceed $50.

2. If the court does not issue an impoundment order pursuant to division (F)(1)(b)1. of this section, issue an order prohibiting the offender from operating any electric personal assistive mobility device on the public streets, highways, sidewalks, and paths and portions of roadways set aside for the exclusive use of bicycles for not less than one day but not more than 30 days.

(2) Whoever violates division (D) of this section is guilty of a minor misdemeanor.
(R.C. § 4511.512)

(G) As used in this code, ***ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE*** means a self-balancing two non-tandem wheeled device that is designed to transport only one person, has an electric propulsion system of an average of 750 watts, and when ridden on a paved level surface by an operator who weighs 170 pounds has a maximum speed of less than 20 miles per hour.
(R.C. § 4501.01(TT))

## § 72.42 OPERATION OF PERSONAL DELIVERY DEVICE ON SIDEWALKS AND CROSSWALKS.

(A) As used in this section:

***ELIGIBLE ENTITY.*** Means a corporation, partnership, association, firm, sole proprietorship, or other entity engaged in business.

***PERSONAL DELIVERY DEVICE.*** Means an electrically powered device to which all of the following apply:

(a) The device is intended primarily to transport property on sidewalks and crosswalks.

(b) The device weighs less than 90 pounds excluding any property being carried in the device.

(c) The device has a maximum speed of ten miles per hour.

(d) The device is equipped with technology that enables the operation of the device with active control or monitoring by a person, without active control or monitoring by a person, or both with or without active control or monitoring by a person.

***PERSONAL DELIVERY DEVICE OPERATOR.*** Means an agent of an eligible entity who exercises direct physical control over, or monitoring of, the navigation and operation of a personal delivery device. The phrase does not include, with respect to a delivery or other service rendered by a personal delivery device, the person who requests the delivery or service. The phrase also does not include a person who only arranges for and dispatches a personal delivery device for a delivery or other service.

(B) An eligible entity may operate a personal delivery device on sidewalks and crosswalks so long as all of the following requirements are met:

(1) The personal delivery device is operated in accordance with all regulations, if any, established by each local authority within which the personal delivery device is operated.

(2) A personal delivery device operator is actively controlling or monitoring the navigation and operation of the personal delivery device.

(3) The eligible entity maintains an insurance policy that includes general liability coverage of not less than $100,000 for damages arising from the operation of the personal delivery device by the eligible entity and any agent of the eligible entity.

(4) The device is equipped with all of the following:

(a) A marker that clearly identifies the name and contact information of the eligible entity operating the personal delivery device and a unique identification number;

(b) A braking system that enables the personal delivery device to come to a controlled stop;

(c) If the personal delivery device is being operated between sunset and sunrise, a light on both the front and rear of the personal delivery device that is visible in clear weather from a distance of at least 500 feet to the front and rear of the personal delivery device when directly in front of low beams of headlights on a motor vehicle.

(C) No personal delivery device operator shall allow a personal delivery device to do any of the following:

(1) Fail to comply with traffic or pedestrian control devices and signals;

(2) Unreasonably interfere with pedestrians or traffic;

(3) Transport any hazardous material that would require a permit issued by the Public Utilities Commission;

(4) Operate on a street or highway, except when crossing the street or highway within a crosswalk.

(D) A personal delivery device has all of the rights and obligations applicable to a pedestrian under the same circumstances, except that a personal delivery device shall yield the right-of-way to human pedestrians on sidewalks and crosswalks.

(E) (1) No person shall operate a personal delivery device unless the person is authorized to do so under this section and complies with the requirements of this section.

(2) An eligible entity is responsible for both of the following:

(a) Any violation of this section that is committed by a personal delivery device operator; and

(b) Any other circumstance, including a technological malfunction, in which a personal delivery device operates in a manner prohibited by divisions (C)(1) to (C)(4) of this section.
(R.C. § 4511.513) Penalty, see § 70.99

## *GRADE CROSSINGS*

### § 72.45 STOP SIGNS AT GRADE CROSSINGS.

(A) As used in this section, ***ACTIVE GRADE CROSSING WARNING DEVICE*** means signs, signals, gates, or other protective devices erected or installed at a public highway-railway crossing at common grade and activated by an electrical circuit.

(B) The Department of Transportation and local authorities, with the approval of the Department, may designate dangerous highway crossings over railroad tracks and erect stop signs thereat.

(C) (1) The Department and local authorities shall erect stop signs at a railroad highway grade crossing in either of the following circumstances:

(a) New warning devices that are not active grade crossing warning devices are being installed at the grade crossing, and railroad crossbucks were the only warning devices at the grade crossing prior to the installation of the new warning devices.

(b) The grade crossing is constructed after July 1, 2013, and only warning devices that are not active grade crossing warning devices are installed at the grade crossing.

(2) Division (C)(1) of this section does not apply to a railroad highway grade crossing that the Director of Transportation has exempted from that division because of traffic flow or other considerations or factors.

(D) When stop signs are erected pursuant to division (B) or (C) of this section, the operator of any vehicle shall stop within 50, but not less than 15, feet from the nearest rail of the railroad tracks and shall exercise due care before proceeding across such grade crossing.

(E) Except as otherwise provided in this division, whoever violates division (D) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.61)

## § 72.46 DRIVING VEHICLE ACROSS RAILROAD GRADE CROSSING.

(A) (1) Whenever any person driving a vehicle approaches a railroad grade crossing, the person shall stop within 50 feet but not less than 15 feet from the nearest rail of the railroad if any of the following circumstances exist at the crossing:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train.

(b) A crossing gate is lowered.

(c) A flagperson gives or continues to give a signal of the approach or passage of a train.

(d) There is insufficient space on the other side of the railroad grade crossing to accommodate the vehicle the person is operating without obstructing the passage of other vehicles, pedestrians or railroad trains, notwithstanding any traffic control signal indication to proceed.

(e) An approaching train is emitting an audible signal or is plainly visible, and is in hazardous proximity to the crossing.

(f) There is insufficient undercarriage clearance to safely negotiate the crossing.

(2) A person who is driving a vehicle and who approaches a railroad grade crossing shall not proceed as long as any of the circumstances described in divisions (A)(1)(a) through (A)(1)(f) of this section exist at the crossing.

(B) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed, or is being opened or closed unless the person is signaled by a law enforcement officer or flagperson that it is permissible to do so.

(C) Whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4511.62)

## § 72.47 VEHICLES REQUIRED TO STOP AT GRADE CROSSINGS.

(A) Except as provided in division (B) of this section, the operator of any bus, any school vehicle, or any vehicle transporting material required to be placarded under 49 C.F.R. parts 100 through 185, before crossing

at grade any track of a railroad, shall stop the vehicle, and while so stopped, shall listen through an open door or open window, and look in both directions along the track for any approaching train and for signals indicating the approach of a train, and shall proceed only upon exercising due care after stopping, looking, and listening as required by this section. Upon proceeding, the operator of such a vehicle shall cross only in a gear that will ensure there will be no necessity for changing gears while traversing the crossing, and shall not shift gears while crossing the tracks.

(B) This section does not apply at grade crossings when any local authority has filed an application with the Public Utilities Commission requesting the approval of an exempt crossing, and the Public Utilities Commission has authorized and approved an exempt crossing as provided in R.C. § 4511.63(B).

(C) As used in this section:

***BUS.*** Means any vehicle originally designed by its manufacturer to transport 16 or more passengers, including the driver, or carries 16 or more passengers, including the driver.

***EXEMPT CROSSING.*** Means a highway rail grade crossing authorized and approved by the Public Utilities Commission under R.C. § 4511.63(B) at which vehicles may cross without making the stop otherwise required by this section.

***SCHOOL VEHICLE.*** Means any vehicle used for the transportation of pupils to and from a school or school-related function if the vehicle is owned or operated by, or operated under contract with, a public or nonpublic school.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or R.C. § 4511.63, 4511.76, 4511.761, 4511.762, 4511.764, 4511.77, or 4511.79, or a municipal ordinance that is substantially equivalent to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4511.63)

## § 72.48 SLOW-MOVING VEHICLES OR EQUIPMENT CROSSING RAILROAD TRACKS.

(A) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of six or less miles per hour or a vertical body or load clearance of less than nine inches above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with divisions (A)(1) and (A)(2) of this section.

(1) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same, and while stopped, the person shall listen and look in both directions along the track for any approaching train and for signals indicating the approach of a train, and shall proceed only upon exercising due care.

(2) No such crossing shall be made when warning is given by automatic signal, crossing gates, or a flagperson, or otherwise of the immediate approach of a railroad train or car.

(B) If the normal sustained speed of the vehicle, equipment, or structure is not more than three miles per hour, the person owning, operating, or moving the same shall also give notice of the intended crossing to a station
agent or superintendent of the railroad, and a reasonable time shall be given to the railroad to provide proper protection for the crossing. Where the vehicles or equipment are being used in constructing or repairing a section of highway lying on both sides of a railroad grade crossing, and in this construction or repair it is necessary to repeatedly move the vehicles or equipment over the crossing, one daily notice specifying when the work will start and stating the hours during which it will be prosecuted is sufficient.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.64)

## *PROHIBITIONS*

### § 72.55 OBSTRUCTION AND INTERFERENCE AFFECTING VIEW AND CONTROL OF DRIVER.

(A) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons, as to obstruct the view of the driver to the front or sides of the vehicle, or to interfere with the driver's control over the driving mechanism of the vehicle.

(B) No passenger in a vehicle shall ride in a position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

(C) No person shall open the door of a vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.70)

### § 72.56 OCCUPYING TRAVEL TRAILER WHILE IN MOTION.

(A) No person shall occupy any travel trailer or manufactured or mobile home while it is being used as a conveyance upon a street or highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.701)

## § 72.57 DRIVING UPON CLOSED HIGHWAY PROHIBITED.

(A) No person shall drive upon, along, or across a street or highway, or any part of a street or highway that has been closed in the process of its construction, reconstruction, or repair, and posted with appropriate signs by the authority having jurisdiction to close the highway.
(R.C. § 4511.71(A))

(B) (1) No person shall operate a vehicle on or onto a public street or highway that is temporarily covered by a rise in water level, including groundwater or an overflow of water, and that is clearly marked by a sign that specifies that the road is closed due to the rise in water level and that any person who uses the closed portion of the road may be fined up to $2,000.

(2) A person who is issued a citation for a violation of division (B)(1) of this section is not permitted to enter a written plea of guilty and waive the person's right to contest the citation in court, but instead must appear in person in the proper court to answer the charge.
(R.C. § 4511.714(A), (B))

(C) (1) Except as otherwise provided in this division, whoever violates division (A) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A) of this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.71(B))

(2) (a) Whoever violates division (B) of this section is guilty of a minor misdemeanor.

(b) In addition to the financial sanctions authorized or required under R.C. § 2929.28 and to any costs otherwise authorized or required under any provision of law, the court imposing the sentence upon an offender who is convicted of or pleads guilty to a violation of division (B) of this section shall order the offender to reimburse one or more rescuers for the cost any such rescuer incurred in rescuing the person, excluding any cost of transporting the rescued person to a hospital or other facility for treatment of injuries, up to a cumulative maximum of $2,000. If more than one rescuer was involved in the emergency response, the court shall allocate the reimbursement proportionately, according to the cost each rescuer incurred. A financial sanction imposed under this section is a judgment in favor of the rescuer and, subject to a determination of indigency under R.C. § 2929.28(B), a rescuer may collect the financial sanction in the same manner as provided in R.C. § 2929.28.
(R.C. § 4511.714(C))

(D) As used in this section:

***EMERGENCY MEDICAL SERVICE ORGANIZATION.*** Has the same meanings as in R.C. § 9.60.

***FIREFIGHTING AGENCY.*** Has the same meanings as in R.C. § 9.60.

***PRIVATE FIRE COMPANY.*** Has the same meanings as in R.C. § 9.60.

***RESCUER.*** Means a state agency, political subdivision, firefighting agency, private fire company, or emergency medical service organization.
(R.C. § 4511.714(D))

## § 72.58 DRIVING UPON SIDEWALK AREA OR PATHS EXCLUSIVELY FOR BICYCLES.

(A) (1) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area, except upon a permanent or duly authorized temporary driveway.

(2) Nothing in this section shall be construed as prohibiting local authorities from regulating the operation of bicycles, except that no local authority may require that bicycles be operated on sidewalks.
(R.C. § 4511.711(A))

(B) (1) No person shall operate a motor vehicle, snowmobile, or all-purpose vehicle upon any path set aside for the exclusive use of bicycles, when an appropriate sign giving notice of such use is posted on the path.

(2) Nothing in this section shall be construed to affect any rule of the Director of Natural Resources governing the operation of motor vehicles, snowmobiles, all-purpose vehicles, and bicycles on lands under the Director's jurisdiction.
(R.C. § 4511.713(A))

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. §§ 4511.711(B), 4511.713(B))

## § 72.59 OBSTRUCTING PASSAGE OF OTHER VEHICLES.

(A) No driver shall enter an intersection or marked crosswalk, or drive onto any railroad grade crossing, unless there is sufficient space on the other side of the intersection, crosswalk, or grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding any traffic-control signal indication to proceed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.712)

## § 72.60 FOLLOWING AN EMERGENCY OR PUBLIC VEHICLE PROHIBITED; APPROACHING STATIONARY PUBLIC SAFETY VEHICLE WITH CAUTION.

(A) *Following an emergency or public vehicle prohibited.* The driver of any vehicle, other than an emergency vehicle or public safety vehicle on official business, shall not follow any emergency vehicle or public safety vehicle traveling in response to an alarm closer than 500 feet, or drive into or park the vehicle within the block where the fire apparatus has stopped in answer to a fire alarm, unless directed to do so by a police officer or a firefighter.
(R.C. § 4511.72(A))

(B) *Approaching stationary public safety vehicle with caution.*

(1) The driver of a motor vehicle, upon approaching a stationary public safety vehicle, emergency vehicle, road service vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with R.C. §§ 4923.04 and 4923.06, or a highway maintenance vehicle that is displaying the appropriate visual signals by means of flashing, oscillating, or rotating lights, as prescribed in R.C. § 4513.17, shall do either of the following:

(a) If the driver of the motor vehicle is traveling on a highway that consists of at least two lanes that carry traffic in the same direction of travel as that of the driver's motor vehicle, the driver shall proceed with due caution and, if possible and with due regard to the road, weather, and traffic conditions, shall change lanes into a lane that is not adjacent to that of the stationary public safety vehicle, emergency vehicle, road service vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with R.C. §§ 4923.04 and 4923.06, or a highway maintenance vehicle.

(b) If the driver is not traveling on a highway of a type described in division (B)(1)(a) of this section, or if the driver is traveling on a highway of that type but it is not possible to change lanes or if to do so would be unsafe, the driver shall proceed with due caution, reduce the speed of the motor vehicle, and maintain a safe speed for the road, weather, and traffic conditions.

(2) This division (B) does not relieve the driver of a public safety vehicle, emergency vehicle, road service vehicle, vehicle used by the Public Utilities Commission to conduct motor vehicle inspections in accordance with R.C. §§ 4923.04 and 4923.06, or a highway maintenance vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(3) No person shall fail to drive a motor vehicle in compliance with divisions (B)(1)(a) or (B)(1)(b) of this section when so required by division (B) of this section.
(R.C. § 4511.213(A) - (C))

(C) *Penalty.*

(1) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(2) Notwithstanding § 130.99 or R.C. § 2929.28, upon a finding that a person operated a motor vehicle in violation of division (B)(3) of this section, the court, in addition to all other penalties provided by law, shall impose a fine of two times the usual amount imposed for the violation.
(R.C. §§ 4511.213(D), 4511.72(B))

## § 72.61 DRIVING OVER UNPROTECTED FIRE HOSE.

(A) No vehicle shall, without the consent of the fire department official in command, be driven over any unprotected hose of a fire department that is laid down on any street or private driveway to be used at any fire or alarm of fire.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.73)

## § 72.62 PLACING INJURIOUS MATERIAL ON HIGHWAY OR DEPOSITING LITTER FROM MOTOR VEHICLE.

(A) (1) No person shall place or knowingly drop upon any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, or animal traveling along or upon the highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

(2) Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove the same.

(3) Any person authorized to remove a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

(4) No person shall place any obstruction in or upon a highway without proper authority.

(B) No person, with intent to cause physical harm to a person or a vehicle, shall place or knowingly drop upon any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof. (R.C. § 4511.74(A), (B))

(C) No operator or occupant of a motor vehicle shall, regardless of intent, throw, drop, discard, or deposit litter from any motor vehicle in operation upon any street, road, or highway, except into a litter receptacle in a manner that prevents its being carried away or deposited by the elements.

(D) No operator of a motor vehicle in operation upon any street, road, or highway shall allow litter to be thrown, dropped, discarded, or deposited from the motor vehicle, except into a litter receptacle in a manner that prevents its being carried away or deposited by the elements.

(E) As used in this section, ***LITTER*** means garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature. (R.C. § 4511.82(A), (B), (D))

(F) (1) Except as otherwise provided in this division, whoever violates division (A) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree. (R.C. § 4511.74(C))

(3) Whoever violates division (C) or (D) of this section is guilty of a minor misdemeanor. (R.C. § 4511.82(C))

## § 72.63 TRANSPORTING CHILD NOT IN CHILD RESTRAINT SYSTEM PROHIBITED.

(A) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in R.C. § 4511.01, that is required by the United States Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards:

(1) A child who is less than four years of age;

(2) A child who weighs less than 40 pounds.

(B) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab, that is owned, leased, or otherwise under the control of a nursery school or day-care

center, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards:

(1) A child who is less than four years of age;

(2) A child who weighs less than 40 pounds.

(C) When any child who is less than eight years of age and less than four feet nine inches in height, who is not required by division (A) or (B) of this section to be secured in a child restraint system, is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in R.C. § 4511.01 or a vehicle that is regulated under R.C. § 5104.015, that is required by the United States Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions on a booster seat that meets federal motor vehicle safety standards.

(D) When any child who is at least eight years of age but not older than 15 years of age, and who is not otherwise required by division (A), (B), or (C) of this section to be secured in a child restraint system or booster seat, is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in R.C. § 4511.01, that is required by the United States Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly restrained either in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards or in an occupant restraining device as defined in R.C. § 4513.263.

(E) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of a motor vehicle being operated on any street or highway to stop the motor vehicle for the sole purpose of determining whether a violation of division (C) or (D) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of division (C) or (D) of this section or causing the arrest of or commencing a prosecution of a person for a violation of division (C) or (D) of this section, and absent another violation of law, a law enforcement officer's view of the interior or visual inspection of a motor vehicle being operated on any street or highway may not be used for the purpose of determining whether a violation of division (C) or (D) of this section has been or is being committed.

(F) The Director of Public Safety shall adopt such rules as are necessary to carry out this section.

(G) The failure of an operator of a motor vehicle to secure a child in a child restraint system, a booster seat, or an occupant restraining device as required in this section is not negligence imputable to the child, is not admissible as evidence in any civil action involving the rights of the child against any other person allegedly liable for injuries to the child, is not to be used as a basis for a criminal prosecution of the operator of the motor vehicle other than a prosecution for a violation of this section, and is not admissible as evidence in any criminal action involving the operator of the motor vehicle other than a prosecution for a violation of this section.

(H) This section does not apply when an emergency exists that threatens the life of any person operating or occupying a motor vehicle that is being used to transport a child who otherwise would be required to be restrained under this section. This section does not apply to a person operating a motor vehicle who has an affidavit signed by a physician licensed to practice in this state under R.C. Chapter 4731 or a chiropractor licensed to practice in this state under R.C. Chapter 4734 that states that the child who otherwise would be required to be restrained under this section has a physical impairment that makes use of a child restraint system, booster seat, or an

occupant restraining device impossible or impractical, provided that the person operating the vehicle has safely and appropriately restrained the child in accordance with any recommendations of the physician or chiropractor as noted on the affidavit.

(I) Nothing in this section shall be construed to require any person to carry with the person the birth certificate of a child to prove the age of the child, but the production of a valid birth certificate for a child showing that the child was not of an age to which this section applies is a defense against any ticket, citation, or summons issued for violating this section.

(J) (1) Whoever violates division (A), (B), (C), or (D) of this section shall be punished as follows, provided that the failure of an operator of a motor vehicle to secure more than one child in a child restraint system, booster seat, or occupant restraining device as required by this section that occurred at the same time, on the same day, and at the same location is deemed to be a single violation of this section:

(a) Except as otherwise provided in division (J)(1)(b) of this section, the offender is guilty of a minor misdemeanor and shall be fined not less than $25 nor more than $75.

(b) If the offender previously has been convicted of or pleaded guilty to a violation of division (A), (B), (C), or (D) of this section or of a state law or municipal ordinance that is substantially equivalent any of those divisions, the offender is guilty of a misdemeanor of the fourth degree.

(2) All fines imposed pursuant to division (J)(1) of this section shall be forwarded to the State Treasurer for deposit in the Child Highway Safety Fund created by R.C. § 4511.81(I).
(R.C. § 4511.81(A) - (H), (K), (L))

## § 72.64 OCCUPANT RESTRAINING DEVICES.

(A) *Definitions.* As used in this section:

***AUTOMOBILE.*** Means any commercial tractor, passenger car, commercial car, or truck that is required to be factory-equipped with an occupant restraining device for the operator or any passenger by regulations adopted by the United States Secretary of Transportation pursuant to the "National Traffic and Motor Vehicle Safety Act of 1966", 80 Stat. 719, 15 U.S.C. § 1392.

***COMMERCIAL CAR.*** Has the same meaning as in R.C. § 4501.01.

***COMMERCIAL TRACTOR.*** Has the same meaning as in R.C. § 4501.01.

***OCCUPANT RESTRAINING DEVICE.*** A seat safety belt, shoulder belt, harness, or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum federal vehicle safety standards established by the United States Department of Transportation.

***PASSENGER.*** Any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.

***PASSENGER CAR.*** Has the same meaning as in R.C. § 4501.01.

***TORT ACTION.*** A civil action for damages for injury, death, or loss to person or property. The term includes a product liability claim, as defined in R.C. § 2307.71, and as asbestos claim, as defined in R.C. § 2307.91, but does not include a civil action for damages for breach of contract or another agreement between persons.

***VEHICLE*** and ***MOTOR VEHICLE.*** As used in the definitions of the terms set forth above, ***VEHICLE*** and ***MOTOR VEHICLE*** have the same meanings as in R.C. § 4511.01.

(B) *Prohibited acts.* No person shall do any of the following:

(1) Operate an automobile on any street or highway unless he or she is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an occupant restraining device installed for use in its operator's seat unless he or she is wearing all of the available elements of the device, as properly adjusted.

(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (B)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device.

(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless he or she is wearing all of the available elements of a properly adjusted occupant restraining device.

(4) Operate a taxicab on any street or highway unless all factory-equipped occupant restraining devices in the taxicab are maintained in usable form.

(C) *Exceptions.* Division (B)(3) of this section does not apply to a person who is required by R.C. § 4511.81 or a substantially equivalent municipal ordinance to be secured in a child restraint device or booster seat. Division (B)(1) of this section does not apply to a person who is an employee of the United States Postal Service or of a newspaper home delivery service, during any period in which the person is engaged in the operation of an automobile to deliver mail or newspapers to addressees. Divisions (B)(1) and (B)(3) of this section do not apply to a person who has an affidavit signed by a physician licensed to practice in this state under R.C. Chapter 4731 or a chiropractor licensed to practice in this state under R.C. Chapter 4734 that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical.

(D) *Officers not permitted to stop cars to determine violation.* Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (B) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for the violation or for causing the arrest of or commencing a prosecution of a person for the violation. No law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether the violation has been or is being committed.

(E) *Use of fines for educational program.* All fines collected for violations of division (B) of this section shall be forwarded to the State Treasurer for deposit in the funds as set forth in R.C. § 4513.263(E).

(F) *Limitations on evidence used for prosecution.*

(1) Subject to division (F)(2) of this section, the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(1) or (B)(3) of this section or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person is wearing all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(2) of this section shall not be considered or used by the trier of fact in a tort action as evidence of negligence or contributory negligence. But, the trier of fact may determine based on evidence admitted consistent with the Ohio Rules of Evidence that the failure contributed to the harm alleged in the tort action and may diminish a recovery of compensatory damages that represents non-economic loss, as defined in R.C. § 2307.011, in a tort action that could have been recovered but for the plaintiff's failure to wear all of the available elements of a properly adjusted occupant restraining device. Evidence of that failure shall not be used as a basis for a criminal prosecution of the person other than a prosecution for a violation of this section; and shall not be admissible as evidence in a criminal action involving the person other than a prosecution for a violation of this section.

(2) If, at the time of an accident involving a passenger car equipped with occupant restraining devices, any occupant of the passenger car who sustained injury or death was not wearing an available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted, then, consistent with the Rules of Evidence, the fact that the occupant was not wearing the available occupant restraining device, was not wearing all of the available elements of such a device, or was not wearing such a device as properly adjusted is admissible in evidence in relation to any claim for relief in a tort action to the extent that the claim for relief satisfies all of the following:

(a) It seeks to recover damages for injury or death to the occupant;

(b) The defendant in question is the manufacturer, designer, distributor, or seller of the passenger car;

(c) The claim for relief against the defendant in question is that the injury or death sustained by the occupant was enhanced or aggravated by some design defect in the passenger car or that the passenger car was not crashworthy.

(G) *Penalty.*

(1) Whoever violates division (B)(1) of this section shall be fined $30.

(2) Whoever violates division (B)(2) shall be subject to the penalty set forth in § 70.99(B).

(3) Whoever violates division (B)(3) of this section shall be fined $20.

(4) Except as otherwise provided in this division, whoever violates division (B)(4) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to a violation

of division (B)(4) of this section, whoever violates division (B)(4) of this section is guilty of a misdemeanor of the third degree.
(R.C. § 4513.263)
***Cross-reference:***
*Child restraint systems, see § 72.63*
*Installation and sale of seat safety belts, see § 74.33*
*School bus operators, restraining devices, see § 72.89*

## § 72.65 [RESERVED]

## § 72.66 OPERATING MOTOR VEHICLE WHILE WEARING EARPHONES OR EARPLUGS.

(A) No person shall operate a motor vehicle while wearing earphones over, or earplugs in, both ears. As used in this section, ***EARPHONES*** means any headset, radio, tape player, or other similar device that provides the listener with radio programs, music, or other recorded information through a device attached to the head and that covers all or a portion of both ears. The term does not include speakers or other listening devices that are built into protective headgear.

(B) This section does not apply to:

(1) Any person wearing a hearing aid;

(2) Law enforcement personnel while on duty;

(3) Fire department personnel and emergency medical service personnel while on duty;

(4) Any person operating equipment for use in the maintenance or repair of any highway;

(5) Any person engaged in the operation of refuse collection equipment.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.84)

## § 72.67 CHAUFFEURED LIMOUSINES AND LIVERY SERVICES.

(A) The operator of a chauffeured limousine shall accept passengers only on the basis of prearranged contracts, as defined in R.C. § 4501.01, and shall not cruise in search of patronage unless the limousine is in compliance with any statute or ordinance governing the operation of taxicabs or other similar vehicles for hire.

(B) The operator of a chauffeured limousine may provide transportation to passengers who arrange for the transportation through an intermediary, including a digital dispatching service. Notwithstanding any law to the contrary, when providing transportation arranged through an intermediary, the operator of a chauffeured limousine may establish the fare and method of fare calculation, so long as the method of fare calculation is provided to the passenger upon request.

(C) No person shall advertise or hold himself or herself out as doing business as a limousine service or livery service or other similar designation unless each vehicle used by the person to provide the service is registered in accordance with R.C. § 4503.24 and is in compliance with R.C. § 4509.80.

(D) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4511.85)
***Statutory reference:***
*Chauffeured limousine, motor vehicle licensing, see R.C. § 4503.24*
*Proof of financial responsibility, see R.C. § 4509.80*

## § 72.68 OPERATING TRACTION ENGINE UPON IMPROVED HIGHWAYS.

(A) No person shall drive over the improved highways of this municipality a traction engine or tractor with tires or wheels equipped with ice picks, spuds, spikes, chains or other projections of any kind extending beyond the cleats, and no person shall tow or in any way pull another vehicle over the improved highways of this municipality which towed or pulled vehicle has tires or wheels equipped with ice picks, spuds, spikes, chains or other projections of any kind. As used in this section, “traction engine” or “tractor” applies to all self-propelling engines equipped with metal-tired wheels operated or propelled by any form of engine, motor or mechanical power.

(B) This municipality shall not adopt, enforce, or maintain any ordinance, rule or regulation contrary to or inconsistent with division (A), nor shall this municipality require any license tax upon or registration fee for any traction engine, tractor, or trailer, or any permit or license to operate. Operators of traction engines or tractors shall have the same rights upon the public streets and highways as the drivers of any other vehicles, unless some other safe and convenient way is provided, and no public road open to traffic shall be closed to traction engines or tractors.
(R.C. § 5589.08)

(C) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 5589.99(B))

## § 72.69 CRACKING EXHAUST NOISES; PEELING OUT.

No person shall operate any motor vehicle, except when necessary for safe operation, or in compliance with law, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position, or in the shifting of gears while in motion, that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation, or that the rubber tires of such vehicle squeal or leave tire marks on the roadway, commonly known as “peeling out”.
Penalty, see § 70.99

## § 72.70 SHORTCUTTING ACROSS PRIVATE PROPERTY.

No operator of a motor vehicle shall enter upon private property for the sole purpose of driving across such property, between abutting streets or other public ways thereof. The failure to stop on such property in connection
with or in furtherance of the enterprise or activities being conducted on the property shall constitute prima facie evidence of the violation.
Penalty, see § 70.99

## § 72.71 UNLICENSED VEHICLES PROHIBITED ON MUNICIPALLY-OWNED AND/OR MAINTAINED PROPERTY.

(A) It shall be unlawful to operate unlicensed motor vehicles on or about property owned and/or maintained by the Municipality, or public streets or highways.

(B) No part of this section shall apply to motorized wheelchairs or vehicles whose primary purpose is to transport disabled, injured, or otherwise impaired persons.

(C) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ATV/ALL TERRAIN VEHICLE.*** Any motor vehicle 52 inches or less in width, having an unladen weight of 800 pounds or less, traveling on three or more low pressure tires with a seat designed to be straddled by the rider, designed for, or capable of, travel over unimproved terrain.

***DIRT BIKE.*** Any two-wheeled vehicle designed for off-road use.

***MINI MOTORBIKES (POCKET ROCKETS, POCKET BIKES).*** Any motorized or motor-driven two-wheeled vehicle.

***MOTORIZED.*** The vehicle is propelled by either a gasoline or electric motor.

***UNLICENSED.*** The vehicle is not required to be registered with the Ohio Bureau of Motor Vehicles.

(D) Failure to comply with this section shall be treated as maintaining a nuisance and punishable accordingly.
(Ord. CM-07-32, passed 9-11-2007) Penalty, see § 70.99

## § 72.72 TEXTING WHILE DRIVING PROHIBITED.

(A) No person shall drive a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

(B) Division (A) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(C) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (A) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(D) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

(E) A prosecution for a violation of R.C. § 4511.204 does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of R.C. § 4511.204 and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under R.C. § 2941.25.

(F) As used in this section:

***ELECTRONIC WIRELESS COMMUNICATIONS DEVICE.*** Includes any of the following:

(a) A wireless telephone;

(b) A text-messaging device;

(c) A personal digital assistant;

(d) A computer, including a laptop computer and a computer tablet;

(e) Any other substantially similar wireless device that is designed or used to communicate text.

***VOICE-OPERATED OR HANDS-FREE DEVICE.*** A device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function.

***WRITE, SEND, OR READ A TEXT-BASED COMMUNICATION.*** To manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail. (R.C. § 4511.204)

***Statutory reference:***

*No preemption for local regulations imposing greater penalties, see R.C. § 4511.204(E)*

## § 72.73 USE OF ELECTRONIC WIRELESS COMMUNICATION DEVICES BY MINORS OR PROBATIONARY DRIVERS WHILE DRIVING PROHIBITED.

(A) No holder of a temporary instruction permit who has not attained the age of 18 years and no holder of a probationary driver's license shall drive a motor vehicle on any street, highway, or property used by the public for purposes of vehicular traffic or parking while using in any manner an electronic wireless communications device.

(B) Division (A) of this section does not apply to either of the following:

(1) A person using an electronic wireless communications device for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person using an electronic wireless communications device whose motor vehicle is in a stationary position and the motor vehicle is outside a lane of travel;

(3) A person using a navigation device in a voice-operated or hands-free manner who does not manipulate the device while driving.

(C) (1) Except as provided in division (C)(2) of this section, whoever violates division (A) of this section shall be fined $150. In addition, the court shall impose a class seven suspension of the offender's driver's license or permit for a definite period of 60 days.

(2) If the person previously has been adjudicated a delinquent child or a juvenile traffic offender for a violation of this section, whoever violates this section shall be fined $300. In addition, the court shall impose a class seven suspension of the person's driver's license or permit for a definite period of one year.

(D) The filing of a sworn complaint against a person for a violation of R.C. § 4511.205 does not preclude the filing of a sworn complaint for a violation of a substantially equivalent municipal ordinance for the same conduct. However, if a person is adjudicated a delinquent child or a juvenile traffic offender for a violation of R.C. § 4511.205 and is also adjudicated a delinquent child or a juvenile traffic offender for a violation of a substantially equivalent municipal ordinance for the same conduct, the two offenses are allied offenses of similar import under R.C. § 2941.25.

(E) As used in this section, ***ELECTRONIC WIRELESS COMMUNICATIONS DEVICE*** includes any of the following:

(1) A wireless telephone;

(2) A personal digital assistant;

(3) A computer, including a laptop computer and a computer tablet;

(4) A text-messaging device;

(5) Any other substantially similar electronic wireless device that is designed or used to communicate via voice, image, or written word.
(R.C. § 4511.205)

## *SCHOOL BUSES*

### § 72.80 REGULATIONS CONCERNING SCHOOL BUSES.

(A) The driver of a vehicle, upon meeting or overtaking from either direction any school bus stopped for the purpose of receiving or discharging any school child, person attending programs offered by community boards of mental health and county boards of developmental disabilities, or child attending a program offered by a head start agency, shall stop at least ten feet from the front or rear of the school bus and shall not proceed until such school bus resumes motion, or until signaled by the school bus driver to proceed. It is no defense to a charge
under this division that the school bus involved failed to display or be equipped with an automatically extended stop warning sign as required by division (B) of this section.

(B) Every school bus shall be equipped with amber and red visual signals meeting the requirements of R.C. § 4511.771 or a substantially equivalent municipal ordinance, and an automatically extended stop warning sign

of a type approved by the state Board of Education, which shall be actuated by the driver of the bus whenever but only whenever the bus is stopped or stopping on the roadway for the purpose of receiving or discharging school children, persons attending programs offered by community boards of mental health and county boards of developmental disabilities, or children attending programs offered by head start agencies. A school bus driver shall not actuate the visual signals or the stop warning sign in designated school bus loading areas where the bus is entirely off the roadway or at school buildings when children or persons attending programs offered by community boards of mental health and county boards of developmental disabilities are loading or unloading at curbside or at buildings when children attending programs offered by head start agencies are loading or unloading at curbside. The visual signals and stop warning sign shall be synchronized or otherwise operated as required by rule of the Board.

(C) Where a highway has been divided into four or more traffic lanes, a driver of a vehicle need not stop for a school bus approaching from the opposite direction which has stopped for the purpose of receiving or discharging any school child, persons attending programs offered by community boards of mental health and county boards of developmental disabilities, or children attending programs offered by head start agencies. The driver of any vehicle overtaking the school bus shall comply with division (A) above.

(D) School buses operating on divided highways or on highways with four or more traffic lanes shall receive and discharge all school children, persons attending programs offered by community boards of mental health and county boards of developmental disabilities, and children attending programs offered by head start agencies on their residence side of the highway.

(E) No school bus driver shall start the driver's bus until after any child, person attending programs offered by community boards of mental health and county boards of developmental disabilities, or child attending a program offered by a head start agency who may have alighted therefrom has reached a place of safety on the child's or person's residence side of the road.

(F) (1) Whoever violates division (A) of this section may be fined an amount not to exceed $500. A person who is issued a citation for a violation of division (A) of this section is not permitted to enter a written plea of guilty and waive the person's right to contest the citation in a trial but instead must appear in person in the proper court to answer the charge.

(2) In addition to and independent of any other penalty provided by law, the court or mayor may impose upon an offender who violates this section a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7). When a license is suspended under this section, the court or mayor shall cause the offender to deliver the license to the court, and the court or clerk of the court immediately shall forward the license to the Registrar of Motor Vehicles, together with notice of the court's action.

(G) As used in this section:

***HEAD START AGENCY.*** Has the same meaning as in R.C. § 3301.32.

***SCHOOL BUS.*** As used in relation to children who attend a program offered by a head start agency, means a bus that is owned and operated by a head start agency, is equipped with an automatically extended stop warning sign of a type approved by the State Board of Education, is painted the color and displays the markings described in R.C. § 4511.77, and is equipped with amber and red visual signals meeting the requirements of R.C. § 4511.77, irrespective of whether or not the bus has 15 or more children aboard at any time. The term does not include a van owned and operated by a head start agency, irrespective of its color, lights or markings.
(R.C. § 4511.75)

## § 72.81 VIOLATION OF REGULATIONS; REPORT; INVESTIGATION; CITATION; WARNING.

(A) As used in this section, ***LICENSE PLATE*** includes but is not limited to any temporary license placard issued under R.C. § 4503.182 or substantially equivalent law of another jurisdiction.

(B) When the operator of a school bus believes that a motorist has violated R.C. § 4511.75(A) or a substantially equivalent municipal ordinance, the operator shall report the license plate number and general description of the vehicle and of the operator of the vehicle to the law enforcement agency exercising jurisdiction over the area where the alleged violation occurred. The information contained in the report relating to the license plate number and to the general description of the vehicle and the operator of the vehicle at the time of the alleged violation may be supplied by any person with first-hand knowledge of the information. Information of which the operator of the school bus has first-hand knowledge also may be corroborated by any other person.

(C) Upon receipt of the report of the alleged violation of R.C. § 4511.75(A) or a substantially equivalent municipal ordinance, the law enforcement agency shall conduct an investigation to attempt to determine the identity of the operator of the vehicle at the time of the alleged violation. If the identity of the operator at the time of the alleged violation is established, the reporting of the license plate number of the vehicle shall establish probable cause for the law enforcement agency to issue a citation for the violation of R.C. § 4511.75(A) or a substantially equivalent municipal ordinance. However, if the identity of the operator of the vehicle at the time of the alleged violation cannot be established, the law enforcement agency shall issue a warning to the owner of the vehicle at the time of the alleged violation, except in the case of a leased or rented vehicle when the warning shall be issued to the lessee at the time of the alleged violation.
(R.C. § 4511.751)

## § 72.82 RESTRICTIONS ON THE OPERATION OF SCHOOL BUSES.

(A) No person shall operate a vehicle used for pupil transportation within this municipality in violation of the rules of the Department of Education of the Department of Public Safety. No person, being the owner thereof, or having the supervisory responsibility therefor, shall permit the operation of a vehicle used for pupil transportation within this municipality in violation of the rules of the Department of Education or the Department of Public Safety.

(B) As used in this section, ***VEHICLE USED FOR PUPIL TRANSPORTATION*** means any vehicle that is identified as such by the Department of Education by rule and that is subject to O.A.C. Chapter 3301-83.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this

section or R.C. § 4511.76, or R.C. § 4511.63, 4511.761, 4511.762, 4511.764, 4511.77, or 4511.79 or a municipal ordinance that is substantially equivalent to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4511.76(C), (E), (F))

## § 72.83 SCHOOL BUS INSPECTION.

(A) No person shall operate, nor shall any person being the owner thereof, or having supervisory responsibility therefor, permit the operation of, a school bus within this municipality, unless there is displayed thereon the decals issued by the state highway patrol bearing the proper date of inspection for the calendar year for which the inspection decals were issued.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or R.C. § 4511.761, or R.C. § 4511.63, 4511.76, 4511.762, 4511.764, 4511.77, or 4511.79 or a municipal ordinance that is substantially equivalent to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

(C) Whenever a person is found guilty in a court of record of a violation of this section, the trial judge, in addition to or independent of all other penalties provided by law, may suspend for any period of time not exceeding three years, or cancel the license of any person, partnership, association, or corporation, issued under R.C. § 4511.763.
(R.C. § 4511.761)

## § 72.84 SCHOOL BUS NOT USED FOR SCHOOL PURPOSES.

(A) Except as provided in division (B) of this section, no person who is the owner of a bus that previously was registered as a school bus that is used or is to be used exclusively for purposes other than the transportation of children shall operate the bus or permit it to be operated within this municipality unless the bus has been painted a color different from that prescribed for school buses by R.C. § 4511.77 or a substantially equivalent municipal ordinance and painted in such a way that the words “stop” and “school bus” are obliterated.

(B) Any church bus that previously was registered as a school bus and is registered under R.C. § 4503.07 may retain the paint color prescribed for school buses by R.C. § 4511.77 or a substantially equivalent municipal ordinance if the bus complies with all of the following:

(1) The words “school bus” required by R.C. § 4511.77 or a substantially equivalent municipal ordinance are covered or obliterated and the bus is marked on the front and rear with the words “church bus” painted in black lettering not less than ten inches in height.

(2) The automatically extending stop warning sign required by R.C. § 4511.75 or a substantially equivalent municipal ordinance is removed and the word “stop” required by R.C. § 4511.77 or a substantially equivalent municipal ordinance is covered or obliterated.

(3) The flashing red and amber lights required by R.C. § 4511.771 or a substantially equivalent municipal ordinance are covered or removed.

(4) The inspection decal required by R.C. § 4511.761 or a substantially equivalent municipal ordinance is covered or removed.

(5) The identification number assigned under R.C. § 4511.764 or a substantially equivalent municipal ordinance and marked in black lettering on the front and rear of the bus is covered or obliterated.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or R.C. § 4511.762, or R.C. § 4511.63, 4511.76, 4511.761, 4511.764, 4511.77, or 4511.79 or a municipal ordinance that is substantially equivalent to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

(D) Whenever a person is found guilty in a court of record of a violation of this section, the trial judge, in addition to or independent of all other penalties provided by law, may suspend for any period of time not exceeding three years, or cancel the license of any person, partnership, association, or corporation, issued under R.C. § 4511.763.
(R.C. § 4511.762)

## § 72.85 LICENSING BY DEPARTMENT OF PUBLIC SAFETY.

(A) No person, partnership, association, or corporation shall transport pupils to or from school on a school bus or enter into a contract with a board of education of any school district for the transportation of pupils on a school bus without being licensed by the Department of Public Safety.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.763)

## § 72.86 REGISTRATION AND IDENTIFICATION OF SCHOOL BUSES.

(A) No person shall operate, nor shall any person being the owner thereof or having supervisory responsibility therefor, permit the operation of a school bus within this municipality unless there is displayed thereon an identifying number in accordance with R.C. § 4511.764.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of R.C.

§ 4511.63, 4511.76, 4511.761, 4511.762, 4511.77, or 4511.79 or a municipal ordinance that is substantially equivalent to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4511.764)

## § 72.87 SCHOOL BUS MARKING.

(A) No person shall operate, nor shall any person being the owner thereof or having supervisory responsibility therefor permit the operation of, a school bus within this municipality unless it is painted national school bus yellow and is marked on both front and rear with the words "school bus" in black lettering not less than eight inches in height and on the rear of the bus with the word "stop" in black lettering not less than ten inches in height.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or R.C. § 4511.77, or R.C. § 4511.63, 4511.76, 4511.761, 4511.762, 4511.764, or 4511.79 or a municipal ordinance that is substantially equivalent to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.

(C) Whenever a person is found guilty in a court of record of a violation of this section, the trial judge, in addition to or independent of all other penalties provided by law, may suspend, for any period of time not exceeding three years, or cancel the license of any person, partnership, association, or corporation issued under R.C. § 4511.763.
(R.C. § 4511.77)

## § 72.88 FLASHING LIGHT SIGNAL LAMPS.

(A) Every school bus shall, in addition to any other equipment and distinctive markings required pursuant to R.C. §§ 4511.76, 4511.761, 4511.764 and 4511.77, and any substantially equivalent municipal ordinances, be equipped with signal lamps mounted as high as practicable, which shall display to the front two alternately flashing red lights and two alternately flashing amber lights located at the same level and to the rear two alternately flashing red lights and alternately flashing amber lights located at the same level, and these lights shall be visible at 500 feet in normal sunlight. The alternately flashing red lights shall be spaced as widely as practicable, and the alternately flashing amber lights shall be located next to them.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.771)

## § 72.89 OCCUPANT RESTRAINING DEVICE FOR OPERATOR.

(A) On and after May 6, 1986, no person, school board, or governmental entity shall purchase, lease, or rent a new school bus unless the school bus has an occupant restraining device, as defined in R.C. § 4513.263, installed for use in its operator's seat.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4511.772)

## *LOCAL REGULATIONS*

## § 72.90 RULES FOR TURNS INTO PRIVATE DRIVEWAY, ALLEY OR BUILDING.

(A) The driver of a vehicle intending to turn into a private road or driveway, alley, or building from a public street or highway shall be governed by the following rules:

(1) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Upon a roadway where traffic is proceeding in opposite directions, approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the center line thereof.

(3) Upon a roadway where traffic is restricted to one direction, approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

(B) It shall be the duty of the driver of any vehicle entering a private road or driveway, alley, or building to yield the right-of-way to pedestrians lawfully using the sidewalk or sidewalk area extending across any alleyway, driveway, private road, or building vehicle entrance.
Penalty, see § 70.99

## § 72.91 U-TURNS RESTRICTED.

(A) No vehicle shall be turned so as to proceed in the opposite direction upon any state route.

(B) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, if such vehicle cannot be seen within 500 feet by the driver of any other vehicle approaching from either direction.
Penalty, see § 70.99.

## § 72.92 OPERATION IN A DIRECTION FORBIDDEN BY SIGN.

No operator of a vehicle shall operate the vehicle on any street or portion of a street or public way, in a direction opposite to or other than in the direction indicated by the traffic sign or signs erected and maintained at such location. No operator shall enter any street or public way where a traffic sign forbids such entrance.
Penalty, see § 70.99

## § 72.93 UNNECESSARY NOISE.

(A) No person shall sound any signaling device in the operation of a vehicle on any highway except when and to the extent reasonably necessary for the prevention of an accident and except other reasonable use for purposes of lawful operation in traffic or of reasonable warning or notice of presence or approach.

(B) No person shall knowingly create unnecessary noise or sound in the operation of a vehicle on any highway so as to disturb the peace and quiet of a neighborhood or of any ordinary pursuit. Without prejudice to the generality of the foregoing any noise produced by a cutout, bypass, gutted muffler, straight pipe, pinched tail pipe, whistle, or the retarding or advancing of the timing of the spark shall be deemed unnecessary.

(C) No person shall place a vehicle in motion from rest or accelerate a moving vehicle in such a manner as to create excessive and unnecessary noise or so as to deposit portions of the tires thereof on the surface of the highway whether from the spinning of the tires against the surface or materials thereon or from the high number of revolutions of the moving parts of its engine while the vehicle is in low or intermediate gear or gear range or from any other cause whatever.
Penalty, see § 70.99

## § 72.94 PARADES AND ASSEMBLAGES.

(A) No person, group of persons, or organization shall conduct or participate in any parade, procession, or assemblage upon any street or highway, or block off any street or highway area, without obtaining a permit from the Director of Safety.

(B) Applications for permits shall be made on the forms prescribed and shall contain such information as is reasonably necessary to a fair determination of whether a permit should be issued. Applications shall be filed not less than 15 days before the time intended for such parade, procession, or assemblage.

(C) The permit may be refused if:

(1) The time, place, size, or conduct of the parade including the assembly areas and route of march would unreasonably interfere with the public convenience and safe use of the streets and highways.

(2) The parade would require the diversion of so great a number of police officers to properly police the line of movement, assembly area and areas contiguous thereto as to deny normal police protection to the municipality.

(3) The parade route of march or assembly areas would unreasonably interfere with the movement of police vehicles, firefighting equipment, or ambulance service to other areas of the municipality.

(4) The parade would unreasonably interfere with another parade for which a permit has been issued.

(5) The information contained in the application is found to be false or nonexistent in any material detail.

(D) The permit or the event may be canceled if an emergency such as a fire or storm would prevent the proper conduct of the parade. The permit or any order accompanying it may limit or prescribe reasonable conditions, including the hours, the places of assembly and of dispersal, the route of march or travel and the streets, highways or portions thereof which may be used or occupied.

## § 72.96 UNAUTHORIZED VEHICLES AND DEVICES ON STREETS.

(A) No person shall ride upon or within or operate any device or vehicle upon any street that is not a motor vehicle, motorized bicycle, or bicycle as defined in § 70.01 (R.C. § 4501.01). It is prima facie evidence of a violation of this section if the vehicle or device in question is not a bicycle and is not licensed by this state as a motor vehicle or motorized bicycle.

(B) An exception to this section may be made for vehicles or devices used by a recognized charitable, fraternal, veterans', or service organization during an authorized parade for which a permit has been issued under § 72.20 of this chapter. This exception shall include travel along the authorized parade route and to the place of beginning immediately after the parade.
(Am. Ord. CM-1015, passed 7-9-1991) Penalty, see § 70.99

## § 72.97 SOUND INSTRUMENTS ON VEHICLES PROHIBITED.

No person, firm, or corporation, either as principal, agent, or employee, shall play, use, or operate for advertising purposes, or for any purpose whatever, on the public streets, alleys, or thoroughfares in the municipality, any device known as a sound truck, loudspeaker, or sound amplifier, or radio or phonograph with a loudspeaker or sound amplifier, or any other sound instrument, calliope or any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to or upon any vehicle operated or standing upon such streets or other public places except by permit of the Safety Director.

## § 72.98 ZONES OF QUIET.

Whenever authorized signs are erected indicating a zone of quiet, no person operating a vehicle within such zone shall sound the horn or other warning device of such vehicle except in an emergency.

## § 72.99 SIGNS PROHIBITED ON PUBLIC PROPERTY.

(A) No person, firm, or corporation, either as principal, agent, or employee shall erect, string, stretch, or spread advertising or political signs and banners or any other devices across any street, alley, or other public place in the municipality, except as permitted by law unless by permit of the Director of Safety.

(B) No person, firm, or corporation, either as principal, agent, or employee shall paint any sign of any kind or nature upon the sidewalks, streets, or curbs of the municipality or attach any signs to any lighting standards, utility poles, posts, trees, or parking meters, except by authority of the Director of Safety.

# CHAPTER 73: MOTOR VEHICLE CRIMES

Section

***Statutory reference:***

*Notice of arrest of certain commercial drivers, see R.C. § 5577.14*

## *GENERAL PROVISIONS*

### § 73.01 DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

(A) (1) No person shall operate any vehicle within this municipality, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(b) The person has a concentration of 0.08% or more but less than 0.17% by weight per unit volume of alcohol in the person's whole blood.

(c) The person has a concentration of 0.096% or more but less than 0.204% by weight per unit volume of alcohol in the person's blood serum or plasma.

(d) The person has a concentration of 0.08 grams or more but less than 0.17 grams by weight of alcohol per 210 liters of the person's breath.

(e) The person has a concentration of 0.11 grams or more but less than 0.238 grams by weight of alcohol per 100 milliliters of the person's urine.

(f) The person has a concentration of 0.17% or more by weight per unit volume of alcohol in the person's whole blood.

(g) The person has a concentration of 0.204% or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(h) The person has a concentration of 0.17 grams or more by weight of alcohol per 210 liters of the person's breath.

(i) The person has a concentration of 0.238 grams or more by weight of alcohol per 100 milliliters of the person's urine.

(j) Except as provided in division (K) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

1. The person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

2. The person has a concentration of cocaine in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

3. The person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

4. The person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

5. The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

6. The person has a concentration of L.S.D. in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

7. The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.

8. Either of the following applies:

A. The person is under the influence of alcohol, a drug of abuse, or a combination of them, and the person has a concentration of marihuana metabolite in the person's urine of at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

B. The person has a concentration of marihuana metabolite in the person's urine of at least 35 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of

marihuana metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

9. The person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.

10. The person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

11. The State Board of Pharmacy has adopted a rule pursuant to R.C. § 4729.041 that specifies the amount of salvia divinorum and the amount of salvinorin A that constitute concentrations of salvia divinorum and salvinorin A in a person's urine, in a person's whole blood, or in a person's blood serum or plasma at or above which the person is impaired for purposes of operating any vehicle within this state, the rule is in effect, and the person has a concentration of salvia divinorum or salvinorin A of at least that amount so specified by rule in the person's urine, in the person's whole blood, or in the person's blood serum or plasma.

(2) No person who, within 20 years of the conduct described in division (A)(2)(a) of this section, previously has been convicted of or pleaded guilty to a violation of this division or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) or (B) of this section or a substantially equivalent state law or municipal ordinance, or any other equivalent offense shall do both of the following:

(a) Operate any vehicle within this municipality while under the influence of alcohol, a drug of abuse, or a combination of them;

(b) Subsequent to being arrested for operating the vehicle as described in division (A)(2)(a) of this section, being asked by a law enforcement officer to submit to a chemical test or tests under R.C. § 4511.191 or any substantially equivalent municipal ordinance, and being advised by the officer in accordance with R.C. § 4511.192 or any substantially equivalent municipal ordinance of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

(B) No person under 21 years of age shall operate any vehicle within this municipality, if, at the time of the operation, any of the following apply:

(1) The person has a concentration of at least 0.02% but less than 0.08% by weight per unit volume of alcohol in the person's whole blood.

(2) The person has a concentration of at least 0.03% but less than 0.096% by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least 0.02 grams but less than 0.08 grams by weight of alcohol per 210 liters of the person's breath.

(4) The person has a concentration of at least 0.028 grams but less than 0.11 grams by weight of alcohol per 100 milliliters of the person's urine.

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1)(a) or (A)(2) and a violation of division (B)(1), (B)(2), or (B)(3) of this section, but the person may not be convicted of more than one violation of these divisions.

(D) (1) (a) In any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(a) of this section or for an equivalent offense that is vehicle-related, the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in R.C. § 2317.02, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

(b) In any criminal prosecution for a violation of division (A) or (B) of this section or for an equivalent offense that is vehicle-related, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in R.C. § 4511.192(A) as the maximum period of time during which a person may consent to a chemical test or tests as described in that section. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood test at the request of a law enforcement officer under R.C. § 4511.191 or a substantially equivalent municipal ordinance, or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, an emergency medical technician-intermediate, an emergency medical technician-paramedic, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood. The bodily substance withdrawn under this division (D)(1)(b) shall be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director pursuant to R.C. § 3701.143.

(c) As used in division (D)(1)(b) of this section, ***EMERGENCY MEDICAL TECHNICIAN-INTERMEDIATE*** and ***EMERGENCY MEDICAL TECHNICIAN-PARAMEDIC*** have the same meanings as in R.C. § 4765.01.

(2) In a criminal prosecution for a violation of division (A) of this section or for an equivalent offense that is vehicle-related, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in divisions (A)(1)(b), (A)(1)(c), (A)(1)(d) and (A)(1)(e) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (A)(1)(j) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or
affect a criminal prosecution for a violation of division (B) of this section.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis. If the chemical test was obtained pursuant to division (D)(1)(b) of this section, the person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. If the person was under arrest as described in R.C. § 4511.191(A)(5), the arresting officer shall advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. If the person was under arrest other than described in R.C. § 4511.191(A)(5), the form to be read to the person to be tested, as required under § 73.02, shall state that the person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.

(4) (a) As used in division (D)(4)(b) and (D)(4)(c) of this section, ***NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION*** means the National Highway Traffic Safety Administration established as an administration of the United States Department of Transportation under 96 Stat. 2415 (1983), 49 U.S.C. § 105.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including but not limited to any testing standards then in effect that were set by the National Highway Traffic Safety Administration, all of the following apply:

1. The officer may testify concerning the results of the field sobriety test so administered.

2. The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

3. If testimony is presented or evidence is introduced under division (D)(4)(b)1. or (D)(4)(b)2. of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(c) Division (D)(4)(b) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (D)(4)(b) of this section.

(E) (1) Subject to division (E)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(b), (A)(1)(c), (A)(1)(d), (A)(1)(e), (A)(1)(f), (A)(1)(g), (A)(1)(h), (A)(1)(i), or (A)(1)(j) or (B)(1), (B)(2), (B)(3), or (B)(4) of this section or for an equivalent offense that is substantially equivalent to any of those divisions, a laboratory report from any laboratory personnel issued a permit by the

Department of Health authorizing an analysis as described in this division that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this division shall be admitted as prima facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:

(a) The signature, under oath, of any person who performed the analysis;

(b) Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;

(c) A copy of a notarized statement by the laboratory director of a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;

(d) An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in division (E)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

(3) A report of the type described in division (E)(1) of this section shall not be prima facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice.

(F) (1) Except as otherwise provided in this division, any physician, registered nurse, emergency medical technician-intermediate, emergency medical technician-paramedic, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section or R.C. § 4511.19, 4511.191 or 4511.192, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section or R.C. § 4511.19, 4511.191 or 4511.192, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division also extends to an emergency medical service organization that employs an emergency medical technician-intermediate or emergency medical technician-paramedic who withdraws blood under this section. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

(2) As used in division (F)(1), ***EMERGENCY MEDICAL TECHNICIAN-INTERMEDIATE*** and ***EMERGENCY MEDICAL TECHNICIAN-PARAMEDIC*** have the same meanings as in R.C. § 4765.01.

(G) (1) Whoever violates any provisions of divisions (A)(1)(a) through (A)(1)(i) or (A)(2) of this section is guilty of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them.

Whoever violates division (A)(1)(j) of this section is guilty of operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance. The court shall sentence the offender for either offense under R.C. Chapter 2929, except as otherwise authorized or required by divisions (G)(1)(a) through (G)(1)(e) of this section:

(a) Except as otherwise provided in division (G)(1)(b), (G)(1)(c), (G)(1)(d), or (G)(1)(e) of this section, the offender is guilty of a misdemeanor of the first degree, and the court shall sentence the offender to all of the penalties and sanctions provided in R.C. § 4511.19(G)(1)(a)(i) through (G)(1)(a)(iv).

(b) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to one violation of division (A) or (B) of this section or one other equivalent offense is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the penalties and sanctions provided in R.C. § 4511.19(G)(1)(b)(i) through (G)(1)(b)(v).

(c) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to two violations of division (A) or (B) of this section or other equivalent offenses is guilty of a misdemeanor. The court shall sentence the offender to all of the penalties and sanctions provided in R.C. § 4511.19(G)(1)(c)(i) through (G)(1)(c)(vi).

(d) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of this section or other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more violations of that nature is guilty of a felony to be prosecuted under appropriate state law.

(e) An offender who previously has been convicted of or pleaded guilty to a violation of R.C. § 4511.19(A) that was a felony, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony to be prosecuted under appropriate state law.

(2) An offender who is convicted of or pleads guilty to a violation of division (A) of this section and who subsequently seeks reinstatement of the driver's or occupational driver's license or permit or nonresident operating privilege suspended under this section or R.C. § 4511.19 as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in R.C. § 4511.191(F)(2).

(3) (a) If an offender is sentenced to a jail term under R.C. § 4511.19(G)(1)(b)(i) or (G)(1)(b)(ii) or (G)(1)(c)(i) or (G)(1)(c)(ii) and if, within 60 days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the 60-day period following the date of sentencing, the court may impose an alternative sentence as specified in R.C. § 4511.19(G)(3) that includes a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

(b) As an alternative to the mandatory jail terms as required by R.C. § 4511.19(G)(1), the court may sentence the offender as provided in R.C. § 4511.19(G)(3).

(4) If an offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under division (G) of this section or R.C. § 4511.19(G) and if R.C. § 4510.13 permits the court to grant limited driving privileges, the court may grant the limited driving privileges in accordance with that section. If division (A)(7) of that section requires the court impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates that are issued under R.C. § 4503.231, except as provided in division (B) of that section, the court shall impose that condition as one of the conditions of the limited driving privileges granted to the offender, except as provided in R.C. § 4503.231(B).

(5) Fines imposed under this section for a violation of division (A) of this section shall be distributed as provided in R.C. § 4511.19(G)(5).

(6) If title to a motor vehicle that is subject to an order of criminal forfeiture under division (G)(1)(c), (G)(1)(d), or (G)(1)(e) of this section is assigned or transferred and R.C. § 4503.234(B)(2) or (B)(3) applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Automobile Dealers Association. The proceeds of any fine so imposed shall be distributed in accordance with division (C)(2) of that section.

(7) In all cases in which an offender is sentenced under division (G) of this section, the offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, the court, in addition to any other penalties provided by law, may order restitution pursuant to § 130.99(G) or R.C. § 2929.18 or 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under division (G) of this section.

(8) A court may order an offender to reimburse a law enforcement agency for any costs incurred by the agency with respect to a chemical test or tests administered to the offender if all of the following apply:

(a) The offender is convicted of or pleads guilty to a violation of division (A) of this section.

(b) The test or tests were of the offender's whole blood, blood serum or plasma, or urine.

(c) The test or tests indicated that the offender had a prohibited concentration of a controlled substance or a metabolite of a controlled substance in the offender's whole blood, blood serum or plasma, or urine at the time of the offense.

(9) As used in division (G) of this section, ***ELECTRONIC MONITORING*** has the same meaning as in R.C. § 2929.01.

(H) Whoever violates division (B) of this section is guilty of operating a motor vehicle after underage alcohol consumption and shall be punished as follows:

(1) Except as otherwise provided in division (H)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court shall impose a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C.

§ 4510.02(A)(6). The court may grant limited driving privileges relative to the suspension under R.C. §§ 4510.021 and 4510.13. The court may grant unlimited driving privileges with an ignition interlock device relative to the suspension and may reduce the period of suspension as authorized under R.C. § 4510.022. If the court grants unlimited driving privileges under R.C. § 4510.022, the court shall suspend any jail term imposed under division (H)(1) of this section as required under that section.

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more violations of division (A) or (B) of this section or other equivalent offense or offenses, the offender is guilty of a misdemeanor of the third degree. In addition to any other sanction imposed for the offense, the court shall impose a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(4). The court may grant limited driving privileges relative to the suspension under R.C. §§ 4510.021 and 4510.13.

(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. § 2941.1414 and if the court imposes a jail term for the violation of division (B) of this section, the court shall impose upon the offender an additional definite jail term pursuant to R.C. § 2929.24(E).

(4) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to § 130.99(G) or R.C. § 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the violation of division (B) of this section.

(I) (1) No court shall sentence an offender to an alcohol treatment program under this section unless the treatment program complies with the minimum standards for alcohol treatment programs adopted under R.C. Chapter 5119 by the Director of Mental Health and Addiction Services.

(2) An offender who stays in a drivers' intervention program or in an alcohol treatment program under an order issued under this section shall pay the cost of the stay in the program. However, if the court determines that an offender who stays in an alcohol treatment program under an order issued under this section is unable to pay the cost of the stay in the program, the court may order that the cost be paid from the court's Indigent Drivers' Alcohol Treatment Fund.

(J) If a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under this section or R.C. § 4511.19 files an appeal regarding any aspect of the person's trial or sentence, the appeal itself does not stay the operation of the suspension.

(K) Division (A)(1)(j) of this section does not apply to a person who operates a vehicle while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(L) The prohibited concentrations of a controlled substance or a metabolite of a controlled substance listed in division (A)(1)(j) of this section also apply in a prosecution of a violation of R.C. § 2923.16(D) in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.

(M) All terms defined in R.C. § 4510.01 apply to this section. If the meaning of a term defined in R.C. § 4510.01 conflicts with the meaning of the same term as defined in R.C. § 4501.01 or 4511.01, the term as defined in R.C. § 4510.01 applies to this section.
(R.C. § 4511.19(A) - (M))

(N) As used in this section, § 73.02 and § 73.03:

***COMMUNITY RESIDENTIAL SANCTION.*** Has the same meaning as in R.C. § 2929.01.

***CONTINUOUS ALCOHOL MONITORING.*** Has the same meaning as in R.C. § 2929.01.

***DRUG OF ABUSE.*** Has the same meaning as in R.C. § 4506.01.

***EQUIVALENT OFFENSE.*** Means any of the following:

(a) A violation of R.C. § 4511.19(A) or (B);

(b) A violation of a municipal OVI ordinance;

(c) A violation of R.C. § 2903.04 in a case in which the offender was subject to the sanctions described in division (D) of that section;

(d) A violation of R.C. § 2903.06(A)(1) or R.C. § 2903.08 or a municipal ordinance that is substantially equivalent to either of those divisions;

(e) A violation of R.C. § 2903.06(A)(2), (A)(3), or (A)(4), R.C. § 2903.08(A)(2), or former R.C. § 2903.07, or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;

(f) A violation of R.C. § 1547.11(A) or (B);

(g) A violation of a municipal ordinance prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on the waters of this state while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on the waters of this state with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine;

(h) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to R.C. § 4511.19(A) or (B) or R.C. § 1547.11(A) or (B);

(i) A violation of a former law of this state that was substantially equivalent to R.C. § 4511.19(A) or (B) or R.C. § 1547.11(A) or (B).

***EQUIVALENT OFFENSE THAT IS VEHICLE-RELATED.*** Means an equivalent offense that is any of the following:

(a) A violation described in division (a), (b), (c), (d), or (e) of the definition for "equivalent offense" provided in this division (N);

(b) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to R.C. § 4511.19(A) or (B);

(c) A violation of a former law of this state that was substantially equivalent to R.C. § 4511.19(A) or (B).

***JAIL.*** Has the same meaning as in R.C. § 2929.01.

***MANDATORY JAIL TERM.*** Means the mandatory term in jail of 3, 6, 10, 20, 30, or 60 days that must be imposed under R.C. § 4511.19(G)(1)(a), (G)(1)(b), or (G)(1)(c) upon an offender convicted of a violation of division (A) of that section and in relation to which all of the following apply:

(a) Except as specifically authorized under R.C. § 4511.19, the term must be served in a jail.

(b) Except as specifically authorized under R.C. § 4511.19, the term cannot be suspended, reduced, or otherwise modified pursuant to R.C. §§ 2929.21 through 2929.28 or any other provision of the Ohio Revised Code.

***MANDATORY PRISON TERM.*** Has the same meaning as in R.C. § 2929.01.

***MANDATORY TERM OF LOCAL INCARCERATION.*** Has the same meaning as in R.C. § 2929.01.

***MUNICIPAL OVI ORDINANCE*** and ***MUNICIPAL OVI OFFENSE.*** Mean any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

***PRISON TERM.*** Has the same meaning as in R.C. § 2929.01.

***SANCTION.*** Has the same meaning as in R.C. § 2929.01.
(R.C. § 4511.181)

***Cross-reference:***
*Endangering children, see § 135.14*

***Statutory reference:***
*Mandatory suspension periods; immobilizing or disabling device; restricted license, see R.C. § 4510.13*
*Trial judge to suspend driver's license, see R.C. § 4510.05*

## § 73.011 IMPLIED CONSENT.

(A) (1) As used in this section:

***ALCOHOL MONITORING DEVICE.*** Means any device that provides for continuous alcohol monitoring, any ignition interlock device, any immobilizing or disabling device other than an ignition interlock device that is constantly available to monitor the concentration of alcohol in a person's system, or any other device that provides for the automatic testing and periodic reporting of alcohol consumption by a person and that a court orders a person to use as a sanction imposed as a result of the person's conviction of or plea of guilty to an offense.

***COMMUNITY ADDICTION SERVICES PROVIDER.*** Has the same meaning as in R.C. § 5119.01.

***PHYSICAL CONTROL.*** Has the same meaning as in R.C. § 4511.194.

(2) Any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking within this municipality or who is in physical control of a vehicle shall be deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for a violation of § 73.01(A) or (B), § 73.03, R.C. § 4511.19(A) or (B), R.C. § 4511.194 or a substantially equivalent municipal ordinance, or any other municipal OVI ordinance.

(3) The chemical test or tests under division (A)(2) of this section shall be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle in violation of a division, section, or ordinance identified in division (A)(2) of this section. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

(4) Any person who is dead or unconscious, or who otherwise is in a condition rendering the person incapable of refusal, shall be deemed to have consented as provided in division (A)(2) of this section, and the test or tests may be administered, subject to R.C. §§ 313.12 through 313.16.

(5) (a) If a law enforcement officer arrests a person for a violation of R.C. § 4511.19(A) or (B), R.C. § 4511.194 or a substantially equivalent municipal ordinance, or a municipal OVI ordinance and if the person if convicted would be required to be sentenced under R.C. § 4511.19(G)(1)(c), (d), or (e), the law enforcement officer shall request the person to submit, and the person shall submit, to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine. A law enforcement officer who makes a request pursuant to this division that a person submit to a chemical test or tests is not required to advise the person of the consequences of submitting to, or refusing to submit to, the test or tests and is not required to give the person the form described in division (C) of this section, but the officer shall advise the person at the time of the arrest that if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. The officer shall also advise the person at the time of the arrest that the person may have an independent chemical test taken at the

person's own expense. Divisions (A)(3) and (A)(4) of this section apply to the administration of a chemical test or tests pursuant to this division.

(b) If a person refuses to submit to a chemical test upon a request made pursuant to division (A)(5)(a) of this section, the law enforcement officer who made the request may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. A law enforcement officer who acts pursuant to this division to ensure that a person submits to a chemical test of the person's whole blood or blood serum or plasma is immune from criminal and civil liability based upon a claim for assault and battery or any other claim for the acts, unless the officer so acted with malicious purpose, in bad faith, or in a wanton or reckless manner.
(R.C. § 4511.191(A))

(B) Except as provided in division (A)(5) of this section, the arresting law enforcement officer shall give advice in accordance with this section to any person under arrest for a violation of § 73.01(A) or (B), § 73.03, R.C. § 4511.19(A) or (B), R.C. § 4511.194 or a substantially equivalent municipal ordinance, or any other municipal OVI ordinance. The officer shall give that advice in a written form that contains the information described in division (C) of this section and shall read the advice to the person. The form shall contain a statement that the form was shown to the person under arrest and read to the person by the arresting officer. One or more persons shall witness the arresting officer's reading of the form, and the witnesses shall certify to this fact by signing the form. The person must submit to the chemical test or tests, subsequent to the request of the arresting officer, within two hours of the time of the alleged violation and, if the person does not submit to the test or tests within that two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests.

(C) Except as provided in division (A)(5) of this section, if a person is under arrest as described in division (B) of this section, before the person may be requested to submit to a chemical test or tests to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine, the arresting officer shall read the following form to the person:

> You now are under arrest for (specifically state the offense under state law or a substantially equivalent municipal ordinance for which the person was arrested – operating a vehicle under the influence of alcohol, a drug, or a combination of them; operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance; operating a vehicle after underage alcohol consumption; or having physical control of a vehicle while under the influence).
>
> If you refuse to take any chemical test required by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated. If you have a prior conviction of OVI, OVUAC, or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance under state or municipal law within the preceding 20 years, you are now under arrest for state OVI, and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the state OVI.
>
> (Read this part unless the person is under arrest for solely having physical control of a vehicle while under the influence.) If you take any chemical test required by law and are found to be at or over the prohibited amount of alcohol, a controlled substance, or a metabolite of a controlled substance in your whole blood, blood serum or plasma, breath, or urine as set by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated.

If you take a chemical test, you may have an independent chemical test taken at your own expense.

(D) If the arresting law enforcement officer does not ask a person under arrest as described in division (B) of this section or division (A)(5) of this section to submit to a chemical test or tests under R.C. § 4511.191 or this section, the arresting officer shall seize the Ohio or out-of-state driver's or commercial driver's license or permit of the person and immediately forward it to the court in which the arrested person is to appear on the charge. If the arrested person is not in possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the arrest, and, upon the surrender, the agency immediately shall forward the license or permit to the court in which the person is to appear on the charge. Upon receipt of the license or permit, the court shall retain it pending the arrested person's initial appearance and any action taken under R.C. § 4511.196.

(E) (1) If a law enforcement officer asks a person under arrest as described in division (A)(5) of this section to submit to a chemical test or tests under that division and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, or if a law enforcement officer asks a person under arrest as described in division (B) of this section to submit to a chemical test or tests under R.C. § 4511.191 or this section, if the officer advises the person in accordance with this section of the consequences of the person's refusal or submission, and if either the person refuses to submit to the test or tests or, unless the arrest was for a violation of § 73.03, R.C. § 4511.194 or a substantially equivalent municipal ordinance, the person submits to the test or tests and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the arresting officer shall do all of the following:

(a) On behalf of the Registrar of Motor Vehicles, notify the person that, independent of any penalties or sanctions imposed upon the person, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, which will be held within five days after the date of the person's arrest or the issuance of a citation to the person, and that the person may appeal the suspension at the initial appearance or during the period of time ending 30 days after that initial appearance;

(b) Seize the driver's or commercial driver's license or permit of the person and immediately forward it to the Registrar. If the arrested person is not in possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the person is given notice of the suspension, and, upon the surrender, the officer's employing agency immediately shall forward the license or permit to the Registrar;

(c) Verify the person's current residence and, if it differs from that on the person's driver's or commercial driver's license or permit, notify the Registrar of the change;

(d) Send to the Registrar, within 48 hours after the arrest of the person, a sworn report that includes all of the following statements:

1. That the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was operating a vehicle in violation of R.C. § 4511.19(A) or (B) or a municipal OVI ordinance or for being in physical control of a stationary vehicle in violation of R.C. § 4511.194 or a substantially equivalent municipal ordinance;

2. That the person was arrested and charged with a violation of R.C. § 4511.19(A) or (B), R.C. § 4511.194 or a substantially equivalent municipal ordinance, or a municipal OVI ordinance;

3. Unless division (E)(1)(d)5. of this section applies, that the officer asked the person to take the designated chemical test or tests, advised the person in accordance with this section of the consequences of submitting to, or refusing to take, the test or tests, and gave the person the form described in division (C) of this section;

4. Unless division (E)(1)(d)5. of this section applies, that either the person refused to submit to the chemical test or tests or, unless the arrest was for a violation of R.C. § 4511.194 or a substantially equivalent municipal ordinance, the person submitted to the chemical test or tests and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.

5. If the person was under arrest as described in division (A)(5) of this section and the chemical test or tests were performed in accordance with that division, that the person was under arrest as described in that division, that the chemical test or tests were performed in accordance with that division, and that test results indicated a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.

(2) Division (E)(1) of this section does not apply to a person who is arrested for a violation of § 73.03, R.C. § 4511.194 or a substantially equivalent municipal ordinance, who is asked by a law enforcement officer to submit to a chemical test or tests under this section, and who submits to the test or tests, regardless of the amount of alcohol, a controlled substance, or a metabolite of a controlled substance that the test results indicate is present in the person's whole blood, blood serum or plasma, breath, or urine.

(F) The arresting officer shall give the officer's sworn report that is completed under this section to the arrested person at the time of the arrest, or the Registrar of Motor Vehicles shall send the report to the person by regular first class mail as soon as possible after receipt of the report, but not later than 14 days after receipt of it. An arresting officer may give an unsworn report to the arrested person at the time of the arrest provided the report is complete when given to the arrested person and subsequently is sworn to by the arresting officer. As soon as possible, but not later than 48 hours after the arrest of the person, the arresting officer shall send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which the person was arrested.

(G) The sworn report of an arresting officer completed under this section is prima facie proof of the information and statements that it contains. It shall be admitted and considered as prima facie proof of the information and statements that it contains in any appeal under R.C. § 4511.197 relative to any suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege that results from the arrest covered by the report.
(R.C. § 4511.192)

(H) (1) A suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege under this section for the time described in R.C. § 4511.191(B) or (C) is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is not guilty of the charge that resulted in the person's being requested to take the chemical test or tests under division (A) of this section does not affect the suspension.

(2) If a person arrested for operating a vehicle in violation of § 73.01(A) or (B), R.C. § 4511.19(A) or (B), or any other municipal OVI ordinance, or for being in physical control of a vehicle in violation of § 73.03 or R.C. § 4511.194 or a substantially equivalent municipal ordinance, regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under R.C. § 4511.191(B) or (C) or R.C. Chapter 4510, the person's initial appearance on the charge resulting from the arrest shall be held within five days of the persons' arrest or the issuance of the citation to him or her, subject to any continuance granted by the court pursuant to R.C. § 4511.197 regarding the issues specified in that section. (R.C. § 4511.191(D))

***Statutory reference:***

*Continuous alcohol monitoring, see R.C. § 4511.198*
*Disposition of fines, immobilization of vehicle and impoundment of license plates, criminal forfeiture for municipal ordinance conviction, see R.C. § 4511.193*
*Effect of refusal to submit to test, seizure of license, suspension periods, appeal procedures, occupational driving privileges, and Indigent Drivers Alcohol Treatment Funds, see R.C. § 4511.191*
*Judicial pretrial suspension, initial appearance, see R.C. § 4511.196*
*Mandatory suspension periods; immobilizing or disabling device; restricted license, see R.C. § 4510.13*
*Seizure of vehicles upon arrest, see R.C. § 4511.195*

## § 73.012 PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE.

(A) As used in this section, ***PHYSICAL CONTROL*** means being in the driver's position of the front seat of a vehicle and having possession of the vehicle's ignition key or other ignition device.

(B) No person shall be in physical control of a vehicle if, at the time of the physical control, any of the following apply:

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in § 73.01(A)(1)(b), (A)(1)(c), (A)(1)(d), or (A)(1)(e).

(3) Except as provided in division (E) of this section, the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the concentration specified in § 73.01(A)(1)(j).

(C) (1) In any criminal prosecution or juvenile court proceeding for a violation of this section, if a law enforcement officer has administered a field sobriety test to the person in physical control of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally acceptable field sobriety tests that were in effect at the time the tests were administered, including but not limited to any testing standards then in effect what were set by the National Highway Traffic Safety Administration, all of the following apply:

(a) The officer may testify concerning the results of the field sobriety test so administered.

(b) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(c) If testimony is presented or evidence is introduced under division (C)(1)(a) or (C)(1)(b) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence, and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(2) Division (C)(1) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (C)(1) of this section.

(D) Whoever violates this section is guilty of having physical control of a vehicle while under the influence, a misdemeanor of the first degree. In addition to other sanctions imposed, the court may impose on the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7).

(E) Division (B)(3) of this section does not apply to a person who is in physical control of a vehicle while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in § 73.01(A)(1)(j) if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.
(R.C. § 4511.194)

## § 73.02 DRIVING COMMERCIAL VEHICLE WITH IMPAIRED ALERTNESS OR ABILITY; USE OF DRUGS.

(A) No person shall drive a commercial motor vehicle, as defined in R.C. § 4506.01, or a commercial car or commercial tractor, as defined in R.C. § 4501.01, while the person's ability or alertness is so impaired by fatigue, illness, or other causes that it is unsafe for the person to drive such vehicle. No driver shall use any drug which would adversely affect the driver's ability or alertness.

(B) No owner, as defined in R.C. § 4501.01, of a commercial motor vehicle, commercial car or commercial tractor, or a person employing or otherwise directing the driver of such vehicle, shall require or knowingly permit a driver in any such condition described in division (A) of this section to drive such vehicle upon any street or highway.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of this section or R.C. § 4511.79, or R.C. § 4511.63, 4511.76, 4511.761, 4511.762, 4511.764, or 4511.77 or a

municipal ordinance that is substantially equivalent to any of those sections, whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4511.79)

## § 73.03 IMMOBILIZING OR DISABLING DEVICE VIOLATION.

(A) (1) No offender who has been granted limited or unlimited driving privileges, during any period that the offender is required to operate only a motor vehicle equipped with an immobilizing or disabling device, shall request or permit any other person to breathe into the device if it is an ignition interlock device or another type of device that monitors the concentration of alcohol in a person's breath or to otherwise start the motor vehicle equipped with the device, for the purpose of providing the offender with an operable motor vehicle.

(2) No person shall breathe into an immobilizing or disabling device that is an ignition interlock device or another type of device that monitors the concentration of alcohol in a person's breath or otherwise start a motor vehicle equipped with an immobilizing or disabling device, for the purpose of providing an operable motor vehicle to another person who has been granted limited or unlimited driving privileges under the condition that the person operate only a motor vehicle equipped with an immobilizing or disabling device.

(3) No unauthorized person shall tamper with or circumvent the operation of an immobilizing or disabling device.

(B) Whoever violates this section is guilty of an immobilizing or disabling device violation, a misdemeanor of the first degree.
(R.C. § 4510.44)

## § 73.04 OPERATION RESTRICTED FOR MINI-TRUCKS AND LOW-SPEED, UNDER-SPEED, OR UTILITY VEHICLES.

(A) (1) No person shall operate a low-speed vehicle upon any street or highway having an established speed limit greater than 35 miles per hour.

(2) No person shall operate an under-speed or utility vehicle or a mini-truck upon any street or highway except as follows:

(a) Upon a street or highway having an established speed limit not greater than 35 miles per hour and only upon such streets or highways where the municipality has granted permission for such operation in accordance with division (E) of this section;

(b) A state park or political subdivision employee or volunteer operating a utility vehicle exclusively within the boundaries of state parks or political subdivision parks for the operation or maintenance of state or political subdivision park facilities.

(3) No person shall operate a motor-driven cycle or motor scooter upon any street or highway having an established speed limit greater than 45 miles per hour.

(B) This section does not prohibit either of the following:

(1) A person operating a low-speed, under-speed, or utility vehicle or a mini-truck from proceeding across an intersection of a street or highway having a speed limit greater than 35 miles per hour;

(2) A person operating a motor-driven cycle or motor scooter from proceeding across an intersection of a street or highway having a speed limit greater than 45 miles per hour.

(C) Nothing in this section shall prevent the municipality from adopting more stringent local ordinances, resolutions, or regulations governing the operation of a low-speed vehicle or a mini-truck, or a motor-driven cycle or motor scooter.

(D) Except as otherwise provided in this division, whoever violates division (A) of this section is guilty of a minor misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.214)

(E) By ordinance or resolution, the municipality may authorize the operation of under-speed or utility vehicles or mini-trucks on a public street or highway under its jurisdiction. The municipality shall do all of the following:

(1) Limit the operation of those vehicles to streets and highways having an established speed limit not greater than 35 miles per hour;

(2) Require the vehicle owner who wishes to operate an under-speed or utility vehicle or a mini-truck on the public streets or highways to submit the vehicle to an inspection conducted by a local law enforcement agency that complies with inspection requirements established by the Department of Public Safety under R.C. § 4513.02;

(3) Permit the operation on public streets or highways of only those vehicles that successfully pass the required vehicle inspection, are registered in accordance with R.C. Chapter 4503, and are titled in accordance with R.C. Chapter 4505;

(4) Notify the Director of Public Safety, in a manner the Director determines, of the authorization for the operation of under-speed or utility vehicles or mini-trucks.

(F) The municipality may establish additional requirements for the operation of under-speed or utility vehicles or mini-trucks on its streets and highways.
(R.C. § 4511.215)

(G) Notwithstanding divisions (A) through (F) of this section, a person may operate a utility vehicle on any public roads or right-of-way, other than a freeway, when traveling from one farm field to another for agricultural purposes if the vehicle is displaying a triangular slow-moving vehicle emblem as described in R.C. § 4513.11.
(R.C. § 4511.216)

(H) (1) Except as provided in this division (H) and divisions (E) and (F) of this section, no person shall operate a mini-truck within this municipality.

(2) A person may operate a mini-truck on a farm for agricultural purposes only when the owner of the farm qualifies for the current agricultural use valuation tax credit. A mini-truck may be operated by or on behalf of such a farm owner on public roads and rights-of-way only when traveling from one farm field to another.

(3) A person may operate a mini-truck on property owned or leased by a dealer who sells mini-trucks at retail.

(4) Whoever violates this division (H) shall be penalized as provided in division (D) of this section. (R.C. § 4519.401)

## *RECKLESS OPERATION*

### § 73.05 RECKLESS OPERATION OF VEHICLES.

(A) No person shall operate a vehicle on any street or highway in willful or wanton disregard of the safety of persons or property.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.20)
***Cross-reference:***
*License suspension, see § 71.15*

### § 73.06 RECKLESS OPERATION OFF STREETS AND HIGHWAYS; COMPETITIVE OPERATION.

(A) (1) No person shall operate a vehicle on any public or private property other than streets or highways in willful or wanton disregard of the safety of persons or property.

(2) This section does not apply to the competitive operation of vehicles on public or private property when the owner of such property knowingly permits such operation thereon.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the

fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.201)
***Cross-reference:***
*License suspension, see § 71.15*

### § 73.07 OPERATOR TO BE IN REASONABLE CONTROL.

(A) No person shall operate a motor vehicle, agricultural tractor, or agricultural tractor that is towing, pulling, or otherwise drawing a unit of farm machinery on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle, agricultural tractor, or unit of farm machinery.

(B) Whoever violates this section is guilty of operating a motor vehicle or agricultural tractor without being in control of it, a minor misdemeanor.
(R.C. § 4511.202)

## *SPEED REGULATIONS*

### § 73.10 SPEED LIMITS.

(A) No person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard for the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle in and upon any street or highway at a greater speed than will permit him or her to bring it to a stop within the assured clear distance ahead.

(B) It is prima facie lawful, in the absence of a lower limit declared or established pursuant to this section by the Director of Transportation or local authorities, for the operator of a motor vehicle to operate the same at a speed not exceeding the following:

(1) (a) Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when 20 miles per hour school speed limit signs are erected, except that on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by division (B)(4) of this section, and on freeways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by divisions (B)(10) and (B)(11) of this section. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the *Manual and Specifications for a Uniform System of Traffic-Control Devices* shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.

(b) As used in this section, ***SCHOOL*** means any school chartered under R.C. § 3301.16 and any nonchartered school that during the preceding year filed with the Department of Education in compliance with

O.A.C. § 3301-35-08, a copy of the school's report for the parents of the school's pupils certifying that the school meets state minimum standards for nonchartered, nontax-supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone. The term also includes a special elementary school that in writing requests the County Engineer to create a school zone at the location of the school. Upon receipt of such written request, the County Engineer shall create a school zone at that location by erecting appropriate signs.

(c) As used in this section, ***SCHOOL ZONE*** means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway, and also includes that portion of a state highway. Upon request from local authorities for streets and highways under their jurisdiction and that portion of a state highway under the jurisdiction of the Director of Transportation or a request from a County Engineer in the case of a school zone for a special elementary school, the Director may extend the traditional school zone boundaries. The distances in divisions (B)(1)(c)1. through (B)(1)(c)3. below shall not exceed 300 feet per approach per direction, and are bounded by whichever of the following distances or combination thereof the Director approves as most appropriate:

1. The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of 300 feet on each approach direction;

2. The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of 300 feet on each approach direction;

3. The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of 300 feet on each approach direction of the highway.

(d) Nothing in this section shall be construed to invalidate the Director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in divisions (B)(1)(a) and (B)(1)(c) of this section.

(e) As used in this division, ***CROSSWALK*** has the meaning given that term in R.C. § 4511.01(LL)(2).

(f) The Director may, upon request by resolution of the Legislative Authority and upon submission by the municipality of such engineering, traffic, and other information as the Director considers necessary, designate a school zone on any portion of a state route lying within the municipality that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of a crosswalk is no more than 1,320 feet. Such a school zone shall include the distance encompassed by the crosswalk and extending 300 feet in each appropriate direction of the state route.

(g) As used in this section, ***SPECIAL ELEMENTARY SCHOOL*** means a school that meets all of the following:

1. It is not chartered and does not receive tax revenue from any source.

2. It does not educate children beyond the eighth grade.

3. It is located outside the limits of a municipal corporation.

4. A majority of the total number of students enrolled at the school are not related by blood.

5. The principal or other person in charge of the special elementary school annually sends a report to the superintendent of the school district in which the special elementary school is located indicating the total number of students enrolled at the school, but otherwise the principal or other person in charge does not report any other information or data to the superintendent.

(2) Twenty-five miles per hour in all other portions of the municipality, except on state routes outside business districts, through highways outside business districts, and alleys;

(3) Thirty-five miles per hour on all state routes or through highways within the municipality outside business districts, except as provided in divisions (B)(4) and (B)(6) of this section;

(4) Fifty miles per hour on controlled-access highways and expressways within the municipality;

(5) Fifty-five miles per hour on highways outside the municipality, other than highways within island jurisdictions as provided in division (B)(8) of this section, highways as provided in divisions (B)(9) and (B)(10) of this section, and highways, expressways and freeways as provided in divisions (B)(13), (B)(14), (B)(15) and (B)(17) of this section;

(6) Fifty miles per hour on state routes within the municipality outside urban districts unless a lower prima facie speed is established as further provided in this section;

(7) Fifteen miles per hour on all alleys within the municipality;

(8) Thirty-five miles per hour on highways outside the municipality that are within an island jurisdiction;

(9) Thirty-five miles per hour on through highways, except state routes, that are outside municipal corporations and that are within a national park with boundaries extending through two or more counties;

(10) Sixty miles per hour on two-lane state routes outside municipal corporations as established by the Director under R.C. § 4511.21(H)(2);

(11) Fifty-five miles per hour at all times on freeways with paved shoulders inside the municipality, other than freeways as provided in divisions (B)(15) and (B)(17) of this section;

(12) Fifty-five miles per hour at all times on freeways outside the municipality, other than freeways as provided in divisions (B)(15) and (B)(17) of this section;

(13) Sixty miles per hour for operators of any motor vehicle at all times on all portions of rural divided highways;

(14) Sixty-five miles per hour for operators of any motor vehicle at all times on all rural expressways without traffic control signals;

(15) Seventy miles per hour for operators of any motor vehicle at all times on all rural freeways;

(16) Fifty-five miles per hour for operators of any motor vehicle at all times on all portions of freeways in congested areas as determined by the Director and that are part of the interstate system and are located within a municipal corporation or within an interstate freeway outerbelt;

(17) Sixty-five miles per hour for operators of any motor vehicle at all times on all portions of freeways in urban areas as determined by the Director and that are part of the interstate system and are part of an interstate freeway outerbelt.

(C) It is prima facie unlawful for any person to exceed any of the speed limitations in divisions (B)(1)(a), (B)(2), (B)(3), (B)(4), (B)(6), (B)(7), (B)(8) and (B)(9) of this section or any declared or established pursuant to this section by the Director or local authorities and it is unlawful for any person to exceed any of the speed limitations in division (D) of this section. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

(D) No person shall operate a motor vehicle upon a street or highway as follows:

(1) At a speed exceeding 55 miles per hour, except upon a two-lane state route as provided in division (B)(10) of this section and upon a highway, expressway or freeway as provided in divisions (B)(13), (B)(14), (B)(15) and (B)(17) of this section;

(2) At a speed exceeding 60 miles per hour upon a two-lane state route as provided in division (B)(10) of this section and upon a highway as provided in division (B)(13) of this section;

(3) At a speed exceeding 65 miles per hour upon an expressway as provided in division (B)(14) of this section or upon a freeway as provided in division (B)(17) of this section, except upon a freeway as provided in division (B)(15) of this section;

(4) At a speed exceeding 70 miles per hour upon a freeway as provided in division (B)(15) of this section;

(5) At a speed exceeding the posted speed limit upon a highway, expressway or freeway for which the Director has determined and declared a speed limit pursuant to R.C. § 4511.21(I)(2) or (L)(2).

(E) Pursuant to R.C. § 4511.21(E), in every charge of violating this section, the affidavit and warrant shall specify the time, place and speed at which the defendant is alleged to have driven, and in charges made in reliance upon division (C) of this section also the speed which division (B)(1)(a), (B)(2), (B)(3), (B)(4), (B)(6), (B)(7), (B)(8) or (B)(9) of, or a limit declared or established pursuant to, this section or R.C. § 4511.21 declares is prima facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit the person to bring the vehicle to stop within the assured clear distance ahead, the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

(F) Pursuant to R.C. § 4511.21(F), when a speed in excess of both a prima facie limitation and a limitation in division (D) of this section is alleged, the defendant shall be charged in a single affidavit, alleging a single act,

with a violation indicated of both division (B)(1)(a), (B)(2), (B)(3), (B)(4), (B)(6), (B)(7), (B)(8) or (B)(9) of this section, or of a limit declared or established pursuant to this section or R.C. § 4511.21 by the Director or local authorities, and of the limitation in division (D) of this section. If the court finds a violation of division (B)(1)(a), (B)(2), (B)(3), (B)(4), (B)(6), (B)(7), (B)(8) or (B)(9) of, or a limit declared or established pursuant to, this section or R.C. § 4511.21 has occurred, it shall enter a judgment of conviction under such division and dismiss the charge under division (D) of this section. If it finds no violation of division (B)(1)(a), (B)(2), (B)(3), (B)(4), (B)(6), (B)(7), (B)(8) or (B)(9) of, or a limit declared or established pursuant to, this section or R.C. § 4511.21, it shall then consider whether the evidence supports a conviction under division (D) of this section.

(G) Pursuant to R.C. § 4511.21(G), points shall be assessed for a violation of a limitation under division (D) of this section in accordance with R.C. § 4510.036.
(R.C. § 4511.21(A) - (G))

(H) Whenever, in accordance with R.C. § 4511.21(H) through (N), the maximum prima facie speed limitations as established herein have been altered, either higher or lower, and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. It is prima facie unlawful for any person to exceed the speed limits posted upon such signs.

(I) As used in this section:

***COMMERCIAL BUS.*** Means a motor vehicle designed for carrying more than nine passengers and used for the transportation of persons for compensation.

***INTERSTATE SYSTEM.*** Has the same meaning as in 23 U.S.C. § 101.

***NONCOMMERCIAL BUS.*** Includes but is not limited to a school bus, or a motor vehicle operated solely for the transportation of persons associated with a charitable or nonprofit organization.

***OUTERBELT.*** A portion of a freeway that is part of the interstate system and is located in the outer vicinity of a major municipal corporation or group of municipal corporations, as designated by the Director.

***RURAL.*** Outside urbanized areas, as designated in accordance with 23 U.S.C. § 101, and outside of a business or urban district.
(R.C. § 4511.21(O))

(J) *Speed limits for private roads and driveways.*

(1) The owner of a private road or driveway located in a private residential area containing 20 or more dwelling units may establish a speed limit on the road or driveway by complying with all of the following requirements:

(a) The speed limit is not less than 25 miles per hour and is indicated by a sign that is in a proper position, is sufficiently legible to be seen by an ordinarily observant person, and meets the specifications for the basic speed limit sign included in the manual adopted by the Department of Transportation pursuant to R.C. § 4511.09;

(b) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, a speed limit has been established for the road or driveway, and the speed limit is enforceable by law enforcement officers under state law.

(2) No person shall operate a vehicle upon a private road or driveway as provided in division (J)(1) of this section at a speed exceeding any speed limit established and posted pursuant to division (J)(1).

(3) When a speed limit is established and posted in accordance with division (J)(1) of this section, a law enforcement officer may apprehend a person violating the speed limit of the residential area by utilizing any of the means described in R.C. § 4511.091 or by any other accepted method of determining the speed of a motor vehicle and may stop and charge the person with exceeding the speed limit.

(4) Pursuant to R.C. § 4511.211(D), points shall be assessed for violation of a speed limit established and posted in accordance with division (J)(1) of this section in accordance with R.C. § 4510.036.

(5) As used in this division (J):

***OWNER.*** Includes but is not limited to a person who holds title to the real property in fee simple, a condominium owners' association, a property owners' association, a board of directors or trustees of a private community, and a nonprofit corporation governing a private community.

***PRIVATE RESIDENTIAL AREA CONTAINING 20 OR MORE DWELLING UNITS.*** Does not include a Chautauqua assembly as defined in R.C. § 4511.90.
(R.C. § 4511.211(A) - (E))

(K) *Penalties.*

(1) *Divisions (A) through (I).*

(a) A violation of any provision of divisions (A) through (I) of this section is one of the following:

1. Except as otherwise provided in divisions (K)(1)(a)2., (K)(1)(a)3., (K)(1)(b), and (K)(1)(c) of this section, a minor misdemeanor;

2. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of any provision of divisions (A) through (I) of this section, R.C. § 4511.21, or any provision of any other municipal ordinance that is substantially equivalent to any provision of that section, a misdemeanor of the fourth degree;

3. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of any provision of divisions (A) through (I) of this section, R.C. § 4511.21, or any provision of any other municipal ordinance that is substantially equivalent to any provision of that section, a misdemeanor of the third degree.

(b) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of division (A) through (I) of this section, R.C. § 4511.21, or any other municipal ordinance that is

substantially equivalent to any provision of that section, and operated a motor vehicle faster than 35 miles an hour in a business district of the municipality, faster than 50 miles an hour in other portions of the municipality, or faster than 35 miles an hour in a school zone during recess or while children are going to or leaving school during the school's opening or closing hours, a misdemeanor of the fourth degree.

(c) Notwithstanding division (K)(1)(a) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with R.C. § 4511.98, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the usual amount imposed for the violation. No court shall impose a fine of two times the usual amount imposed for the violation upon an offender if the offender alleges, in an affidavit filed with the court prior to the offender's sentencing, that the offender is indigent and is unable to pay the fine imposed pursuant to this division and if the court determines that the offender is an indigent person and unable to pay the fine.
(R.C. § 4511.21(P))

(2) *Division (J).* A violation of division (J)(2) of this section is one of the following:

(a) Except as otherwise provided in divisions (K)(2)(b) and (K)(2)(c) of this section, a minor misdemeanor;

(b) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two violations of division (J)(2) of this section, R.C. § 4511.211(B), or any other municipal ordinance that is substantially equivalent to that division, a misdemeanor of the fourth degree;

(c) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more violations of division (J)(2) of this section, R.C. § 4511.211(B), or any other municipal ordinance that is substantially equivalent to that division, a misdemeanor of the third degree.
(R.C. § 4511.211(F))

***Statutory reference:***

*Alteration of speed limits with approval of Director, see R.C. § 4511.21(H) through (N)*
*Arrest pending warrant when radar, electrical or mechanical timing device used to determine violation, see R.C. § 4511.091*

## § 73.11 SLOW SPEED OR STOPPING.

(A) No person shall stop or operate a vehicle at such an unreasonably slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law.

(B) Whenever the Director of Transportation or local authorities determine on the basis of an engineering and traffic investigation that slow speeds on any part of a controlled-access highway, expressway, or freeway consistently impede the normal and reasonable movement of traffic, the Director or such local authority may declare a minimum speed limit below which no person shall operate a motor vehicle, except when necessary for safe operation or in compliance with the law. No minimum speed limit established hereunder shall be less than 30 miles per hour, greater than 50 miles per hour, nor effective until the provisions of R.C. § 4511.21 or a substantially equivalent municipal ordinance, relating to appropriate signs, have been fulfilled and local authorities have obtained the approval of the Director.

(C) In a case involving a violation of this section, the trier of fact, in determining whether the vehicle was being operated at an unreasonably slow speed, shall consider the capabilities of the vehicle and its operator.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.22)

## § 73.12 EMERGENCY VEHICLES EXCEPTED FROM SPEED LIMITATION.

The prima facie speed limitations set forth in R.C. § 4511.21 or a substantially equivalent municipal ordinance do not apply to emergency vehicles or public safety vehicles when they are responding to emergency calls and are equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle, and when the drivers thereof sound audible signals by bell, siren, or exhaust whistle. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons using the street or highway.
(R.C. § 4511.24)

## § 73.13 STREET RACING DEFINED; PROHIBITED ON PUBLIC HIGHWAYS.

(A) As used in this section, ***STREET RACING*** means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds. Persons rendering assistance in any manner to such competitive use of vehicles shall be equally charged as the participants. The operation of two or more vehicles side by side either at speeds in excess of prima facie lawful speeds established by R.C. § 4511.21(B)(1)(a) through (B)(9) or a substantially equivalent municipal ordinance, or rapidly accelerating from a common starting point to a speed in excess of such prima facie lawful speeds shall be prima facie evidence of street racing.

(B) No person shall participate in street racing upon any public road, street, or highway in this municipality.

(C) Whoever violates this section is guilty of street racing, a misdemeanor of the first degree. In addition to any other sanctions, the court shall suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privileges for not less than 30 days or more than three years. No judge shall suspend the first 30 days of any suspension of an offender's license, permit, or privilege imposed under this division.
(R.C. § 4511.251)

## § 73.14 SPEED REGULATIONS ON BRIDGES.

(A) (1) No person shall operate a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed that can be maintained with safety to such bridge or structure, when such structure is posted with signs as provided in this section.

(2) The Department of Transportation upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it finds that such structure cannot with safety withstand traffic traveling at the speed otherwise permissible under this Traffic Code, the Department shall determine and declare the maximum speed of traffic which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of a least 100 feet before each end of the structure.

(3) Upon the trial of any person charged with a violation of this section, proof of such determination of the maximum speed by the Department and the existence of such signs shall constitute prima facie evidence of the maximum speed which can be maintained with safety to such bridge or structure.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.23)

### *RESISTING OFFICER*

## § 73.15 PROHIBITION AGAINST RESISTING OFFICER.

(A) No person shall resist, hinder, obstruct, or abuse any sheriff, constable, or other official while that official is attempting to arrest offenders under any provision of this Title VII. No person shall interfere with any person charged under any provision of this Title VII with the enforcement of the law relative to public highways.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.36)

(C) It is a defense to prosecution under this section that the hindrance, obstruction, resistance, or interference alleged consisted of constitutionally protected speech only.

## § 73.16 PRESENTING FALSE NAME OR INFORMATION TO OFFICER.

(A) No person shall knowingly present, display, or orally communicate a false name, social security number, or date of birth to a law enforcement officer who is in the process of issuing to the person a traffic ticket or complaint.

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4513.361)

## *STOPPING AFTER ACCIDENT*

### § 73.20 FAILURE TO STOP AFTER ACCIDENT.

(A) (1) In the case of a motor vehicle accident or collision with persons or property on a public road or highway, the operator of the motor vehicle, having knowledge of the accident or collision, immediately shall stop the operator's motor vehicle at the scene of the accident or collision. The operator shall remain at the scene of the accident or collision until the operator has given the operator's name and address and, if the operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to all of the following:

(a) Any person injured in the accident or collision;

(b) The operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision;

(c) The police officer at the scene of the accident or collision.

(2) In the event an injured person is unable to comprehend and record the information required to be given under division (A)(1) of this section, the other operator involved in the accident or collision shall notify the nearest police authority concerning the location of the accident or collision, and the operator's name, address, and the registered number of the motor vehicle the operator was operating. The operator shall remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an emergency vehicle operated by a political subdivision or an ambulance.

(3) If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle shall securely attach the information required to be given in this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

(B) (1) Whoever violates division (A) of this section is guilty of failure to stop after an accident. Except as otherwise provided in division (B)(2) or (B)(3) of this section, failure to stop after an accident is a misdemeanor of the first degree.

(2) If the accident or collision results in serious physical harm to a person, failure to stop after an accident is a felony to be prosecuted under appropriate state law.

(3) If the accident or collision results in the death of a person, failure to stop after an accident is a felony to be prosecuted under appropriate state law.

(4) In all cases, the court, in addition to any other penalties provided by law, shall impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary

instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(5). No judge shall suspend the first six months of suspension of an offender's license, permit, or privilege required by this division.

(5) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to R.C. § 2929.18 or 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the motor vehicle before, during, or after committing the offense charged under this section.
(R.C. § 4549.02)

## § 73.21 STOPPING AFTER ACCIDENT ON OTHER THAN PUBLIC ROADS OR HIGHWAYS.

(A) (1) In the case of a motor vehicle accident or collision resulting in injury or damage to persons or property on any public or private property other than a public road or highway, the operator of the motor vehicle, having knowledge of the accident or collision, shall stop at the scene of the accident or collision. Upon request of any person who is injured or damaged, or any other person, the operator shall give that person the operator's name and address, and, if the operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, and, if available, exhibit the operator's driver's or commercial driver's license.

(2) If the operator of the motor vehicle involved in the accident or collision does not provide the information specified in division (A)(1) of this section, the operator shall give that information, within 24 hours after the accident or collision, to the police department of the city or village in which the accident or collision occurred, or if it occurred outside the corporate limits of a city or village, to the sheriff of the county in which the accident or collision occurred.

(3) If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle shall securely attach the information required under division (A)(1) of this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

(B) (1) Whoever violates division (A) of this section is guilty of failure to stop after a nonpublic road accident. Except as otherwise provided in division (B)(2) or (B)(3) of this section, failure to stop after a nonpublic road accident is a misdemeanor of the first degree.

(2) If the accident or collision results in serious physical harm to a person, failure to stop after a nonpublic road accident is a felony to be prosecuted under appropriate state law.

(3) If the accident or collision results in the death of a person, failure to stop after a nonpublic road accident is a felony to be prosecuted under appropriate state law.

(4) In all cases, the court, in addition to any other penalties provided by law, shall impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary

instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(5). No judge shall suspend the first six months of suspension of an offender's license, permit, or privilege required by this division.

(5) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to R.C. § 2929.18 or 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the motor vehicle before, during, or after committing the offense charged under this section.
(R.C. § 4549.021)

## § 73.22 ACCIDENT INVOLVING DAMAGE TO REALTY.

(A) (1) The driver of any vehicle involved in an accident resulting in damage to real property, or personal property attached to real property, legally upon or adjacent to a public road or highway immediately shall stop and take reasonable steps to locate and notify the owner or person in charge of the property of that fact, of the driver's name and address, and of the registration number of vehicle the driver is driving and, upon request and if available, shall exhibit the driver's driver's or commercial driver's license.

(2) If the owner or person in charge of the property cannot be located after reasonable search, the driver of the vehicle involved in the accident resulting in damage to the property, within 24 hours after accident, shall forward to the police department of the municipality the same information required to be given to the owner or person in control of the property and give the location of the accident and a description of the damage insofar as it is known.

(B) (1) Whoever violates division (A) of this section is guilty of failure to stop after an accident involving the property of others, a misdemeanor of the first degree.

(2) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to § 130.99(G) or R.C. § 2929.28 in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the motor vehicle before, during, or after committing the offense charged under this section.
(R.C. § 4549.03)

## § 73.23 FAILURE TO REPORT ACCIDENT.

(A) No person shall fail to report a motor vehicle accident as required under state or local law.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4509.74)

*LOCAL REGULATIONS*

## § 73.35 FAILURE TO CONTROL; WEAVING COURSE.

(A) No person shall operate a motor vehicle or motorcycle upon any street or highway within the municipality in a weaving or zigzag course unless such course is necessary for safe operation or in compliance with the law or at the direction of a police officer, or fireman at the scene of a fire.

(B) No person shall operate a motor vehicle or motorcycle upon any street or highway within the municipality, or on any public or private property other than a street or highway, without exercising reasonable and ordinary control over such vehicle.
(Am. Ord. CM-565, passed 2-3-1981) Penalty, see § 70.99

## § 73.36 SQUEALING TIRES, CRACKING EXHAUST NOISES.

No person shall unnecessarily race the motor of any vehicle and no person shall operate any motor vehicle, except in an emergency, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation; or whereby the tires of such vehicle squeal or leave tire marks on the roadway.
Penalty, see § 70.99

## § 73.37 LOUD SOUND AMPLIFICATIONS SYSTEMS FROM MOTOR VEHICLES PROHIBITED.

(A) No person operating or occupying a motor vehicle on a street, highway, alley, parking lot, or driveway within the municipality shall operate or permit the operation of any sound amplification system from the vehicle in such a manner or at a volume that will disturb the quiet, comfort, or repose of any other person and is plainly audible at a distance of 50 or more feet from the noise source. Such prohibition shall apply when the motor vehicle is stopped, standing, parked or moving on a street, highway, alley, parking lot, driveway, public property, or private property anywhere within the municipality, at any time.

(B) Division (A) hereof shall not apply to any of the following circumstances:

(1) The person and/or organization has received a valid permit or permission from the municipality, issued by the office of the Director of Safety, on a form or in a manner designed by and for such purposes as the Director may approve;

(2) The sound amplification device is being operated in a motor vehicle to request medical or vehicular assistance or to warn others of hazardous road, vehicle operating, or traffic safety conditions;

(3) The sound amplification device is an anti-theft device being operated in a motor vehicle to deter theft or vandalism;

(4) The motor vehicle is an emergency vehicle or public safety vehicle and is being operated on an emergency run;

(5) The motor vehicle is owned and operated by the State of Ohio, a political subdivision of the State of Ohio, or a public utility;

(6) The motor vehicle is participating in a parade and the sponsors have obtained the proper permit; and

(7) The sound amplification device is being operated as a requirement of federal or state law.

(C) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***MOTOR VEHICLE.*** The same meaning as "vehicle" (including bicycles) as set forth in § 70.01 of the codified ordinances of the Municipality of West Milton.

***PLAINLY AUDIBLE.*** Any sound produced by a sound amplification system which can be clearly heard by a person with normal hearing ability at a distance of 50 feet or more. Measurement standards shall be the auditory senses, based upon direct line of sight. Words or phrases need not be discernible and bass reverberations are included.

***SOUND AMPLIFICATION SYSTEM.*** Any radio, tape player, compact disc player, receiving set, musical instrument, phonograph, "boom box", sound amplifier, television, audio system, loud speaker or other electronic device used for amplification of the human voice or music.

(D) Whoever violates this section is guilty of a minor misdemeanor. If an offender has been previously convicted of this section or persists in violation of this section after repeated warning, then the violation is a misdemeanor of the fourth degree.
(Am. Ord. CM-99-56, passed 1-4-00)

# CHAPTER 74: EQUIPMENT AND LOADS

Section

## *Equipment*

***Loads***



***Statutory reference:***

*Exemption of certain vehicles from emission, noise control and fuel standards, see R.C. § 4513.41*
*Exemption of collector's or historical vehicles from equipment standards, see R.C. § 4513.38*
*Motorcycles, protective eye devices required for operators and passengers; helmets required for persons under 18 years of age, see O.A.C. § 4501-17-01*
*Notice of arrest of certain commercial drivers, see R.C. § 5577.14*
*Snowmobiles and all-purpose vehicles, equipment, see O.A.C. § 4501-29-01*
*Vehicle lighting, see O.A.C. Chapter 4501-15*

## *EQUIPMENT*

### § 74.01 UNSAFE VEHICLES, PROHIBITION AGAINST OPERATION.

(A) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.02(A), (H))

### § 74.02 BUMPERS ON MOTOR VEHICLES.

(A) As used in this section:

***GROSS VEHICLE WEIGHT RATING.*** Means the manufacturer's gross vehicle weight rating established for that vehicle.

***MANUFACTURER.*** Has the same meaning as in R.C. § 4501.01.

***MULTIPURPOSE PASSENGER VEHICLE.*** Means a motor vehicle with motive power, except a motorcycle, designed to carry ten persons or less, that is constructed either on a truck chassis or with special features for occasional off-road operation.

***PASSENGER CAR.*** Means any motor vehicle with motive power, designed for carrying ten persons or less, except a multipurpose passenger vehicle or motorcycle.

***TRUCK.*** Means every motor vehicle, except trailers and semitrailers, designed and used to carry property and having a gross vehicle weight rating of 10,000 pounds or less.

(B) Rules adopted by the Director of Public Safety, in accordance with R.C. Chapter 119, shall govern the maximum bumper height or, in the absence of bumpers and in cases where bumper height have been lowered or modified, the maximum height to the bottom of the frame rail of any passenger car, multipurpose passenger vehicle or truck.

(C) No person shall operate upon a street or highway any passenger car, multipurpose passenger vehicle or truck registered in this state that does not conform to the requirements of this section or any applicable rule adopted pursuant to R.C. § 4513.021.

(D) No person shall modify any motor vehicle registered in this state in such a manner as to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation, and no person shall disconnect any part of the original suspension system of the vehicle to defeat the safe operation of that system.

(E) Nothing contained in this section or in the rules adopted pursuant to R.C. § 4513.021 shall be construed to prohibit either of the following:

(1) The installation upon a passenger car, multipurpose passenger vehicle or truck registered in this state of heavy duty equipment, including shock absorbers and overload springs:

(2) The operation on a street or highway of a passenger car, multipurpose passenger vehicle, or truck registered in this state with normal wear to the suspension system if the normal wear does not adversely affect the control of the vehicle.

(F) This section and the rules adopted pursuant to R.C. § 4513.021 do not apply to any specially designed or modified passenger car, multipurpose passenger vehicle, or truck when operated off a street or highway in races and similar events.

(G) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.021)

***Statutory reference:***

*Maximum height on bumpers, see O.A.C. Chapter 4501-43*

## § 74.03 LIGHTED LIGHTS REQUIRED.

(A) Every vehicle, other than a motorized bicycle, operated upon a street or highway within this state shall display lighted lights and illuminating devices as required by R.C. §§ 4513.04 to 4513.37 during all of the following times:

(1) The time from sunset to sunrise;

(2) At any other time when, due to insufficient natural light or unfavorable atmospheric conditions, persons, vehicles, and substantial objects on the highway are not discernible at a distance of 1,000 feet ahead;

(3) At any time when the windshield wipers of the vehicle are in use because of precipitation on the windshield.

(B) Every motorized bicycle shall display at such times lighted lights meeting the rules adopted by the Ohio Director of Public Safety under R.C. § 4511.521. No motor vehicle, during any time specified in this section, shall be operated upon a street or highway within this state using only parking lights as illumination.

(C) Whenever in such sections a requirement is declared as to the distance from which certain lamps and devices shall render objects visible, or within which such lamps or devices shall be visible, such distance shall be measured upon a straight level unlighted highway under normal atmospheric conditions unless a different condition is expressly stated.

(D) Whenever in such sections a requirement is declared as to the mounted height of lights or devices, it shall mean from the center of such light or device to the level ground upon which the vehicle stands.

(E) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause the operator of a vehicle being operated upon a street or highway within this state to stop the vehicle solely because the officer observes that a violation of division (A)(3) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that division, or causing the arrest of or commencing a prosecution of a person for a violation of that division.

(F) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.03)

## § 74.04 HEADLIGHTS.

(A) (1) Every motor vehicle, other than a motorcycle, shall be equipped with at least two headlights with at least one near each side of the front of the motor vehicle.

(2) Every motorcycle shall be equipped with at least one and not more than two headlights.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.04)

## § 74.05 TAIL LIGHTS AND ILLUMINATION OF REAR LICENSE PLATE.

(A) (1) Every motor vehicle, trailer, semitrailer, pole trailer or vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one tail light mounted on the rear which, when lighted, shall emit a red light visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the tail light on the rearmost vehicle need be visible from the distance specified.

(2) Either a tail light or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate, when such registration plate is required, and render it legible from a distance of 50 feet to the rear. Any tail light, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted, except where separate lighting systems are provided for trailers for the purpose of illuminating such registration plate.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.05)

## § 74.06 RED REFLECTORS REQUIRED.

(A) (1) Every new motor vehicle sold after September 6, 1941, and operated on a highway, other than a commercial tractor to which a trailer or semitrailer is attached, shall carry at the rear, either as a part of the tail lamps or separately, two red reflectors meeting the requirements of this section, except that vehicles of the type mentioned in R.C. § 4513.07 or a substantially equivalent municipal ordinance shall be equipped with reflectors as required by the regulations provided for in that section.

(2) Every such reflector shall be of such size and characteristics and so maintained as to be visible at night from all distances within 300 feet to 50 feet from such vehicle.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.06)

## § 74.07 SAFETY LIGHTING OF COMMERCIAL VEHICLES.

(A) (1) When the Director of Public Safety prescribes and promulgates regulations relating to clearance lights, marker lights, reflectors and stop lights on buses, trucks, commercial tractors, trailers, semitrailers and pole trailers, when operated upon any highway, these vehicles shall be equipped as required by such regulations, and such equipment shall be lighted at all times mentioned in R.C. § 4513.03 or a substantially equivalent municipal ordinance, except that clearance lights and side marker lights need not be lighted on any such vehicle when it is operated within the municipality where there is sufficient light to reveal any person or substantial object on the highway at a distance of 500 feet.

(2) Such equipment shall be in addition to all other lights specifically required by R.C. §§ 4513.03 through 4513.16, or any substantially equivalent municipal ordinances.

(3) Vehicles operated under the jurisdiction of the Public Utilities Commission are not subject to this section.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.07)

## § 74.08 STOPLIGHT REGULATIONS.

(A) (1) Every motor vehicle, trailer, semitrailer, and pole trailer when operated upon a highway shall be equipped with two or more stop lights, except that passenger cars manufactured or assembled prior to January 1, 1967, motorcycles, and motor-driven cycles shall be equipped with at least one stop light. Stop lights shall be mounted on the rear of the vehicle, actuated upon application of the service brake, and may be incorporated with other rear lights. Such stop lights when actuated shall emit a red light visible from a distance of 500 feet to the rear; provided that in the case of a train of vehicles only the stop lights on the rearmost vehicle need be visible from the distance specified.

(2) Such stop lights when actuated shall give a steady warning light to the rear of a vehicle or train of vehicles to indicate the intention of the operator to diminish the speed of or stop a vehicle or train of vehicles.

(3) When stop lights are used as required by this section, they shall be constructed or installed so as to provide adequate and reliable illumination and shall conform to the appropriate rules and regulations established under R.C. § 4513.19.

(4) Historical motor vehicles as defined in R.C. § 4503.181, not originally manufactured with stop lights, are not subject to this section.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.071)

## § 74.09 OBSCURED LIGHTS ON VEHICLES.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any light, except tail lights, which by reason of its location on a vehicle of the combination would be obscured by another vehicle of the combination, need not be lighted, but this section does not affect the requirement that lighted clearance lights be displayed on the front of the foremost vehicle required to have clearance lights or that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.
(R.C. § 4513.08)

## § 74.10 RED LIGHT OR FLAG REQUIRED.

(A) Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of this vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in R.C. § 4513.03 or a substantially equivalent municipal ordinance, a red light or lantern plainly visible from a distance of at least

500 feet to the sides and rear. The red light or lantern required by this section is in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than 16 inches square.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.09)

## § 74.11 LIGHTS ON PARKED VEHICLES.

(A) Except in case of an emergency, whenever a vehicle is parked or stopped upon a roadway open to traffic or a shoulder adjacent thereto, whether attended or unattended, during the times mentioned in R.C. § 4513.03 or a substantially equivalent municipal ordinance, such vehicle shall be equipped with one or more lights which shall exhibit a white or amber light on the roadway side visible from a distance of 500 feet to the front of such vehicle, and a red light visible from a distance of 500 feet to the rear. No lights need be displayed upon any such vehicle when it is stopped or parked within the municipality where there is sufficient light to reveal any person or substantial object within a distance of 500 feet upon such highway. Any lighted headlights upon a parked vehicle shall be depressed or dimmed.
(R.C. § 4513.10)

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.12 LIGHTS AND EMBLEM ON SLOW-MOVING VEHICLES; LIGHTS AND REFLECTORS ON MULTI-WHEEL AGRICULTURAL TRACTORS OR FARM MACHINERY.

(A) All vehicles other than bicycles, including animal-drawn vehicles and vehicles referred to in R.C. § 4513.02(G), not specifically required to be equipped with lamps or other lighting devices by R.C. §§ 4513.03 through 4513.10, or any substantially equivalent municipal ordinances, shall, at the times specified in R.C. § 4513.03 or a substantially equivalent municipal ordinance, be equipped with at least one lamp displaying a white light visible from a distance of not less than 1,000 feet to the front of the vehicle and also shall be equipped with two lamps displaying red light visible from a distance of not less than 1,000 feet to the rear of the vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible from all distances of 600 feet to 100 feet to the rear when illuminated by the lawful lower beams of headlamps. Lamps and reflectors required by this section shall meet standards adopted by the Director of Public Safety.

(B) All boat trailers, farm machinery and other machinery, including all road construction machinery, upon a street or highway, except when being used in actual construction and maintenance work in an area guarded by a flagperson, or where flares are used, or when operating or traveling within the limits of a construction area designated by the Director of Transportation, a city or village engineer, or the county engineer of the several counties, when such construction area is marked in accordance with requirements of the Director and the *Manual*

*and Specifications for a Uniform System of Traffic-Control Devices*, as set forth in R.C. § 4511.09, which is designed for operation at a speed of 25 miles per hour or less, shall be operated at a speed not exceeding 25 miles per hour, and shall display a triangular slow-moving vehicle emblem (SMV). The emblem shall be mounted so as to be visible from a distance of not less than 500 feet to the rear. The Director of Public Safety shall adopt standards and specifications for the design and position of mounting the SMV emblem. The standards and specifications for SMV emblems referred to in this section shall correlate with and, so far as possible, conform with those approved by the American Society of Agricultural Engineers. A unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour may be operated on a street or highway at a speed greater than 25 miles per hour provided it is operated in accordance with this section. As used in this division, "machinery" does not include any vehicle designed to be drawn by an animal.

(C) The use of the SMV emblem shall be restricted to animal-drawn vehicles and to the slow-moving vehicles specified in division (B) of this section operating or traveling within the limits of the highway. Its use on slow-moving vehicles being transported upon other types of vehicles or on any other type of vehicle or stationary object on the highway is prohibited.

(D) (1) No person shall sell, lease, rent or operate any boat trailer, farm machinery or other machinery defined as a slow-moving vehicle in division (B) of this section, except those units designed to be completely mounted on a primary power unit, which is manufactured or assembled on or after April 1, 1966, unless the vehicle is equipped with a slow-moving vehicle emblem mounting device as specified in division (B) of this section.

(2) No person shall sell, lease, rent, or operate on a street or highway any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour unless the unit displays a slow-moving vehicle emblem as specified in division (B) of this section and a speed identification symbol that meets the specifications contained in the American Society of Agricultural Engineers Standard ANSI/ASAE S584 JAN2005, Agricultural Equipment: Speed Identification Symbol (SIS).

(E) Any boat trailer, farm machinery or other machinery defined as a slow-moving vehicle in division (B) of this section, in addition to the use of the slow-moving vehicle emblem, and any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour, in addition to the display of a speed identification symbol, may be equipped with a red flashing light that shall be visible from a distance of not less than 1,000 feet to the rear at all times specified in R.C. § 4513.03 or a substantially equivalent municipal ordinance. When a double-faced light is used, it shall display amber light to the front and red light to the rear. In addition to the lights described in this division, farm machinery and motor vehicles escorting farm machinery may display a flashing, oscillating or rotating amber light, as permitted by R.C. § 4513.17 or a substantially equivalent municipal ordinance, and also may display simultaneously flashing turn signals or warning lights, as permitted by that section.

(F) (1) Every animal-drawn vehicle upon a street or highway shall at all times be equipped in one of the following ways:

(a) With a slow-moving vehicle emblem complying with division (B) of this section;

(b) With alternate reflective material complying with rules adopted under division (F)(2) below;

(c) With both a slow-moving vehicle emblem and alternate reflective material as specified in division (F)(2) below.

(2) Rules adopted by the Director of Public Safety, subject to R.C. Chapter 119, establishing standards and specifications for the position of mounting of the alternate reflective material authorized by this division, permit, as a minimum, the alternate reflective material to be black, gray, or silver in color. The alternate reflective material shall be mounted on the animal-drawn vehicle so as to be visible, at all times specified in R.C. § 4513.03 or a substantially equivalent municipal ordinance, from a distance of not less than 500 feet to the rear when illuminated by the lawful lower beams of headlamps.

(G) (1) Every unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour shall display a slow-moving vehicle emblem and a speed identification symbol that meets the specifications contained in the American Society of Agricultural Engineers Standard ANSI/ASAE S584 JAN2005, Agricultural Equipment: Speed Identification Symbol (SIS) when the unit is operated upon a street or highway, irrespective of the speed at which the unit is operated on the street or highway. The speed identification symbol shall indicate the maximum speed in miles per hour at which the unit of farm machinery is designed by its manufacturer to operate. The display of the speed identification symbol shall be in accordance with the standard prescribed in this division.

(2) If an agricultural tractor that is designed by its manufacturer to operate at a speed greater than 25 miles per hour is being operated on a street or highway at a speed greater than 25 miles per hour and is towing, pulling, or otherwise drawing a unit of farm machinery, the unit of farm machinery shall display a slow-moving vehicle emblem and a speed identification symbol that is the same as the speed identification symbol that is displayed on the agricultural tractor.

(H) When an agricultural tractor that is designed by its manufacturer to operate at a speed greater than 25 miles per hour is being operated on a street or highway at a speed greater than 25 miles per hour, the operator shall possess some documentation published or provided by the manufacturer indicating the maximum speed in miles per hour at which the manufacturer designed the agricultural tractor to operate.

(I) As used in this section, ***BOAT TRAILER*** means any vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less. (R.C. § 4513.11)

(J) Lights and reflector requirements for multi-wheel agricultural tractors or farm machinery.

(1) (a) Every multi-wheel agricultural tractor whose model year was 2001 or earlier, when being operated or traveling on a street or highway at the times specified in R.C. § 4513.03, or a substantially equivalent municipal ordinance, at a minimum shall be equipped with and display reflectors and illuminated amber lamps so that the extreme left and right projections of the tractor are indicated by flashing lamps displaying amber light, visible to the front and the rear; by amber reflectors, all visible to the front; and by red reflectors, all visible to the rear.

(b) The lamps displaying amber light need not flash simultaneously and need not flash in conjunction with any directional signals of the tractor.

(c) The lamps and reflectors required by division (J)(1)(a) of this section and their placement shall meet standards and specifications contained in rules adopted by the Director of Public Safety in accordance with R.C. Chapter 119. The rules governing the amber lamps, amber reflectors, and red reflectors and their placement shall correlate with and, as far as possible, conform with paragraphs 4.1.4.1, 4.1.7.1, and 4.1.7.2, respectively, of the American Society of Agricultural Engineers Standard ANSI/ASAE S279.10 OCT98, Lighting and Marking of Agricultural Equipment on Highways.

(2) Every unit of farm machinery whose model year was 2002 or later, when being operated or traveling on a street or highway at the times specified in R.C. § 4513.03, or a substantially equivalent municipal ordinance, shall be equipped with and display markings and illuminated lamps that meet or exceed the lighting, illumination, and marking standards and specifications that are applicable to that type of farm machinery for the unit's model year specified in the American Society of Agricultural Engineers Standard ANSI/ASAE S279.11 APR01, Lighting and Marking of Agricultural Equipment on Highways, or any subsequent revisions of that standard.

(3) The lights and reflectors required by division (J)(1) of this section are in addition to the slow-moving vehicle emblem and lights required or permitted by R.C. § 4513.11 or 4513.17, or a substantially equivalent municipal ordinance, to be displayed on farm machinery being operated or traveling on a street or highway.

(4) No person shall operate any unit of farm machinery on a street or highway or cause any unit of farm machinery to travel on a street or highway in violation of divisions (J)(1) or (J)(2) of this section.
(R.C. § 4513.111)

(K) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. §§ 4513.11(I), 4513.111(E))

## § 74.13 SPOTLIGHT AND AUXILIARY DRIVING LIGHTS.

(A) (1) Any motor vehicle may be equipped with not more than one spotlight and every lighted spotlight shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle, nor more than 100 feet ahead of the vehicle.

(2) Any motor vehicle may be equipped with not more than three auxiliary driving lights mounted on the front of the vehicle. Any such lights which do not conform to the specifications for auxiliary driving lights and the regulations for their use prescribed by the Director of Public Safety shall not be used.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.12)

## § 74.14 COWL, FENDER, AND BACK-UP LIGHTS.

(A) (1) Any motor vehicle may be equipped with side cowl or fender lights which shall emit a white or amber light without glare.

(2) Any motor vehicle may be equipped with lights on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with back-up lights, either separately or in combination with another light. No back-up lights shall be continuously lighted when the motor vehicle is in forward motion.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.13)

## § 74.15 TWO LIGHTS DISPLAYED.

(A) At all times mentioned in R.C. § 4513.03 or a substantially equivalent municipal ordinance, at least two lighted lights shall be displayed, one near each side of the front of every motor vehicle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.14)

## § 74.16 HEADLIGHTS REQUIRED.

(A) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in R.C. § 4513.03 or a substantially equivalent municipal ordinance, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons, vehicles and substantial objects at a safe distance in advance of the vehicle, subject to the following requirements:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver.

(2) Every new motor vehicle registered in this state which has multiple-beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlights is in use, and shall not otherwise be lighted. This indicator shall be so designed and located that, when lighted, it will be readily visible without glare to the driver of the vehicle.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.15)

## § 74.17 LIGHTS OF LESS INTENSITY.

(A) Any motor vehicle may be operated under the conditions specified in R.C. § 4513.03 or a substantially equivalent municipal ordinance when it is equipped with two lighted lights upon the front thereof capable of revealing persons and substantial objects 75 feet ahead, in lieu of lights required in R.C. § 4513.14 or a substantially equivalent municipal ordinance, provided that such vehicle shall not be operated at a speed in excess of 20 miles per hour.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.16)

## § 74.18 NUMBER OF LIGHTS PERMITTED; RED AND FLASHING LIGHTS.

(A) Whenever a motor vehicle equipped with headlights is also equipped with any auxiliary lights or spotlight or any other light on the front thereof projecting a beam of an intensity greater than 300 candlepower, not more than a total of five of any such lights on the front of a vehicle shall be lighted at any one time when the vehicle is upon a highway.

(B) Any lighted light or illuminating device upon a motor vehicle, other than headlights, spotlights, signal lights, or auxiliary driving lights, that projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(C) (1) Flashing lights are prohibited on motor vehicles, except as a means for indicating a right or a left turn, or in the presence of vehicular traffic hazard requiring unusual care in approaching, or overtaking or passing. This prohibition does not apply to emergency vehicles, road service vehicles servicing or towing a disabled vehicle, rural mail delivery vehicles, vehicles as provided in R.C. § 4513.182 or a substantially equivalent municipal ordinance, highway maintenance vehicles, funeral hearses, funeral escort vehicles, and similar equipment operated by the Department or local authorities, which shall be equipped with and display, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating or rotating amber light, but shall not display a flashing, oscillating or rotating light of any other color, nor to vehicles or machinery permitted by R.C. § 4513.11 or a substantially equivalent municipal ordinance to have a flashing red light.

(2) When used on a street or highway, farm machinery and vehicles escorting farm machinery may be equipped with and display a flashing, oscillating or rotating amber light, and the prohibition contained in division (C)(1) of this section does not apply to such machinery or vehicles. Farm machinery may also display the lights described in R.C. § 4513.11 or a substantially equivalent municipal ordinance.

(D) Except a person operating a public safety vehicle, as defined in R.C. § 4511.01(E), or a school bus, no person shall operate, move, or park upon or permit to stand within the right-of-way of any public street or highway any vehicle or equipment that is equipped with and displaying a flashing red or a flashing combination red and white light, or an oscillating or rotating red light, or a combination red and white oscillating or rotating light; and except a public law enforcement officer, or other person sworn to enforce the criminal and traffic laws of the state, operating a public safety vehicle when on duty, no person shall operate, move or park upon or permit to stand within the right-of-way of any street or highway any vehicle or equipment that is equipped with, or upon which is mounted, and displaying a flashing blue or a flashing combination blue and white light, or an oscillating or rotating blue light, or a combination blue and white oscillating or rotating light.

(E) This section does not prohibit the use of warning lights required by law or the simultaneous flashing of turn signals on disabled vehicles or on vehicles being operated in unfavorable atmospheric conditions in order to enhance their visibility. This section also does not prohibit the simultaneous flashing of turn signals or warning lights whether on farm machinery or vehicles escorting farm machinery when used on a street or highway.
(R.C. § 4513.17)

(F) (1) Notwithstanding any other provision of law, a motor vehicle operated by a coroner, deputy coroner or coroner's investigator may be equipped with a flashing, oscillating or rotating red or blue light and siren, whistle or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet. Such a vehicle may display the flashing, oscillating or rotating red or blue light and may give the audible signal of the siren, whistle or bell only when responding to a fatality or a fatal motor vehicle accident on a street or highway and only at those locations where the stoppage of traffic impedes the ability of the coroner, deputy coroner or coroner's investigator to arrive at the site of the fatality.

(2) This division (F) does not relieve the coroner, deputy coroner or coroner's investigator operating a motor vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.
(R.C. § 4513.171)

(G) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. §§ 4513.17(F), 4513.171(B))

## § 74.19 STANDARDS FOR LIGHTS ON SNOW REMOVAL EQUIPMENT AND OVERSIZE VEHICLES.

(A) It is unlawful to operate snow removal equipment on a highway unless the lights thereon comply with and are lighted when and as required by the standards and specifications adopted by the Director of Transportation pursuant to R.C. § 4513.18.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.18)

## § 74.20 FLASHING LIGHTS PERMITTED FOR CERTAIN TYPES OF VEHICLES.

Rural mail delivery vehicles, state highway survey vehicles, and funeral escort vehicles are permitted to use flashing lights.
(R.C. § 4513.181)

## § 74.21 LIGHTS AND SIGN ON TRANSPORTATION FOR PRESCHOOL CHILDREN.

(A) No person shall operate any motor vehicle owned, leased, or hired by a nursery school, kindergarten, or day-care center, while transporting preschool children to or from such an institution unless the motor vehicle is equipped with and displaying two amber flashing lights mounted on a bar attached to the top of the vehicle, and a sign bearing the designation "caution – children", which shall be attached to the bar carrying the amber flashing lights in such a manner as to be legible to persons both in front of and behind the vehicle. The lights and sign shall meet standards and specifications adopted by the Director of Public Safety.

(B) No person shall operate a motor vehicle displaying the lights and sign required by this section for any purpose other than the transportation of preschool children as provided in this section.
(R.C. § 4513.182)

(C) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.22 FOCUS AND AIM OF HEADLIGHTS.

(A) No person shall use any lights mentioned in R.C. §§ 4513.03 through 4513.18, or any substantially equivalent municipal ordinances, upon any motor vehicle, trailer or semitrailer unless these lights are equipped, mounted and adjusted as to focus and aim in accordance with regulations which are prescribed by the Director of Public Safety.

(B) The headlights on any motor vehicle shall comply with the headlamp color requirements contained in Federal Motor Vehicle Safety Standard Number 108, 49 C.F.R. § 571.108. No person shall operate a motor vehicle in violation of this division.

(C) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.19)

## § 74.23 BRAKE EQUIPMENT; SPECIFICATIONS.

(A) The following requirements govern as to brake equipment on vehicles:

(1) Every motor vehicle, other than a motorcycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold the motor vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, then on such motor vehicles, manufactured or assembled after January 1, 1942, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(2) Every motorcycle, when operated upon a highway shall be equipped with at least one adequate brake, which may be operated by hand or by foot.

(3) Every motorized bicycle shall be equipped with brakes meeting the rules adopted by the Director of Public Safety under R.C. § 4511.521.

(4) When operated upon the highways, the following vehicles shall be equipped with brakes adequate to control the movement of and to stop and to hold the vehicle, designed to be applied by the driver of the towing motor vehicle from its cab, and also designed and connected so that, in case of a breakaway of the towed vehicle, the brakes shall be automatically applied:

(a) Except as otherwise provided in this section, every trailer or semitrailer, except a pole trailer, with an empty weight of 2,000 pounds or more, manufactured or assembled on or after January 1, 1942;

(b) Every manufactured home or travel trailer with an empty weight of 2,000 pounds or more, manufactured or assembled on or after January 1, 2001.

(5) Every watercraft trailer with a gross weight or manufacturer's gross vehicle weight rating of 3,000 pounds or more that is manufactured or assembled on or after January 1, 2008, shall have separate brakes equipped with hydraulic surge or electrically operated brakes on two wheels.

(6) In any combination of motor-drawn trailers or semitrailers equipped with brakes, means shall be provided for applying the rearmost brakes in approximate synchronism with the brakes on the towing vehicle, and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost brakes; or both of the above means, capable of being used alternatively, may be employed.

(7) Every vehicle and combination of vehicles, except motorcycles and motorized bicycles, and except trailers and semitrailers of a gross weight of less than 2,000 pounds, and pole trailers, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.

(8) The same brake drums, brake shoes and lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(9) Every motor vehicle or combination of motor-drawn vehicles shall, at all times and under all conditions of loading, be capable of being stopped on a dry, smooth, level road free from loose material, upon application of the service or foot brake, within the following specified distances, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

(a) Vehicles or combinations of vehicles having brakes on all wheels shall come to a stop in 30 feet or less from a speed of 20 miles per hour.

(b) Vehicles or combinations of vehicles not having brakes on all wheels shall come to a stop in 40 feet or less from a speed of 20 miles per hour.

(10) All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.
(R.C. § 4513.20)

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.24 BRAKE FLUID.

(A) No hydraulic brake fluid for use in motor vehicles shall be sold in this municipality if the brake fluid is below the minimum standard of specifications for heavy duty type brake fluid established by the society of automotive engineers and the standard of specifications established by 49 C.F.R. § 571.116, as amended.

(B) All manufacturers, packers, or distributors of brake fluid selling such fluid in this municipality shall state on the containers that the brake fluid meets or exceeds the applicable minimum SAE standard of specifications, and the standard of specifications established in 49 C.F.R. § 571.116, as amended.
(R.C. § 4513.201)

(C) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.25 MINIMUM STANDARDS FOR BRAKES AND COMPONENTS.

(A) No brake lining, brake lining material, or brake lining assemblies for use as repair and replacement parts in motor vehicles shall be sold in this municipality if these items do not meet or exceed the minimum standard of specifications established by the Society of Automotive Engineers and the standard of specifications established in 49 C.F.R. § 571.105, as amended, and 49 C.F.R. § 571.135, as amended.

(B) All manufacturers or distributors of brake lining, brake lining material, or brake lining assemblies selling these items for use as repair and replacement parts in motor vehicles shall state that the items meet or exceed the applicable minimum standard of specifications.

(C) As used in this section, ***MINIMUM STANDARD OF SPECIFICATIONS*** means a minimum standard for brake system or brake component performance that meets the need for motor vehicle safety and complies with the applicable SAE standards and recommended practices, and the federal motor vehicle safety standards that cover the same aspect of performance for any brake lining, brake lining material, or brake lining assemblies.
(R.C. § 4513.202)

(D) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.26 HORNS, SIRENS, AND WARNING DEVICES.

(A) (1) Every motor vehicle when operated upon a highway shall be equipped with a horn which is in good working order and capable of emitting sound audible, under normal conditions, from a distance of not less than 200 feet.

(2) No motor vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle, or bell. Any vehicle may be equipped with a theft alarm signal device which shall be so arranged that it cannot be used as an ordinary warning signal. Every emergency vehicle shall be equipped with a siren, whistle

or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the Director of Public Safety. Such equipment shall not be used except when such vehicle is operated in response to an emergency call or is in the immediate pursuit of an actual or suspected violator of the law, in which case the driver of the emergency vehicle shall sound such equipment when it is necessary to warn pedestrians and other drivers of the approach thereof.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.21)

## § 74.27 MUFFLERS; EXCESSIVE SMOKE OR GAS.

(A) (1) Every motor vehicle and motorcycle with an internal combustion engine shall at all times be equipped with a muffler which is in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cutout, bypass or similar device upon a motor vehicle on a highway. Every motorcycle muffler shall be equipped with baffle plates.

(2) No person shall own, operate or have in the person's possession any motor vehicle or motorcycle equipped with a device for producing excessive smoke or gas, or so equipped as to permit oil or any other chemical to flow into or upon the exhaust pipe or muffler of such vehicle, or equipped in any way to produce or emit smoke or dangerous or annoying gases from any portion of such vehicle, other than the ordinary gases emitted by the exhaust of an internal combustion engine under normal operation.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.22)

## § 74.28 REARVIEW MIRRORS.

(A) Every motor vehicle and motorcycle shall be equipped with a mirror so located as to reflect to the operator a view of the highway to the rear of such vehicle or motorcycle. Operators of vehicles and motorcycles shall have a clear and unobstructed view to the front and to both sides of their vehicles and motorcycles and shall have a clear view to the rear of their vehicles and motorcycles by mirror.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.23)

## § 74.29 WINDSHIELDS AND WIPERS.

(A) No person shall drive any motor vehicle on a street or highway in this municipality, other than a motorcycle or motorized bicycle, that is not equipped with a windshield.

(B) (1) No person shall drive any motor vehicle, other than a bus, with any sign, poster, or other nontransparent material upon the front windshield, sidewings, side, or rear windows of such vehicle other than a certificate or other paper required to be displayed by law, except that there may be in the lower left-hand or

right-hand corner of the windshield a sign, poster, or decal not to exceed four inches in height by six inches in width. No sign, poster, or decal shall be displayed in the front windshield in such a manner as to conceal the vehicle identification number for the motor vehicle when, in accordance with federal law, that number is located inside the vehicle passenger compartment and so placed as to be readable through the vehicle glazing without moving any part of the vehicle.

(2) Division (B)(1) of this section does not apply to a person who is driving a passenger car with an electronic device, including an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device located in the front windshield if the device meets both of the following:

(a) It does not restrict the vehicle operator's sight lines to the road and highway signs and signals.

(b) It does not conceal the vehicle identification number.

(3) Division (B)(1) of this section does not apply to a person who is driving a commercial car with an electronic device, including an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device located in the front windshield if the device meets both of the following:

(a) It does not restrict the vehicle operator's sight lines to the road and highway signs and signals.

(b) It is mounted not more than 6 inches below the upper edge of the windshield and is outside the area swept by the vehicle's windshield wipers.

(C) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield. The device shall be maintained in good working order and so constructed as to be controlled or operated by the operator of the vehicle.

(D) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.24)

## § 74.30 SOLID TIRE REQUIREMENTS.

(A) Every solid tire, as defined in R.C. § 4501.01, on a vehicle shall have rubber or other resilient material on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.
(R.C. § 4513.25)

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.31 REQUIREMENTS FOR SAFETY GLASS IN MOTOR VEHICLES; USE OF TINTED GLASS OR REFLECTORIZED MATERIAL.

(A) *Safety glass.*

(1) No person shall sell any new motor vehicle nor shall any new motor vehicle be registered, and no person shall operate any motor vehicle, which is registered in this state and which has been manufactured or

assembled on or after January 1, 1936, unless the motor vehicle is equipped with safety glass, wherever glass is used in the windshields, doors, partitions, rear windows, and windows on each side immediately adjacent to the rear window.

(2) As used in this section, ***SAFETY GLASS*** means any product composed of glass so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when it is struck or broken, or such other or similar product as may be approved by the Registrar of Motor Vehicles.

(3) Glass other than safety glass shall not be offered for sale, or sold for use in, or installed in any door, window, partition, or windshield that is required by this section to be equipped with safety glass. (R.C. § 4513.26)

(B) *Tinted or reflectorized material.*

(1) No person shall operate, on any highway or other public or private property open to the public for vehicular travel or parking, lease, or rent any motor vehicle that is registered in this state unless the motor vehicle conforms to the requirements concerning tinted glass and reflectorized material of R.C. § 4513.241 and of any applicable rule adopted under that section.

(2) No person shall install in or on any motor vehicle, any glass or other material that fails to conform to the requirements of R.C. § 4513.241 or of any rule adopted under that section.

(3) (a) No used motor vehicle dealer or new motor vehicle dealer, as defined in R.C. § 4517.01, shall sell any motor vehicle that fails to conform to the requirements of R.C. § 4513.241 or of any rule adopted under that section.

(b) No manufacturer, remanufacturer, or distributor, as defined in R.C. § 4517.01, shall provide to a motor vehicle dealer licensed under R.C. Chapter 4517 or to any other person, a motor vehicle that fails to conform to the requirements of R.C. § 4513.241 or of any rule adopted under that section.

(4) No reflectorized materials shall be permitted upon or in any front windshield, side windows, sidewings, or rear window.

(5) This division (B) does not apply to the manufacturer's tinting or glazing of motor vehicle windows or windshields that is otherwise in compliance with or permitted by Federal Motor Vehicle Safety Standard #205.

(6) With regard to any side window behind a driver's seat or any rear window other than any window on an emergency door, this division (B) does not apply to any school bus used to transport a child with disabilities pursuant to R.C. Chapter 3323, whom it is impossible or impractical to transport by regular school bus in the course of regular route transportation provided by a school district. As used in this division, ***CHILD WITH DISABILITIES*** has the same meaning as in R.C. § 3323.01.

(7) This division (B) does not apply to any school bus that is to be sold and operated outside the municipality.

(8) (a) This division (B) does not apply to a motor vehicle used by a law enforcement agency under either of the following circumstances:

1. The vehicle does not have distinctive markings of a law enforcement vehicle but is operated by or on behalf of the law enforcement agency in an authorized investigation or other activity requiring that the presence and identity of the vehicle occupants be undisclosed.

2. The vehicle primarily is used by the law enforcement canine unit for transporting a police dog.

(b) As used in this division, ***LAW ENFORCEMENT AGENCY*** means a police department, the office of a sheriff, the State Highway Patrol, a county prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest. (R.C. § 4513.241(C) - (J))

(C) (1) Whoever violates division (A) of this section is guilty of a minor misdemeanor. (R.C. § 4513.99)

(2) Whoever violates division (B)(1),(B)(3)(b) or (B)(4) of this section is guilty of a minor misdemeanor.

(3) Whoever violates division (B)(3)(a) of this section is guilty of a minor misdemeanor if the dealer or the dealer's agent knew of the nonconformity at the time of sale.

(4) (a) Whoever violates division (B)(2) of this section is guilty of a misdemeanor of the fourth degree, except that an organization may not be convicted unless the act of installation was authorized by the board of directors, trustees, partners, or by a high managerial officer acting on behalf of the organization, and installation was performed by an employee of the organization acting within the scope of the person's employment.

(b) In addition to any other penalty imposed under this section, whoever violates division (B)(2) of this section is liable in a civil action to the owner of a motor vehicle on which was installed the nonconforming glass or material for any damages incurred by that person as a result of the installation of the nonconforming glass or material, costs of maintaining the civil action, and attorney fees.

(c) In addition to any other penalty imposed under this section, if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(2) of this section and the offender is a motor vehicle repair operator registered under R.C. Chapter 4775 or a motor vehicle dealer licensed under R.C. Chapter 4517, whoever violates division (B)(2) of this section is subject to a registration or license suspension, as applicable, for a period of not more than 180 days.
(R.C. § 4513.241(K))

***Statutory reference:***

*Regulations, see O.A.C. Chapter 4501-41*
*Recording and reporting violations, certain court requirements, see R.C. § 4513.241(L)*

## § 74.32 DIRECTIONAL SIGNALS.

(A) (1) No person shall operate any motor vehicle manufactured or assembled on or after January 1, 1954, unless the vehicle is equipped with electrical or mechanical directional signals.

(2) No person shall operate any motorcycle or motor-driven cycle manufactured or assembled on or after January 1, 1968, unless the vehicle is equipped with electrical or mechanical directional signals.

(B) As used in this section, ***DIRECTIONAL SIGNALS*** means an electrical or mechanical signal device capable of clearly indicating an intention to turn either to the right or to the left and which shall be visible from both the front and rear.

(C) All mechanical signal devices shall be self-illuminating devices when in use at the times mentioned in R.C. § 4513.03 or a substantially equivalent municipal ordinance.

(D) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.261)

## § 74.33 INSTALLATION AND SALE OF SEAT SAFETY BELTS REQUIRED; DEFINITION.

(A) As used in this section and in R.C. § 4513.263 or a substantially equivalent municipal ordinance, the component parts of a seat safety belt include a belt, anchor attachment assembly, and a buckle or closing device.

(B) No person shall sell, lease, rent, or operate any passenger car, as defined in R.C. § 4501.01(E), that is registered or to be registered in this state and that is manufactured or assembled on or after January 1, 1962, unless the passenger car is equipped with sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts to its front seat. Such anchorage units at the attachment points shall be of such construction, design, and strength to support a loop load pull of not less than 4,000 pounds for each belt.

(C) No person shall sell, lease, or rent any passenger car, as defined in R.C. § 4501.01(E), that is registered or to be registered in this state and that is manufactured or assembled on or after January 1, 1966, unless the passenger car has installed in its front seat at least two seat safety belt assemblies.

(D) After January 1, 1966, neither any seat safety belt for use in a motor vehicle nor any component part of any such seat safety belt shall be sold in this municipality unless the seat safety belt or the component part satisfies the minimum standard of specifications established by the society of automotive engineers for automotive seat belts and unless the seat safety belt or component part is labeled so as to indicate that it meets those minimum standard specifications.

(E) Each sale, lease, or rental in violation of this section constitutes a separate offense.

(F) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.262)
***Statutory reference:***
*Child restraint systems, regulations, see O.A.C. Chapter 4501-37*

## § 74.34 REQUIREMENTS FOR EXTRA SIGNAL EQUIPMENT.

(A) No person shall operate any motor truck, bus, or commercial tractor upon any highway at any time from sunset to sunrise unless there is carried in such vehicle, except as provided in division (B) of this section, the following equipment which shall be of the types approved by the Director of Transportation.

(1) At least three flares or three red reflectors or three red electric lanterns, each of which is capable of being seen and distinguished at a distance of 500 feet under normal atmospheric conditions at nighttime;

(2) At least three red-burning fusees, unless red reflectors or red electric lanterns are carried;

(3) At least two red cloth flags, not less than two inches square, with standards to support them;

(4) The type of red reflectors shall comply with such standards and specifications in effect on September 16, 1963, or later established by the Interstate Commerce Commission and must be certified as meeting such standards by Underwriters Laboratories.

(B) No person shall operate at the time and under the conditions stated in this section any motor vehicle used in transporting flammable liquids in bulk, or in transporting compressed flammable gases, unless there is carried in such vehicle three red electric lanterns or three red reflectors meeting the requirements stated in division (A) of this section. There shall not be carried in any such vehicle any flare, fusee, or signal produced by a flame.

(C) This section does not apply to any person who operates any motor vehicle in a work area designated by protection equipment devices that are displayed and used in accordance with the manual adopted by the Department of Transportation under R.C. § 4511.09.
(R.C. § 4513.27)

(D) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.35 DISPLAY OF WARNING DEVICES ON DISABLED VEHICLES.

(A) Whenever any motor truck, bus, commercial tractor, trailer, semitrailer, or pole trailer is disabled upon any freeway, expressway, thruway and connecting, entering, or exiting ramps within the municipality, at any time when lighted lamps are required on vehicles, the operator of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in division (B) of this section:

(1) A lighted fusee shall be immediately placed on the roadway at the traffic side of such vehicle, unless red electric lanterns or red reflectors are displayed.

(2) Within the burning period of the fusee and as promptly as possible, three lighted flares or pot torches, or three red reflectors or three red electric lanterns shall be placed on the roadway as follows:

(a) One at a distance of 40 paces or approximately 100 feet in advance of the vehicle;

(b) One at a distance of 40 paces or approximately 100 feet to the rear of the vehicle, except as provided in this section, each in the center of the lane of traffic occupied by the disabled vehicle;

(c) One at the traffic side of the vehicle.

(B) Whenever any vehicle used in transporting flammable liquids in bulk, or in transporting compressed flammable gases, is disabled upon a highway at any time or place mentioned in division (A) of this section, the driver of such vehicle shall display upon the roadway the following warning devices:

(1) One red electric lantern or one red reflector shall be immediately placed on the roadway at the traffic side of the vehicle;

(2) Two other red electric lanterns or two other red reflectors shall be placed to the front and rear of the vehicle in the same manner prescribed for flares in division (A) of this section.

(C) When a vehicle of a type specified in division (B) of this section is disabled, the use of flares, fusees, or any signal produced by flame as warning signals is prohibited.

(D) Whenever any vehicle of a type referred to in this section is disabled upon any freeway, expressway, thruway, and connecting, entering, or exiting ramps within the municipality, at any time when the display of fusees, flares, red reflectors, or electric lanterns is not required, the operator of such vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of 40 paces or approximately 100 feet in advance of the vehicle, and one at a distance of 40 paces or approximately 100 feet to the rear of the vehicle, except as provided in this section.

(E) The flares, fusees, lanterns, red reflectors, and flags to be displayed as required in this section shall conform with the applicable requirements of R.C. § 4513.27 or a substantially equivalent municipal ordinance.

(F) In the event the vehicle is disabled near a curve, crest of a hill, or other obstruction of view, the flare, flag, reflector, or lantern in that direction shall be placed as to afford ample warning to other users of the highway, but in no case shall it be placed less than 40 paces or approximately 100 feet nor more than 120 paces or approximately 300 feet from the disabled vehicle.

(G) This section does not apply to the operator of any vehicle in a work area designated by protection equipment devices that are displayed and used in accordance with the manual adopted by the Department of Transportation under R.C. § 4511.09.

(H) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.28)

## § 74.36 REQUIREMENTS FOR VEHICLES TRANSPORTING EXPLOSIVES.

(A) Any person operating any vehicle transporting explosives upon a highway shall at all times comply with the following requirements:

(1) The vehicle shall be marked or placarded on each side and on the rear with the word "EXPLOSIVES" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than 24 inches square marked with the word "DANGER" in white letters six inches high, or shall be marked or placarded in accordance with Section 177.823 of the United States Department of Transportation regulations.

(2) The vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at convenient points on such vehicle.
(R.C. § 4513.29)

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.37 STUDDED TIRES; SEASONAL USE PERMITTED.

(A) For the purposes of this section, ***STUDDED TIRE*** means any tire designed for use on a vehicle and equipped with metal studs or studs of wear-resisting material that project beyond the tread of the traction surface of the tire.

(B) (1) Except as provided in division (B)(2) of this section, no person shall operate any motor vehicle other than a public safety vehicle or school bus that is equipped with studded tires on any street or highway in this municipality, except during the period extending from the first day of November of each year through the fifteenth day of April of the succeeding year.

(2) A person may operate a motor vehicle that is equipped with retractable studded tires with the studs retracted at any time of the year, but shall operate the motor vehicle with the studs extended only as provided in division (B)(1) of this section.

(C) This section does not apply to the use of tire chains when there is snow or ice on the streets or highways where such chains are being used, or the immediate vicinity thereof.
(R.C. § 5589.081)

(D) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 5589.99(B))

## § 74.38 SAFETY INSPECTION DECALS FOR BUSES.

(A) *Definitions.* As used in this section:

***BUS.***

(a) Means any vehicle used for the transportation of passengers that meets at least one of the following:

1. Was originally designed by the manufacturer to transport more than 15 passengers, including the driver;

2. Either the gross vehicle weight rating or the gross vehicle weight exceeds 10,000 pounds.

(b) The term does not include a church bus as defined in R.C. § 4503.07 or a school bus unless the church bus or school bus is used in the transportation of passengers by a motor carrier.

(c) The term also does not include any of the following:

1. Any vehicle operated exclusively on a rail or rails;

2. A trolley bus operated by electric power derived from a fixed overhead wire furnishing local passenger transportation similar to street-railway service;

3. Vehicles owned or leased by government agencies or political subdivisions.

***MOTOR CARRIER.*** Has the same meaning as in R.C. § 4923.01
(R.C. § 4513.50)

(B) *Safety inspection decals.*

(1) Except as provided in division (B)(2) of this section, on and after July 1, 2001, no person shall operate a bus, nor shall any person being the owner of a bus or having supervisory responsibility for a bus, permit the operation of any bus unless the bus displays a valid, current safety inspection decal issued by the State Highway Patrol under R.C. § 4513.52.

(2) For the purpose of complying with the requirements of this section and R.C. § 4513.52, the owner or other operator of a bus may drive the bus directly to an inspection site conducted by the State Highway Patrol and directly back to the person's place of business without a valid registration and without displaying a safety inspection decal, provided that no passengers may occupy the bus during such operation.
(R.C. § 4513.51(A), (B))

(C) Whoever violates division (B)(1) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 4513.51(D))

## § 74.39 AIR BAGS.

(A) As used in this section:

***AIR BAG.*** Has the same meaning as in 49 C.F.R. § 579.4, as amended.

***COUNTERFEIT AIR BAG.*** An air bag displaying a mark identical or similar to the genuine mark of a motor vehicle manufacturer, without the authorization of the motor vehicle manufacturer.

***NONFUNCTIONAL AIR BAG.*** Any of the following:

(a) A replacement air bag that has been previously deployed or damaged;

(b) A replacement air bag that has an electrical fault that is detected by the air bag diagnostic system of a vehicle after the air bag is installed;

(c) A counterfeit air bag, air bag cover, or some other object that is installed in a vehicle to deceive an owner or operator of the vehicle into believing that a functional air bag has been installed.

(B) No person shall install or reinstall in any motor vehicle a counterfeit or nonfunctional air bag or any object intended to fulfill the function of an air bag other than an air bag that was designed in conformance with or that is regulated by Federal Motor Vehicle Safety Standard Number 208 for the make, model, and model year of the vehicle, knowing that the object is not in accordance with that standard.

(C) No person shall knowingly manufacture, import, sell, or offer for sale any of the following:

(1) A counterfeit air bag;

(2) A nonfunctional air bag;

(3) Any other object that is intended to be installed in a motor vehicle to fulfill the function of an air bag and that is not in conformance with Federal Motor Vehicle Safety Standard Number 208 for the make, model, and model year of the vehicle in which the object is intended to be installed.

(D) No person shall knowingly sell, install, or reinstall a device in a motor vehicle that causes the diagnostic system of a vehicle to inaccurately indicate that the vehicle is equipped with a functional air bag.

(E) (1) Whoever violates division (B) or (D) of this section is guilty of improper replacement of a motor vehicle air bag, a misdemeanor of the first degree on a first offense. On each subsequent offense, or if the violation results in serious physical harm to an individual, the person is guilty of a felony to be prosecuted under appropriate state law.

(2) A violation of division (C) of this section is a felony to be prosecuted under appropriate state law.

(3) Each manufacture, importation, installation, reinstallation, sale, or offer for sale in violation of this section shall constitute a separate and distinct violation.
(R.C. § 4549.20)

## *LOADS*

### § 74.40 PERMIT REQUIRED TO EXCEED LOAD LIMITS.

(A) (1) The municipality, with respect to highways under their jurisdiction, upon application in writing, shall issue a special regional heavy hauling permit authorizing the applicant to operate or move a vehicle or combination of vehicles as follows:

(a) At a size or weight of vehicle or load exceeding the maximum specified in R.C. §§ 5577.01 to 5577.09, or otherwise not in conformity with R.C. §§ 4513.01 to 4513.37.

(b) Upon any highway under the jurisdiction of municipality except those highways with a condition insufficient to bear the weight of the vehicle or combination of vehicles as stated in the application.

(c) For regional trips at distances of 150 miles or less from a facility stated on the application as the applicant’s point of origin.

(d) Issuance of a special regional heavy hauling permit is subject to the payment of a fee established by the municipality in accordance with this section.

(2) In circumstances where a person is not eligible to receive a permit under division (A)(1) of this section, the municipality, with respect to highways under its jurisdiction, upon application in writing and for good cause shown, may issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in R.C. §§ 5577.01 through 5577.09, or otherwise not in conformity with R.C. §§ 4513.01 through 4513.37, upon any highway under its jurisdiction.

(B) Notwithstanding R.C. §§ 715.22 and 723.01, the holder of a permit issued by the Director of Transportation under R.C. § 4513.34 may move the vehicle or combination of vehicles described in the permit on any highway that is a part of the state highway system when the movement is partly within and partly without the corporate limits of the municipality. No local authority shall require any other permit or license or charge any license fee or other charge against the holder of a permit for the movement of a vehicle or combination of vehicles on any highway which is a part of the state highway system. The Ohio Director of Transportation shall not require the holder of a permit issued by the municipality to obtain a special permit for the movement of vehicles or combination of vehicles on highways within the jurisdiction of the municipality. Permits may be issued for any period of time not to exceed one year, as the local authority in its discretion determines advisable or for the duration of any public construction project.

(C) (1) The application for a permit issued under this section shall be in the form that the municipality prescribes. The municipality may prescribe a permit fee to be imposed and collected when any permit described in this section is issued. The permit fee may be in an amount sufficient to reimburse the municipality for the administrative costs incurred in issuing the permit, and also to cover the cost of normal and expected damage caused to the roadway or a street or highway structure as the result of the operation of the nonconforming vehicle or combination of vehicles.

(2) For the purposes of this section and of rules adopted by the Director under R.C. § 4513.34, milk transported in bulk by vehicle is deemed a nondivisible load.

(3) For purposes of this section and of rules adopted by the Director under R.C. § 4513.34, three or fewer aluminum coils, transported by a vehicle, are deemed a nondivisible load. The Director shall adopt rules establishing requirements for an aluminum coil permit that are substantially similar to the requirements for a steel coil permit under O.A.C. Chapter 5501:2-1.

(D) The municipality shall issue a special regional heavy hauling permit under division (A)(1) of this section upon application and payment of the applicable fee. However, the municipality may issue or withhold a special permit specified in division (A)(2) of this section. If a permit is to be issued, the municipality may limit or prescribe conditions of operation for the vehicle and may require the posting of a bond or other security conditioned upon the sufficiency of the permit fee to compensate for damage caused to the roadway or a street or highway structure. In addition, the municipality, as a condition of issuance of an overweight permit, may require the applicant to develop and enter into a mutual agreement with the municipality to compensate for or to repair excess damage caused to the roadway by travel under the permit.

(E) Every permit issued under this section shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of any authority granting the permit. No person shall violate any of the terms of a permit.

(F) The Director of Transportation may debar an applicant from applying for a special permit under this section upon a finding based on a reasonable belief that the applicant has done any of the actions specified in R.C. § 4513.34(F).

(G) Notice and procedures for debarment shall be as provided in R.C. § 4513.34(G).

(H) (1) No person shall violate the terms of a permit issued under this section that relate to gross load limits.

(2) No person shall violate the terms of a permit issued under this section that relate to axle load by more than 2,000 pounds per axle or group of axles.

(3) No person shall violate the terms of a permit issued under this section that relate to an approved route except upon order of a law enforcement officer or authorized agent of the issuing authority.

(I) A permit issued by the municipality under this section for the operation of a vehicle or combination of vehicles is valid for the purposes of the vehicle operation in accordance with the conditions and limitations specified on the permit. Such a permit is voidable by law enforcement only for operation of a vehicle or combination of vehicles in violation of the weight, dimension, or route provisions of the permit. However, a permit is not voidable for operation in violation of a route provision of a permit if the operation is upon the order of a law enforcement officer.
(R.C. § 4513.34)

(J) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)
***Statutory reference:***
*Overweight or oversized vehicles, state permit regulations, see O.A.C. Chapter 5501:2-1*

## § 74.41 LIMITATION OF LOAD EXTENSION ON LEFT SIDE OF VEHICLES.

(A) No passenger-type vehicle shall be operated on a highway with any load carried on the vehicle which extends more than six inches beyond the line of the fenders on the vehicle's left side.
(R.C. § 4513.30)

(B) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, the person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, the person is guilty of a misdemeanor of the third degree.
(R.C. § 4513.99)

## § 74.42 ALL LOADS SHALL BE PROPERLY SECURED.

(A) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed, loaded, or covered as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand or other substances may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway.

(B) Except for a farm vehicle used to transport agricultural produce or agricultural production materials or a rubbish vehicle in the process of acquiring its load, no vehicle loaded with garbage, swill, cans, bottles, waste paper, ashes, refuse, trash, rubbish, waste, wire, paper, cartons, boxes, glass, solid waste, or any other material of an unsanitary nature that is susceptible to blowing or bouncing from a moving vehicle shall be driven or moved on any highway unless the load is covered with a sufficient cover to prevent the load or any part of the load from spilling onto the highway.
(R.C. § 4513.31)

(C) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

## § 74.43 TOWING REQUIREMENTS; EXCEPTION TO SIZE AND WEIGHT RESTRICTIONS.

(A) (1) When one vehicle is towing another vehicle, the drawbar or other connection shall be of sufficient strength to pull all the weight towed thereby, and the drawbar or other connection shall not exceed 15 feet from one vehicle to the other, except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

(2) When one vehicle is towing another and the connection consists only of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than 12 inches square.

(3) In addition to such drawbar or other connection, each trailer and each semitrailer which is not connected to a commercial tractor by means of a fifth wheel shall be coupled with stay chains or cables to the vehicle by which it is being drawn. These chains or cables shall be of sufficient size and strength to prevent the towed vehicle's parting from the drawing vehicle in case the drawbar or other connection should break or become disengaged. In case of a loaded pole trailer, the connecting pole to the drawing vehicle shall be coupled to the drawing vehicle with stay chains or cables of sufficient size and strength to prevent the towed vehicle's parting from the drawing vehicle.

(4) Every trailer or semitrailer, except pole and cable trailers and pole and cable dollies operated by a public utility as defined in R.C. § 5727.01, shall be equipped with a coupling device which shall be so designed and constructed that the trailer will follow substantially in the path of the vehicle drawing it, without whipping or swerving from side to side. Vehicles used to transport agricultural produce or agricultural production materials between a local place of storage and supply and the farm, when drawn or towed on a street or highway at a speed of 25 miles per hour or less, and vehicles designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less, shall have a drawbar or other connection, including the hitch mounted on the towing vehicle, which shall be of sufficient strength to pull all the weight

towed thereby. Only one such vehicle used to transport agricultural produce or agricultural production materials as provided in this section may be towed or drawn at one time except as follows:

(a) An agricultural tractor may tow or draw more than one such vehicle;

(b) A pickup truck or straight truck designed by the manufacturer to carry a load of not less than one-half ton and not more than two tons may tow or draw not more than two such vehicles that are being used to transport agricultural produce from the farm to a local place of storage. No vehicle being so towed by such a pickup truck or straight truck shall be considered to be a motor vehicle.
(R.C. § 4513.32)

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4513.99)

(C) Exception to size and weight restrictions.

(1) The size and weight provisions of this chapter and R.C. Chapter 5577 do not apply to a person who is engaged in the initial towing or removal or a wrecked or disabled motor vehicle from the site of an emergency on a public highway where the vehicle became wrecked or disabled to the nearest site where the vehicle can be brought into conformance with the requirements of this chapter and R.C. Chapter 5577 or to the nearest qualified repair facility.

(2) Any subsequent towing of a wrecked or disabled vehicle shall comply with the size and weight provisions of this chapter and R.C. Chapter 5577.

(3) No court shall impose any penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance, or the civil liability established in R.C. § 5577.12 upon a person towing or removing a vehicle in the manner described in division (C)(1) of this section.
(R.C. § 5577.15)

## § 74.44 WEIGHING OF VEHICLE; REMOVAL OF EXCESS LOAD.

(A) Any police officer having reason to believe that the weight of a vehicle and its load is unlawful may require the driver of the vehicle to stop and submit to a weighing of it by means of a compact, self-contained, portable, sealed scale specially adapted to determining the wheel loads of vehicles on highways; a sealed scale permanently installed in a fixed location, having a load-receiving element specially adapted to determining the wheel loads of highway vehicles; a sealed scale, permanently installed in a fixed location, having a load-receiving element specially adapted to determining the combined load of all wheels on a single axle or on successive axles of a highway vehicle; or a sealed scale adapted to weighing highway vehicles, loaded or unloaded.

(B) The driver of the vehicle shall, if necessary, be directed to proceed to the nearest available sealed scales to accomplish the weighing, provided the scales are within three miles of the point where the vehicle is stopped.

(C) Any vehicle stopped in accordance with this section may be held by the police officer for a reasonable time only to accomplish the weighing as prescribed by this section.

(D) All scales used in determining the lawful weight of a vehicle and its load shall be annually compared by a municipal, county or state sealer with the state standards or standards approved by the state, and the scales shall not be sealed if they do not conform to the state standards or standards approved by the state.

(E) At each end of a permanently installed scale, there shall be a straight approach in the same plane as the platform, of sufficient length and width to insure the level positioning of vehicles during weight determinations. During determination of weight by compact, self-contained, portable, sealed scales, specially adapted to determining the wheel loads of vehicles on highways, they shall always be used on a level terrain of sufficient length and width to accommodate the entire vehicle being weighed. Such terrain shall be level, or if not level, it shall be of such elevation that the difference in elevation between the wheels on any one axle does not exceed two inches and the difference in elevation between axles being weighed does not exceed one-quarter inch per foot of the distance between such axles.

(F) In all determinations of all weights, except gross weight, by compact, self-contained, portable, sealed scales, specially adapted to determining the wheel loads of vehicles on highways, all successive axles, 12 feet or less apart, shall be weighed simultaneously by placing one such scale under the outside wheel of each such axle. In determinations of gross weight by the use of compact, self-contained, portable, sealed scales, specially adapted to determining the wheel loads of vehicles on highways, all axles shall be weighed simultaneously by placing one such scale under the outside wheel of each axle.

(G) Whenever an officer, upon weighing a vehicle and load, determines that the weight is unlawful, he or she may require the driver to stop the vehicle in a suitable place and remain standing until such portion of the load is removed as is necessary to reduce the weight of the vehicle to the limit permitted under R.C. §§ 5577.01 through 5577.14 and this chapter.
(R.C. § 4513.33)
***Statutory reference:***
*Alteration of weight limits, approval of Director required, see R.C. § 4513.33*

## § 74.45 OPERATION OF VEHICLE EXCEEDING WEIGHT LIMITS PROHIBITED.

(A) No traction engine, steam roller, or other vehicle, load, object or structure, whether propelled by muscular or motor power, not including vehicles run upon stationary rails or tracks, fire engines, fire trucks, or other vehicles or apparatus belonging to or used by any municipal or volunteer fire department in the discharge of its functions, shall be operated or moved over or upon the improved public streets, highways, bridges, or culverts in this municipality upon wheels, rollers or otherwise, weighing in excess of the weights prescribed in this subchapter or R.C. §§ 5577.01 et seq., including the weight of the vehicle, object, structure or contrivance and load, except upon special permission granted as provided by R.C. § 4513.34 or a substantially equivalent municipal ordinance.
(R.C. § 5577.02)

(B) Whoever violates the weight provisions of this section shall be fined $80 for the first 2,000 pounds, or fraction thereof, of overload; for overloads in excess of 2,000 pounds, but not in excess of 5,000 pounds, such person shall be fined $100, and in addition thereto $1 per 100 pounds of overload; for overloads in excess of 5,000 pounds but not in excess of 10,000 pounds, such person shall be fined $130, and in addition thereto $2 per 100 pounds of overload, or imprisoned not more than 30 days, or both. For all overloads in excess of 10,000 pounds, such person shall be fined $160, and in addition thereto $3 per 100 pounds of overload, or imprisoned

not more than 30 days, or both. Whoever violates the weight provisions of vehicle and load relating to gross load limits shall be fined not less than $100. No penalty prescribed in this division (B)(2) shall be imposed on any vehicle combination if the overload on any one axle does not exceed 1,000 pounds, and if the immediately preceding or following axle, excepting the front axle of the vehicle combination, is underloaded by the same or greater amount. For purposes of this division (B)(2), two axles on one vehicle less than eight feet apart shall be considered as one axle.
(R.C. § 5577.99(A))

## § 74.46 LOAD LIMITS.

(A) *Weight of load; width of tire.* No person, firm or corporation shall transport over the improved public streets, alleys, intercounty highways, state highways, bridges or culverts in this municipality, in any vehicle propelled by muscular, motor or other power, any burden, including weight of vehicle and load, greater than the following:

(1) (a) In vehicles having metal tires three inches or less in width, a load of 500 pounds for each inch of the total width of the tire on all wheels;

(b) When the tires on such vehicles exceed three inches in width, an additional load of 800 pounds shall be permitted for each inch by which the total width of the tires on all wheels exceeds 12 inches.

(2) In vehicles having tires of rubber or other similar substance, for each inch of the total width of tires on all wheels, as follows:

| ***Tire Width (in inches)*** | ***Load Limit (in pounds)*** |
|---|---|
| 3 | 450 |
| 3.5 | 450 |
| 4 | 500 |
| 5 | 600 |
| 6 and over | 650 |

(3) The total width of tires on all wheels shall be, in the case of solid tires of rubber or other similar substance, the actual width in inches of all such tires between the flanges at the base of the tires, but in no event shall that portion of tire coming in contact with the road surface be less than two-thirds the width so measured between the flanges.

(4) In the case of pneumatic tires, of rubber or other similar substance, the total width of tires on all wheels shall be the actual width of all such tires, measured at the widest portion thereof when inflated and not bearing a load.

(5) In no event shall the load, including the proportionate weight of vehicle that can be concentrated on any wheel, exceed 650 pounds to each inch in width of the tread as defined in this division (A) for solid tires, or each inch in the actual diameter of pneumatic tires measured when inflated and not bearing a load.
(R.C. § 5577.03)

(B) *Vehicles with pneumatic tires, load limits.*

(1) The maximum wheel load of any one wheel of any vehicle, load, object or structure operated or moved upon improved public highways, streets, bridges or culverts shall not exceed 650 pounds per inch width of pneumatic tire, measured as prescribed by division (A) of this section.

(2) The weight of the vehicle and load imposed upon a road surface that is part of the interstate system by vehicles with pneumatic tires shall not exceed any of the following weight limitations:

(a) On any one axle, 20,000 pounds;

(b) On any tandem axle, 34,000 pounds;

(c) On any two or more consecutive axles, the maximum weight as determined by application of the formula provided in division (B)(3) of this section.

(3) (a) For purposes of division (B)(2)(c) of this section, the maximum gross weight on any two or more consecutive axles shall be determined by application of the following formula: W = 500[(LN/–1) + 12N + 36]

(b) In this formula, W equals the overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L equals the distance in rounded whole feet between the extreme of any group of two or more consecutive axles, and N equals the number of axles in the group under consideration. However, two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each, provided the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more.

(4) Except as provided in division (B)(9) of this section, the weight of vehicle and load imposed upon a road surface that is not part of the interstate system by vehicles with pneumatic tires shall not exceed any of the following weight limitations:

(a) On any one axle, 20,000 pounds.

(b) On any two successive axles:

1. Spaced four feet or less apart, and weighed simultaneously, 24,000 pounds;

2. Spaced more than four feet apart, and weighed simultaneously, 34,000 pounds, plus 1,000 pounds per foot or fraction thereof, over four feet, not to exceed 40,000 pounds.

(c) On any three successive load-bearing axles designed to equalize the load between such axles and spaced so that each such axle of the three-axle group is more than four feet from the next axle in the three-axle group and so that the spacing between the first axle and the third axle in the three-axle group is no more than nine feet, and with such load-bearing three-axle group weighed simultaneously as a unit:

1. A weight of 48,000 pounds, with the total weight of the vehicle and load not exceeding 38,000 pounds plus an additional 900 pounds for each foot of spacing between the front axle and the rearmost axle of the vehicle;

2. As an alternative to division (B)(4)(c)1. of this section, 42,500 pounds, if part of a six-axle vehicle combination with at least 20 feet of spacing between the front axle and rearmost axle, with the total weight of the vehicle and load not exceeding 54,000 pounds plus an additional 600 pounds per each foot of spacing between the front axle and the rearmost axle of the vehicle.

(d) The total weight of the vehicle and load utilizing any combination of axles, other than as provided for three-axle groups in division (B)(4) of this section, shall not exceed 38,000 pounds plus an additional 900 pounds for each foot of spacing between the front axle and the rearmost axle of the vehicle.

(5) Notwithstanding divisions (B)(2) and (B)(4) of this section, the maximum overall gross weight of a vehicle and load imposed upon the road surface shall not exceed 80,000 pounds.

(6) Notwithstanding any other provision of law, when a vehicle is towing another vehicle, such drawbar or other connection shall be of a length such as will limit the spacing between nearest axles of the respective vehicles to a distance not in excess of 12.5 feet.

(7) As used in division (B)(2) of this section, ***TANDEM AXLE*** means two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches but not more than 96 inches apart, extending across the full width of the vehicle.

(8) This division (B) does not apply to passenger bus type vehicles operated by a regional transit authority pursuant to R.C. §§ 306.30 through 306.54.

(9) Either division (B)(2) or (B)(4) of this section applies to the weight of a vehicle and its load imposed upon any road surface that is not a part of the interstate system by vehicles with pneumatic tires. As between divisions (B)(2) and (B)(4) of this section, only the division that yields the highest total gross vehicle weight limit shall be applied to any such vehicle. Once that division has been determined, only the limits contained in the subdivisions of that division shall apply to that vehicle.
(R.C. § 5577.04)

(C) *Axle and wheel load, gross weights and towing connection length for solid rubber tires.*

(1) No vehicle, load, object or structure having a maximum axle load greater than 16,000 pounds when such vehicle is equipped with solid rubber tires shall be operated or moved upon the improved public highways, streets, bridges or culverts. The maximum wheel load of any one wheel of such vehicle shall not exceed 650 pounds per inch width of tire, measured as prescribed by division (A) of this section, nor shall any solid tire or rubber or other resilient material, on any wheel of any such vehicle, be less than one inch thick when measure from the top of the flanges of the tire channel.

(2) The weight of vehicle and load imposed upon the road surface by any two successive axles, spaces four feet or less apart, shall not exceed 19,000 pounds for solid tires; or by any two successive axles spaced more than four feet but less than eight feet apart, shall not exceed 24,000 pounds for solid tires; or by any two successive axles, spaced eight feet or more apart, shall not exceed 28,000 pounds for solid tires; nor shall the total weight of vehicle and load exceed, for solid rubber tires, 28,000 pounds plus an additional 600 pounds for each foot or fraction thereof of spacing between the front axle and the rear-most axle of the vehicle; nor shall the weight of the vehicle and load imposed upon the road surface by any vehicle equipped with solid rubber tires exceed 80% of the permissible weight of vehicle and load as provided for pneumatic tires.

(3) Notwithstanding any other provision of law, when a vehicle is towing another vehicle, such drawbar or other connection shall be of a length such as will limit the spacing between the nearest axles of the respective vehicles to a distance not in excess of 12.5 feet. If the provisions of this division (C) are held to exceed the weight limitations or other provisions set forth in the "Federal-Aid Highway Act of 1958", 72 Stat. 902, 23 U.S.C. § 127, this division (C) shall become null and void to the extent of such inconsistency.
(R.C. § 5577.041)

(D) *Penalties.*

(1) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second or subsequent offense, such person is guilty of a misdemeanor of the fourth degree.
(R.C. § 5577.99(C))

(2) Whoever violates the weight provisions of this section shall be punished as set forth in § 74.55(B).

(E) *Modification of load limits.* The load limits established in this section may be modified or waived upon special permission granted as provided in R.C. § 4513.34 or a substantially equivalent municipal ordinance.

## § 74.47 MAXIMUM WIDTH, HEIGHT, AND LENGTH.

(A) No vehicle shall be operated upon the public highways, streets, bridges, and culverts within this municipality whose dimensions exceed those specified in this section.

(B) No such vehicle shall have a width:

(1) In excess of 104 inches for passenger bus type vehicles operated exclusively within the municipality.

(2) In excess of 102 inches, excluding such safety devices as are required by law, for passenger bus type vehicles operated over freeways, and such other state roads with minimum pavement widths of 22 feet, except those roads or portions of roads over which operation of 102-inch buses is prohibited by order of the Director of Transportation.

(3) In excess of 132 inches for traction engines.

(4) In excess of 102 inches for recreational vehicles, excluding safety devices and retracted awnings and other appurtenances of six inches or less in width and except that the Director may prohibit the operation of 102-inch recreational vehicles on designated state highways or portions of highways.

(5) In excess of 102 inches, including load, for all other vehicles, except that the Director may prohibit the operation of 102-inch vehicles on such state highways or portions of state highways as the Director designates.

(C) No such vehicle shall have a length:

(1) In excess of 66 feet for passenger bus type vehicles and articulated passenger bus type vehicles operated by a regional transit authority pursuant to R.C. §§ 306.30 through 306.54.

(2) In excess of 45 feet for all other passenger bus type vehicles.

(3) In excess of 53 feet for any semitrailer when operated in a commercial tractor-semitrailer combination, with or without load, except that the Director may prohibit the operation of any such commercial tractor-semitrailer combination on such state highways or portions of state highways as the Director designates.

(4) In excess of 28.5 feet for any semitrailer or trailer when operated in a commercial tractor-semitrailer-trailer or commercial tractor-semitrailer-semitrailer combination, except that the Director may prohibit the operation of any such commercial tractor-semitrailer-trailer or commercial tractor-semitrailer-semitrailer combination on such state highways or portions of state highways as the Director designates.

(5) (a) In excess of 97 feet for drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount vehicle transporter combinations when operated on any interstate, United States route, or state route, including reasonable access travel on all other roadways for a distance not to exceed one road mile from any interstate, United States route, or state route, not to exceed three saddlemounted vehicles, but which may include one fullmount;

(b) In excess of 75 feet for drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount vehicle transporter combinations when operated on any roadway not designated as an interstate, United States route, or state route, not to exceed three saddlemounted vehicles, but which may include one fullmount.

(6) In excess of 65 feet for any other combination of vehicles coupled together, with or without load, except as provided in division (C)(3) and (C)(4), and in division (E) below.

(7) In excess of 45 feet for recreational vehicles.

(8) In excess of 50 feet for all other vehicles, except trailers and semitrailers, with or without load.

(D) No such vehicle shall have a height in excess of 13.5 feet, with or without load.

(E) An automobile transporter or boat transporter shall be allowed a length of 65 feet, and a stinger-steered automobile transporter or stinger-steered boat transporter shall be allowed a length of 75 feet, except that the load thereon may extend no more than four feet beyond the rear of such vehicles and may extend no more than three feet beyond the front of such vehicles, and except further that the Director may prohibit the operation of a stinger-steered automobile transporter, stinger-steered boat transporter, or a B-train assembly on any state highway or portion of any state highway that the Director designates.

(F) (1) The widths prescribed in division (B) of this section shall not include side mirrors, turn signal lamps, marker lamps, handholds for cab entry and egress, flexible fender extensions, mud flaps, splash and spray suppressant devices, and load-induced tire bulge.

(2) The widths prescribed in division (B)(5) of this section shall not include automatic covering devices, tarp and tarp hardware, and tiedown assemblies, provided these safety devices do not extend more than three inches from either side of the vehicle.

(3) The lengths prescribed in divisions (C)(2) through (C)(7) shall not include safety devices, bumpers attached to the front or rear of such bus or combination, non-property carrying devices or components that do not extend more than 24 inches beyond the rear of the vehicle and are needed for loading or unloading, B-train assembly used between the first and second semitrailer of a commercial tractor-semitrailer-semitrailer combination, energy conservation devices as provided in any regulations adopted by the Secretary of the United States Department of Transportation, or any noncargo-carrying refrigerator equipment attached to the front of trailers and semitrailers. In special cases, vehicles that dimensions exceed those prescribed by this section may operate in accordance with rules adopted by the Director.

(G) (1) This section does not apply to fire engines, fire trucks, or other vehicles or apparatus belonging to the municipality or to the volunteer fire department thereof or used by such department in the discharge of its functions. This section does not apply to vehicles and pole trailers used in the transportation of wooden and metal poles, nor to the transportation of pipes or well-drilling equipment, nor to farm machinery and equipment.

(2) The owner or operator of any vehicle, machinery, or equipment not specifically enumerated in this section but the dimensions of which exceed the dimensions provided by this section, when operating the same on the highways and streets of the municipality, shall comply with the rules of the Director governing such movement. Any person adversely affected shall have the same right of appeal as provided in R.C. Chapter 119.

(3) This section does not require the municipality or any railroad or other private corporation to provide sufficient vertical clearance to permit the operation of such vehicle, or to make any changes in or about existing structures now crossing streets, roads, and other public thoroughfares.

(H) As used in this section, ***RECREATIONAL VEHICLE*** has the same meaning as in R.C. § 4501.01.
(R.C. § 5577.05)

(I) No person shall violate any rule or regulation promulgated by the Director of Transportation in accordance with R.C. § 5577.05.
(R.C. § 5577.06)

(J) Whoever violates this section is guilty of a minor misdemeanor on a first offense; on a second or subsequent offense, such person is guilty of a misdemeanor of the fourth degree.
(R.C. § 5577.99(C))

## § 74.48 STATEMENT OF GROSS VEHICLE WEIGHT.

(A) No person shall issue or aid in issuing any bill of lading or other document of like nature in lieu thereof, which bill or document is to accompany a shipment of goods or property by truck, trailer, semitrailer, commercial tractor, or any other commercial vehicle used for the transportation of property, the gross weight of which, with load, exceeds three tons, with intent to defraud by misrepresentation thereon the weight of such goods of property to be so transported.

(B) Any driver or operator of a commercial car, trailer or semitrailer may obtain from any person, firm, partnership, corporation or association, including the owner, lessee, or operator of such commercial car, trailer or semitrailer, owning and operating sealed scales in this state, a written “statement of gross vehicle weight”

showing the gross weight of the vehicle including the cargo on the vehicle, the name and address of the person issuing the statement, and the date and place where the vehicle and its cargo were weighed. The driver or operator of the commercial car, trailer or semitrailer shall retain such statement of gross vehicle weight on his or her person, and any law enforcement officer may request that such driver or operator exhibit it to him or her. If, upon examining the statement of gross vehicle weight, the law enforcement officer has reason to believe that the information contained therein is correct in every respect, he or she shall indorse it with his or her name and the date and place where it was exhibited to him or her. The law enforcement officer may then permit such driver or operator to proceed without weighing by a law enforcement officer. No person shall willfully issue a written statement of gross vehicle weight and knowingly give any false information in such statement.
(R.C. § 5577.10)

(C) Whoever violates division (A) of this section shall be fined not more than $5,000 or imprisoned for not less than 30 days nor more than six months, or both.
(R.C. § 5577.99(D))

## § 74.49 WHEEL PROTECTORS REQUIRED ON HEAVY COMMERCIAL VEHICLES.

(A) No person shall drive or operate, or cause to be driven or operated, any commercial car, trailer, or semitrailer, used for the transportation of goods or property, the gross weight of which, with load, exceeds three tons, upon the public highways, streets, bridges, and culverts within the municipality, unless such vehicle is equipped with suitable metal protectors or substantial flexible flaps on the rearmost wheels of such vehicle or combination of vehicles to prevent, as far as practicable, the wheels from throwing dirt, water, or other materials on the windshields of following vehicles. Such protectors or flaps shall have a ground clearance of not more than one-third of the distance from the center of the rearmost axle to the center of the flaps under any conditions of loading of the vehicle, and they shall be at least as wide as the tires they are protecting. If the vehicle is so designed and constructed that such requirements are accomplished by means of fenders, body construction, or other means of enclosure, then no such protectors or flaps are required. Rear wheels not covered at the top by fenders, bodies, or other parts of the vehicle shall be covered at the top by protective means extending at least to the center line of the rearmost axle.
(R.C. § 5577.11)

(B) Whoever violates this section shall be fined not more than $25.
(R.C. § 5577.99(E))

## § 74.50 LIABILITY FOR DAMAGES; PROSECUTION; APPLICATION OF MONIES.

Any person violating any law relating to or regulating the use of the improved public roads shall be liable for all damage resulting to any such street, highway, bridge or culvert by reason of such violation. In case of any injury to such street, highway, bridge or culvert, such damages shall be collected by civil action for recovery of such damages brought by the proper authorities of the municipality. All damages collected under this section shall be paid into the treasury of the municipality and credited to any fund for the repairs of streets, highways, roads, bridges or culverts.
(R.C. § 5577.12)

## § 74.51 WEIGHT EXCEPTIONS FOR CERTAIN VEHICLES.

(A) As used in this section:

***COAL TRUCK.*** Means a truck transporting coal from the site where it is mined when the truck is operated in accordance with this section.

***FARM COMMODITIES.*** Includes livestock, bulk milk, corn, soybeans, tobacco and wheat.

***FARM MACHINERY.*** Has the same meaning as in R.C. § 4501.01.

***FARM TRUCK.*** Means a truck used in the transportation from a farm of farm commodities when the truck is operated in accordance with this section.

***LOG TRUCK.*** Means a truck used in the transportation of timber from the site of its cutting when the truck is operated in accordance with this section.

***SOLID WASTE.*** Has the same meaning as in R.C. § 3743.01.

***SOLID WASTE HAUL VEHICLE.*** Means a vehicle hauling solid waste for which a bill of lading has not been issued.

(B) (1) Notwithstanding R.C. §§ 5577.02 and 5577.04, or any substantially equivalent municipal ordinance, the following vehicles under the described conditions may exceed by no more than 7.5% the weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent municipal ordinance, and no penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance, shall be imposed:

(a) A coal truck transporting coal, from the place of production to the first point of delivery where title to the coal is transferred;

(b) A farm truck or farm machinery transporting farm commodities, from the place of production to the first point of delivery where the commodities are weighed and title to the commodities is transferred;

(c) A log truck transporting timber, from the site of its cutting to the first point of delivery where the timber is transferred;

(d) A solid waste haul vehicle hauling solid waste, from the place of production to the first point of delivery where the solid waste is disposed of or title to the solid waste is transferred.

(2) In addition, if any of the vehicles listed in division (B)(1) of this section and operated under the conditions described in that division does not exceed by more than 7.5% the gross vehicle weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent municipal ordinance, and does not exceed the wheel or axle-load limits of those sections by more than 7.5%, no penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance, for a wheel or axle overload shall be imposed.

(C) If any of the vehicles listed in division (B)(1) of this section and operated under the conditions described in that division exceeds the weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent

municipal ordinance, by more than the percentage allowance of either divisions (B)(1) or (B)(2) of this section, both of the following apply without regard to the allowance provided by this division (B) of this section:

(1) The applicable penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance;

(2) The civil liability imposed by R.C. § 5577.12, or any substantially equivalent municipal ordinance.

(D) (1) Division (B) of this section does not apply to the operation of a farm truck, log truck, or farm machinery transporting farm commodities during the months of February and March.

(2) Regardless of when the operation occurs, division (B) of this section does not apply to the operation of a vehicle on either of the following:

(a) A highway that is part of the interstate system;

(b) A highway, road, or bridge that is subject to reduced maximum weights under R.C. § 4513.33, 5577.07, 5577.071, 5577.08, 5577.09, or 5591.42, or any substantially equivalent municipal ordinance.
(R.C. § 5577.042)

(E) Notwithstanding R.C. §§ 5577.02 and 5577.04, or any substantially equivalent municipal ordinance, the following vehicles under the described conditions may exceed by no more than 7.5% the weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent municipal ordinance, and no penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance, shall be imposed:

(1) A surface mining truck transporting minerals from the place where the minerals are loaded to any of the following:

(a) The construction site where the minerals are discharged;

(b) The place where title to the minerals is transferred;

(c) The place of processing.

(2) A vehicle transporting hot mix asphalt material from the place where the material is first mixed to the paving site where the material is discharged;

(3) A vehicle transporting concrete from the place where the material is first mixed to the site where the material is discharged;

(4) A vehicle transporting manure, turf, sod, or silage from the site where the material is first produced to the first place of delivery;

(5) A vehicle transporting chips, sawdust, mulch, bark, pulpwood, biomass, or firewood from the site where the product is first produced or harvested to first point where the product is transferred.

(F) In addition, if any of the vehicles listed in division (E) of this section and operated under the conditions described in that division do not exceed by more than 7.5% the gross vehicle weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent municipal ordinance, and do not exceed the wheel or axle-load limits of those sections by more than 7.5%, no penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance, for a wheel or axle overload shall be imposed.

(G) If any of the vehicles listed in division (E) of this section and operated under the conditions described in that division exceed the weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent municipal ordinance, by more than the percentage allowance of either divisions (E) or (F) of this section, both of the following apply without regard to the allowance provided by division (E) or (F) of this section:

(1) The applicable penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance;

(2) The civil liability imposed by R.C. § 5577.12, or any substantially equivalent municipal ordinance.

(H) Divisions (E) and (F) of this section do not apply to the operation of a vehicle listed in division (E) of this section on either of the following:

(1) A highway that is part of the interstate system;

(2) A highway, road, or bridge that is subject to reduced maximum weights under R.C. § 4513.33, 5577.07, 5577.071, 5577.08, 5577.09, or 5591.42, or any substantially equivalent municipal ordinance. (R.C. § 5577.043)

(I) Notwithstanding R.C. §§ 5577.02 and 5577.04, or any substantially equivalent municipal ordinance, a vehicle fueled solely by compressed natural gas or liquid natural gas may exceed by not more than 2,000 pounds the gross vehicle weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent municipal ordinance, or the axle load limits of those sections.

(J) If a vehicle described in division (I) of this section exceeds the weight provisions of R.C. §§ 5577.01 to 5577.09, or any substantially equivalent municipal ordinance, by more than the allowance provided for in division (I) of this section, both of the following apply:

(1) The applicable penalty prescribed in R.C. § 5577.99, or any substantially equivalent municipal ordinance;

(2) The civil liability imposed by R.C. § 5577.12, or any substantially equivalent municipal ordinance.

(K) Division (I) of this section does not apply to the operation of a vehicle on either of the following:

(1) A highway that is part of the interstate system;

(2) A highway, road, or bridge that is subject to reduced maximum weights under R.C. § 4513.33, 5577.07, 5577.071, 5577.08, 5577.09, or 5591.42, or any substantially equivalent municipal ordinance. (R.C. § 5577.044)

# CHAPTER 75: BICYCLES, MOTORCYCLES, AND OFF-ROAD VEHICLES

Section



***Statutory reference:***

*Bicycle regulations to be consistent with state law, see R.C. § 4511.07(A)(8)*
*Protective eye devices required for motorcycle operators and passengers; helmets required for persons under 18 years of age, see O.A.C. § 4501-17-01*

## *GENERAL PROVISIONS*

### § 75.01 BICYCLES; APPLICATION OF TITLE VII.

(A) The provisions of this title that are applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles.

(B) Except as provided in division (D) of this section, a bicycle operator who violates any provisions of this title described in division (A) of this section that is applicable to bicycles may be issued a ticket, citation, or

summons by a law enforcement officer for the violation in the same manner as the operator of a motor vehicle would be cited for the same violation. A person who commits any such violation while operating a bicycle shall not have any points assessed against the person's driver's license, commercial driver's license, temporary instruction permit, or probationary license under R.C. § 4510.036.

(C) Except as provided in division (D) of this section, in the case of a violation of any provision of this title described in division (A) of this section by a bicycle operator or by a motor vehicle operator when the trier of fact finds that the violation by the motor vehicle operator endangered the lives of bicycle riders at the time of the violation, the court, notwithstanding any provision of the Ohio Revised Code to the contrary, may require the bicycle operator or motor vehicle operator to take and successfully complete a bicycling skills course approved by the court in addition to or in lieu of any penalty otherwise prescribed by this Traffic Code or the Ohio Revised Code for that violation.

(D) Divisions (B) and (C) of this section do not apply to violations of R.C. § 4511.19, or a substantially equivalent municipal ordinance.
(R.C. § 4511.52)

## § 75.02 OPERATION OF MOTORIZED BICYCLE.

(A) No person shall operate a motorized bicycle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking, unless all of the following conditions are met:

(1) The person is 14 or 15 years of age and holds a valid probationary motorized bicycle license issued after the person has passed the test provided for in this section, or the person is 16 years of age or older and holds either a valid commercial driver's license issued under R.C. Chapter 4506 or a driver's license issued under R.C. Chapter 4507 or a valid motorized bicycle license issued after the person has passed the test provided for in this section, except that if a person is 16 years of age, has a valid probationary motorized bicycle license and desires a motorized bicycle license, the person is not required to comply with the testing requirements provided for in this section.

(2) The motorized bicycle is equipped in accordance with the rules adopted under division (B) of this section and is in proper working order.

(3) The person, if under 18 years of age, is wearing a protective helmet on the person's head with the chin strap properly fastened and the motorized bicycle is equipped with a rearview mirror.

(4) The person operates the motorized bicycle when practicable within three feet of the right edge of the roadway obeying all traffic rules applicable to vehicles.

(B) The Director of Public Safety, subject to R.C. Chapter 119, shall adopt and promulgate rules concerning protective helmets, the equipment of motorized bicycles, and the testing and qualifications of persons who do not hold a valid driver's or commercial driver's license. The test shall be as near as practicable to the examination required for a motorcycle operator's endorsement under R.C. § 4507.11. The test shall also require the operator to give an actual demonstration of the operator's ability to operate and control a motorized bicycle by driving one under the supervision of an examining officer.

(C) Every motorized bicycle license expires on the birthday of the applicant in the fourth year after the date it is issued, but in no event shall any motorized bicycle license be issued for a period longer than four years.

(D) No person operating a motorized bicycle shall carry another person upon the motorized bicycle.

(E) The protective helmet and rearview mirror required by division (A)(3) of this section shall, on and after January 1, 1985, conform with rules adopted by the Director under division (B) of this section.

(F) Each probationary motorized bicycle license or motorized bicycle license shall be laminated with a transparent plastic material.

(G) Whoever violates division (A), (D), or (E) of this section is guilty of a minor misdemeanor. (R.C. § 4511.521)

***Statutory reference:***

*Suspension of probationary motorized bicycle license by the state, see R.C. § 4510.34*

## § 75.03 RULES FOR BICYCLES, MOTORCYCLES, AND SNOWMOBILES.

(A) As used in this section, ***SNOWMOBILE*** has the same meaning as given that term in R.C. § 4519.01.

(B) (1) No person operating a bicycle shall ride other than upon or astride the permanent and regular seat attached thereto or carry any other person upon such bicycle other than upon a firmly attached and regular seat thereon, and no person shall ride upon a bicycle other than upon such a firmly attached and regular seat.

(2) No person operating a motorcycle shall ride other than upon or astride the permanent and regular seat or saddle attached thereto, or carry any other person upon such motorcycle other than upon a firmly attached and regular seat or saddle thereon, and no person shall ride upon a motorcycle other than upon such a firmly attached and regular seat or saddle.

(3) No person shall ride upon a motorcycle that is equipped with a saddle other than while sitting astride the saddle, facing forward, with one leg on each side of the motorcycle.

(4) No person shall ride upon a motorcycle that is equipped with a seat other than while sitting upon the seat.

(5) No person operating a bicycle shall carry any package, bundle, or article that prevents the driver from keeping at least one hand upon the handlebars.

(6) No bicycle or motorcycle shall be used to carry more persons at one time than the number for which it is designed and equipped. No motorcycle shall be operated on a highway when the handlebars rise higher than the shoulders of the operator when the operator is seated in the operator's seat or saddle.

(C) (1) Except as provided in division (C)(3) of this section, no person shall operate or be a passenger on a snowmobile or motorcycle without using safety glasses or other protective eye device. Except as provided in division (C)(3) of this section, no person who is under the age of 18 years, or who holds a motorcycle operator's endorsement or license bearing a "novice" designation that is currently in effect as provided in R.C. § 4507.13,

shall operate a motorcycle on a highway, or be a passenger on a motorcycle, unless wearing a protective helmet on the person's head, and no other person shall be a passenger on a motorcycle operated by such a person unless similarly wearing a protective helmet. The helmet, safety glasses, or other protective eye device shall conform with rules adopted by the Ohio Director of Public Safety. The provisions of this paragraph or a violation thereof shall not be used in the trial of any civil action.

(2) (a) Except as provided in division (C)(3) of this section, no person shall operate a motorcycle with a valid temporary instruction permit and temporary instruction permit identification card issued by the Registrar of Motor Vehicles pursuant to R.C. § 4507.05 unless the person, at the time of such operation, is wearing on the person's head a protective helmet that conforms with rules adopted by the Ohio Director of Public Safety.

(b) No person shall operate a motorcycle with a valid temporary instruction permit and temporary instruction permit identification card issued by the Registrar of Motor Vehicles pursuant to R.C. § 4507.05 in any of the following circumstances:

1. At any time when lighted lights are required by R.C. § 4513.03(A)(1);

2. While carrying a passenger;

3. On any limited access highway or heavily congested roadway.

(3) Divisions (C)(1) and (C)(2)(a) of this section do not apply to a person who operates or is a passenger in an autocycle or cab-enclosed motorcycle when the occupant compartment top is in place enclosing the occupants.

(D) Nothing in this section shall be construed as prohibiting the carrying of a child in a seat or trailer that is designed for carrying children and is firmly attached to the bicycle.

(E) Except as otherwise provided in this division, whoever violates division (B) or (C)(1) or (C)(2) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (B) or (C)(1) or (C)(2) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (B) or (C)(1) or (C)(2) of this section is guilty of a misdemeanor of the third degree. (R.C. § 4511.53)

## § 75.04 PROHIBITION AGAINST ATTACHING BICYCLES AND SLEDS TO VEHICLES.

(A) (1) No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or self to any vehicle upon a roadway.

(2) No operator shall knowingly permit any person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle to attach the same or self to any vehicle while it is moving upon a roadway.

(3) This section does not apply to towing a disabled vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty

to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.54)

## § 75.05 RIDING BICYCLES; MOTORCYCLES ABREAST.

(A) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable obeying all traffic rules applicable to vehicles and exercising due care when passing a standing vehicle or one proceeding in the same direction.

(B) Persons riding bicycles or motorcycles upon a roadway shall ride not more than two abreast in a single lane, except on paths or parts of roadways set aside for the exclusive use of bicycles or motorcycles.

(C) This section does not require a person operating a bicycle to ride at the edge of the roadway when it is unreasonable or unsafe to do so. Conditions that may require riding away from the edge of the roadway include when necessary to avoid fixed or moving objects, parked or moving vehicles, surface hazards, or if it otherwise is unsafe or impracticable to do so, including if the lane is too narrow for the bicycle and an overtaking vehicle to travel safely side by side within the lane.

(D) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.55)

## § 75.06 EQUIPMENT OF BICYCLES.

(A) Every bicycle when in use at the times specified in R.C. § 4513.03 or a substantially equivalent municipal ordinance shall be equipped with the following:

(1) A lamp mounted on the front of either the bicycle or the operator that shall emit a white light visible from a distance of at least 500 feet to the front and 300 feet to the sides. A generator-powered lamp that emits light only when the bicycle is moving may be used to meet this requirement.

(2) A red reflector on the rear that shall be visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle;

(3) A lamp emitting either flashing or steady red light visible from a distance of 500 feet to the rear shall be used in addition to the red reflector. If the red lamp performs as a reflector in that it is visible as specified in division (A)(2) of this section, the red lamp may serve as the reflector and a separate reflector is not required.

(B) Additional lamps and reflectors may be used in addition to those required under division (A) of this section, except that red lamps and red reflectors shall not be used on the front of the bicycle and white lamps and white reflectors shall not be used on the rear of the bicycle.

(C) A bicycle may be equipped with a device capable of giving an audible signal, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(D) Every bicycle shall be equipped with an adequate brake when used on a street or highway.

(E) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.56)

## *SNOWMOBILES, OFF-HIGHWAY MOTORCYCLES, AND ALL-PURPOSE VEHICLES*

### § 75.25 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALL-PURPOSE VEHICLE.*** Any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof, including vehicles that operate on a cushion of air, vehicles commonly known as all-terrain vehicles, all season vehicles, mini-bikes and trail bikes. The term does not include a utility vehicle as defined in R.C. § 4501.01 or any vehicle principally used in playing golf, any motor vehicle or aircraft required to be registered under R.C. Chapter 4503 or R.C. Chapter 4561, and any vehicle excepted from definition as a motor vehicle by R.C. § 4501.01(B).

***DEALER.*** Any person or firm engaged in the business of manufacturing or selling snowmobiles, off-highway motorcycles, or all-purpose vehicles at wholesale or retail, or who rents, leases or otherwise furnishes snowmobiles, off-highway motorcycles, or all-purpose vehicles for hire.

***ELECTRONIC.*** Has the same meaning as in R.C. § 4501.01.

***ELECTRONIC DEALER.*** A dealer whom the Registrar of Motor Vehicles designates under R.C. § 4519.511.

***ELECTRONIC RECORD.*** Has the same meaning as in R.C. § 4501.01.

***HIGHWAY.*** Has the same meaning as in R.C. § 4511.01.

***INTERSTATE HIGHWAY.*** Any part of the interstate system of highways as defined in subsection (e), 90 Stat. 431 (1976), 23 U.S.C. § 103, as amended.

***LIMITED ACCESS HIGHWAY OR FREEWAY.*** Have the same meanings as in R.C. § 5511.02.

***MINI-TRUCK.*** A vehicle that has four wheels, is propelled by an electric motor with a rated power of 7,500 watts or less or an internal combustion engine with a piston displacement capacity of 660 cubic centimeters or less, has a total dry weight of 900 to 2,200 pounds, contains an enclosed cabin and a seat for the vehicle operator, resembles a pickup truck or van with a cargo area or bed located at the rear of the vehicle, and was not originally manufactured to meet federal motor vehicle safety standards.

***OFF-HIGHWAY MOTORCYCLE.*** Every motorcycle, as defined in R.C. § 4511.01, that is designed to be operated primarily on lands other than a street or highway.

***OPERATOR.*** Any person who operates or is in actual physical control of a snowmobile, off-highway motorcycle, or all-purpose vehicle.

***OWNER.*** Any person or firm, other than a lienholder or dealer, having title to a snowmobile, off-highway motorcycle, or all-purpose vehicle, or other right to the possession thereof.

***PROOF OF FINANCIAL RESPONSIBILITY.*** Has the same meaning as in R.C. § 4509.01.

***SNOWMOBILE.*** Any self-propelled vehicle designed primarily for use on snow or ice, and steered by skis, runners or caterpillar treads.

***STATE HIGHWAY*** and ***STATE ROUTE.*** Have the same meanings as in R.C. § 4511.01.

***STREET.*** Has the same meaning as in R.C. § 4511.01.
(R.C. § 4519.01)

## § 75.26 EQUIPMENT.

(A) In addition to any rules or regulations promulgated by the Ohio Director of Public Safety pursuant to R.C. § 4519.20 and R.C. Chapter 119, equipment of snowmobiles, off-highway motorcycles, and all-purpose vehicles shall include but not necessarily be limited to requirements for the following items of equipment:

(1) At least one headlight having a minimum candlepower of sufficient intensity to reveal persons and objects at a distance of at least 100 feet ahead under normal atmospheric conditions during hours of darkness;

(2) At least one red tail light having a minimum candlepower of sufficient intensity to be plainly visible from a distance of 500 feet to the rear under normal atmospheric conditions during hours of darkness;

(3) Every snowmobile, while traveling on packed snow, shall be capable of carrying a driver who weighs 175 pounds or more, and, while carrying such driver, be capable of stopping in no more than 40 feet from an initial steady speed of 20 miles per hour, or locking its traction belt; and

(4) A muffler system capable of precluding the emission of excessive smoke or exhaust fumes, and of limiting the engine noise of vehicles. On snowmobiles manufactured after January 1, 1973, such requirement shall include sound dampening equipment such that noise does not exceed 82 decibels on the "A" scale at 50 feet as measured according to SAE J192 (September 1970).

(B) No person shall operate any snowmobile, off-highway motorcycle, or all-purpose vehicle in violation of this section, except that equipment specified in division (A)(1) and (A)(2) of this section shall not be required on snowmobiles, off-highway motorcycles, or all-purpose vehicles operated during the daylight hours.
(R.C. § 4519.20(A), (B))

(C) No person shall sell, offer for sale, lease, rent or otherwise furnish for hire in this municipality any new snowmobile, off-highway motorcycle, or all-purpose vehicle that fails to comply with any rule adopted by the Ohio Director of Public Safety under R.C. § 4519.20 after the effective date of the rule.
(R.C. § 4519.22(A))

(D) (1) Except as otherwise provided in this division, whoever violates division (B) of this section shall be fined not more than $50. If the offender within the preceding year previously has committed a violation of division (B) of this section or of R.C. § 4519.20(B), whoever violates division (B) of this section shall be fined not less than $15 nor more than $100, imprisoned not more than three days, or both.
(R.C. § 4519.20(C))

(2) Except as otherwise provided in this division, whoever violates division (C) of this section shall be fined not more than $50. If the offender within the preceding year previously has committed a violation of division (C) of this section or of R.C. § 4519.22(A), whoever violates this section shall be fined not less than $15 nor more than $100, imprisoned not more than three days, or both.
(R.C. § 4519.22(B))

## § 75.27 CODE APPLICATION; PROHIBITED OPERATION.

(A) The applicable provisions of this traffic code apply to the operation of snowmobiles, off-highway motorcycles, and all-purpose vehicles, except that no person shall operate a snowmobile, off-highway motorcycle, or all-purpose vehicle as follows:

(1) On any state highway, including a limited access highway or freeway or the right-of-way thereof, except for emergency travel during such time and in such manner as the Ohio Director of Public Safety designates or except as authorized by R.C. § 4519.41(F);

(2) On any private property, or in any nursery or planting area, without the permission of the owner or other person having the right to possession of the property;

(3) On any land or waters controlled by the state, except at those locations where a sign has been posted permitting such operation;

(4) On the tracks or right-of-way of any operating railroad;

(5) While transporting any firearm, bow or other implement for hunting that is not unloaded and securely encased;

(6) For the purpose of chasing, pursuing, capturing or killing any animal or wild fowl; or

(7) During the time from sunset to sunrise, unless displaying lighted lights as required by R.C. § 4519.20 or a substantially equivalent municipal ordinance.

(B) Whoever violates this section shall be fined not less than $50 nor more than $500, imprisoned not less than 3 nor more than 30 days, or both.
(R.C. § 4519.40)

***Cross-reference:***

*Operation restricted for mini-trucks and low-speed, under-speed, or utility vehicles, see § 73.04*

## § 75.28 PERMITTED OPERATION.

(A) To make a crossing of a highway, other than a highway as designated in R.C. § 4519.40(A)(1) or a substantially equivalent municipal ordinance, whenever the crossing can be made in safety and will not interfere with the movement of vehicular traffic approaching from any direction on the highway, and provided that the operator yields the right-of-way to any approaching traffic that presents an immediate hazard;

(B) On highways in the county or township road systems whenever the local authority having jurisdiction over such highways so permits;

(C) Off and alongside street or highway for limited distances from the point of unloading from a conveyance to the point at which the snowmobile, off-highway motorcycle, or all-purpose vehicle is intended and authorized to be operated;

(D) On the berm or shoulder of a highway, other than a highway as designated in R.C. § 4519.40(A)(1) or a substantially equivalent municipal ordinance, when the terrain permits such operation to be undertaken safely and without the necessity of entering any traffic lane;

(E) On the berm or shoulder or a county or township road, while traveling from one area of operation of the snowmobile, off-highway motorcycle, or all-purpose vehicle to another such area.

(F) For snowmobiles without metal studded tracks and all-purpose vehicles, on state highways located on an island in Lake Erie, including limited access highways and freeways, between the first day of November and the thirtieth day of April, provided that all of the following conditions apply:

(1) The operator has a valid driver's license as required under R.C. § 4519.44.

(2) The snowmobile or all-purpose vehicle is in compliance with rules governing safety equipment adopted under R.C. § 4519.20.

(3) The owner of the snowmobile or all-purpose vehicle maintains proof of financial responsibility for both on-road and off-road use of the snowmobile or all-purpose vehicle.

(4) The operator obeys all traffic rules and regulations.
(R.C. § 4519.41)

## § 75.29 LICENSING REQUIREMENTS OF OPERATOR.

(A) No person who does not hold a valid, current motor vehicle driver's or commercial driver's license, motorcycle operator's endorsement or probationary license, issued under R.C. Chapter 4506 or R.C. Chapter 4507 or a valid, current driver's license issued by another jurisdiction, shall operate a snowmobile, off-highway motorcycle, or all-purpose vehicle on any street or highway in this municipality, on any portion of the right-of-way thereof, or on any public land or waters.

(B) No person who is less than 16 years of age shall operate a snowmobile, off-highway motorcycle, or all-purpose vehicle on any land or waters other than private property or waters owned by or leased to the person's parent or guardian, unless accompanied by another person who is 18 years of age or older, and who holds a license as provided in division (A) of this section, except that the Ohio Department of Natural Resources may permit such operation on state controlled land under its jurisdiction when such person is less than 16 years of age and is accompanied by a parent or guardian who is a licensed driver 18 years of age or older.

(C) Whoever violates this section shall be fined not less than $50 nor more than $500, imprisoned not less than 3 nor more than 30 days, or both.
(R.C. § 4519.44)

## § 75.30 MAINTENANCE OF VEHICLES FOR HIRE.

(A) Any dealer who rents, leases or otherwise furnishes a snowmobile, off-highway motorcycle, or all-purpose vehicle for hire shall maintain the vehicle in safe operating condition. No dealer, or agent or employee of a dealer, shall rent, lease or otherwise furnish a snowmobile, off-highway motorcycle, or all-purpose vehicle for hire to any person who does not hold a license as required by R.C. § 4519.44(A) or a substantially equivalent municipal ordinance, or to any person whom the dealer or an agent or employee of the dealer has reasonable cause to believe is incompetent to operate the vehicle in a safe and lawful manner.

(B) Whoever violates this section shall be fined not less than $100 nor more than $500.
(R.C. § 4519.45)

## § 75.31 ACCIDENT REPORTS.

(A) The operator of a snowmobile, off-highway motorcycle, or all-purpose vehicle involved in any accident resulting in bodily injury to or death of any person or damage to the property of any person in excess of $100 shall report the accident within 48 hours to the Chief of Police, and within 30 days shall forward a written report of the accident to the Ohio Registrar of Motor Vehicles on a form prescribed by the Registrar. If the operator is physically incapable of making the reports and there is another participant in the accident not so incapacitated,

the participant shall make the reports. In the event there is no other participant, and the operator is other than the owner, the owner, within the prescribed periods of time, shall make the reports.

(B) Any law enforcement officer or other person authorized by R.C. §§ 4519.42 and 4519.43 who investigates or receives information of an accident involving a snowmobile, off-highway motorcycle, or all-purpose vehicle shall forward to the Registrar a written report of the accident within 48 hours.
(R.C. § 4519.46)

## § 75.32 IMPOUNDING OF VEHICLE.

(A) Whenever a person is found guilty of operating a snowmobile, off-highway motorcycle, or all-purpose vehicle in violation of any rule authorized to be adopted under R.C. § 4519.21 or 4519.42, the trial judge of any court of record, in addition to or independent of any other penalties provided by law, may impound for not less than 60 days the certificate of registration and license plate, if applicable, of that snowmobile, off-highway motorcycle, or all-purpose vehicle. The court shall send the impounded certificate of registration and license plate, if applicable, to the Registrar of Motor Vehicles, who shall retain the certificate of registration and license plate, if applicable, until the expiration of the period of impoundment.

(B) If a court impounds the certificate of registration and license plate of an all-purpose vehicle pursuant to R.C. § 2911.21, the court shall send the impounded certificate of registration and license plate to the Registrar, who shall retain them until the expiration of the period of impoundment.
(R.C. § 4519.47)

## § 75.33 LOCAL CONTROL WITHIN POLICE POWER.

Nothing contained in this subchapter shall prevent the municipality from regulating the operation of snowmobiles, off-highway motorcycle, and all-purpose vehicles on streets and highways and other public property under municipal jurisdiction, and within the reasonable exercise of the police power, except that no registration or licensing of any snowmobile, off-highway motorcycle, or all-purpose vehicle required to be registered or titled under R.C. Chapter 4519 shall be required.
(R.C. § 4519.48)

## § 75.34 REGISTRATION OF VEHICLES.

(A) (1) Except as provided in division (B), (C) and (D) of this section, no person shall operate any snowmobile, off-highway motorcycle, or all-purpose vehicle within this municipality unless the snowmobile, off-highway motorcycle, or all-purpose vehicle is registered and numbered in accordance with R.C. §§ 4519.03 and 4519.04.

(2) Except as provided in R.C. § 4511.215 or a substantially equivalent municipal ordinance, no registration is required for a mini-truck that is operated within this state. A mini-truck may be operated only in accordance with R.C. § 4511.215 and R.C. § 4519.401, or any substantially equivalent municipal ordinance.

(B) (1) No registration is required for a snowmobile or off-highway motorcycle that is operated exclusively upon lands owned by the owner of the snowmobile or off-highway motorcycle, or on lands to which the owner of the snowmobile or off-highway motorcycle has a contractual right.

(2) No registration is required for an all-purpose vehicle that is used primarily for agricultural purposes when the owner qualifies for the current agricultural use valuation tax credit, unless it is to be used on any public land, trail, or right-of-way.

(3) Any all-purpose vehicle exempted from registration under division (B)(2) of this section and operated for agricultural purposes may use public roads and rights-of-way when traveling from one farm field to another, when such use does not violate R.C. § 4519.41.

(4) No registration is required for a snowmobile or all-purpose vehicle that is operated on a state highway as authorized by R.C. § 4519.41(F).

(C) No registration is required for a snowmobile, off-highway motorcycle, or all-purpose vehicle owned and used in this state by a resident of another state whenever that state has in effect a registration law similar to R.C. Chapter 4519 and the snowmobile, off-highway motorcycle, or all-purpose vehicle is properly registered under that state's law. Any snowmobile, off-highway motorcycle, or all-purpose vehicle owned and used in this state by a resident of a state not having a registration law similar to R.C. Chapter 4519 shall comply with R.C. § 4519.09.

(D) No registration is required for a snowmobile, off-highway motorcycle, or all-purpose vehicle owned and used in this municipality by the United States, another state or a political subdivision thereof, but the snowmobile, off-highway motorcycle, or all-purpose vehicle shall display the name of the owner thereon.

(E) The owner or operator of any all-purpose vehicle operated or used upon the waters in this municipality shall comply with R.C. Chapter 1547 and R.C. Chapter 1548 relative to the operation of watercraft.

(F) Whoever violates division (A) of this section shall be fined not less than $50 nor more than $100. (R.C. § 4519.02)

***Statutory reference:***

*Destruction or disposal of vehicle; transfer of ownership; change of address; loss of certificate, see R.C. § 4519.05*
*Registration of emergency vehicles, see R.C. § 4519.08*
*Registration procedure, see R.C. § 4519.03*
*Temporary license placards and fees, see R.C. § 4519.10*
*Temporary operating permit for certain nonresidents, see R.C. § 4519.09*

## § 75.35 CERTIFICATE OF TITLE; PROHIBITIONS.

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

(1) Operate in this state an off-highway motorcycle or all-purpose vehicle without having a certificate of title for the off-highway motorcycle or all-purpose vehicle if such a certificate is required by R.C. Chapter 4519 to be issued for the off-highway motorcycle or all-purpose vehicle, or, if a physical certificate of title has

not been issued for it, operate an off-highway motorcycle or all-purpose vehicle knowing that the ownership information related to the motorcycle or vehicle has not been entered into the automated title processing system by a Clerk of a Court of Common Pleas.

(2) Operate in this municipality an off-highway motorcycle or all-purpose vehicle is a certificate of title to the off-highway motorcycle or all-purpose vehicle has been issued and then has been canceled.

(3) Fail to surrender any certificate of title upon cancellation of it by the Registrar of Motor Vehicles and notice of the cancellation as prescribed in R.C. Chapter 4519.

(4) Fail to surrender the certificate of title to a Clerk of a Court of Common Pleas as provided in R.C. Chapter 4519, in case of the destruction or dismantling of, or change in, the off-highway motorcycle or all-purpose vehicle described in the certificate of title.

(5) Violate any provision of R.C. §§ 4519.51 through 4519.70 for which no penalty is otherwise provided or any lawful rules adopted pursuant to those sections.

(6) Operate in this state an off-highway motorcycle or all-purpose vehicle knowing that the certificate of title to or ownership of the motorcycle or vehicle as otherwise reflected in the automated title processing system has been canceled.

(B) Whoever violates this section shall be fined not more than $200, imprisoned not more than 90 days, or both.
(R.C. § 4519.66)

***Statutory reference:***

*Certificate of title: rules and procedures, see R.C. §§ 4519.51 et seq.*
*Stolen vehicles and restrictions on sale or transfer, felony provisions, see R.C. § 4519.67*

# CHAPTER 76: PARKING REGULATIONS

Section



***Cross-reference:***

*Junk motor vehicles, see Chapter 95*

*Unlawful furnishing of prescription to enable persons to be issued handicapped parking placards or license plates, see § 138.17*

***Statutory reference:***

*Noncriminal parking infractions, local option to create, see R.C. Chapter 4521*

## § 76.01 PROHIBITION AGAINST PARKING ON HIGHWAYS.

(A) (1) Upon any highway, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the highway if it is practicable to stop, park, or so leave such vehicle off the paved or main traveled part of the highway. In every event a clear and unobstructed portion of the highway opposite such standing vehicle shall be left for the free passage of other vehicles, and a clear view of such stopped vehicle shall be available from a distance of 200 feet in each direction upon such highway.

(2) This section does not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.66)

## § 76.02 CONDITION WHEN MOTOR VEHICLE LEFT UNATTENDED.

(A) (1) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the parking brake, and, when the motor vehicle is standing upon any grade, turning the front wheels to the curb or side of the highway.

(2) The requirements of this section relating to the stopping of the engine, locking of the ignition, and removing the key from the ignition of a motor vehicle do not apply to any of the following:

(a) A motor vehicle that is parked on residential property;

(b) A motor vehicle that is locked, regardless of where it is parked;

(c) An emergency vehicle ;

(d) A public safety vehicle.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 4511.661)

## § 76.03 POLICE MAY REMOVE ILLEGALLY PARKED VEHICLE.

(A) Whenever any police officer finds a vehicle standing upon a highway in violation of R.C. § 4511.66 or a substantially equivalent municipal ordinance, such officer may move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or improved or main traveled part of such highway.

(B) Whenever any police officer finds a vehicle unattended upon any highway, bridge, or causeway, or in any tunnel, where such vehicles constitutes an obstruction to traffic, such officer may provide for the removal of such vehicle to the nearest garage or other place of safety.
(R.C. § 4511.67)

## § 76.04 PARKING PROHIBITIONS.

(A) No person shall stand or park a vehicle, except when necessary to avoid conflict with other traffic or to comply with the provisions of this title, or while obeying the directions of a police officer or a traffic-control device, in any of the following places:

(1) On a sidewalk, except a bicycle;

(2) In front of a public or private driveway;

(3) Within an intersection;

(4) Within ten feet of a fire hydrant;

(5) On a crosswalk;

(6) Within 20 feet of a crosswalk at an intersection;

(7) Within 30 feet of, and upon the approach to, any flashing beacon, stop sign, or traffic-control device;

(8) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by a traffic-control device;

(9) Within 50 feet of the nearest rail of a railroad crossing;

(10) Within 20 feet of a driveway entrance to any fire station and, on the side of the street opposite the entrance to any fire station, within 75 feet of the entrance when it is properly posted with signs;

(11) Alongside or opposite any street excavation or obstruction when such standing or parking would obstruct traffic;

(12) Alongside any vehicle stopped or parked at the edge or curb of a street;

(13) Upon any bridge or elevated structure upon a highway, or within a highway tunnel;

(14) At any place where signs prohibit stopping;

(15) Within one foot of another parked vehicle;

(16) On the roadway portion of a freeway, expressway, or thruway.

(B) *Parking of motor vehicles on lawns prohibited.*

(1) No automobile, motorcycle or other motor vehicle or trailer shall be parked or remain on any non-parking or non-driveway portion (as described in § 152.19) of the yard of any residential or multi-family zoned lot.

(2) This section shall not apply during times of emergency due to acts of nature; or during the time that a resident is in the process of moving in or out of the premises.

(C) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.
(Ord. CM-18-06, passed 3-13-2018)
***Statutory reference:***
*Parking, prohibited acts, see R.C. § 4511.68*

## § 76.05 PARKING NEAR CURB; PRIVILEGES FOR PERSONS WITH DISABILITIES.

(A) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the right-hand wheels of the vehicle parallel with and not more than 12 inches from the right-hand curb, unless it is impossible to approach so close to the curb; in such case the stop shall be made as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise. Local authorities by ordinance may permit angle parking on any roadway under their jurisdiction, except that angle parking shall not be permitted on a state route within the municipality unless an unoccupied roadway width of not less than 25 feet is available for free-moving traffic.

(B) Local authorities by ordinance may permit parking of vehicles with the left-hand wheels adjacent to and within 12 inches of the left-hand curb of a one-way roadway.

(C) (1) (a) Except as provided in division (C)(1)(b) of this section, no vehicle shall be stopped or parked on a road or highway with the vehicle facing in a direction other than the direction of travel on that side of the road or highway.

(b) The operator of a motorcycle may back the motorcycle into an angled parking space so that when the motorcycle is parked it is facing in a direction other than the direction of travel on the side of the road or highway.

(2) The operator of a motorcycle may back the motorcycle into a parking space that is located on the side of, and parallel to, a road or highway. The motorcycle may face any direction when so parked. Not more than two motorcycles at a time shall be parked in a parking space as described in division (C)(2) of this section irrespective of whether or not the space is metered.

(D) Notwithstanding any statute or any rule, regulation, resolution, or ordinance, air compressors, tractors, trucks, and other equipment, while being used in the construction, reconstruction, installation, repair, or removal of facilities near, on, over, or under a street or highway, may stop, stand, or park where necessary in order to perform such work, provided a flagperson is on duty or warning signs or lights are displayed as may be prescribed by the Director of Transportation.

(E) Special parking locations and privileges for persons with disabilities that limit or impair the ability to walk, also known as handicapped parking spaces or disability parking spaces, shall be provided and designated by all political subdivisions and by the state and all agencies and instrumentalities thereof at all offices and facilities where parking is provided, whether owned, rented, or leased, and at all publicly owned parking garages. The locations shall be designated through the posting of an elevated sign, whether permanently affixed or movable, imprinted with the international symbol of access and shall be reasonably close to exits, entrances, elevators, and ramps. All elevated signs posted in accordance with this division and R.C. § 3781.111(C) shall be mounted on a fixed or movable post, and the distance from the ground to the bottom edge of the sign shall measure not less than five feet. If a new sign or a replacement sign designating a special parking location is posted on or after October 14, 1999, there also shall be affixed upon the surface of that sign or affixed next to the designating sign a notice that states the fine applicable for the offense of parking a motor vehicle in the special designated parking location if the motor vehicle is not legally entitled to be parked in that location.

(F) (1) (a) No person shall stop, stand, or park any motor vehicle at special parking locations provided under division (E) of this section, or at special clearly marked parking locations provided in or on privately owned parking lots, parking garages, or other parking areas and designated in accordance with that division, unless one of the following applies:

1. The motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a valid removable windshield placard or special license plates; or

2. The motor vehicle is being operated by or for the transport of a handicapped person and is displaying a parking card or special handicapped license plates.

(b) Any motor vehicle that is parked in a special marked parking location in violation of division (F)(1)(a)1. or (F)(1)(a)2. of this section may be towed or otherwise removed from the parking location by the law enforcement agency of the municipality. A motor vehicle that is so towed or removed shall not be released to its owner until the owner presents proof of ownership of the motor vehicle and pays all towing and storage fees normally imposed by the municipality for towing and storing motor vehicles. If the motor vehicle is a leased vehicle, it shall not be released to the lessee until the lessee presents proof that that person is the lessee of the motor vehicle and pays all towing and storage fees normally imposed by the municipality for towing and storing motor vehicles.

(c) If a person is charged with a violation of division (F)(1)(a)1. or (F)(1)(a)2. of this section, it is an affirmative defense to the charge that the person suffered an injury not more than 72 hours prior to the time the person was issued the ticket or citation and that, because of the injury, the person meets at least one of the criteria contained in R.C. § 4503.44(A)(1).

(2) No person shall stop, stand, or park any motor vehicle in an area that is commonly known as an access aisle, which area is marked by diagonal stripes and is located immediately adjacent to a special parking location provided under division (E) of this section or at a special clearly marked parking location provided in or on a privately owned parking lot, parking garage, or other parking area and designated in accordance with that division.

(G) When a motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a removable windshield placard or a temporary removable

windshield placard or special license plates, or when a motor vehicle is being operated by or for the transport of a handicapped person, and is displaying a parking card or special handicapped license plates, the motor vehicle is permitted to park for a period of two hours in excess of the legal parking period permitted by local authorities, except where local ordinances or police rules provide otherwise or where the vehicle is parked in such a manner as to be clearly a traffic hazard.

(H) No owner of an office, facility, or parking garage where special parking locations are required to be designated in accordance with division (E) of this section shall fail to properly mark the special parking locations in accordance with that division or fail to maintain the markings of the special locations, including the erection and maintenance of the fixed or movable signs.

(I) Nothing in this section shall be construed to require a person or organization to apply for a removable windshield placard or special license plates if the parking card or special license plates issued to the person or organization under prior law have not expired or been surrendered or revoked.

(J) As used in this section:

***HANDICAPPED PERSON.*** Means any person who has lost the use of one or both legs or one or both arms, who is blind, deaf, or so severely handicapped as to be unable to move without the aid of crutches or a wheelchair, or whose mobility is restricted by a permanent cardiovascular, pulmonary, or other handicapping condition.

***PERSON WITH A DISABILITY THAT LIMITS OR IMPAIRS THE ABILITY TO WALK.*** Has the same meaning as in R.C. § 4503.44.

***SPECIAL LICENSE PLATES*** and ***REMOVABLE WINDSHIELD PLACARD.*** Mean any license plates or removable windshield placard or temporary removable windshield placard issued under R.C. § 4503.41 or 4503.44, and also mean any substantially equivalent license plates or removable windshield placard or temporary removable windshield placard issued by a state, district, country, or sovereignty.

(K) Penalty.

(1) Whoever violates division (A) or (C) of this section is guilty of a minor misdemeanor.

(2) (a) Whoever violates division (F)(1)(a)1. or (F)(1)(a)2. of this section is guilty of a misdemeanor and shall be punished as provided in division (K)(2)(a) and (K)(2)(b) of this section. Except as otherwise provided in division (K)(2)(a) of this section, an offender who violates division (F)(1)(a)1. or (F)(1)(a)2. of this section shall be fined not less than $250 nor more than $500. An offender who violates division (F)(1)(a)1. or (F)(1)(a)2. of this section shall be fined not more than $100 if the offender, prior to sentencing, proves either of the following to the satisfaction of the court:

1. At the time of the violation of division (F)(1)(a)1. of this section, the offender or the person for whose transport the motor vehicle was being operated had been issued a removable windshield placard that then was valid or special license plates that then were valid but the offender or the person neglected to display the placard or license plates as described in division (F)(1)(a)1. of this section.

2. At the time of the violation of division (F)(1)(a)2. of this section, the offender or the person for whose transport the motor vehicle was being operated had been issued a parking card that then was valid or special handicapped license plates that then were valid but the offender or the person neglected to display the card or license plates as described in division (F)(1)(a)2. of this section.

(b) In no case shall an offender who violates division (F)(1)(a)1. or (F)(1)(a)2. be sentenced to any term of imprisonment.

(c) An arrest or conviction for a violation of division (F)(1)(a)1. or (F)(1)(a)2. of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(d) The clerk of the court shall pay every fine collected under divisions (K)(2) and (K)(3) of this section to the municipality. Except as provided in division (K)(2) of this section, the municipality shall use the fine moneys it receives under divisions (K)(2) and (K)(3) of this section to pay the expenses it incurs in complying with the signage and notice requirements contained in division (E) of this section. The municipality may use up to 50% of each fine it receives under divisions (K)(2) and (K)(3) of this section to pay the costs of educational, advocacy, support, and assistive technology programs for persons with disabilities, and for public improvements within the municipality that benefit or assist persons with disabilities, if governmental agencies or nonprofit organizations offer the programs.

(3) Whoever violates division (F)(2) of this section shall be fined not less than $250 nor more than $500. In no case shall an offender who violates division (F)(2) of this section be sentenced to any term of imprisonment. An arrest or conviction for a violation of division (F)(2) of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(4) Whoever violates division (H) of this section shall be punished as follows:

(a) Except as otherwise provided in division (K)(4) of this section, the offender shall be issued a warning.

(b) If the offender previously has been convicted of or pleaded guilty to a violation of division (H) of this section or of a municipal ordinance that is substantially equivalent to that division, the offender shall not be issued a warning but shall be fined not more than $25 for each parking location that is not properly marked or whose markings are not properly maintained.
(R.C. § 4511.69)

***Cross-reference:***

*Unlawful furnishing of prescription to enable persons to be issued handicapped parking placards or license plates, see § 138.17*

***Statutory reference:***

*Buildings, access for disabled persons, see R.C. § 3781.111*

## § 76.06 PARKING ON PRIVATE PROPERTY IN VIOLATION OF POSTED PROHIBITION.

(A) If an owner of private property posts on the property in a conspicuous manner a prohibition against parking on the property or conditions and regulations under which parking is permitted, no person shall do either of the following:

(1) Park a vehicle on the property without the owner's consent;

(2) Park a vehicle on the property in violation of any condition or regulation posted by the owner.

(B) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4511.681)
***Cross-reference:***
*Towing from private property, requirements, see § 95.01*

## § 76.07 SELLING, WASHING OR REPAIRING VEHICLE UPON ROADWAY.

No person shall stop, stand or park a vehicle upon any roadway for the principal purpose of:

(A) Displaying such vehicle for sale; or

(B) Washing, greasing or repairing such vehicle except repairs necessitated by an emergency.
Penalty, see § 70.99

## § 76.08 TRUCK LOADING ZONES.

No person shall stop, stand or park a vehicle for any purpose or length of time, other than for the expeditious unloading and delivery or pickup and loading of materials, in any place marked as a truck loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed 30 minutes.
Penalty, see § 70.99

## § 76.09 BUS STOPS AND TAXICAB STANDS.

(A) No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when any such stop or stand has been officially designated and appropriately posted, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of, and while actually engaged in, loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone, and then only for a period not to exceed three minutes, if such stopping is not prohibited therein by posted signs.

(B) No operator of a bus shall stop, stand or park such vehicle upon any street or other public way at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop so designated and posted as such, except in case of an emergency.

(C) No operator of a bus shall fail to enter a bus stop on a street or other public way in such a manner that the bus when stopped to load or unload passengers or baggage is in a position with the right front wheel of such vehicle not further than 18 inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(D) No operator of a taxicab shall stand or park such vehicle upon any street or other public way at any place other than in a taxicab stand so designated and posted as such. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking provisions at any place for the purpose of, and while actually engaged in, the expeditious loading or unloading of passengers.
Penalty, see § 70.99

## § 76.10 PARKING IN ALLEYS AND NARROW STREETS; EXCEPTIONS.

(A) No person shall stop, stand or park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than 10 feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when directed to by a police officer or traffic control signal.

(B) Except as otherwise provided by law, no person shall stop, stand or park a vehicle within an alley except while actually loading and unloading, and then only for a period not to exceed 30 minutes.
Penalty, see § 70.99

## § 76.11 REGISTERED OWNER PRIMA FACIE LIABLE FOR UNLAWFUL PARKING.

In any hearing on a charge of illegally parking a motor vehicle, testimony that a vehicle bearing a certain license plate was found unlawfully parked as prohibited by the provisions of this Traffic Code, and further testimony that the record of the Ohio Registrar of Motor Vehicles shows that the license plate was issued to the defendant, shall be prima facie evidence that the vehicle which was unlawfully parked, was so parked by the defendant. A certified registration copy, showing such fact, from the Registrar shall be proof of such ownership.

## § 76.12 WAIVER.

Any person charged with a violation of any provision of this chapter for which payment of a prescribed fine may be made, may pay such sum in the manner prescribed on the issued traffic ticket. Such payment shall be deemed a plea of guilty, waiver of court appearance and acknowledgment of conviction of the alleged offense and may be accepted in full satisfaction of the prescribed penalty for such alleged violation. Payment of the prescribed fine need not be accepted when laws prescribe that a certain number of such offenses shall require court appearance.

## § 76.13 APPLICABLE PARKING RULES AND REGULATIONS.

When any vehicle shall be parked, stopped, or standing on any street, alley, or highway within the corporate limits of the municipality, and remains beyond the parking time limit fixed for such space, or is parked, stopped,

or standing in a space which prohibits parking of such vehicles, then in that event, such vehicle, its operator, or owner shall be subject to §§ 76.13 through 76.19, provided there is a violation of §§ 77.02 or 77.03, Ch. 77, Appendix F, promulgated by the Director of Safety under authority of § 70.22 which relate to no parking, limited parking, and no parking for certain types of vehicles as heretofore and hereafter promulgated.
(Ord. CM-555, passed 11-11-1980)

## § 76.14 ENFORCEMENT; COURTESY FEES.

(A) It shall be the duty of the Director of Safety to provide for enforcement of the provisions of § 76.13 by using police officers or parking control officers to issue parking tickets. The Director of Safety is authorized and directed to cause parking tickets to be printed, which tickets shall indicate the date, time, and place of a parking violation, the section or rule violated, the make of the vehicle, the license number of the vehicle, and the name of the officer issuing the ticket, and printed instructions regarding payment of the courtesy fee.

(B) In the event of a violation of the above mentioned sections and the application of § 76.13, then each and every ticket of violation attached to the vehicle on any one day while such vehicle remains parked beyond the allotted period or in a prohibited area shall constitute notice of, and render the owner or operator of such vehicle liable for, a separate violation. A failure of such owner or operator to make such payment within 24 hours shall render such owner or operator subject to the penalty hereinafter provided, subject to the provisions of §§ 76.13 through 76.19.
(Ord. CM-555, passed 11-11-1980)

## § 76.15 PROCEDURE FOR PAYMENT OF COURTESY FEES.

Any person receiving a ticket indicating a violation of the applicable sections and rules as set forth in § 76.13, shall within 24 hours of the time of such violation, deposit such ticket, together with the sum of $10 in a courtesy box or at the office of the Director of Finance, located at the municipal building, in full satisfaction of such violation. After 24 hours, the cost of a ticket shall be $25.
(Ord. CM-555, passed 11-11-1980; Am. Ord. CM-918, passed 12-12-1989; Am. Ord. CM-12-28, passed 10-9-2012)

## § 76.16 DEPOSITS ASSESSED FOR FEES.

The funds required to be deposited under the provisions of § 76.15 are levied as a regulation and inspection fee to cover the operation of inspection and regulation involved in the inspection, installation, operation, control, and use of parking spaces in conformity with law.
(Ord. CM-555, passed 11-11-1980)

## § 76.17 COLLECTION OF FEES.

The Director of Finance, or designated representative shall be responsible and have charge of the collection of the courtesy fees deposited for such parking violations.
(Ord. CM-555, passed 11-11-1980)

## § 76.18 WAIVER.

Whoever is charged with a violation of § 76.13 for which payment of a prescribed fee in the sum of $5 may be made and such fee is paid, such payment shall be deemed a plea of guilty, waiver of court appearance, and acknowledgment of the conviction of the alleged offense, and may be accepted in full satisfaction of the penalty for such alleged violation.
(Ord. CM-555, passed 11-11-1980)

## § 76.19 FAILURE TO DEPOSIT COURTESY FEE.

In the event the owner or operator of the vehicle charged with a violation of § 76.13 fails to comply with § 76.15 will result in a complaint and summons being issued for the violation or violations set forth in § 76.13.
(Ord. CM-555, passed 11-11-1980)

# CHAPTER 77: TRAFFIC SCHEDULES

Section



## § 77.01 AUTHORITY OF DIRECTOR OF SAFETY.

(A) The Director of Safety is empowered to make and enforce regulations necessary to make effective the provisions of the traffic code and to make and enforce temporary regulations to cover emergencies or special conditions.

(B) The Director of Safety, unless the Council shall direct otherwise, or the Council by administrative order, is empowered to place and maintain traffic-control devices and parking meters, painted, or otherwise marked safety zones, traffic, parking and no parking lanes, curbs or areas, crosswalks for pedestrians, no parking, no U-turn, no left turn, 1-way or stop signs or signals, or such other traffic signs, signals or standards consistent with the provisions of this code as he or it may deem necessary for the proper control of traffic or the parking of vehicles.

(C) The Director of Safety shall maintain a current list of all items in division (B), in an administrative rule or regulation that is promulgated from time to time. Appendices A, B, C, D, E and F contain a copy of the current lists maintained in the administrative rules and regulations.

## § 77.02 CONTINUOUS PARKING IN SAME LOCATION.

No person who is the owner, agent, operator or other person in charge of any vehicle shall permit the vehicle to remain parked standing or abandoned upon any street for a continuous period longer than 48 hours.

## § 77.03 PARKING OF CERTAIN TYPES OF VEHICLES LIMITED.

(A) No person shall park and leave standing upon any street, highway or alley within the municipality any of the vehicles defined in division (B) of this section.

(B) *Definitions.* For the purposes of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CHURCH BUS.*** Any bus used exclusively to transport members of a church congregation to and from church services or church functions or to transport children and their authorized supervisors to and from any camping function sponsored by a nonprofit, tax-exempt, charitable or philanthropic organization.
(R.C. § 4503.07)

***FARM MACHINERY.*** All machines and tools used in the production, harvesting, and care of farm products, including trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of 25 mph, or less.
(R.C. § 4501.01(U))

***TRUCK.*** Every motor vehicle, except trailers and semitrailers, designed and used to carry property, excluding trucks with a capacity of one ton or less.
(R.C. § 4511.01(J))

***AGRICULTURAL TRACTOR***, ***BUS***, ***COMMERCIAL TRACTOR, POLE TRAILER, SCHOOL BUS, SEMITRAILER*** and ***TRAILER*** shall have the same meanings as given to them in § 70.01.

(C) The vehicles defined in (B) above shall be excepted from the provisions of this section as follows:

(1) For the minimum period of time required to effect emergency repairs, or maintenance;

(2) For the minimum period of time required to load or unload materials, merchandise or passengers;

(3) When so directed by a law-enforcement officer; and

(4) For the minimum period of time required by contractors, builders or other workers to complete contractual obligations on any property within the municipality.

## APPENDIX A. STOP INTERSECTIONS.

(A) Stop streets:

| *Stop Street* | *Right-of-Way Street* |
|---|---|
| Aspin Trail | Hawthorne Dr. |
| Baker Rd. | S. Miami St. |
| Beechnut Dr. | Bruce Dr. |
| Beechnut Dr. | Cedar Dr. |
| Bevonne Ct. | S. Main St. |
| Black Oak Drive | Wright Road |
| Bruce (East Bound) | Cedar Dr. |
| Bruce (North Bound) | Cedar Dr. |
| Cedar Drive (N. End) | S. Miami St. |
| Cedar Drive (S. End) | S. Miami St. |
| Cemetery Dr. | N. Miami St. |
| Circle Drive | N. Hayes St. |
| Community Drive (Park Entrance) | Tipp Pike (SR571) |
| Coopers Alley | Lavendar Alley |
| Debron Rd. | Emerick Rd. |
| DeVore Dr. | S . Main St. |
| DeVore Dr. | Debron |
| DeVore Dr. | Debron Road |
| Dogwood Drive | Wright Road |
| Donna Jane Ct. | N. Miami St. |
| Dorwin Rd. | Spring St. |
| Duerr Dr. | S. Jay St. |
| Duerr Drive | S. Miami St. |
| E. Fredrick Garland Rd. | S. Miami St. |
| Edgar Ave. | N. Miami St. |
| Emerick Rd. | S. Miami St. |
| Forest Ave. | N. Jay St. |
| Forest Ave. | Hasket Rd. |
| W. Fredrick Garland Rd. | S. Miami St. |

| *Stop Street* | *Right-of-Way Street* |
|---|---|
| Front St. | S. Miami St. |
| Front St. | N. Main St. |
| Front St. | S. Jay St. |
| Hamilton St. | Washington St. |
| Hamilton St. | Miami St. |
| Hasket Rd. | Milton-Potsdam Rd. |
| Hawthorne Dr. | S. Main St. |
| Hawthorne St. | Larrel Lane |
| High St. | Jay St. |
| High St. | Main St. |
| High St. | N. Miami St. |
| N. Jay St. | Hayes St. |
| S. Jay St. | Norris Dr. |
| S. Jay St. | N. Market St. |
| Jefferson St. | North St. |
| Jefferson St. | N. Hamilton St. |
| Jefferson St. | Front St. |
| Larrel Lane | Winding Way |
| Lawnsdale Ct. | Larrel Lane |
| Lee Circle | Beechnut Dr. |
| Locust Lane | S. Jay St. |
| Locust Lane | Market St. |
| Lowry Dr. | Phillip Dr. |
| Lowry Dr. | S. Main St. |
| Lowry Dr. | S. Jay St. |
| Lowry Drive | S. Miami St. |
| Lowry Drive | S. Jay St. |
| Lyle Dr. | Hasket Rd. |
| N. Main St. | N. Hayes St. |
| S. Main St. | Emerick Rd. |
| S. Main St. (South) | Emerick Rd. |
| S. Main St. (North at DeVore) 10-12-78 | S. Main (South) |

## Traffic Schedules

| *Stop Street* | *Right-of-Way Street* |
|---|---|
| Maple St. | Stillwater St. |
| Maple St. | Water St. |
| Mapleview Ct. | S. Main St. |
| Marjorie Ct. | Lowry Dr. |
| Market St. | Washington St. |
| W. Market | S. Miami St. |
| McKinley Ave. | Main St. |
| McKinley Ave. | Jay St. |
| Meadowbrook Ct. | Rockleigh Dr. |
| Micaela Court | Richard Drive |
| Nellie Court | Philip Drive |
| Norris Dr. | Duerr Dr. |
| North St. | N. Jay St. |
| North St. | Washington St. |
| North St. | N. Main St. |
| North St. | N. Miami St. |
| Oak Court | Park Ave. |
| Overla Dr. | Winding Way |
| Palm Court | Park Ave. |
| Park Ave. | Hasket Rd. |
| Park Ave. | N. Jay St. |
| Parkwood Dr. | N. Miami St. |
| Phillip Dr. | Main St. |
| Pinewood Dr. | Sanlor Dr. |
| Pinewood Dr. | South Miami St. |
| Poplar Ave. | Hamilton St. |
| Poplar Ave. | Park St. |
| Poplar Ave. | Forest Ave. |
| Poplar St. | Wagner Rd. |
| Potsdam Pike | Hayes St. |
| Priceton Rd. | Bevonne Ct. |
| Richard Drive | Princeton Road |

| *Stop Street* | *Right-of-Way Street* |
|---|---|
| Richard Drive | South Miami Street |
| Rockhill Dr. | Cedar Dr. |
| Rockleigh Ct. | Stillwater St. |
| Sanlor Ave. | Woods Dr. |
| North Sanlor Ave. | Emerick Rd. |
| Sanlor Ave. (North) | Woods Dr. |
| Sanlor Ave. (South) | Woods Dr. |
| Second St. | Washington St. |
| Second St. | S. Miami St. |
| Second St. | Jefferson St. |
| Second St. | Main St. |
| South St. | S. Miami St. |
| South St. | Washington St. |
| South St. | Main St. |
| Southview Lane | Larrel Lane |
| Spring St. | Wagner Rd. |
| Spring St. | Park St. |
| Spring St. | Forest Ave. |
| Spring St. | Hamilton St. |
| Stillacres Dr. | N. Miami St. |
| Stillacres Dr. | Hilltop Dr. |
| Stillwater St. | Market St. |
| Stillwater St. | S. Main St. |
| Stonemount Ct. | Larrel Lane |
| Susanne Ct. | Lowry Dr. |
| Teri Dr. | Lyle Dr. |
| Teri Dr. | Hayes St. |
| Valleyview Dr. | Cemetery Dr. |
| Wagner Rd. | S. Jay St. |
| Walnut St. | Stillwater St. |
| Washington St. | Tipp Pike (SR 571) |
| Water St. | S. Miami St. |

## Traffic Schedules

| *Stop Street* | *Right-of-Way Street* |
|---|---|
| Water St. | Main St. |
| Water St. | Market St. |
| Williams Dr. North | S. Miami St. |
| Williams Dr. South | S. Miami St. |
| Willow Way | Pinewood Drive |
| Winding Way | Emerick Rd. |
| Winding Way | S. Main St. |
| Woods Drive | Larrel Lane |
| Woods Drive | S. Miami St. |
| Wright Rd. | Spring St. |
| Wright Rd. | S. Jay St. |
| Yount Rd. | Spring St. |
| Yount Rd. | Wright Rd. |
| Yount Rd. | Wright Rd. |

(B) Four-way stop intersections:

| *Intersections* | *Location* |
|---|---|
| — | |
| — | |

*(C) Yield intersections:*

| ***Yield Street*** | ***Right-of-Way Street*** |
|---|---|
| Valley View Dr. | Parkwood Dr. |

(Ord. passed 11-1-1991)

## APPENDIX B. ONE-WAY STREETS.

The following streets are designated as one-way streets:

| *Street* | *Description* | *Direction* |
|---|---|---|
| Coopers Alley | From North Main Street east to Lavendar Alley | East |
| Farmer's Alley | — | East |
| Front Street | From Miami Street to Washington Street | West |
| Hamilton Street | From Miami Street to Washington Street | East |
| Hatters Alley | From Miami Street to Main Street | West |
| Tailor's Alley | From Miami Street to Washington Street | East |
| Washington Street | From Front Street to South St. | South |
| Washington Street | From Hatters Alley south to Front Street | South |

(Ord. passed 8-18-1988; Am. Ord. passed 11-1-1992; Am. Ord. passed 10-8-1996; Am. Ord. passed 7-8-1997)

## APPENDIX C. TRAFFIC-CONTROL DEVICES.

(A) *Traffic-control signal intersections.*

(1) The street intersections at Hayes Street and Miami Street, and Miami Street and Tipp Pike are designated traffic-control signal intersections, subject to §§ 70.20 through 70.99 of this code.

(2) The street intersections of South Miami Street, South Williams Drive and Emerick Road are designated traffic-control signal intersections subject to §§ 70.20 through 70.99 of this code.

(B) *Flashing signal intersection.* The following intersections are designated flashing signal intersections.

(1) North Main Streets and West Hayes Street with “Red Stop” on Main Street and “Amber” on West Hayes Street.

(2) Hamilton Street and Main Street with “Red” four-way stop.

(3) Market Street and Main Street with “Red” four-way stop.

(4) Duerr Street and Main Street with “Red” four-way stop.

(5) Hamilton Street and Jay Street with “Red” four-way stop.

(6) Hayes Street and Miami Street, and Miami Street and Tipp Pike - required by traffic signal permit.

(C) *Caution signal lights.* Flashing amber caution lights may be located near the corporation lines and South Miami Street, West Market Street, North Miami Street, and Emerick Road.

(D) *Street barricades.* In order to limit access to Jefferson Street between Market Street and Front Street, street barricades shall be erected at Market Street on Jefferson Street at ____ feet south of Front Street on Jefferson and on Carpenter's Alley at Jefferson Street.

## APPENDIX D. TURNING REGULATIONS.

(A) *Right turn on red.* Right turns on red are permitted in accordance with R.C. § 4511.13 (C)(2) at the following intersections:

(1) Miami Street northbound, at Tipp Pike.

(2) Miami Street southbound, at Hayes Street.

(3) Hayes Street eastbound, at Miami Street.

(4) Tipp Pike westbound, at Miami Street.

(B) *Left turns prohibited.* Left turns shall be prohibited at the following intersections:

(1) Miami Street southbound, at Front Street.

(2) Washington Street northbound, at Hamilton Street.

(3) Second Street onto Washington Street.

(4) Market Street onto Washington Street.

(5) South Street onto Washington Street.

(6) Miami Street southbound, onto Tailor's Alley.

(7) Carpenter's Alley onto Washington Street.

(8) Farmer's Alley onto Washington Street.

(9) Smith's Alley onto Washington Street.

(C) *Right turns prohibited.* Right turns shall be prohibited at the following intersections:

(1) Miami Street northbound, at Front Street.

(2) Washington Street southbound, at Hamilton Street.

(3) Miami Street northbound, onto Tailor's Alley.

(4) Washington Street onto Farmer's Alley.

(Ord. passed 11-1-1992)

## APPENDIX E. PEDESTRIAN SAFETY ZONES.

(A) A portion of the alley running east and west between North and Hamilton Streets, known as “Cooper's Alley”, shall be a pedestrian safety zone.

(B) This zone shall run for the width of the alley (15 feet) east from Miami Street for a distance of 97 feet and west from Miami Street for a distance of 113 feet.

(C) This zone shall be used exclusively for pedestrian traffic and, therefore, no motor vehicle traffic shall be permitted in this zone. However, nothing herein should be interpreted to prohibit the use of this right-of-way by emergency vehicles whenever necessary.
(Ord. passed 11-1-1992)

## APPENDIX F. NO PARKING AND LIMITED PARKING.

| *Street* | *Restriction* | *Side* |
|---|---|---|
| *Duerr Drive* | *No parking from Main Street to Miami Street* | *Both* |
| *Emerick Road* | *No parking for a distance of 275 feet South Miami Street* | *Both* |
| *Front Street* | *No parking from Miami Street to Main Street* | *North* |
| *Front Street* | *No parking from Miami Street to Jay Street* | *North* |
| *Hamilton Street* | *No parking from Miami Street to Jefferson Street* | *North* |
| *Hamilton Street* | *No parking from intersection of Lavander Alley, east to Miami Street with the exception of loading zones as marked* | *South* |
| *Hamilton Street* | *No parking from Miami Street to Washington Street with the exception of loading zones as marked* | *North* |
| *Hamilton Street* | *No parking from Jay Street east for a distance of 110 feet from 6:00 a.m. to 6:00 p.m. with the exception of Sundays and holidays* | *South* |
| *Hatters Alley* | *No parking/tow away zone in 16½-foot wide alley from South Miami St. to South Main St.* | *Both* |
| *West Hayes Street* | *No parking from Miami Street to Jay Street* | *South* |
| *West Hayes Street* | *One hour parking from Lavender Alley to Main Street* | *North* |
| *West Hayes Street* | *No parking from Jay Street to the corporation line* | *North* |
| *West Hayes Street* | *No parking from Miami St. to Lavender Alley* | *North* |
| *Jay Street* | *No parking from Wright Road to Hamilton Street* | *East* |
| *Jay Street* | *No parking 7:00 a.m. to 4:00 p.m. on school days from Hamilton Street to Forest Avenue* | *West* |
| *Jay Street* | *No parking Forest Avenue to West Hayes Street* | *East* |
| *Lowry Drive* | *No parking from Main Street to Miami Street* | *North* |

| Street | Restriction | Side |
|---|---|---|
| Main Street | No parking from Duerr Drive to Lowry Drive with the exception of loading zones as marked | East |
| Main Street | Thirty-minute parking for a distance 82 feet north of Cooper's Alley in front of the U.S. Post Office, 30 N. Main Street, for use of Post Office patrons. | East |
| Market Street | No parking 8 a.m. to 6 p.m. school days from Main Street to Jefferson Street | South |
| Market Street | No parking for distance of 170 feet Southwest of Jefferson Street | South east |
| Market Street | No parking for distance of 150 feet Southwest of Jefferson Street | Northwest |
| Miami Street | No parking on traveled portion of the East side | East |
| Miami Street | Limited parking permitted from North Street to Front Street, with the exceptions as indicated by signs and/or curb markings. | West |
| Miami Street | No parking from Hayes Street to North Street | Both |
| Miami Street | No parking from Hayes Street, north for a distance of 350 feet | West |
| Miami Street | No parking from Duerr Drive to Lowry Drive | West |
| Miami Street | No parking on the traveled portion from the south corporation line to feet north of Duerr Drive | West |
| North Street | No parking from Main Street to Miami Street with the exception of loading zones as marked | North |
| North Street | No parking from Miami Street to Washington Street | Both |
| North Street | No parking from Main Street to Jay Street | North |
| Parkwood Drive (South of Island) | No parking from 55 feet west of east edge of island to Valleyview Avenue from December 1st to April 30th | Both |
| Parkwood Drive (North of Island) | No parking from 55 feet west of east edge of island to Valleyview Avenue from December 1st to April 30th | Both |

## *Traffic Schedules*

| *Street* | *Restriction* | *Side* |
|---|---|---|
| *Second St.* | *No parking from Miami Street to Main Street* | *North* |
| *Second Street* | *No parking from Miami Street to Washington Street* | *North* |
| *Second Street* | *No parking from Jefferson Street to Main Street* | *North* |
| *South Street* | *No parking Miami Street to Washington Street* | *Both* |
| *Smiths Alley* | *No parking from Miami Street to Main Street* | *Both* |
| *Spring Street* | *No parking south of Wright Road, 8 a.m. to 4 p.m. school days.* | *Both* |
| *Tipp Pike* | *No parking on traveled roadway from Miami Street to east corporation line* | *Both* |
| *Valleyview Avenue* | *No parking from south Parkwood Drive north to Cemetery Drive from December 1st to April 30th* | *Both* |
| *Washington Street* | *No parking.* | *West* |
| *Water Street* | *No parking on the travelled portion of the pavement from Miami to Main Street* | *South* |
| *Williams Drive North* | *No parking, 6 p.m. to 6 a.m. for a distance of 300 feet, east of Miami Street.* | *North* |
| *Williams Drive South* | *No parking from Miami Street east for a distance of 200 feet.* | *Both* |
| *Wright Road* | *No parking for a distance of 70 feet, east of Spring Street.* | *North* |
| *Wright Road* | *No parking, 8 a.m. to 4 p.m. school days, for a distance of 355 feet west of Jay Street; with the exception of loading zones as marked.* | *South* |
| *Wright Road* | *No parking, for a distance of 150 lineal feet from Spring Street east.* | *South* |

*(Ord. passed 8-12-1988; Am. Ord. passed 5-5-1989; Am. Ord. passed 10-13-1992; Am. Ord. passed 11-1-1992; Am. Ord. passed 2-9-1996; Am. Ord. passed 9-11-1996; Am. Ord. passed 5-9-1997; Am. Ord. passed 7-14-1998; Am. Ord. passed 10-13-1998)*

## *APPENDIX G. HANDICAPPED PARKING SPACES.*

| *Location* | *Side* | *Spaces* |
|---|---|---|
| Municipal Building | West | 2 |
| Wastewater Plant | North | 1 |
| Water Plant | East | 1 |
| Park Entrance (Washington St.) | East | 1 |
| Washington St. - south of Masonic Lodge | East | 2 |
| Central Business District on North Miami St. | West | 1 |
| Jefferson St., south on Second St. | East | 1 |
| 115 West North St. (UTCDC & Friends Church) | South | 1 |

(Adopted by motion of Council, 8-9-1994; Am. Ord. passed 2-9-1996)

# CHAPTER 78: SPECIAL VEHICLES

Section



## § 78.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALL-PURPOSE VEHICLE.*** Any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof, including vehicles that operate on a cushion of air, vehicles commonly known as all-terrain vehicles, all-season vehicles, mini-bikes, and trail bikes, but excluding any self-propelled vehicle not principally used for purposes of personal transportation, any vehicle principally used in playing golf, any motor vehicle or aircraft required to be registered under R.C. Ch. 4503 or 4561, and any vehicle excepted from definition as a motor vehicle by R.C. § 4501.01(B).

***DEALER.*** Any person, firm or corporation engaged in the business of manufacturing or selling snowmobiles or all-purpose vehicles at wholesale or retail, or who rents, leases or otherwise furnishes snowmobiles or all-purpose vehicles for hire.

***FREEWAY.*** See ***LIMITED ACCESS HIGHWAY.***

***INTERSTATE HIGHWAY.*** Any part of the interstate system of highways as defined in subsection (e), 90 Stat. 431 (1976), 23 U.S.C. § 103, and amendments thereof.

***LIMITED ACCESS HIGHWAY OR FREEWAY.*** Have the same meaning as given those terms in R.C. § 5511.02.

***OPERATOR.*** Any person who operates or is in actual physical control of a snowmobile or all-purpose vehicle.

***OWNER.*** Any person, firm or corporation, other than a lienholder or dealer, having title to a snowmobile or all-purpose vehicle, or other right to the possession thereof.

***SNOWMOBILE.*** Any self-propelled vehicle designed primarily for use on snow or ice, and steered by skis, runners, or caterpillar treads.

***STREET*** or ***HIGHWAY.*** Has the meaning given in § 70.01 of this code.
(Ord. CM-752, passed 12-10-1985)

## § 78.03 REQUIRED EQUIPMENT.

Equipment of snowmobiles and all-purpose vehicles shall include, but not necessarily be limited to, requirements for the following items:

(A) At least 1 headlight having a minimum candlepower of sufficient intensity to reveal persons and objects at a distance of at least 100 feet ahead under normal atmospheric conditions during hours of darkness.

(B) At least 1 red tail light having a minimum candlepower of sufficient intensity to be plainly visible from a distance of 500 feet to the rear under normal atmospheric conditions during hours of darkness.

(C) Every snowmobile shall, while traveling on packed snow, be capable of carrying a driver who weighs 175 pounds or more, and, while carrying such driver, be capable of stopping in not more than 40 feet from an initial steady speed of 20 miles per hour, or locking its traction belt.

(D) A muffler system capable of precluding the emission of excessive smoke or exhaust fumes. On snowmobiles manufactured after January 1, 1973, such requirement shall include sound dampening equipment such that noise does not exceed 82 decibels on the "A" scale at 50 feet as measured according to SAE J192 (September 1970).

(E) No person shall operate any snowmobile or all-purpose vehicle in violation of division (A), (B), (C) or (D) of this section, except that equipment specified in divisions (A) and (B) of this section shall not be required on snowmobiles or all-purpose vehicles operated during the daylight hours on state-controlled land under the jurisdiction of the department of natural resources, and that are limited to off-highway use.
(Ord. CM-752, passed 12-10-1985) Penalty, see § 78.99

## § 78.05 PROHIBITED OPERATION.

The applicable provisions of the traffic code shall be applied to the operation of snowmobiles and all-purpose vehicles, except that no snowmobile or all-purpose vehicle shall be operated as follows:

(A) On any highway, street, alley, way or public property within the municipality except for emergency travel or use during such times and in such manner as may be specifically designated by the Safety Director from time to time.

(B) On any private property, or in any nursery or planting area, without the express written permission of the owner or other person having the right to possession of the property.
(Ord. CM-752, passed 12-10-1985) Penalty, see § 78.99

## § 78.07 OPERATOR'S LICENSE REQUIRED.

(A) No person who does not hold a valid current motor vehicle operator's or chauffeur's license, motorcycle operator's endorsement, or probationary license, issued under R.C. Ch. 4507, shall operate a snowmobile or all-purpose vehicle on any street or highway, on any portion of the right-of-way thereof, or on any public land or waters.

(B) No person who is less than 16 years of age shall operate a snowmobile or all-purpose vehicle on any land or waters other than private property or waters owned by or leased to such person's parent or guardian, unless accompanied by another person who is 18 years of age, or older, and who holds a license as provided in division (A) of this section; except that the department of natural resources may permit such operation on state-controlled land under its jurisdiction when such person is less than 16 years of age but is 12 years of age or older and is accompanied by a parent or guardian who is a licensed driver 18 years of age or older.
(Ord. CM-752, passed 12-10-1985) Penalty, see § 78.99

## § 78.09 ACCIDENT REPORT.

(A) The operator of a snowmobile or all-purpose vehicle involved in any accident resulting in bodily injury to or death of any person, or damage to the property of any person in excess of $100, shall report the accident within 48 hours to the Chief of Police, and shall within 30 days forward a written report of the accident to the registrar of motor vehicles on a form prescribed by the registrar. If the operator is physically incapable of making the reports and there is another participant in the accident not so incapacitated, that participant in the accident shall make the reports. In the event that there is no other participant, and the operator is other than the owner, the owner shall, within the prescribed periods of time, make the reports.

(B) Any law enforcement officer, or other person authorized by R.C. §§ 4519.42 and 4519.43, who investigates or receives information of an accident involving a snowmobile or all-purpose vehicle, shall forward to the registrar a written report of the accident within 48 hours.
(Ord. CM-752, passed 12-10-1985) Penalty, see § 78.99

## § 78.99 PENALTY.

(A) Whoever violates § 78.03 shall be fined not more than $50 for a first offense; for each subsequent offense within 1 year of a first offense such person shall be fined not less than $15 nor more than $100 or imprisoned not more than 3 days, or both.

(B) Whoever violates §§ 78.05, 78.07 or 78.09 shall be fined not less than $50 nor more than $500 or imprisoned not less than 3 nor more than 30 days, or both.
(Ord. CM-752, passed 12-10-1985)

# TITLE IX: GENERAL REGULATIONS

Chapter

# CHAPTER 90: ANIMALS

Section



## *ANIMALS RUNNING AT LARGE*

### § 90.01 KEEPING ANIMALS; PERMIT.

(A) All animals in the municipality will require a permit except dog and cat house pets. A permit for said exemptions will be required if the number kept creates a reported nuisance.

(B) The keeping of livestock, consisting of but not limited to sheep, horses, mules, chickens, cattle and other such farm animals is a danger to the health and safety of the citizens of the municipality, the animals may not be kept or housed within the municipal limits without a permit granted by the Director of Service.

(C) (1) The cost of such permit shall be $5.

(2) Rules and regulations governing the issuance of such permit shall be promulgated by the Director of Service.
Penalty, see § 90.99

## § 90.02 DOGS OR OTHER ANIMALS RUNNING AT LARGE; NUISANCE, DANGEROUS OR VICIOUS DOGS; HEARINGS.

(A) *Animals running at large.*

(1) No person, who is the owner or keeper of horses, mules, cattle, bison, sheep, goats, swine, llamas, alpacas, or poultry, shall permit them to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land, or cause the animals to be herded, kept, or detained for the purpose of grazing on premises other than those owned or lawfully occupied by the owner or keeper of the animals.
(R.C. § 951.02)

(2) Whoever recklessly violates division (A)(1) of this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 951.99)

(3) The owner or keeper of an animal described in division (A)(1) of this section who negligently permits it to run at large in violation of division (A)(1) of this section is liable for all damages resulting from injury, death, or loss to person or property caused by the animal in any of the places specified in division (A)(1) of this section or upon the premises of another without reference to the fence that may enclose the premises.

(4) The running at large of any animal specified in division (A)(1) of this section in or upon any of the places specified in division (A)(1) of this section is prima facie evidence in a civil action for damages under division (A)(3) of this section that the owner or keeper of the animal negligently permitted the animal to run at large in violation of division (A)(1) of this section.
(R.C. § 951.10)

(B) *Dogs running at large; dangerous dogs; debarked or surgically silenced dangerous dogs.*

(1) As used in this division (B), ***DANGEROUS DOG*** has the same meaning as in R.C. § 955.11.

(2) No owner, keeper, or harborer of any female dog shall permit it to go beyond the premises of the owner, keeper, or harborer at any time the dog is in heat unless the dog is properly in leash.

(3) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harborer, or handler of the dog, no owner, keeper, or harborer of any dog shall fail at any time to do either of the following:

(a) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harborer by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;

(b) Keep the dog under the reasonable control of some person.

(4) Except when a dangerous dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harborer, or handler of the dog, no owner, keeper, or harborer of a dangerous dog shall fail to do either of the following:

(a) While the dog is on the premises of the owner, keeper, or harborer, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top.

(b) While the dog is off the premises of the owner, keeper, or harborer, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following: keep the dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top; have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station a person in close enough proximity to that dog so as to prevent it from causing injury to any person; or muzzle that dog.

(5) No person who has been convicted of or pleaded guilty to three or more violations of division (B)(3) of this section involving the same dog and no owner, keeper, or harborer of a dangerous dog shall fail to do the following:

(a) Obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence because of damage or bodily injury to or death of a person caused by the dangerous dog if so ordered by a court and provide proof of that liability insurance upon request to any law enforcement officer, county dog warden, or public health official charged with enforcing this section;

(b) Obtain a dangerous dog registration certificate from the County Auditor pursuant to division (B)(9) of this section, affix a tag that identifies the dog as a dangerous dog to the dog's collar, and ensure that the dog wears the collar and tag at all times;

(c) Notify the local dog warden immediately if any of the following occurs:

1. The dog is loose or unconfined.

2. The dog bites a person, unless the dog is on the property of the owner of the dog, and the person who is bitten is unlawfully trespassing or committing a criminal act within the boundaries of that property.

3. The dog attacks another animal while the dog is off the property of the owner of the dog.

(d) If the dog is sold, given to another person, or dies, notify the County Auditor within ten days of the sale, transfer, or death.

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

(a) Debark or surgically silence a dog that the person knows or has reason to believe is a dangerous dog;

(b) Possess a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(c) Falsely attest on a waiver form provided by the veterinarian under division (B)(7) of this section that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.

(7) Before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that attests that the dog is not a dangerous dog. The written waiver form shall include all of the following:

(a) The veterinarian's license number and current business address;

(b) The number of the license of the dog if the dog is licensed;

(c) A reasonable description of the age, coloring, and gender of the dog as well as any notable markings on the dog;

(d) The signature of the owner of the dog attesting that the owner's dog is not a dangerous dog;

(e) A statement that R.C. § 955.22(F) prohibits any person from doing any of the following:

1. Debarking or surgically silencing a dog that the person knows or has reason to believe is a dangerous dog;

2. Possessing a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

3. Falsely attesting on a waiver form provided by the veterinarian under R.C. § 955.22(G) that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.

(8) It is an affirmative defense to a charge of a violation of division (B)(6) of this section that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (B)(7) of this section and that attests that the dog is not a dangerous dog.

(9) (a) The County Auditor shall issue a dangerous dog registration certificate to a person who is the owner of a dog, who is 18 years of age or older, and who provides the following to the County Auditor:

1. A fee of $50;

2. The person's address, phone number, and other appropriate means for the local dog warden or County Auditor to contact the person;

3. With respect to the person and the dog for which the registration is sought, all of the following:

a. Either satisfactory evidence of the dog's current rabies vaccination or a statement from a licensed veterinarian that a rabies vaccination is medically contraindicated for the dog;

b. Either satisfactory evidence of the fact that the dog has been neutered or spayed or a statement from a licensed veterinarian that neutering or spaying of the dog is medically contraindicated;

c. Satisfactory evidence of the fact that the person has posted and will continue to post clearly visible signs at the person's residence warning both minors and adults of the presence of a dangerous dog on the property;

d. Satisfactory evidence of the fact that the dog has been permanently identified by means of a microchip and the dog's microchip number.

(b) Upon the issuance of a dangerous dog registration certificate to the owner of a dog, the County Auditor shall provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall renew the certificate annually for the same fee and in the same manner as the initial certificate was obtained. If a certificate holder relocates to a new county, the certificate holder shall follow the procedure in division (B)(9)(c)2. of this section and, upon the expiration of the certificate issued in the original county, shall renew the certificate in the new county.

(c) 1. If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within the same county, the owner shall provide notice of the new address to the County Auditor within ten days of relocating to the new address.

2. If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address within another county, the owner shall do both of the following within ten days of relocating to the new address:

a. Provide written notice of the new address and a copy of the original dangerous dog registration certificate to the County Auditor of the new county;

b. Provide written notice of the new address to the County Auditor of the county where the owner previously resided.

(d) The owner of a dangerous dog shall present the dangerous dog registration certificate upon being requested to do so by any law enforcement officer, dog warden, or public health official charged with enforcing this section.
(R.C. § 955.22)

(C) *Hearing.*

(1) The municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harborer of a dog shall conduct any hearing concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog.

(2) If a person who is authorized to enforce this chapter has reasonable cause to believe that a dog in the person's jurisdiction is a nuisance dog, dangerous dog, or vicious dog, the person shall notify the owner, keeper, or harborer of that dog, by certified mail or in person, of both of the following:

(a) That the person has designated the dog a nuisance dog, dangerous dog, or vicious dog, as applicable;

(b) That the owner, keeper, or harborer of the dog may request a hearing regarding the designation in accordance with this division (C). The notice shall include instructions for filing a request for a hearing in the county in which the dog's owner, keeper, or harborer resides.

(3) If the owner, keeper, or harborer of the dog disagrees with the designation of the dog as a nuisance dog, dangerous dog, or vicious dog, as applicable, the owner, keeper, or harborer, not later than ten days after receiving notification of the designation, may request a hearing regarding the determination. The request for a hearing shall be in writing and shall be filed with the municipal court or county court that has territorial jurisdiction over the residence of the dog's owner, keeper, or harborer. At the hearing, the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog has the burden of proving, by clear and convincing evidence, that the dog is a nuisance dog, dangerous dog, or vicious dog. The owner, keeper, or harborer of the dog or the person who designated the dog as a nuisance dog, dangerous dog, or vicious dog may appeal the court's final determination as in any other case filed in that court.

(4) A court, upon motion of an owner, keeper, or harborer or an attorney representing the owner, keeper, or harborer, may order that the dog designated as a nuisance dog, dangerous dog, or vicious dog be held in the possession of the owner, keeper, or harborer until the court makes a final determination under this section or during the pendency of an appeal, as applicable. Until the court makes a final determination and during the pendency of any appeal, the dog shall be confined or restrained in accordance with the provisions of division (B)(4) that apply to dangerous dogs regardless of whether the dog has been designated as a vicious dog or a nuisance dog rather than a dangerous dog. The owner, keeper, or harborer of the dog shall not be required to comply with any other requirements established in this Code or the Ohio Revised Code that concern a nuisance dog, dangerous dog, or vicious dog, as applicable, until the court makes a final determination and during the pendency of any appeal.

(5) If a dog is finally determined under this division (C), or on appeal as described in this division (C), to be a vicious dog, § 90.28(D) and divisions (B)(4) to (B)(9) of this section apply with respect to the dog and the owner, keeper, or harborer of the dog as if the dog were a dangerous dog, and § 90.36 applies with respect to the dog as if it were a dangerous dog, and the court shall issue an order that specifies that those provisions apply with respect to the dog and the owner, keeper, or harborer in that manner. As part of the order, the court shall require the owner, keeper, or harborer to obtain the liability insurance required under division (B)(5)(a) in an amount described in division (D)(4)(b) of this section.

(6) As used in this division (C), ***NUISANCE DOG***, ***DANGEROUS DOG***, and ***VICIOUS DOG*** have the same meanings as in R.C. § 955.11.
(R.C. § 955.222)

(D) *Penalty.*

(1) (a) Whoever violates division (B)(2) of this section or commits a violation of division (B)(3) of this section that involves a dog that is not a nuisance dog, dangerous dog, or vicious dog shall be fined not less

than $25 or more than $100 on a first offense, and on each subsequent offense shall be fined not less than $75 or more than $250 and may be imprisoned for not more than 30 days.

(b) In addition to the penalties prescribed in division (D)(1)(a) of this section, if the offender is guilty of a violation of division (B)(2) of this section or a violation of division (B)(3) of this section that involves a dog that is not a nuisance dog, dangerous dog, or vicious dog, the court may order the offender to personally supervise the dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both.
(R.C. § 955.99(E))

(2) (a) Whoever commits a violation of division (B)(3) of this section that involves a nuisance dog is guilty of a minor misdemeanor on the first offense and of a misdemeanor of the fourth degree on each subsequent offense involving the same dog. Upon a person being convicted of or pleading guilty to a third violation of division (B)(3) of this section involving the same dog, the court shall require the offender to register the involved dog as a dangerous dog.

(b) In addition to the penalties prescribed in division (D)(2)(a) of this section, if a violation of division (B)(3) of this section involves a nuisance dog, the court may order the offender to personally supervise the nuisance dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both.
(R.C. § 955.99(F))

(3) Whoever commits a violation of division (B)(3) of this section that involves a dangerous dog, or a violation of division (B)(4) of this section is guilty of a misdemeanor of the fourth degree on a first offense and of a misdemeanor of the third degree on each subsequent offense. Additionally, the court may order the offender to personally supervise the dangerous dog that the offender owns, keeps, or harbors, to cause that dog to complete dog obedience training, or to do both, and the court may order the offender to obtain liability insurance pursuant to division (B)(5) of this section. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense. With respect to a violation of division (B)(3) of this section that involves a dangerous dog, until the court makes a final determination and during the pendency of any appeal of a violation of that division and at the discretion of the dog warden, the dog shall be confined or restrained in accordance with division (B)(4) of this section or at the county dog pound at the owner's expense.
(R.C. § 955.99(G))

(4) (a) Whoever commits a violation of division (B)(3) of this section that involves a vicious dog is guilty of one of the following:

1. A felony to be prosecuted under appropriate state law if the dog kills or seriously injures a person. Additionally, the court shall order that the vicious dog be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense.

2. A misdemeanor of the first degree if the dog causes serious injury to a person. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society at the owner's expense.

(b) If the court does not order the vicious dog to be destroyed under division (D)(4)(a)2. of this section, the court shall issue an order that specifies that § 90.28(D) and divisions (B)(4) to (B)(9) of this section apply with respect to the dog and the owner, keeper, or harborer of the dog as if the dog were a dangerous dog and that § 90.36 applies with respect to the dog as if it were a dangerous dog. As part of the order, the court shall order the offender to obtain the liability insurance required under division (B)(5)(a) of this section in an amount, exclusive of interest and costs, that equals or exceeds $100,000. Until the court makes a final determination and during the pendency of any appeal of a violation of division (B)(3) of this section and at the discretion of the dog warden, the dog shall be confined or restrained in accordance with the provisions described in division (B)(4) of this section or at the county dog pound at the owner's expense.
(R.C. § 955.99(H))

(5) Whoever violates division (B)(5)(b) of this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 955.99(J))

(6) Whoever violates division (B)(6)(a), (B)(6)(b), or (B)(6)(c) of this section is guilty of a felony to be prosecuted under appropriate state law. Additionally, the court shall order that the dog involved in the violation be humanely destroyed by a licensed veterinarian, the county dog warden, or the county humane society. Until the court makes a final determination and during the pendency of any appeal of a violation of division (B)(6)(a), (B)(6)(b), or (B)(6)(c) of this section and at the discretion of the dog warden, the dog shall be confined or restrained in accordance with the provisions of division (B)(4) of this section or at the county dog pound at the owner's expense.
(R.C. § 955.99(L))

(7) Whoever violates division (B)(5)(a), (B)(5)(c), or (B)(5)(d) of this section is guilty of a minor misdemeanor.
(R.C. § 955.99(M))

(8) Whoever violates division (B)(9)(d) of this section is guilty of a minor misdemeanor.
(R.C. § 955.99(N))

(9) (a) If a dog is confined at the county dog pound pursuant to division (D)(3), (D)(4), or (D)(6) of this section, the county dog warden shall give written notice of the confinement to the owner of the dog. If the county dog warden is unable to give the notice to the owner of the dog, the county dog warden shall post the notice on the door of the residence of the owner of the dog or in another conspicuous place on the premises at which the dog was seized. The notice shall include a statement that a security in the amount of $100 is due to the county dog warden within ten days to secure payment of all reasonable expenses, including medical care and boarding of the dog for 60 days, expected to be incurred by the county dog pound in caring for the dog pending the determination. The county dog warden may draw from the security any actual costs incurred in caring for the dog.

(b) If the person ordered to post security under division (D)(9)(a) of this section does not do so within ten days of the confinement of the animal, the dog is forfeited, and the county dog warden may determine the disposition of the dog unless the court issues an order that specifies otherwise.

(c) Not more than ten days after the court makes a final determination under division (D)(3), (D)(4), or (D)(6) of this section, the county dog warden shall provide the owner of the dog with the actual cost of the confinement of the dog. If the county dog warden finds that the security provided under division (D)(9)(a) of this section is less than the actual cost of confinement of the dog, the owner shall remit the difference between the security provided and the actual cost to the county dog warden within 30 days after the court's determination. If the county dog warden finds that the security provided under division (D)(9)(a) of this section is greater than that actual cost, the county dog warden shall remit the difference between the security provided and the actual cost to the owner within 30 days after the court's determination.
(R.C. § 955.99(P))

(10) As used in this division (D), ***NUISANCE DOG***, ***DANGEROUS DOG***, and ***VICIOUS DOG*** have the same meanings as in R.C. § 955.11.
(R.C. § 955.99(Q))
***Statutory reference:***
*Power of municipality to regulate animals running at large, see R.C. §§ 715.23 and 955.221*

## § 90.03 INOCULATION OF DOGS.

No person owning or harboring any animal of the dog kind shall maintain or harbor such animal unless the dog is inoculated against rabies. Reinoculation of the animal shall be had by the owner thereof whenever the need for the same is prescribed by the county's Dog Warden.
Penalty, see § 90.99

## § 90.04 STRAYS.

A person finding an animal at large in violation of § 90.01(A)(1) may, and a law enforcement officer of the municipality on view or information shall, take and confine that animal, promptly giving notice of the taking and confining of the animal to the owner or keeper, if known, and if not known, by publishing a notice describing the animal once in a newspaper of general circulation in the county or municipality where the animal was found. If the owner or keeper does not appear and claim the animal and pay the compensation prescribed in § 90.04 for so taking, advertising, and keeping it within ten days from the date of the notice, that person or the county shall have a lien for that compensation and the animal may be sold at public auction as provided in R.C. § 1311.49. The residue of the proceeds of sale shall be paid and deposited by the Treasurer in the General Funds of the county.
(R.C. § 951.11)

## § 90.05 UNAVOIDABLE ESCAPES.

If it is proven that an animal running at large in violation of § 90.01(A)(1) escaped from its owner or keeper without the owner's or keeper's knowledge or fault, the animal shall be returned to its owner or keeper upon payment of the compensation prescribed in § 90.04 for its taking, advertising and keeping.
(R.C. § 951.12)

### § 90.06 FEES.

(A) The person or municipality whose law enforcement officer takes an animal running at large in violation of § 90.01(A)(1) is entitled to receive from the owner or keeper of the animal the following compensation:

(1) For taking and advertising each animal, $5.00; and

(2) Reasonable expenses actually incurred for keeping each animal.

(B) Compensation for taking, advertising, and keeping a single herd or flock shall not exceed $50.00 when the flock or herd belongs to one person.
(R.C. § 951.13)

### § 90.07 QUARANTINE ORDERS OF BOARD OF HEALTH.

Whenever the Board of Health shall deem it necessary for the protection of the public, he or she shall issue an order prohibiting, for a certain time, any dog from being at large in any public street or place, unless muzzled and on leash, so as effectually to prevent it from biting any person or animal. This order shall be posted in three conspicuous places in the municipality, for such time as the Board of Health deems necessary, and any dog found at large during the existence of this quarantine order shall be impounded and may be destroyed by municipal authority without notice to the owner.

### § 90.08 INTERFERING WITH ENFORCEMENT OF QUARANTINE ORDERS.

No person shall molest or interfere with any officer while engaged in enforcing an order issued under § 90.07.
Penalty, see § 90.99

## *OFFENSES RELATING TO ANIMALS*

### § 90.20 ABANDONING ANIMALS.

(A) No owner or keeper of a dog, cat, or other domestic animal shall abandon the animal.
(R.C. § 959.01)

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense.
(R.C. § 959.99(E)(2))

## § 90.21 INJURING ANIMALS.

(A) No person shall maliciously, or willfully and without the consent of the owner, kill or injure a dog, cat, or any other domestic animal that is the property of another. This section does not apply to a licensed veterinarian acting in an official capacity.
(R.C. § 959.02)

(B) Except as otherwise provided in this division, whoever violates division (A) of this section is guilty of a misdemeanor of the second degree. If the value of the animal killed or the injury done amounts to $300 or more, whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 959.99(B))

(C) This section does not apply to a person killing or injuring an animal or attempting to do so while endeavoring to prevent it from trespassing upon his or her enclosure, or while it is so trespassing, or while driving it away from his or her premises; provided within 15 days thereafter, payment is made for damages done to such animal by killing or injuring, less the actual amount of damage done by such animal while so trespassing, or a sufficient sum of money is deposited with the nearest judge of a county court or judge of a municipal court having jurisdiction within such time to cover the damages. The deposit shall remain in the custody of such judge until there is a determination of the damage resulting from such killing or injury and from the trespass. The judge and his or her bondsmen shall be responsible for the safekeeping of such money and for the payment thereof as for money collected upon a judgment.
(R.C. § 959.04)

## § 90.22 POISONING ANIMALS.

(A) No person shall maliciously, or willfully and without the consent of the owner, administer poison, except a licensed veterinarian acting in such capacity, to a dog, cat, or any other domestic animal that is the property of another; and no person shall, willfully and without the consent of the owner, place any poisoned food where it may be easily found and eaten by any such animal, either upon his or her own lands or the lands of another.
(R.C. § 959.03)

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 959.99(C))

(C) This section does not apply to a person killing or injuring an animal or attempting to do so while endeavoring to prevent it from trespassing upon his or her enclosure, or while it is so trespassing, or while driving it away from his or her premises; provided that within 15 days thereafter, payment is made for damages done to such animal by killing or injuring, less the actual amount of damage done by such animal while so trespassing, or a sufficient sum of money is deposited with the nearest judge of a county court or judge of a municipal court having jurisdiction within such time to cover the damages. The deposit shall remain in the custody of such judge until there is a determination of the damage resulting from such killing or injury and from the trespass. The judge and his or her bondsmen shall be responsible for the safekeeping of such money and for the payment thereof as for money collected upon a judgment.
(R.C. § 959.04)

## § 90.23 CRUELTY TO ANIMALS; CRUELTY TO COMPANION ANIMALS.

(A) No person shall:

(1) Torture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate or kill, or impound or confine an animal without supplying it during the confinement with a sufficient quantity of good wholesome food and water;

(2) Impound or confine an animal without affording it, during the confinement, access to shelter from wind, rain, snow, or excessive direct sunlight, if it can reasonably be expected that the animal would otherwise become sick or in some other way suffer. This division does not apply to animals impounded or confined prior to slaughter. For the purpose of this section, ***SHELTER*** means an artificial enclosure, windbreak, sunshade, or natural windbreak or sunshade that is developed from the earth's contour, tree development, or vegetation;

(3) Carry or convey an animal in a cruel or inhuman manner;

(4) Keep animals other than cattle, poultry or fowl, swine, sheep, or goats in an enclosure without wholesome exercise and change of air, nor feed cows on food that produces impure or unwholesome milk;

(5) Detain livestock in railroad cars or compartments longer than 28 hours after they are so placed without supplying them with necessary food, water, and attention, nor permit the stock to be so crowded as to overlie, crush, wound, or kill each other.

(B) Upon the written request of the owner or person in custody of any particular shipment of livestock, which written request shall be separate and apart from any printed bill of lading or other railroad form, the length of time in which the livestock may be detained in any cars or compartment without food, water, and attention may be extended to 36 hours without penalty therefor. Division (A) of this section does not prevent the dehorning of cattle.

(C) All fines collected for violations of division (A) of this section shall be paid to the society or association for the prevention of cruelty to animals, if there is one in the municipality; otherwise, all fines shall be paid to the General Fund.
(R.C. § 959.13)

(D) *Cruelty to companion animals.*

(1) As used in this section:

***BOARDING KENNEL.*** Has the same meaning as in R.C. § 956.01.

***CAPTIVE WHITE-TAILED DEER.*** Has the same meaning as in R.C. § 1531.01.

***COMPANION ANIMAL.*** Means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, including a pet store as defined in R.C. § 956.01. The term does not include livestock or any wild animal.

***CRUELTY.*** Has the same meaning as in R.C. § 1717.01.

***DOG KENNEL.*** Means an animal rescue for dogs that is registered under R.C. § 956.06, a boarding kennel, or a training kennel.

***FEDERAL ANIMAL WELFARE ACT.*** Means the "Laboratory Animal Act of 1966", Pub. L. No. 89-544, 80 Stat. 350 (1966), 7 U.S.C. §§ 2131 et seq., as amended by the "Animal Welfare Act of 1970", Pub. L. No. 91-579, 84 Stat. 1560 (1970), the "Animal Welfare Act Amendments of 1976", Pub. L. No. 94-279, 90 Stat. 417 (1976), and the "Food Security Act of 1985", Pub. L. No. 99-198, 99 Stat. 1354 (1985), and as it may be subsequently amended.

***LIVESTOCK.*** Means horses, mules, and other equidae; cattle, sheep, goats, and other bovidae; swine and other suidae; poultry; alpacas; llamas; captive white-tailed deer; and any other animal that is raised or maintained domestically for food or fiber.

***PRACTICE OF VETERINARY MEDICINE.*** Has the same meaning as in R.C. § 4741.01.

***RESIDENTIAL DWELLING.*** Means a structure or shelter or the portion of a structure or shelter that is used by one or more humans for the purpose of a habitation.

***SERIOUS PHYSICAL HARM.*** Means any of the following:

1. Physical harm that carries an unnecessary or unjustifiable substantial risk of death;

2. Physical harm that involves either partial or total permanent incapacity;

3. Physical harm that involves acute pain of a duration that results in substantial suffering or that involves any degree of prolonged or intractable pain;

4. Physical harm that results from a person who confines or who is the custodian or caretaker of a companion animal depriving the companion animal of good, wholesome food and water that proximately causes the death of the companion animal.

***TORMENT.*** Has the same meaning as in R.C. § 1717.01.

***TORTURE***. Has the same meaning as in R.C. § 1717.01.

***TRAINING KENNEL.*** Means an establishment operating for profit that keeps, houses, and maintains dogs for the purpose of training the dogs in return for a fee or other consideration.

***WILD ANIMAL.*** Has the same meaning as in R.C. § 1531.01.

(2) No person shall knowingly torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against a companion animal.

(3) No person shall knowingly cause serious physical harm to a companion animal.

(4) No person who confines or who is the custodian or caretaker of a companion animal shall negligently do any of the following:

(a) Torture, torment, or commit an act of cruelty against the companion animal;

(b) Deprive the companion animal of necessary sustenance or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation or confinement;

(c) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the lack of adequate shelter.

(5) No owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal shall knowingly do any of the following:

(a) Torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against the companion animal;

(b) Deprive the companion animal of necessary sustenance or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water if it is reasonably expected that the companion animal would die or experience unnecessary or unjustifiable pain or suffering as a result of the deprivation or confinement;

(c) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it is reasonably expected that the companion animal would die or experience unnecessary or unjustifiable pain or suffering as a result of or due to the lack of adequate shelter.

(6) No owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal shall negligently do any of the following:

(a) Torture, torment, or commit an act of cruelty against the companion animal;

(b) Deprive the companion animal of necessary sustenance or confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation or confinement;

(c) Impound or confine the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the lack of adequate shelter.

(7) Divisions (D)(2), (D)(3), (D)(4), (D)(5), and (D)(6) of this section do not apply to any of the following:

(a) A companion animal used in scientific research conducted by an institution in accordance with the federal animal welfare act and related regulations;

(b) The lawful practice of veterinary medicine by a person who has been issued a license, temporary permit, or registration certificate to do so under R.C. Chapter 4741;

(c) Dogs being used or intended for use for hunting or field trial purposes, provided that the dogs are being treated in accordance with usual and commonly accepted practices for the care of hunting dogs;

(d) The use of common training devices, if the companion animal is being treated in accordance with usual and commonly accepted practices for the training of animals;

(e) The administering of medicine to a companion animal that was properly prescribed by a person who has been issued a license, temporary permit, or registration certificate under R.C. Chapter 4741.

(8) Notwithstanding any section of the Ohio Revised Code that otherwise provides for the distribution of fine moneys, the Clerk of Court shall forward all fines the Clerk collects that are so imposed for any violation of this division (D) to the Treasurer of the municipality, whose county humane society or law enforcement agency is to be paid the fine money as determined under this division. The Treasurer shall pay the fine moneys to the county humane society or the county, township, municipal corporation, or state law enforcement agency in this state that primarily was responsible for or involved in the investigation and prosecution of the violation. If a county humane society receives any fine moneys under this division, the county humane society shall use the fine moneys either to provide the training that is required for humane agents under section R.C. § 1717.06 or to provide additional training for humane agents.
(R.C. § 959.131)

(E) Whoever violates division (A) of this section is guilty of a misdemeanor of the second degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition including but not limited to the sale of the animal or livestock. If an animal or livestock is forfeited and sold pursuant to this division, the proceeds from the sale first shall be applied to pay the expenses incurred with regard to the care of the animal from the time it was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, shall be paid to the former owner of the animal.
(R.C. § 959.99(D))

(F) (1) Whoever violates division (D)(2) of this section is guilty of a misdemeanor of the first degree on a first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.

(2) Whoever violates division (D)(3) of this section is guilty of a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (D)(4) of this section is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense.

(4) Whoever violates division (D)(5) of this section is guilty of a felony to be prosecuted under appropriate state law.

(5) Whoever violates division (D)(6) of this section is guilty of a misdemeanor of the first degree.

(6) (a) A court may order a person who is convicted of or pleads guilty to a violation of division (D) of this section to forfeit to an impounding agency, as defined in R.C. § 959.132, any or all of the companion animals in that person's ownership or care. The court also may prohibit or place limitations on the person's ability to own or care for any companion animals for a specified or indefinite period of time.

(b) A court may order a person who is convicted of or pleads guilty to a violation of division (D) of this section to reimburse an impounding agency for the reasonably necessary costs incurred by the agency for the care of a companion animal that the agency impounded as a result of the investigation or prosecution of the violation, provided that the costs were not otherwise paid under R.C. § 959.132.

(7) If a court has reason to believe that a person who is convicted of or pleads guilty to a violation of division (D) of this section suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court shall order the offender to pay the costs of the evaluation or counseling.
(R.C. § 959.99(E))
***Statutory reference:***
*Impoundment of companion animals; notice and hearing, see R.C. § 959.132*

## § 90.24 ADMINISTRATIVE OFFICER TO MAKE NECESSARY AGREEMENTS.

The Director of Service is instructed to enter into the necessary agreements with animal hospitals, shelters and farms to carry out the terms of this chapter.

## § 90.25 ANIMAL FIGHTS.

(A) No person shall knowingly do either of the following:

(1) Engage in cockfighting, bearbaiting, or pitting an animal against another;

(2) Use, train, or possess any animal for seizing, detaining, or maltreating a domestic animal.

(B) No person shall knowingly do either of the following:

(1) Be employed at cockfighting, bearbaiting, or pitting an animal against another;

(2) Do any of the following regarding an event involving cockfighting, bearbaiting, or pitting an animal against another:

(a) Wager money or anything else of value on the results of the event;

(b) Pay money or give anything else of value in exchange for admission to or being present at the event;

(c) Receive money or anything else of value in exchange for the admission of another person to the event or for another person to be present at the event;

(d) Use, possess, or permit or cause to be present at the event any device or substance intended to enhance an animal's ability to fight or to inflict injury on another animal;

(e) Permit or cause a minor to be present at the event if any person present at or involved with the event is conducting any of the activities described in division (B)(1) or (B)(2)(a), (B)(2)(b), (B)(2)(c), or (B)(2)(d) of this section.

(C) A person who knowingly witnesses cockfighting, bearbaiting, or an event in which one animal is pitted against another when a violation of division (B) of this section is occurring at the cockfighting, bearbaiting, or event is an aider and abettor and has committed a violation of this division.
(R.C. § 959.15)

(D) (1) Whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates division (B) or (C) of this section is guilty of a felony to be prosecuted under appropriate state law.
(R.C. § 959.99(C), (I))
***Statutory reference:***
*Dogfighting, felony provisions, see R.C. § 959.16*

## § 90.26 TRAPSHOOTING.

(A) Live birds or fowl shall not be used as targets in trapshooting.
(R.C. § 959.17)

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 959.99(C))

## § 90.27 BIRDS.

No person shall kill or injure any wild bird, or throw, fire, or shoot a bullet, stone, arrow or other missile, at such bird, or break, tear down or destroy any bird's nest or the eggs or other contents of such nest; or catch or capture any wild bird, or set traps, or spread nets or snares, with intent to catch or capture the same, or follow or pursue the same, with intent to catch or injure the bird.
Penalty, see § 90.99

## § 90.28 KEEPING OF BEES.

(A) No person shall own or possess bees within the corporate limits of the municipality except in accordance with the following restrictions and limitations:

(1) Persons may own and possess bees within only those land areas within the municipality zoned either F-1 Flood Plain District or A-1 Agricultural.

(2) Bees located within the above designated land areas shall not be kept or harbored nearer than 50 feet to any inhabited residence, and not nearer than 20 feet to any lot line.

(3) Persons desiring to own or possess bees must make written application to the Director of Safety on an annual basis for a permit to own and possess bees. Permits shall be issued only after inspection of the location of the bees in compliance with the restrictions and limitations set forth in divisions (A)(1) and (2) above. The Director of Safety is further authorized to revoke any permit when conditions exist that create a hazard or danger to the health and safety of other persons.

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree.
(Am. Ord. CM-666, passed 6-14-1983) Penalty, see § 90.99

## § 90.29 LOUD DOG.

No person shall harbor or keep a dog, which by loud and frequent or habitual barking, howling, or yelping shall cause annoyance or disturbance to another person.
(Am. Ord. CM-13-17, passed 9-10-2013) Penalty, see § 90.99

## § 90.30 WILD/DANGEROUS ANIMALS.

No person shall harbor or keep an animal considered dangerous to humans on any premises unless by a licensed institution. Such animals include members of the cat family, wolves, badgers, bears and poisonous or constricting reptiles. If a person is found to be keeping such an animal on any premises within the corporate limits, the Municipal Manager shall provide written notice to safely remove the animal within three days. Failure to comply shall allow the Village to impound the animal and/or prosecute the owner of the property for a violation of Chapter 90.
(Ord. CM-06-33, passed 12-12-2006) Penalty, see § 90.99

## § 90.31 NUISANCE CONDITIONS PROHIBITED.

(A) No person shall keep or harbor any animal in the Municipality so as to create offensive odors, excessive noise or unsanitary conditions which are a menace to the health, safety or comfort of the public, or otherwise permit the commission or existence of a nuisance as defined hereafter.

(B) Any animal which scratches, digs, urinates or defecates upon any lawn, tree, shrub, plant, building or any other public or private property, other than the property of the owner, keeper or harborer of such animal, is hereby declared to be a nuisance.

(C) No person being the owner, keeper or harborer of any animal shall allow or permit such animal to commit a nuisance on any school grounds, park, other public property or upon private property other than that of the owner, keeper or harborer of such animal, without the permission of the owner of such property. Where the owner, keeper or harborer of such animal immediately removes all feces deposited by such animal and disposes of the same in a sanitary manner, such nuisance shall be considered abated.
(Ord. CM-06-33, passed 12-12-2006) Penalty, see § 90.99

## § 90.32 RESTRICTIONS ON DOG OWNERSHIP FOR CERTAIN CONVICTED FELONS.

(A) No person who is convicted of or pleads guilty to a felony offense of violence committed on or after May 22, 2012 or a felony violation of any provision of R.C. Chapter 959, R.C. Chapter 2923 or R.C. Chapter 2925 committed on or after May 22, 2012 shall knowingly own, possess, have custody of, or reside in a residence with either of the following for a period of three years commencing either upon the date of release of the person from any period of incarceration imposed for the offense or violation or, if the person is not incarcerated for the offense or violation, upon the date of the person's final release from the other sanctions imposed for the offense or violation:

(1) An unspayed or unneutered dog older than 12 weeks of age;

(2) Any dog that has been determined to be a dangerous dog under R.C. Chapter 955 or any substantially equivalent municipal ordinance.

(B) A person described in division (A) of this section shall microchip for permanent identification any dog owned, possessed by, or in the custody of the person.

(C) (1) Division (A) of this section does not apply to any person who is confined in a correctional institution of the Department of Rehabilitation and Correction.

(2) Division (A) of this section does not apply to any person with respect to any dog that the person owned, possessed, had custody of, or resided in a residence with prior to May 22, 2012.
(R.C. § 955.54)

(D) Whoever violates division (A) or (B) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 955.99(O))

## § 90.33 SEXUAL CONDUCT WITH AN ANIMAL.

(A) As used in this section:

***ANIMAL.*** Means a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.

***OFFENSE.*** Means a violation of this section or an attempt, in violation of R.C. § 2923.02, to violate this section.

***OFFICER.*** Has the same meaning as in R.C. § 959.132.

***SEXUAL CONDUCT.*** Means either of the following committed for the purpose of sexual gratification:

(a) Any act done between a person and animal that involves contact of the penis of one and the vulva of the other, the penis of one and the penis of the other, the penis of one and the anus of the other, the mouth of one and the penis of the other, the mouth of one and the anus of the other, the vulva of one and the vulva of the other, the mouth of one and the vulva of the other, any other contact between a reproductive organ

of one and a reproductive organ of the other, or any other insertion of a reproductive organ of one into an orifice of the other;

(b) Without a bona fide veterinary or animal husbandry purpose to do so, the insertion, however slight, of any part of a person's body or any instrument, apparatus, or other object into the vaginal, anal, or reproductive opening of an animal.

(B) No person shall knowingly engage in sexual conduct with an animal or knowingly possess, sell, or purchase an animal with the intent that it be subjected to sexual conduct.

(C) No person shall knowingly organize, promote, aid, or abet in the conduct of an act involving any sexual conduct with an animal.

(D) An officer may seize and cause to be impounded at an impounding agency an animal that the officer has probable cause to believe is the subject of an offense. With respect to an animal so seized and impounded, all procedures and requirements that are established in R.C. § 959.132, and all other provisions of that section, apply to the seizure, impoundment, and disposition of the animal. References in R.C. § 959.132 to "section 959.131 of the Revised Code", "companion animal", and "offense" shall be construed, respectively, as being references to "§ 90.37 of this Code" and to "animal" and "offense" as defined in this section, for purposes of application under this section only.
(R.C. § 959.21)

(E) (1) Whoever violates this section is guilty of a misdemeanor of the second degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition including but not limited to the sale of the animal or livestock. If an animal or livestock is forfeited and sold pursuant to this division, the proceeds from the sale first shall be applied to pay the expenses incurred with regard to the care of the animal from the time it was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, shall be paid to the former owner of the animal.
(R.C. § 959.99(D))

(2) If a court has reason to believe that a person who is convicted of or pleads guilty to a violation of this section suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court shall order the offender to pay the costs of the evaluation or counseling.
(R.C. § 959.99(E)(7))

## § 90.99 PENALTY.

(A) Whoever violates any provision of this chapter, for which another penalty is not specifically provided, shall be guilty of a minor misdemeanor.

(B) Whoever violates § 90.28 is guilty of a misdemeanor of the fourth degree.

# CHAPTER 91: FIREWORKS, EXPLOSIVES, FIRE PREVENTION

Section



***Statutory reference:***

*Power of municipality to regulate explosives, R.C. § 715.60*

## *GENERAL PROVISIONS*

### § 91.01 OPEN BURNING.

It shall be unlawful to undertake or permit any open burning except under the following conditions:

(A) It shall be lawful to do outside cooking in appropriate grills or barbecue pits constructed for that purpose.

(B) It shall be lawful to kindle or maintain any outdoor bonfire or rubbish fire in places provided therefor.

## *FIREWORKS AND EXPLOSIVES*

### § 91.10 DEFINITIONS.

For purposes of this subchapter, the following words and phrases shall have the following meanings ascribed to them respectively.

***FIREWORKS.*** Any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration or detonation, except ordinary matches and except as provided in R.C. § 3743.80.
(R.C. § 3743.01)

### § 91.11 POSSESSION, SALE AND USE OF FIREWORKS.

(A) No person shall possess fireworks in this municipality or shall possess for sale or sell fireworks in this municipality, except a licensed manufacturer of fireworks as authorized by R.C. §§ 3743.02 through 3743.08, a licensed wholesaler of fireworks as authorized by R.C. §§ 3743.15 through 3743.21, a shipping permit holder as authorized by R.C. § 3743.40, an out-of-state resident as authorized by R.C. § 3743.44, a resident of this state as authorized by R.C. § 3743.45, or a licensed exhibitor of fireworks as authorized by R.C. §§ 3743.50 through 3743.55, or as authorized by any municipal ordinance that is substantially equivalent to any of these statutes, and except as provided in R.C. § 3743.80 or a substantially equivalent municipal ordinance.

(B) Except as provided in R.C. § 3743.80 or a substantially equivalent municipal ordinance, and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to R.C. §§ 3743.50 through 3743.55 or a substantially equivalent municipal ordinance, no person shall discharge, ignite, or explode any fireworks in this municipality.

(C) No person shall use in a theater or public hall what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(D) No person shall sell fireworks of any kind to a person under 18 years of age. No person under 18 years of age shall enter a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or

other responsible adult. No person under 18 years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(E) Except as otherwise provided in R.C. § 3743.44, no person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder shall possess 1.3G fireworks in this municipality.

(R.C. § 3743.65(A) - (E)) Penalty, see § 91.99

***Statutory reference:***

*Felony offense for disabling a fire suppression system, see R.C. § 3743.65(F)*

## § 91.12 PERMIT TO USE FIREWORKS.

(A) An exhibitor of fireworks licensed under R.C. §§ 3743.50 through 3743.55 who wishes to conduct a public fireworks exhibition shall apply for approval to conduct the exhibition to the Fire Chief and Police Chief, or if there is no Fire Chief or Police Chief of the municipality, to the Fire Chief or Police Chief of the political subdivision for which there is a contract for fire protection or police services between political subdivisions covering the premises on which the exhibition will take place, or if there is no such contract, to the fire prevention officer and law enforcement officer having jurisdiction over the premises.

(B) The approval required by division (A) of this section shall be evidenced by the Fire Chief and the Police Chief signing a permit for the exhibition. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the state's Fire Marshal or, if it is available, from the Fire Chief, or Police Chief.

(C) Before signing a permit and issuing it to a licensed exhibitor of fireworks, the Fire Chief and the Police Chief shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show the applicant's license as an exhibitor of fireworks to the Fire Chief and the Police Chief.

(D) The Fire Chief and the Police Chief shall give his or her approval to conduct a public fireworks exhibition only if satisfied, based on the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the state's Fire Marshal pursuant to R.C. § 3743.53(B) and that the applicant is in fact, a licensed exhibitor of fireworks. The Fire Chief and the Police Chief may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke a permit for noncompliance with the rules.

(E) If the Council has prescribed a fee for the issuance of a permit for a public fireworks exhibition, the Fire Chief and Police Chief shall not issue a permit until the exhibitor pays the requisite fee.

(F) Each exhibitor shall provide an indemnity bond in the amount of at least $1,000,000, with surety satisfactory to the Fire Chief and the Police Chief, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death, or loss to person or property emanating from the fireworks exhibitor, or proof of insurance coverage of at least $1,000,000 for liability arising from injury, death or loss of persons or property emanating from the fireworks exhibition. The Council may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this

division. The Fire Chief and Police Chief shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this division or by the Council.

(G) Each permit for a fireworks exhibition issued by the Fire Chief and the Police Chief shall contain a distinct number, designate the municipal corporation and identify the certified fire safety inspector, Fire Chief or fire prevention officer who will be present before, during and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the Fire Chief and the Police Chief issuing it to the state's Fire Marshal, who shall keep a records of the permits received. A permit is not transferable or assignable.

(H) The Fire Chief and Police Chief shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief or Police Chief shall list the name of the exhibitor, the exhibitor's license number, the premises on which the exhibition will be conducted, the date and time of the exhibition, and the number and political subdivision designation of the permit issued to the exhibitor for the exhibition.

(I) The Legislative Authority shall require that a certified fire safety inspector, Fire Chief or fire prevention officer be present before, during and after the exhibition, and shall require the certified fire safety inspector, Fire Chief or fire prevention officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this chapter.
(R.C. § 3743.54) Penalty, see § 91.99

## § 91.13 STORAGE OF EXPLOSIVES.

It shall be unlawful to store at any time within the village limits a quantity of gunpowder or other similar explosive weighing in excess of 100 pounds.
Penalty, see § 91.99

## § 91.14 BLASTING PERMIT.

No person shall cause a blast to occur within the municipality without making application in writing beforehand, setting forth the exact nature of the intended operation, and receiving a permit to blast from the Mayor of the municipality. The Mayor or other proper administrative officer before granting such permit may require the applicant to provide a bond to indemnify the municipality and all other persons against injury or damages which might result from the proposed blasting.
Penalty, see § 91.99

## § 91.15 REMOVAL OF INFLAMMABLES OR OBSTRUCTIONS.

Any inflammable or combustible materials not arranged or stored in such a manner as to afford reasonable safety against the danger of fire, or any matter stored or arranged in such a manner as to impede or prevent access to, or exit from, any premises in case of fire, shall be ordered by the Fire Chief to be removed or rearranged in such manner as to eliminate any fire hazard. The order shall be in writing and delivered to the owner, lessee or occupant of the premises.
Penalty, see § 91.99

## § 91.16 PROTECTIVE APPLIANCES.

If the Fire Chief finds upon inspection that the appliances for protection against fire are wholly wanting or are inadequate in number, condition, size, arrangement or efficiency for the reasonable protection of the premises against fire, he or she shall cause an order in writing to be delivered to the owner, lessee or occupant, requiring the installation, replacement or repair of appliances adequate for the reasonable protection of the premises in case of fire.
Penalty, see § 91.99

## § 91.17 COMPLIANCE WITH ORDER.

An order, to correct the hazardous conditions specified in § 91.16 shall be directed to the owner, lessee or occupant of the premises, building, or structure, or to the person in control of the articles, material, goods, wares, or merchandise, or to the owner thereof, as the circumstances may require. It is made the duty of the owner, lessee or occupant of the premises, building, or structure, and of the person in control of such articles, materials, goods, wares and merchandise, or the owner thereof, to comply with the order with all reasonable dispatch and diligence.
Penalty, see § 91.99

## § 91.18 WASTE RECEPTACLES.

Waste paper, ashes, oil rags, waste rags, excelsior or any material of a similar hazardous nature shall not be accumulated in any cellar or any other portion of any building of any kind. Proper fireproof receptacles shall be provided for such hazardous materials.
Penalty, see § 91.99

# *FIRE PREVENTION*

## § 91.30 REMOVAL OF INFLAMMABLES OR OBSTRUCTIONS.

Any inflammable or combustible materials not arranged or stored in such a manner as to afford reasonable safety against the danger of fire, or any matter stored or arranged in such a manner as to impede or prevent access to, or exit from, any premises in case of fire, shall be ordered by the Fire Chief to be removed or rearranged in such manner as to eliminate any fire hazard. The order shall be in writing and delivered to the owner, lessee or occupant of the premises.
Penalty, see § 91.99

## § 91.31 PROTECTIVE APPLIANCES.

If the Fire Chief finds, upon inspection, that the appliances for protection against fire are wholly wanting or are inadequate in number, condition, size, arrangement or efficiency for the reasonable protection of the

premises against fire, he or she shall cause an order in writing to be delivered to the owner, lessee or occupant, requiring the installation, replacement or repair of appliances adequate for the reasonable protection of the premises in case of fire.
Penalty, see § 91.99

## § 91.32 COMPLIANCE WITH ORDER.

An order to correct the hazardous conditions specified in § 91.30 shall be directed to the owner, lessee or occupant of the premises, building or structure or to the person in control of the articles, material, goods, wares or merchandise, or to the owner thereof, as the circumstances may require. It is made the duty of the owner, lessee or occupant of such articles, materials, goods, wares and merchandise, or the owner thereof, to comply with the order with all reasonable dispatch and diligence.
Penalty, see § 91.99

## § 91.33 WASTE RECEPTACLES.

Waste paper, ashes, oil rags, waste rags, excelsior or any material of a similar hazardous nature shall not be accumulated in any cellar or any other portion of any building of any kind. Proper fireproof receptacles shall be provided for such hazardous materials.
Penalty, see § 91.99

## § 91.34 CONTRACT AUTHORIZED.

The Municipal Manager and the Fire Chief are authorized to enter into a contract for mutual aid for additional fire protection with other political subdivisions according to law.
(Am. Ord. CM-610, passed 3-9-1982)

## § 91.35 METHOD OF OPERATION UNCHANGED.

It is not intended by ordinance or contract to change the method of operation of the Municipal Fire Department or that of the fire company incorporated, which have been found satisfactory to both parties, but rather to put into legal effect by ordinance and contract, the recent methods and manner of operations, in order to comply with the recent requirements of the office of the state's Auditor.

## § 91.36 CHIEF TO USE JUDGMENT ON NONRECIPROCAL CALLS.

In the event an emergency fire call is received from any municipality with which no such contract has been entered into, the Fire Chief may exercise his or her judgment and discretion as to whether the calls shall be answered; and if so, what equipment and firefighters shall be used in answering such calls.

## § 91.37 CONTRACT MUST BE RECIPROCAL.

The Fire Chief shall enter into no contract to furnish mutual aid to any municipality which does not pass a reciprocal ordinance to furnish mutual aid to the Municipality of West Milton in case of an emergency.

## § 91.99 PENALTY.

Whoever violates any provision of this chapter, for which another penalty is not specifically provided, shall be fined not more than $100.

# CHAPTER 92: INTOXICATING LIQUORS

Section



## § 92.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALCOHOL.*** Ethyl alcohol, whether rectified or diluted with water or not, whatever its origin may be, and includes synthetic ethyl alcohol. The term does not include denatured alcohol and wood alcohol.

***AT RETAIL.*** For use or consumption by the purchaser and not for resale.

***BEER.***

(1) Includes all beverages brewed or fermented wholly or in part from malt products and containing 0.5% or more of alcohol by volume.

(2) Beer, regardless of the percent of alcohol by volume, is not intoxicating liquor for purposes of this code, the Ohio Revised Code, or any rules adopted under it.

***CIDER.*** All liquids that are fit to use for beverage purposes that contain 0.5% of alcohol by volume, but not more than 6% of alcohol by weight that are made through the normal alcoholic fermentation of the juice of sound, ripe apples, including, without limitation, flavored, sparkling, or carbonated cider and cider made from pure condensed apple must.

***CLUB.*** A corporation or association of individuals organized in good faith for social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purposes, which is the owner, lessor, or occupant of a permanent building or part of a permanent building operated solely for such purposes, membership in which entails the prepayment of regular dues, and includes the place so operated.

***COMMUNITY FACILITY.*** Means either of the following:

(1) Any convention, sports or entertainment facility or complex, or any combination of these, that is used by or accessible to the general public and that is owned or operated in whole or in part by the state, a state agency, or a political subdivision of the state or that is leased from, or located on property owned by or leased from, the state, a state agency, a political subdivision of the state, or a convention facilities authority created pursuant to R.C. § 351.02;

(2) An area designated as a community entertainment district pursuant to R.C. § 4301.80.

***CONTROLLED ACCESS ALCOHOL AND BEVERAGE CABINET.*** A closed container, either refrigerated, in whole or in part, or nonrefrigerated, access to the interior of which is restricted by means of a device that requires the use of a key, magnetic card, or similar device and from which beer, intoxicating liquor, other beverages, or food may be sold.

***HOTEL.*** The same meaning as in R.C. § 3731.01, subject to the exceptions mentioned in R.C. § 3731.03.

***INTOXICATING LIQUOR*** and ***LIQUOR.*** All liquids and compounds, other than beer, containing 0.5% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented. The terms include cider and alcohol, and all solids and confections which contain 0.5% or more of alcohol by volume.

***LOW-ALCOHOL BEVERAGE.*** Any brewed or fermented malt product or any product made from the fermented juices of grapes, fruits, or other agricultural products that contains either no alcohol or less than 0.5% of alcohol by volume. The beverages described in this definition do not include a soft drink such as root beer, birch beer, or ginger beer.

***MANUFACTURE.*** All processes by which beer or intoxicating liquor is produced, whether by distillation, rectifying, fortifying, blending, fermentation, brewing, or in any other manner.

***MANUFACTURER.*** Any person engaged in the business of manufacturing beer or intoxicating liquor.

***MIXED BEVERAGES.*** Include bottled and prepared cordials, cocktails, highballs, and solids and confections that are obtained by mixing any type of whiskey, neutral spirits, brandy, gin or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product shall contain not less than 0.5% of alcohol by volume and not more than 21% of alcohol by volume.

***NIGHTCLUB.*** A place habitually operated for profit, where food is served for consumption on the premises, and one or more forms of amusement are provided or permitted for a consideration that may be in the form of a cover charge or may be included in the price of the food and beverages, or both, purchased by patrons.

***PERSON.*** Includes firms and corporations.

***PHARMACY.*** An establishment as defined in R.C. § 4729.01, that is under the management or control of a licensed pharmacist in accordance with R.C. § 4729.27.

***RESTAURANT.*** A place located in a permanent building provided with space and accommodations wherein, in consideration of the payment of money, hot meals are habitually prepared, sold, and served at noon and evening, as the principal business of the place. The term does not include pharmacies, confectionery stores, lunch stands, nightclubs, and filling stations.

***SALE*** and ***SELL.*** The exchange, barter, gift, offer for sale, sale, distribution, and delivery of any kind, and the transfer of title or possession of beer and intoxicating liquor either by constructive or actual delivery by any means or devices whatever, including the sale of beer or intoxicating liquor by means of a controlled access alcohol and beverage cabinet pursuant to R.C. § 4301.21. Such terms do not include the mere solicitation of orders for beer or intoxicating liquor from the holders of permits issued by the Division of Liquor Control authorizing the sale of the beer or intoxicating liquor, but no solicitor shall solicit any orders until the solicitor has been registered with the Division pursuant to R.C. § 4303.25.

***SALES AREA OR TERRITORY.*** An exclusive geographic area or territory that is assigned to a particular A or B permit holder and that either has one or more political subdivisions as its boundaries or consists of an area of land with readily identifiable geographic boundaries. The term does not include, however, any particular retail location in an exclusive geographic area or territory that had been assigned to another A or B permit holder before April 9, 2001.

***SEALED CONTAINER.*** Any container having a capacity of not more than 128 fluid ounces, the opening of which is closed to prevent the entrance of air.

***SPIRITUOUS LIQUOR.*** All intoxicating liquors containing more than 21% of alcohol by volume.

***VEHICLE.*** All means of transportation by land, by water, or by air, and everything made use of in any way for such transportation.

***WHOLESALE DISTRIBUTOR*** and ***DISTRIBUTOR.*** A person engaged in the business of selling to retail dealers for purposes of resale.

***WINE.*** All liquids fit to use for beverage purposes containing not less than 0.5% of alcohol by volume and not more than 21% of alcohol by volume, which is made from the fermented juices of grapes, fruits, or other agricultural products. Except as provided in R.C. § 4301.01(B)(3), the term does not include cider.
(R.C. §§ 4301.01, 4301.244)

## § 92.02 RESTRICTIONS APPLICABLE TO SALE OF BEER OR INTOXICATING LIQUOR FOR CONSUMPTION ON THE PREMISES.

(A) The sale of beer or intoxicating liquor for consumption on the premises is subject to the following restrictions, in addition to those imposed by the rules and orders of the Division of Liquor Control:

(1) Except as otherwise provided in this chapter or in R.C. Chapter 4301, beer or intoxicating liquor may be served to a person not seated at a table unless there is reason to believe that the beer or intoxicating liquor so served will be consumed by a person under 21 years of age.

(2) Beer or intoxicating liquor may be served by a hotel in the room of a bona fide guest, and may be sold by a hotel holding a D-5a permit, or a hotel holding a D-3 or D-5 permit that otherwise meets all of the requirements for holding a D-5a permit, by means of a controlled access alcohol and beverage cabinet that shall be located only in the hotel room of a registered guest. A hotel may sell beer or intoxicating liquor as authorized by its permit to a registered guest by means of a controlled access alcohol and beverage cabinet in accordance with the following requirements:

(a) Only a person 21 years of age or older who is a guest registered to stay in a guestroom shall be provided a key, magnetic card, or other similar device necessary to obtain access to the contents of a controlled access alcohol and beverage cabinet in that guestroom.

(b) The hotel shall comply with R.C. § 4301.22, or a substantially equivalent municipal ordinance, in connection with the handling, restocking, and replenishing of the beer and intoxicating liquor in the controlled access alcohol and beverage cabinet.

(c) The hotel shall replenish or restock beer and intoxicating liquor in any controlled access alcohol and beverage cabinet only during the hours during which the hotel may serve or sell beer and intoxicating liquor.

(d) The registered guest shall verify in writing that the guest has read and understands the language that shall be posted on the controlled access alcohol and beverage cabinet as required by division (A)(2)(e) of this section.

(e) A hotel authorized to sell beer and intoxicating liquor pursuant to division (A)(2) of this section shall post on the controlled access alcohol and beverage cabinet, in conspicuous language, the following notice:

The alcoholic beverages contained in this cabinet shall not be removed from the premises.

(f) The hotel shall maintain a record of each sale of beer or intoxicating liquor made by the hotel by means of a controlled access alcohol and beverage cabinet for any period in which the permit holder is authorized to hold the permit pursuant to R.C. §§ 4303.26 and 4303.27 and any additional period during which an applicant exercises its right to appeal a rejection by the Division of Liquor Control to renew a permit pursuant to R.C. § 4303.271. The records maintained by the hotel shall comply with both of the following:

1. Include the name, address, age, and signature of each hotel guest who is provided access by the hotel to a controlled access alcohol and beverage cabinet pursuant to division (A)(2)(a) of this section;

2. Be made available during business hours to authorized agents of the Division of Liquor Control pursuant to R.C. § 4301.10(A)(6) or to enforcement agents of the Department of Public Safety pursuant to R.C. §§ 5502.13 through 5502.19.

(g) The hotel shall observe all other applicable rules adopted by the Division of Liquor Control and the Liquor Control Commission.

(3) The seller shall not require the purchase of food with the purchase of beer or intoxicating liquor; nor shall the seller of beer or intoxicating liquor give away food of any kind in connection with the sale of beer or intoxicating liquor, except as authorized by rule of the state Liquor Control Commission.

(4) Except as otherwise provided in R.C. § 4301.62(C)(8), the seller shall not permit the purchaser to remove beer or intoxicating liquor so sold from the premises.

(5) A hotel authorized to sell beer and intoxicating liquor pursuant to division (A)(2) of this section shall provide a registered guest with the opportunity to refuse to accept a key, magnetic card, or other similar device necessary to obtain access to the contents of a controlled access alcohol and beverage cabinet in that guest room. If a registered guest refuses to accept such key, magnetic card, or other similar device, the hotel shall not assess any charges on the registered guest for use of the controlled access alcohol and beverage cabinet in that guest room.
(R.C. § 4301.21)

(B) Whoever violates division (A)(4) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(C))

## § 92.03 RESERVED.

## § 92.04 RESTRICTIONS ON SALE OF BEER AND LIQUOR.

(A) *Restrictions on sales.* Sales of beer and intoxicating liquor under all classes of permits and from liquor stores are subject to the following restrictions, in addition to those imposed by the rules or orders of the state Division of Liquor Control.

(1) (a) Except as otherwise provided in this chapter or in R.C. Chapter 4301, no beer or intoxicating liquor shall be sold to any person under 21 years of age.

(b) No low-alcohol beverage shall be sold to any person under 18 years of age. No permit issued by the Division shall be suspended, revoked, or cancelled because of a violation of this division (A)(1)(b).

(c) No intoxicating liquor shall be handled by any person under 21 years of age, except that a person 18 years of age or older employed by a permit holder may handle or sell beer or intoxicating liquor in sealed containers in connection with wholesale or retail sales, and any person 19 years of age or older employed by a permit holder may handle intoxicating liquor in open containers when acting in the capacity of a server in a hotel, restaurant, club, or night club, as defined in R.C. § 4301.01, or in the premises of a D-7 permit holder. This section does not authorize persons under 21 years of age to sell intoxicating liquor across a bar. Any person employed by a permit holder may handle beer or intoxicating liquor in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading, and may handle beer or intoxicating liquor in open containers in connection with cleaning tables or handling empty bottles or glasses.

(2) No permit holder and no agent or employee of a permit holder shall sell or furnish beer or intoxicating liquor to an intoxicated person.

(3) (a) No sales of intoxicating liquor shall be made after 2:30 a.m. on Sunday, except under either of the following circumstances:

1. Intoxicating liquor may be sold on Sunday under authority of a permit that authorizes Sunday sale.

2. Spiritous liquor may be sold on Sunday by any person awarded an agency contract under R.C. § 4301.17 if the sale of spiritous liquor is authorized in the applicable precinct as the result of an election on question (B)(1) or (B)(2) of R.C. § 4301.351 and if the agency contract authorizes the sale of spiritous liquor on Sunday.

(b) This section does not prevent the municipality from adopting a closing hour for the sale of intoxicating liquor earlier than 2:30 a.m. on Sunday or to provide that no intoxicating liquor may be sold prior to that hour on Sunday.

(4) (a) No holder of a permit shall give away any beer or intoxicating liquor of any kind at any time in connection with the permit holder's business. However, with the exception of an A-1-A permit holder that also has been issued an A-2 or A-2f permit, an A-1-A, A-1c, or D permit holder may provide to a paying customer not more than a total of four tasting samples of beer, wine, or spirituous liquor, as authorized by the applicable permit, in any twenty-four-hour period. The permit holder shall provide the tasting samples free of charge, at the permit holder's expense, only to a person who is 21 years of age or older. The person shall consume the tasting samples on the premises of the permit holder. A distributor is not responsible for the costs of providing tasting samples authorized under division (A)(4) of this section.

(b) As used in division (A)(4) of this section:

***TASTING SAMPLE.*** Means one of the following, as applicable:

a. An amount not to exceed two ounces of beer;

b. An amount not to exceed two ounces of wine;

c. An amount not to exceed a quarter ounce of spirituous liquor.

***D PERMIT HOLDER.*** Means a person that has been issued a D-1, D-2, D-2x, D-3, D-3a, D-3 x, D-4, D-5, D-5a, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, D-5k, D-5l, D-5m, D-5n, D-5o, D-6, or D-7 permit.

(5) Except as otherwise provided in this division, no retail permit holder shall display or permit the display on the outside of any licensed retail premises, on any lot of ground on which the licensed premises are situated, or on the exterior of any building of which the licensed premises are a part, any sign, illustration, or advertisement bearing the name, brand name, trade name, trademark, designation, or other emblem of, or indicating the manufacturer, producer, distributor, place of manufacture, production, or distribution of, any beer or intoxicating liquor. Signs, illustrations, or advertisements bearing the name, brand name, trade name, trademark, designation, or other emblem of or indicating the manufacturer, producer, distributor, place of manufacture, production, or distribution of beer or intoxicating liquor may be displayed and permitted to be displayed on the interior or in the show windows of any licensed premises, if the particular brand or type of product so advertised is actually available for sale on the premises at the time of that display. The Liquor Control Commission shall determine by rule the size and character of those signs, illustrations, or advertisements.

(6) No retail permit holder shall possess on the licensed premises any barrel or other container from which beer is drawn, unless there is attached to the spigot or other dispensing apparatus the name of the manufacturer of the product contained in the barrel or other container, provided that, if the beer is served at a bar, the manufacturer's name or brand shall appear in full view of the purchaser. The Commission shall regulate the size and character of the devices provided for in this section.

(7) Except as otherwise provided in this division, no sale of any gift certificate shall be permitted whereby beer or intoxicating liquor of any kind is to be exchanged for the certificate, unless the gift certificate can be exchanged only for food, and beer or intoxicating liquor, for on-premises consumption and the value of the beer or intoxicating liquor does not exceed more than 30% of the total value of the gift certificate. The sale of gift certificates for the purchase of beer, wine, or mixed beverages shall be permitted for the purchase of beer, wine, or mixed beverages for off-premises consumption. Limitations on the use of a gift certificate for the purchase of beer, wine, or mixed beverages for off-premises consumption may be expressed by clearly stamping or typing on the face of the certificate that the certificate may not be used for the purchase of beer, wine, or mixed beverages for on-premises consumption.
(R.C. § 4301.22)

(B) *Division (A)(1) not modified or affected.* The provisions of R.C. §§ 4301.633 through 4301.637, or substantially equivalent municipal ordinances, shall not be deemed to modify or affect division (A)(1) of this section or R.C. § 4301.22(A).
(R.C. § 4301.638)

(C) *Penalties.*

(1) Whoever violates divisions (A)(1)(b) or (A)(3) of this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4301.99(B))

(2) Whoever violates divisions (A)(1)(a), (A)(1)(c) or (A)(2) of this section is guilty of a misdemeanor of the third degree.
(R.C. § 4301.99(D), (H))

***Statutory reference:***

*Suspension of beer and liquor sales during emergency, see R.C. § 4301.251*

## § 92.05 ACTIVITIES PROHIBITED WITHOUT PERMIT.

(A) No person, personally or by the person's clerk, agent, or employee, who is not the holder of an A permit issued by the Division of Liquor Control, in force at the time, and authorizing the manufacture of beer or intoxicating liquor, or who is not an agent or employee of the Division authorized to manufacture beer or intoxicating liquor, shall manufacture any beer or intoxicating liquor of sale, or shall manufacture spirituous liquor.

(B) No person, personally or by the person's clerk, agent, or employee, who is not the holder of an A, B, C, D, E, F, G, I, or S permit issued by the Division, in force at the time, and authorizing the sale of beer, intoxicating liquor, or alcohol, or who is not an agent or employee of the Division or the Tax Commissioner authorized to sell beer, intoxicating liquor or alcohol for sale to any persons other than those authorized by this chapter and R.C. §§ 4301 *et seq.* and 4303 *et seq.* to purchase any beer or intoxicating liquor, or sell any alcohol at retail.

(C) No person, personally or by the person's clerk, agent, or employee, who is the holder of a permit issued by the Division, shall sell, keep or possess for sale any intoxicating liquor not purchased from the Department or from the holder of a permit issued by the Division authorizing the sale of intoxicating liquor, unless the same has been purchased with the special consent of the Division. The Division shall revoke the permit of any person convicted of a violation of this division.
(R.C. § 4301.58)

(D) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(C))

## § 92.06 ILLEGAL TRANSPORTATION PROHIBITED.

(A) No person, who is not the holder of an H permit shall transport beer, intoxicating liquor or alcohol in this state. This section does not apply to the transportation and delivery of beer, alcohol or intoxicating liquor purchased or to be purchased from the holder of a permit issued by the Division of Liquor Control, in force at the time, and authorizing the sale and delivery of the beer, alcohol or intoxicating liquor so transported, or to the transportation and delivery of beer, intoxicating liquor or alcohol purchased from the Division or the Tax Commissioner, or purchased by the holder of an A or B permit outside this state, and transported within this state by them in their own trucks for the purpose of sale under their permits.
(R.C. § 4301.60)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(C))

## § 92.07 OPEN CONTAINER PROHIBITED; EXCEPTION.

(A) As used in this section:

***CHAUFFEURED LIMOUSINE.*** Means a vehicle registered under R.C. § 4503.24.

***HIGHWAY.*** Has the same meaning as in R.C. § 4511.01.

***MOTOR VEHICLE.*** Has the same meaning as in R.C. § 4511.01.

***STREET.*** Has the same meaning as in R.C. § 4511.01.

(B) No person shall have in the person's possession an opened container of beer or intoxicating liquor in any of the following circumstances:

(1) Except as provided in division (C)(1)(e) of this section, in a state liquor store;

(2) Except as provided in division (C) of this section, on the premises of the holder of any permit issued by the Division of Liquor Control;

(3) In any other public place;

(4) Except as provided in division (D) or (E) of this section, while operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking;

(5) Except as provided in division (D) or (E) of this section, while being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(C) (1) A person may have in the person's possession an opened container of any of the following:

(a) Beer or intoxicating liquor that has been lawfully purchased for consumption on the premises where bought from the holder of an A-1-A, A-2, A-2f, A-3a, D-1, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, D-5k, D-5l, D-5m, D-5n, D-5o, D-7, D-8, E, F, F-2, F-5, F-7, or F-8 permit;

(b) Beer, wine, or mixed beverages served for consumption on the premises by the holder of an F-3 permit, wine served as a tasting sample by an A-2 permit holder or S permit holder for consumption on the premises of a farmers market for which an F-10 permit has been issued, or wine served for consumption on the premises by the holder of an F-4 or F-6 permit;

(c) Beer or intoxicating liquor consumed on the premises of a convention facility as provided in R.C. § 4303.201;

(d) Beer or intoxicating liquor to be consumed during tastings and samplings approved by rule of the Liquor Control Commission;

(e) Spiritous liquor to be consumed for purposes of a tasting sample, as defined in R.C. § 4301.171.

(2) A person may have in the person's possession on an F liquor permit premises an opened container of beer or intoxicating liquor that was not purchased from the holder of the F permit if the premises for which the F permit is issued is a music festival and the holder of the F permit grants permission for that possession on the premises during the period for which the F permit is issued. As used in this division (C)(2), ***MUSIC FESTIVAL*** means a series of outdoor live musical performances extending for a period of at least three consecutive days and located on an area of land of at least 40 acres.

(3) (a) A person may have in the person's possession on a D-2 liquor permit premises an opened or unopened container of wine that was not purchased from the holder of the D-2 permit if the premises for which the D-2 permit is issued is an outdoor performing arts center, the person is attending an orchestral performance, and the holder of the D-2 permit grants permission for the possession and consumption of wine in certain predesignated areas of the premises during the period for which the D-2 permit is issued.

(b) As used in division (C)(3)(a) of this section:

***ORCHESTRAL PERFORMANCE.*** Means a concert comprised of a group of not fewer than 40 musicians playing various musical instruments.

***OUTDOOR PERFORMING ARTS CENTER.*** Means an outdoor performing arts center that is located on not less than 150 acres of land and that is open for performances from the first day of April to the last day of October of each year.

(4) A person may have in the person's possession an opened or unopened container of beer or intoxicating liquor at an outdoor location at which the person is attending an orchestral performance as defined in division (C)(3)(b) of this section if the person with supervision and control over the performance grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of that outdoor location.

(5) (a) A person may have in the person's possession on an F-9 liquor permit premises an opened or unopened container of beer or intoxicating liquor that was not purchased from the holder of the F-9 permit if the person is attending either of the following:

1. An orchestral performance and the F-9 permit holder grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of the premises during the period for which the F-9 permit is issued;

2. An outdoor performing arts event or orchestral performance that is free of charge and the F-9 permit holder annually hosts not less than 25 other events or performances that are free of charge on the permit premises.

(b) As used in division (C)(5) of this section, ***ORCHESTRAL PERFORMANCE*** has the same meaning as in division (C)(3)(b) of this section.

(6) (a) A person may have in the person's possession on the property of an outdoor motorsports facility an opened or unopened container of beer or intoxicating liquor that was not purchased from the owner of the facility if both of the following apply:

1. The person is attending a racing event at the facility; and

2. The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property of the facility.

(b) As used in division (C)(6)(a) of this section:

***OUTDOOR MOTORSPORTS FACILITY.*** An outdoor racetrack to which all of the following apply:

a. It is 2.4 miles or more in length.

b. It is located on 200 acres or more of land.

c. The primary business of the owner of the facility is the hosting and promoting of racing events.

d. The holder of a D-1, D-2, or D-3 permit is located on the property of the facility.

***RACING EVENT.*** A motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations.

(7) (a) A person may have in the person's possession an opened container of beer or intoxicating liquor at an outdoor location within an outdoor refreshment area created under R.C. § 4301.82 if the opened container of beer or intoxicating liquor was purchased from a qualified permit holder to which both of the following apply:

1. The permit holder's premises is located within the outdoor refreshment area.

2. The permit held by the permit holder has an outdoor refreshment area designation.

(b) Division (C)(7) of this section does not authorize a person to do either of the following:

1. Enter the premises of an establishment within an outdoor refreshment area while possessing an opened container of beer or intoxicating liquor acquired elsewhere;

2. Possess an opened container of beer or intoxicating liquor while being in or on a motor vehicle within an outdoor refreshment area, unless the motor vehicle is stationary and is not being operated in a lane of vehicular travel or unless the possession is otherwise authorized under division (D) or (E) of this section.

(8) (a) A person may have in the person's possession on the property of a market, within a defined F-8 permit premises, an opened container of beer or intoxicating liquor that was purchased from a D permit premises that is located immediately adjacent to the market if both of the following apply:

1. The market grants permission for the possession and consumption of beer and intoxicating liquor within the defined F-8 permit premises;

2. The market is hosting an event pursuant to an F-8 permit and the market has notified the division of liquor control about the event in accordance with R.C. § 4303.208(A)(3).

(b) As used in division (C)(8) of this section, ***MARKET*** means a market, for which an F-8 permit is held, that has been in operation since 1860.

(D) This section does not apply to a person who pays all or a portion of the fee imposed for use of a chauffeured limousine pursuant to a prearranged contract or the guest of the person, when all of the following apply:

(1) The person or guest is a passenger in the limousine.

(2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located.

(3) The limousine is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(E) An opened bottle of wine that was purchased from the holder of a permit that authorizes the sale of wine for consumption on the premises where sold is not an opened container for the purposes of this section if both of the following apply:

(1) The opened bottle of wine is securely resealed by the permit holder or an employee of the permit holder before the bottle is removed from the premises. The bottle shall be secured in such a manner that it is visibly apparent if the bottle has been subsequently opened or tampered with.

(2) The opened bottle of wine that is resealed in accordance with division (E)(1) of this section is stored in the trunk of a motor vehicle or, if the motor vehicle does not have a trunk, behind the last upright seat or in an area not normally occupied by the driver or passengers and not easily accessible by the driver.

(F) (1) Except if an ordinance or resolution is enacted or adopted under division (F)(2) of this section, this section does not apply to a person who, pursuant to a prearranged contract, is a passenger riding on a commercial quadricycle when all of the following apply:

(a) The person is not occupying a seat in the front of the commercial quadricycle where the operator is steering or braking.

(b) The commercial quadricycle is being operated on a street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(c) The person has in their possession on the commercial quadricycle an opened container of beer or wine.

(d) The person has in their possession on the commercial quadricycle not more than either 36 ounces of beer or 18 ounces of wine.

(2) The Legislative Authority may enact an ordinance or adopt a resolution, as applicable, that prohibits a passenger riding on a commercial quadricycle from possessing an opened container of beer or wine.

(3) As used in this section, ***COMMERCIAL QUADRICYCLE*** means a vehicle that has fully-operative pedals for propulsion entirely by human power and that meets all of the following requirements:

(a) It has four wheels and is operated in a manner similar to a bicycle.

(b) It has at least five seats for passengers.

(c) It is designed to be powered by the pedaling of the operator and the passengers.

(d) It is used for commercial purposes.

(e) It is operated by the vehicle owner or an employee of the owner.

(G) (1) This section does not apply to a person that has in the person's possession an opened container of beer or intoxicating liquor on the premises of a market if the beer or intoxicating liquor has been purchased from a D liquor permit holder that is located in the market.

(2) As used in division (G) of this section, ***MARKET*** means an establishment that:

(a) Leases space in the market to individual vendors, not less than 50% of which are retail food establishments or food service operations licensed under R.C. Chapter 3717;

(b) Has an indoor sales floor area of not less than 22,000 square feet;

(c) Hosts a farmer's market on each Saturday from April through December.
(R.C. § 4301.62)

(H) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 4301.99(A))

## § 92.08 UNDERAGE PERSON SHALL NOT PURCHASE INTOXICATING LIQUOR OR BEER.

(A) Except as otherwise provided in this chapter or in R.C. Ch. 4301, no person under the age of 21 years shall purchase beer or intoxicating liquor.
(R.C. § 4301.63)

(B) Whoever violates this section shall be fined not less than $25 nor more than $100. The court imposing a fine for a violation of this section may order that the fine be paid by the performance of public work at a reasonable hour rate established by the court. The court shall designate the time within which the public work shall be completed.
(R.C. § 4301.99(E))

**§ 92.09 PROHIBITIONS; MINORS UNDER 18 YEARS; LOW-ALCOHOL BEVERAGES**.

(A) As used in this section, ***UNDERAGE PERSON*** means a person under 18 years of age.

(B) No underage person shall purchase any low-alcohol beverage.

(C) No underage person shall order, pay for, share the cost of, or attempt to purchase any low-alcohol beverage.

(D) No person shall knowingly furnish any false information as to the name, age or other identification of any underage person for the purpose of obtaining or with the intent to obtain any low-alcohol beverage for an underage person, by purchase or as a gift.

(E) No underage person shall knowingly show or give false information concerning his or her name, age or other identification for the purpose of purchasing or otherwise obtaining any low-alcohol beverage in any place in this state.

(F) No person shall sell or furnish any low-alcohol beverage to, or buy any low-alcohol beverage for, an underage person, unless given by a physician in the regular line of his or her practice or given for established religious purposes, or unless the underage person is accompanied by a parent, spouse who is not an underage person or legal guardian.

(G) (1) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming any low-alcohol beverage, unless the low-alcohol beverage is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian, and the parent, spouse who is not an underage person, or legal guardian is present when the person possesses or consumes the low-alcohol beverage.

(2) An owner of a public or private place is not liable for acts or omissions in violation of division (G)(1) that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(H) No permit issued by the division of liquor control shall be suspended, revoked or cancelled because of a violation of either divisions (F) or (G).

(I) No underage person shall knowingly possess or consume any low-alcohol beverage in any public or private place, unless accompanied by a parent, spouse who is not an underage person, or legal guardian, or unless the low-alcohol beverage is given by a physician in the regular line of his or her practice or given for established religious purposes.

(J) No parent, spouse who is not an underage person, or legal guardian of an underage person shall knowingly permit the underage person to violate this section.
(R.C. § 4301.631)

(K) (1) Whoever violates any provision of this section for which no other penalty is provided is guilty of a misdemeanor of the fourth degree.
(R.C. § 4301.99(B))

(2) Whoever violates division (B) of this section shall be fined not less than $25 nor more than $100. The court imposing a fine for a violation of division (B) of this section may order that the fine be paid by the performance of public work at a reasonable hour rate established by the court. The court shall designate the time within which the public work shall be completed.
(R.C. § 4301.99(E))

## § 92.10 ALCOHOL VAPORIZING DEVICES PROHIBITED.

(A) As used in this section, ***ALCOHOL VAPORIZING DEVICE*** means a machine or other device that mixes beer or intoxicating liquor with pure oxygen or any other gas to produce a vaporized product for the purpose of consumption by inhalation.

(B) No person shall sell or offer for sale an alcohol vaporizing device.

(C) No person shall purchase or use an alcohol vaporizing device.
(R.C. § 4301.65)

(D) (1) Whoever violates division (B) of this section is guilty of misdemeanor of the third degree. For a second or subsequent violation occurring within a period of five consecutive years after the first violation, a person is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(J))

(2) Whoever violates division (C) of this section is guilty of a minor misdemeanor.
(R.C. § 4301.99(A))

## § 92.11 MISREPRESENTATION TO OBTAIN ALCOHOLIC BEVERAGE FOR A MINOR PROHIBITED.

(A) Except as otherwise provided in this chapter or in R.C. Ch. 4301, no person shall knowingly furnish any false information as to the name, age or other identification of any person under 21 years of age, for the purpose of obtaining, or with the intent to obtain, beer or intoxicating liquor for a person under 21 years of age, by purchase or as a gift.
(R.C. § 4301.633)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(C))

## § 92.12 MISREPRESENTATION BY A MINOR UNDER 21 YEARS.

(A) Except as otherwise provided in this chapter or in R.C. Chapter 4301, no person under the age of 21 years shall knowingly show or give false information concerning his or her name, age, or other identification for the purpose of purchasing or otherwise obtaining beer or intoxicating liquor in any place in this municipality

where beer or intoxicating liquor is sold under a permit issued by the Division of Liquor Control, or sold by the Division of Liquor Control.
(R.C. § 4301.634)

(B) (1) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree. If, in committing a first violation of division (A), the offender presented to the permit holder or his or her employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than $250 and not more than $1,000, and may be sentenced to a term of imprisonment of not more than six months.

(2) On a second violation in which, for the second time, the offender presented to the permit holder or his or her employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than $500 nor more than $1,000, and may be sentenced to a term of imprisonment of not more than six months. The court also may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operation privilege from the range specified in R.C. § 4510.02(A)(7).

(3) On a third or subsequent violation in which, for the third or subsequent time, the offender presented to the permit holder or his or her employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than $500 nor more than $1,000, and may be sentenced to a term of imprisonment of not more than six months. Except as provided in this division, the court also may impose a class six suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6), and the court may order that the suspension or denial remain in effect until the offender attains the age of 21 years. The court, in lieu of suspending the offender's temporary instruction permit, probationary driver's license, or driver's license, instead may order the offender to perform a determinate number of hours of community service, with the court determining the actual number of hours and the nature of the community service the offender shall perform.
(R.C. § 4301.99(F))

## § 92.13 RESERVED.

## § 92.14 POSTING OF CARD.

(A) Except as otherwise provided in R.C. § 4301.691, every place in this municipality where beer, intoxicating liquor or any low-alcohol beverage is sold for beverage purposes shall display at all times, in a prominent place on the premises thereof, a printed card, which shall be furnished by the Division of Liquor Control and which shall read substantially as follows:

"WARNING TO PERSONS UNDER AGE

If you are under the age of 21

Under the statutes of the state of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or possess or consume beer or intoxicating liquor in any public place, or furnish false information as to name, age, or other identification, you are subject to a fine of up to $1,000, or imprisonment up to 6 months, or both.

If you are under the age of 18

Under the statutes of the state of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or posses or consume, any type of beer or wine that contains either no alcohol or less than one-half of one per cent of alcohol by volume in any public place, or furnish false information as to the name, age, or other identification, you are subject to a fine of up to $250 or to imprisonment up to 30 days, or both."

(B) No person shall be subject to any criminal prosecution or any proceedings before the Division or the Liquor Control Commission for failing to display this card. No permit issued by the Division shall be suspended, revoked or canceled because of the failure of the permit holder to display this card.

(C) Every place in this municipality for which a D permit has been issued under R.C. Ch. 4303 shall be issued a printed card by the Division that shall read substantially as follows:

"WARNING

If you are carrying a firearm

Under the statutes of Ohio, if you possess a firearm in any room in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303 of the Revised Code, you may be guilty of a felony and may be subjected to a prison term of up to one year."

(D) No person shall be subject to any criminal prosecution or any proceedings before the Division of Liquor Control or the Liquor Control Commission for failing to display this card. No permit issued by the division shall be suspended, revoked or canceled because of the failure of the permit holder to display this card. (R.C. § 4301.637)

## § 92.15 GOOD FAITH ACCEPTANCES OF SPURIOUS IDENTIFICATION.

(A) No permit holder, agent or employee of a permit holder, or any other person may be found guilty of a violation of any section of this chapter in which age is any element of the offense, if any court of record finds all of the following:

(1) That the person buying, at the time of so doing, exhibited to the permit holder, the agent or employee of the permit holder, or the other person a driver's or commercial driver's license or an identification card as defined in R.C. § 4301.61, a military identification card issued by the United States Department of

Defense, or a United States or foreign passport, that displays a picture of the individual for whom the license, card, or passport was issued and shows that the person buying was then at least 21 years of age if the person was buying beer as defined in R.C. § 4301.01 or intoxicating liquor, or that the person was then at least 18 years of age if the person was buying any low-alcohol beverage;

(2) That the permit holder, the agent or employee of the permit holder, or the other person made a bona fide effort to ascertain the true age of the person buying by checking the identification presented at the time of the purchase to ascertain that the description on the identification compared with the appearance of the buyer and that the identification presented had not been altered in any way.

(3) That the permit holder, the agent or employee of the permit holder, or the other person had reason to believe that the person buying was of legal age.

(B) The defense provided by division (A) of this section is in addition to the affirmative defense provided by R.C. § 4301.611.
(R.C. § 4301.639(A), (C))

## § 92.16 PROHIBITION AGAINST CONSUMPTION IN MOTOR VEHICLE.

(A) No person shall consume any beer or intoxicating liquor in a motor vehicle. This section does not apply to persons described in R.C. § 4301.62(D) or a substantially equivalent municipal ordinance.
(R.C. § 4301.64)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. If an offender who violates this section was under the age of 18 years at the time of the offense, the court, in addition to any other penalties it imposes upon the offender, may suspend the offender's temporary instruction permit, probationary driver's license or driver's license for a period of not less than six months and not more than one year. In lieu of suspending the offender's temporary instruction permit, probationary driver's license, or driver's license, the court instead may require the offender to perform community service for a number of hours determined by the court. If the offender is 15 years and six months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender shall not be eligible to be issued such a license or permit for a period of six months. If the offender has not attained the age of 15 years and six months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of 16 years.
(R.C. § 4301.99(B))

## § 92.17 OBSTRUCTING SEARCH OF PREMISES PROHIBITED.

(A) No person shall hinder or obstruct any agent or employee of the Division of Liquor Control, any enforcement agent of the Department of Public Safety, or any officer of the law, from making an inspection or search of any place, other than a bona fide private residence, where beer or intoxicating liquor is possessed, kept, sold or given away.
(R.C. § 4301.66)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(C))

(C) It is a defense to prosecution under this section that the hindrance, obstruction, resistance, or interference alleged consisted of constitutionally protected speech only.

## § 92.18 ILLEGAL POSSESSION OF INTOXICATING LIQUOR PROHIBITED.

(A) No person shall have in that person's possession of any spirituous liquor, in excess of one liter, in one or more containers, which was not purchased at wholesale or retail from the Division of Liquor Control or otherwise lawfully acquired pursuant to this chapter, R.C. §§ 4301 *et seq.* and 4303 *et seq.*, or any other intoxicating liquor, in one or more containers, which was not lawfully acquired pursuant to those chapters.
(R.C. § 4301.67)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 4301.99(B))

## § 92.19 PROHIBITION AGAINST SALE OR POSSESSION OF DILUTED LIQUOR AND REFILLED CONTAINERS.

(A) No person shall sell, offer for sale or possess intoxicating liquor in any original container, which has been diluted, refilled or partly refilled.
(R.C. § 4301.68)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(C))

## § 92.20 SALE TO UNDERAGE PERSONS PROHIBITED.

(A) Except as otherwise provided in this chapter or in R.C. Chapter 4301, no person shall sell beer or intoxicating liquor to an underage person, shall buy beer or intoxicating liquor for an underage person, or shall furnish it to an underage person unless given by a physician in the regular line of the physician's practice or given for established religious purposes or unless the underage person is supervised by a parent, spouse or legal guardian. In proceedings before the Liquor Control Commission, no permit holder or no employee or agent of a permit holder, charged with a violation of this division shall be charged, for the same offense, with a violation of § 92.04(A)(1) or R.C. § 4301.22(A)(1).

(B) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian and the parent, spouse who is not an underage person, or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor. An owner of a public or private place is not liable for acts or omissions in violation of this division that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(C) No person shall engage or use accommodations at a hotel, inn, cabin, campground or restaurant when the person knows or has reason to know either of the following:

(1) That beer or intoxicating liquor will be consumed by an underage person on the premises of the accommodations that the person engages or uses, unless the person engaging or using the accommodations is the spouse of the underage person and who is not an underage person, or is the parent or legal guardian of all of the underage persons, who consume beer or intoxicating liquor on the premises and that person is on the premises at all times when beer or intoxicating liquor is being consumed by an underage person.

(2) That a drug of abuse will be consumed on the premises of the accommodations by any person, except a person who obtained the drug of abuse pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs and has the drug of abuse in the original container in which it was dispensed to the person.

(D) (1) No person is required to permit the engagement of accommodations at any hotel, inn, cabin or campground by an underage person or for an underage person, if the person engaging the accommodations knows or has reason to know that the underage person is intoxicated, or that the underage person possesses any beer or intoxicating liquor and is not supervised by a parent, spouse, who is not an underage person or legal guardian who is or will be present at all times when the beer or intoxicating liquor is being consumed by the underage person.

(2) No underage person shall knowingly engage or attempt to engage accommodations at any hotel, inn, cabin, or campground by presenting identification that falsely indicates that the underage person is 21 years of age or older for the purpose of violating this section.

(E) (1) No underage person shall knowingly order, pay for, share the cost of, attempt to purchase, possess, or consume any beer or intoxicating liquor in any public or private place. No underage person shall knowingly be under the influence of any beer or intoxicating liquor in any public place. The prohibitions set forth in this division against an underage person knowingly possessing, consuming, or being under the influence of any beer or intoxicating liquor shall not apply if the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian, or the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes.

(2) (a) If a person is charged with violating division (E)(1) of this section in a complaint filed under R.C. § 2151.27, the court may order the child into a diversion program specified by the court and hold the complaint in abeyance pending successful completion of the diversion program. A child is ineligible to enter into a diversion program under this division if the child previously has been diverted pursuant to this division. If the child completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the child’s record in the case sealed under R.C. §§ 2151.356 through 2151.358. If the child fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

(b) If a person is charged in a criminal complaint with violating division (E)(1) of this section, R.C. § 2935.36 shall apply to the offense, except that a person is ineligible for diversion under that section if the person previously has been diverted pursuant to divisions (E)(2)(a) or (E)(2)(b) of this section. If the person completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the record in the case sealed under R.C. § 2953.52. If the person fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

(F) No parent, spouse, who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or R.C. §§ 4301.63, 4301.632, 4301.633 or 4301.634.

(G) The operator of any hotel, inn, cabin or campground shall make the provisions of this section available in writing to any person engaging or using accommodations at the hotel, inn, cabin or campground.

(H) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***DRUG OF ABUSE*** has the same meaning as in R.C. § 3719.011.

***HOTEL*** has the same meaning as in R.C. § 3731.01.

***LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS AND PRESCRIPTION.*** Have the same meanings as in R.C. § 4729.01.

***MINOR*** means a person under the age of 18 years.

***UNDERAGE PERSON*** means a person under the age of 21 years.
(R.C. § 4301.69)

(I) Sections 92.10 through 92.14, and R.C. §§ 4301.632 through 4301.637 shall not be deemed to modify or affect divisions (A) and (B) above or R.C. § 4301.69.
(R.C. § 4301.638)

(J) (1) Except as provided in division (J)(2) of this section, whoever violates this section is guilty of a misdemeanor of the first degree. If an offender who violates division (E)(1) of this section was under the age of 18 years at the time of the offense and the offense occurred while the offender was the operator of or a passenger in a motor vehicle, the court, in addition to any other penalties it imposes upon the offender, shall suspend the offender's temporary instruction permit or probationary driver's license for a period of six months. If the offender is 15 years and six months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender shall not be eligible to be issued such a license or permit for a period of six months. If the offender has not attained the age of 15 years and six months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of 16 years.
(R.C. § 4301.99(C))

(2) Whoever violates division (A) of this section is guilty of a misdemeanor, shall be fined not less than $500 nor more than $1,000, and in addition to the fine, may be imprisoned for a definite term of not more than six months.
(R.C. § 4301.99(I))

***Statutory reference:***

*Changes to law if federal uniform drinking age repealed or declared unconstitutional, see R.C. § 4301.691*

## § 92.21 KEEPING PLACE WHERE INTOXICATING LIQUORS ARE SOLD IN VIOLATION OF LAW.

(A) No person shall keep a place where beer or intoxicating liquors are sold, furnished or given away in violation of law. The court, on conviction for a subsequent offense, shall order the place where the beer or intoxicating liquor is sold, furnished or given away to be abated as a nuisance, or shall order the person convicted for the offense to give bond payable to the state in the sum of $1,000, with sureties to the acceptance of the court,

that the person will not sell, furnish or give away beer or intoxicating liquor in violation of law, and will pay all fines, costs and damages assessed against him for a violation. The giving away of beer or intoxicating liquors, or other device to evade this section, constitutes unlawful selling.

(B) As used in this section, ***BEER*** has the meaning set forth in § 92.01.

(C) Division (A) of this section does not apply to any premises for which a permit has been issued under R.C. Chapter 4303 while that permit is in effect.
(R.C. § 4399.09)

(D) Whoever violates this section shall be fined not less than $100 nor more than $500 on a first offense and shall be fined not less than $200 nor more than $500 on each subsequent offense.
(R.C. § 4399.99(B))

## § 92.22 INTOXICATING LIQUORS SHALL NOT BE SOLD IN BROTHELS.

(A) No person shall sell, exchange or give away intoxicating liquor in a brothel.
(R.C. § 4399.10)

(B) Whoever violates this section shall be fined not less than $100 nor more than $500 and imprisoned not less than one nor more than six months.
(R.C. § 4399.99(C))

## § 92.23 USE OF INTOXICATING LIQUOR IN A PUBLIC DANCE HALL PROHIBITED; EXCEPTIONS.

(A) (1) Except as otherwise provided in division (A)(2) of this section, no person who is the proprietor of, or who conducts, manages, or is in charge of any public dance hall shall allow the use of any intoxicating liquor or the presence of intoxicated persons in the public dance hall or on the premises on which it is located.

(2) The prohibition against the use of any intoxicating liquor contained in division (A)(1) of this section does not apply to establishments that are holders of a D-1, D-2, D-3, D-4, or D-5 permit whose principal business consists of conducting a hotel, a restaurant, a club, or a nightclub, all as defined in R.C. § 4301.01.
(R.C. § 4399.14)

(B) Whoever violates this section shall be fined not less than $25 nor more than $500, imprisoned not more than six months, or both.
(R.C. § 4399.99(D))

## § 92.24 POISONOUSLY ADULTERATED LIQUORS.

(A) No person, for the purpose of sale, shall adulterate spirituous liquor, alcoholic liquor, or beer used or intended for drink or medicinal or mechanical purposes, with *cocculus indicus*, vitriol, grains of paradise, opium,

alum, capsicum, copperas, laurel water, logwood, brazilwood, cochineal, sugar of lead, aloes, glucose, tannic acid, or any other substance that is poisonous or injurious to health, or with a substance not a necessary ingredient in the manufacture of the spiritous liquor, alcoholic liquor, or beer, or sell, offer, or keep for sale spiritous liquor, alcoholic liquor, or beer that is so adulterated.

(B) In addition to the penalties provided in division (C) of this section, a person convicted of violating this section shall pay all necessary costs and expenses incurred in inspecting and analyzing spiritous liquor, alcoholic liquor, or beer that is so adulterated, sold, kept, or offered for sale.
(R.C. § 4399.15)

(C) Whoever violates this section shall be fined not less than $20 nor more than $100, imprisoned not less than 20 nor more than 60 days, or both.
(R.C. § 4399.99(E))

## § 92.25 TAVERN KEEPER PERMITTING RIOTING OR DRUNKENNESS.

(A) No tavern keeper shall permit rioting, reveling, intoxication or drunkenness in his or her house or on his or her premises.
(R.C. § 4399.16)

(B) Whoever violates this section shall be fined not less than $5 nor more than $100.
(R.C. § 4399.99(A))

## § 92.26 MANUFACTURING OR SELLING POISONED LIQUORS.

(A) No person shall use an active poison in the manufacture or preparation of intoxicating liquor or sell intoxicating liquor so manufactured or prepared.
(R.C. § 4399.17)

(B) Whoever violates this section is guilty of a felony of the fourth degree.
(R.C. § 4399.99(F))

## § 92.27 RESERVED.

## § 92.28 PROCEDURE WHEN INJUNCTION VIOLATED.

(A) Any person subject to an injunction, temporary or permanent, granted pursuant to R.C. § 3767.05(D) or (E) involving a condition described in division (3) of the definition of "nuisance" in R.C. § 3767.01, or a substantially similar municipal ordinance, shall obey the injunction. If the person violates the injunction, the court, or in vacation a judge thereof, may summarily try and punish the violator. The proceedings for punishment for contempt shall be commenced by filing with the clerk of the court from which the injunction issued, information under oath setting out the alleged facts constituting the violation, whereupon the court shall cause a warrant to

issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses.
(R.C. § 4301.74)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 4301.99(C))

## § 92.99 PENALTY.

Whoever violates any provision of this chapter for which no other penalty has been provided is guilty of a minor misdemeanor.
(R.C. §§ 4301.70, 4301.99(A))
***Statutory reference:***
*Liquor Director to be notified of court decision regarding permit holder, employee or agent, see R.C. § 4301.991*

# CHAPTER 93: NUISANCES

Section

***Trees***



***Miscellaneous Nuisances***



***Public Nuisances***



***Unsafe Structures***



***Statutory reference:***

*Power of municipality to abate and prevent nuisances, R.C. § 715.44*

## *GENERAL PROVISIONS*

### § 93.01 APPLICATION OF THE CHAPTER.

The provisions of this chapter shall be enforceable within this municipality concurrently with the state and federal laws relative to sanitation and health and the ordinances or orders of the local health district relative thereto, and shall not be construed as modifying, repealing, limiting or affecting in any manner such laws, ordinances or orders.

## *UNCLEAN HABITATIONS*

### § 93.10 PERMITTING UNCLEAN HABITATIONS.

It shall be unlawful for any person to lease, let, permit the occupancy of, permit the continuation of the occupancy of, or continue the occupancy of a structure or building or any portion thereof used for human habitation, unless such structure or building or portion thereof is free from unclean and unsanitary conditions as defined in § 93.11 and unless the provisions of the subsequent sections are complied with.
Penalty, see § 93.99

***Statutory reference:***

*Duties of the landlord, R.C. § 5321.04*
*Duties of the tenant, R.C. § 5321.05*
*Power of municipality to regulate buildings used for human occupancy, R.C. § 715.29*

### § 93.11 WHEN HABITATIONS ARE DEEMED UNSANITARY.

A structure, building or any portion thereof used for human habitation shall be deemed to be in unclean and unsanitary condition when any of the following conditions exist:

(A) Infection with communicable disease;

(B) Absence of the toilet facilities required by law or ordinance;

(C) Presence of sewer gas;

(D) Dampness or wetness due to lack of repair;

(E) Accumulation of dirt, filth, litter, refuse or other offensive or dangerous substances likely to cause sickness among the occupants;

(F) Defective or improperly used drainage, plumbing or ventilation facilities likely to cause sickness.

### § 93.12 ORDER FOR ABATEMENT OR VACATION OF PREMISES.

If the local Board of Health ascertains from examination or reports of its inspectors or sanitary officers or otherwise determines that a public nuisance, as defined in § 93.11, exists in or upon any structure or building, or portion thereof, and has notified the owner, occupant or person in charge of the premises to abate the nuisance or vacate the premises, it shall be unlawful to occupy or permit the occupancy of the premises or portion thereof until the nuisance has been completely abated and the building or portion thereof has been rendered clean and sanitary in accordance with the terms of the notices of the Board of Health.

### § 93.13 ENFORCEMENT OF VACATION ORDER BY MARSHAL.

When the notice or order of vacation has not been complied with, and the Board of Health certifies such fact to the Marshal or Police Chief of the municipality, together with a copy of the order of notice, it shall be the duty of the Marshal or Police Chief to enforce the notice or order of vacation and to cause the premises to be vacated in accordance with the terms of the notice or order.

### § 93.14 ENFORCEMENT THROUGH COURT PROCEEDINGS.

Whenever the Board of Health certifies to the Solicitor any failure to comply with any order or notice of vacation, with the request that civil proceedings for the enforcement thereof be instituted, the Solicitor shall institute any and all proceedings, either legal or equitable, that may be appropriate or necessary for the enforcement of the order or notice and the abatement of the nuisance against which the order or notice was directed. These suits or proceedings shall be brought in the name of the municipality. Proceedings under this section shall not relieve any party defendant from criminal law or ordinance in force within the municipality.

## *PRIVY VAULTS, CESSPOOLS, REFUSE*

### § 93.20 UNSANITARY VAULTS.

It shall be unlawful for any person being the owner, lessor, occupant or person in charge of any premises upon which a privy vault, cesspool, or septic tank is located to permit such vault, pool or tank, or any building, fixture or device appurtenant thereto, to become foul, noisome, filthy or offensive to neighboring property owners.
Penalty, see § 93.99

### § 93.21 REMOVAL OF CONTENTS OF VAULT.

Whenever any part of the waste in any privy vault or cesspool extends to a point less than three feet below the surface of the ground adjacent thereto, or whenever use of any such vault or cesspool is abandoned or where such use or maintenance is prohibited by ordinance or health order, the owner, lessor, occupant or person in charge of the premises shall cause the vault or cesspool to be emptied of its contents, thoroughly cleaned and disinfected, and if abandoned, to be filled with clean earth or mineral matter to the level of the adjacent ground.
Penalty, see § 93.99

### § 93.22 DEPOSIT OF DEAD ANIMALS, OFFAL UPON LAND OR WATER.

No person shall put the carcass of a dead animal or the offal from a slaughter house, butcher’s establishment, packing house or fish house, or spoiled meat, spoiled fish or other putrid substance or the contents of a privy

vault, upon or into a lake, river, bay, creek, pond, canal, road, street, alley, lot, meadow, public ground, market place or common. No owner or occupant of the place, shall knowingly permit such thing to remain therein to the annoyance of any citizen or neglect to remove or abate the nuisance occasioned thereby within 24 hours after knowledge of the existence thereof, or after notice thereof in writing from the Street Commissioner.
(R.C. § 3767.16) Penalty, see § 93.99

## § 93.23 PROHIBITION AGAINST DEFILING SPRING OR WELL.

No person shall maliciously put a dead animal, carcass or part thereof, or other putrid, nauseous, or offensive substance into, or befoul, a well, spring, brook or branch of running water, or a reservoir of a waterworks, of which use is or may be made for domestic purposes.
(R.C. § 3767.18) Penalty, see § 93.99

## § 93.24 DUMPING OF REFUSE IN MUNICIPALITY FORBIDDEN.

It shall be unlawful for any person to dump, cause to be dumped or permit to be dumped on any publicly or privately owned land or water in the municipality any paper, brush, rubbish, tin cans, vegetation, garbage or refuse of any kind, without first having obtained a written license from the Municipal Manager so to do. The Municipal Manager shall issue a license permitting dumping of designated materials where it appears that filling of the land is necessary and that the material deposited will be immediately covered with earth or will not be objectionable to the citizens of the neighborhood, or injurious to health.
Penalty, see § 93.99

## § 93.25 DRAINING SLOPS.

It shall be unlawful for any person or persons to drain, cause to be drained or allow to drain from any property occupied by him or her any kitchen slops or other greasy or impure matter in the open gutters or waterways in the municipality, unless the drainage has been drained into a vault and filtered through a lesser vault filled with sand and fine gravel, built under the inspection of the local Board of Health.
Penalty, see § 93.99

## § 93.26 DISPOSAL OF GARBAGE AND OTHER WASTE ALONG STREAMS.

(A) No person, regardless of intent, shall deposit litter or cause litter to be deposited on any public property, on private property not owned by the person, or in or on waters of the state, unless one of the following applies:

(1) The person is directed to do so by a public official as part of a litter collection drive.

(2) Except as provided in division (B) of this section, the person deposits the litter in a litter receptacle in a manner that prevents its being carried away by the elements.

(3) The person is issued a permit or license covering the litter pursuant to R.C. Chapter 3734 or 6111.

(B) No person, without privilege to do so, shall knowingly deposit litter, or cause it to be deposited, in a litter receptacle located on any public property or on any private property not owned by the person, unless one of the following applies:

(1) The litter was generated or located on the property on which the litter receptacle is located.

(2) The person is directed to do so by a public official as part of a litter collection drive.

(3) The person is directed to do so by a person whom the person reasonably believes to have the privilege to use the litter receptacle.

(4) The litter consists of any of the following:

(a) The contents of a litter bag or container of a type and size customarily carried and used in a motor vehicle.

(b) The contents of an ash tray of a type customarily installed or carried and used in a motor vehicle.

(c) Beverage containers and food sacks, wrappings, and containers of a type and in an amount that reasonably may be expected to be generated during routine commuting or business or recreational travel by a motor vehicle.

(d) Beverage containers, food sacks, wrappings, containers, and other materials of a type and in an amount that reasonably may be expected to be generated during a routine day by a person and deposited in a litter receptacle by a casual passerby.

(C) (1) As used in division (B)(1) of this section, ***PUBLIC PROPERTY*** includes any private property open to the public for the conduct of business, the provision of a service, or upon the payment of a fee but does not include any private property to which the public otherwise does not have a right of access.

(2) As used in division (B)(4) of this section, ***CASUAL PASSERBY*** means a person who does not have depositing litter in a litter receptacle as the person's primary reason for traveling to or by the property on which the litter receptacle is located.

(D) As used in this section:

***DEPOSIT.*** Means to throw, drop, discard, or place.

***LITTER.*** Includes garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature.

***LITTER RECEPTACLE.*** Means a dumpster, trash can, trash bin, garbage can, or similar container in which litter is deposited for removal.

(E) This section may be enforced by any sheriff, deputy sheriff, police officer of a municipal corporation, police constable or officer of a township, or township or joint police district, wildlife officer designated under

R.C. § 1531.13, natural resources officer appointed under R.C. § 1501.24, forest-fire investigator appointed under R.C. § 1503.09, conservancy district police officer, inspector of nuisances of a county, or any other law enforcement officer within the law enforcement officer's jurisdiction.
(R.C. § 3767.32)

(F) Whoever violates any provision of this section shall be guilty of a misdemeanor of the third degree. The sentencing court may, in addition to or in lieu of the penalty provided in this division, require a person who violates this section to remove litter from any public or private property or in or on waters of the state.
(R.C. § 3767.99(C))

## § 93.27 DEPOSIT OF HARMFUL OBJECTS IN RECREATIONAL WATERS.

No person shall intentionally throw, deposit or cause to be thrown or deposited into a river, lake, stream or any body of waste used by the public for recreational purposes, glass, bottles, pottery, cans, wires, parts of machines or machinery or other materials of similar nature which would be likely to harm persons using such rivers, lakes, streams or other bodies of water.
Penalty, see § 93.99

## § 93.28 POWER OF THE MUNICIPALITY TO FILL OR DRAIN LAND.

(A) The municipality may fill or drain any lot or land within its limits on which water at any time becomes stagnant, remove all putrid substances from any lot, and remove all obstructions from culverts, covered drains or private property, laid in any natural watercourse, creek, brook or branch, which obstruct the water naturally flowing therein, causing it to flow back or become stagnant, in a way prejudicial to the health, comfort or convenience of any of the citizens of the neighborhood.

(B) Council may, by resolution, direct the owner to fill or drain such lot, remove such putrid substance or other obstructions, and if necessary, enlarge such culverts or covered drains to meet the requirements thereof.

(C) After service of a copy of such resolution, or after a publication thereof, in a newspaper of general circulation in such municipal corporation, or as provided in R.C. § 7.16, for two consecutive weeks, the owner, or the owner's agent or attorney, shall comply with the directions of the resolution within the time therein specified.

(D) In case of the failure or refusal of such owner to comply with the resolution, the work required thereby may be done at the expense of the municipality, and the amount of money so expended shall be recovered from the owner before any court of competent jurisdiction. This expense from the time of the adoption of the resolution shall be a lien on such lot, which may be enforced by suit in the court of common pleas, and like proceedings may be had as directed in relation to the improvement of streets.

(E) The officers connected with the Health Department of the municipality shall see that this section is strictly and promptly enforced.
(R.C. § 715.47)

## *REGULATION OF WEEDS AND GRASSES*

### § 93.30 WEEDS AND GRASS MAINTENANCE.

(A) To foster and preserve reasonable community and neighborhood standards, the owner, person having control, or entity having charge of any land, including any areas of easement within the municipality shall be responsible for maintaining and keeping his property free of tall grasses and/or weeds.

(B) Definitions. ***WEEDS*** shall be defined as any weeds such as jimson, burdock ragweed, thistle, cocklebur, further known as berberis vulgaris, or its horticulture varieties; bushes of the specific tall, common or European barberry, further known as berberis vulgaris, or its horticulture varieties; any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants growing to a height exceeding more than six inches in height. This section shall not apply to real property that meets any one of the following requirements:

(1) Real property lawfully and substantially used for agricultural purposes for profit;

(2) Real property of more than two acres, where a 150 foot wide strip directly adjacent to the boundaries of such real property complies with this section. However, compliance is not required for the portions of any boundaries of such real property that are adjacent to an undeveloped lot and which are more than ten feet from the closest point of contact with a developed lot. Real property will be deemed developed if a permanent structure, including but not limited to paving, has been erected on the parcel; or

(3) Any real property owned by any governmental entity and used as a park or as an educational facility.

(C) Cutting required.

(1) The owner, person having control, or entity having charge of any land, including any areas or easement within the municipality shall cut down all grasses and/or weeds more than six inches in height, and shall remove those cuttings from that land; and/or

(2) The owner, person having control, or entity having charge of land abutting a public right-of-way shall cut down all grasses and/or weeds more than six inches from any unpaved portions of the land abutting the right-of-way and shall remove those cuttings from the right-of-way and that abutting land. For the purposes of this section, the owner, person having control, or entity having charge of land abutting a public right-of-way shall be deemed to have charge of that half of the right-of-way on the side of his or her land.
(Ord. CM-08-29, passed 10-14-2008)

### § 93.31 NOTICE TO CUT.

(A) Upon notice to, or by, the Manager or his or her designee, that grasses and/or weeds are growing on land in the municipality, the Manager or designee, in the name of Council, shall cause written notice to be served upon the owner, person having control, or entity having charge of such land, identifying such offending grasses and/or weeds, which are growing on such land and directing that they must be cut and removed within seven days

from the date contained in the written notice. No owner, person having control or entity having charge of land shall fail to comply with such notice within those seven days. Further, the notice shall disclose the remedy for noncompliance.

(B) If the owner, person having control, or entity having charge of such land fails to comply with such initial notice as stipulated in § 93.31(A), the Manager or his or her designee, shall cause a second written notice to be served. The second written notice shall direct the owner, person having control, or entity having charge of such land, identifying such offending grasses and/or weeds which are growing on such land and directing that they must be cut and removed within seven days from the date contained in the second written notice. Further, the notice shall disclose the remedy for noncompliance.
(Ord. CM-08-29, passed 10-14-2008)

## § 93.32 SERVICE OF NOTICE.

(A) The written notice shall be served upon the owner, person having control, or entity having charge of the land either in person, or by being mailed to, or left at, the usual place of residence of any such owner, person having control, or the principal office of any such entity having charge of land;

(B) If such owner, person having control, or entity having charge of the land is a nonresident of this municipality, whose address is known, such notice shall be sent to his or their address by registered or certified mail;

(C) If no owner, person having control or entity having charge of the land is present on such land at the time the municipality attempts to serve the written notice, or if the address of such owner, person having control, or entity having charge of such land is unknown, or if notice by registered or certified mail is not delivered and accepted, the municipality shall have the option to make such service by publishing the written notice once in a newspaper of general circulation within the municipality;

(D) Any police officer, the Manager, or designee may make such personal or residential service and shall make the necessary return of the written notice.
(Ord. CM-08-29, passed 10-14-2008)

## § 93.33 NONCOMPLIANCE; ADMINISTRATIVE REMEDY OF MUNICIPALITY.

(A) If the owner, person having control, or entity having charge of land fails to comply with the second notice as set forth above, the municipality shall cause such grasses and/or weeds to be cut. At the discretion of the Manager, employees of the municipality or the services of an independent contractor shall be used to carry out these provisions. If assigned to municipal employees, the owner, person having control or entity having charge of land shall be charged at the rate of $75 per hour to ensure compliance. If assigned to an independent contractor, the owner, person having control or entity having charge of land, shall incur expense at the reasonable going rate of the contractor. All expenses incurred, together with an administrative fee of $250, shall be thereby assessed against the land.

(B) Repeat violations. For continued violations of the same general character, the written notice(s) shall again direct such grasses and/or weeds to be cut and removed. The procedures, expenses, administrative fees, and assessments shall be the same as prescribed in § 93.33(A) above.
(Ord. CM-08-29, passed 10-14-2008)

### § 93.34 COLLECTION OF COSTS.

(A) Written notice of such an assessment shall be given to the owner, person having control, or entity having charge of land in the same manner as is provided above in § 93.32, for service of the written notice to cut weeds. The amount of the assessment shall be paid and delivered to the municipality within ten days after notice of the assessment is so served.

(B) If the municipality does not receive payment of the assessment within that ten-day period, the municipality shall make a written return or certification to the County Auditor of the amount of the unpaid assessment, plus an additional administrative charge of 10%, including with that certification a proper description of the property. The assessed amount shall be entered upon the tax duplicate and shall be a lien upon such land from and after the date of the entry and shall be collected as other taxes and returned to the municipality's General fund.
(Ord. CM-08-29, passed 10-14-2008)

### § 93.35 NONCOMPLIANCE; MISDEMEANOR.

In addition to, and separate from the administrative remedy set forth above, whoever violates § 93.31(A) or (B) shall be guilty of a minor misdemeanor. Any person convicted of a second offense of this section within two years of the first offense shall be guilty of a misdemeanor of the fourth degree.
(Ord. CM-08-29, passed 10-14-2008)

## *REMOVAL OF LITTER AND JUNK*

### § 93.40 DEFINITIONS: LITTER/JUNK.

(A) To foster and preserve reasonable community and neighborhood standards, the owner, person having control, or entity having charge of any land, including any areas of easement within the municipality, shall be responsible for maintaining and keeping his property free of litter and/or junk.

(B) ***JUNK*** is any worn-out, cast-off, or discarded article of material which is ready for destruction, or which has been collected or stored for salvage or conversion to some other use.

(C) ***LITTER*** shall include garbage, rubbish, wire, ashes, cans, bottles, paper, boxes, cartons, furniture, glass, oil, rags, trees, trunks, brush, wood, wood chips or shavings, and other items of waste and/or of an unsightly or unsanitary nature.
(Ord. CM-08-28, passed 10-14-2008)

## § 93.41 REMOVAL REQUIRED.

It shall be unlawful for the owner, person having control, or entity having charge of any residence, land, including any areas of easement within the municipality to amass, stockpile, accumulate, or otherwise accrue litter and/or junk.
(Ord. CM-08-28, passed 10-14-2008)

## § 93.42 NOTICE TO REMOVE.

(A) Upon notice to, or by, the Manager or his or her designee, that litter and/or junk are present on land in the municipality, the Manager or designee, in the name of Council, shall cause written notice to be served upon the owner, person having control, or entity having charge of such land or residence, directing that the litter and/or junk to be removed within seven days of the date contained in the written notice. No owner, person having control, or entity having charge of land or residence shall fail to comply with such notice within those seven days.

(B) If the owner, person having control, or entity having charge of such land fails to comply with such notice as stipulated in § 93.42(A) above, the Manager, or his or her designee, shall cause a second written notice to be served. The second written notice shall direct the owner, person having control, or entity having charge of such land or residence that the litter and/or junk be removed within seven days from the date contained in the second written notice. Further, the notice shall disclose the remedy for noncompliance.
(Ord. CM-08-28, passed 10-14-2008)

## § 93.43 SERVICE OF NOTICE.

(A) The written notice provided for in § 93.42 hereof shall be served upon the owner, person having control, or entity having charge of the land or residence either in person, or by being mailed to, or left at, the usual place of residence of any such owner, person having control, or the principal office of any such entity having charge of land.

(B) If such owner, person having control, or entity having charge of such land or residence is a nonresident of this municipality whose address is known, such notice shall be sent to his or their address by registered or certified mail.

(C) If no owner, person having control, or entity having charge of the land or residence is present on such land at the time that the municipality attempts to serve the written notice, or if the address of such owner, person having control, or entity having charge of such land is unknown, or if notice by registered or certified mail is not delivered and accepted, the municipality shall have the option to make such service by publishing the written notice once in a newspaper of general circulation in the municipality.

(D) Any police officer or the Manager/designee may make such personal or residential service and shall make the necessary return of the written notice.
(Ord. CM-08-28, passed 10-14-2008)

### § 93.44 NONCOMPLIANCE; REMEDY OF MUNICIPALITY.

(A) If the owner, person having control, or entity having charge of said land fails to comply with such notice, the municipality shall cause such litter and/or junk to be removed at the expense of the owner, person having control, or entity in charge of that land or residence, and may employ the necessary labor to carry out the provisions of this division. The Manager may employ an independent contractor, and the owner, person having control, or entity having charge of such land shall be charged with reasonable going rate of the contractor. All expenses incurred together with an administrative fee of $250, shall be assessed against the land.

(B) Repeat violations. For continued violations of the same general character, the written notice shall again cause such litter and/or junk to be removed. The procedures, expenses, administrative fees, and assessments shall be the same prescribed in § 93.44(A) above.
(Ord. CM-08-28, passed 10-14-2008)

### § 93.45 COLLECTION OF COST.

(A) Written notice of such assessment shall be given to the owner of the land, the person having control, or the entity in charge of the land, in the same manner as is provided in § 93.43. The amount of the assessment shall be paid and delivered to the municipality within ten days after notice of the assessment was so served.

(B) If the municipality does not receive payment of the assessment within that ten-day period, the municipality shall make a written return or certification to the County Auditor of the amount of the unpaid assessment, plus an additional administrative charge of 10%, including with that certification a proper description of the property. The assessed amount shall be entered upon the tax duplicate and shall be a lien upon such land from and after the date of the entry and shall be collected as other taxes and returned to the municipality's General Fund.
(Ord. CM-08-28, passed 10-14-2008)

### § 93.46 NONCOMPLIANCE; MISDEMEANOR.

In addition to, and separate from the administrative remedy set forth above, whoever violates § 93.42(A) and (B) of this subchapter, shall be guilty of a minor misdemeanor. Any person convicted of a second offense of this subchapter within two years of the first offense shall be guilty of a misdemeanor of the fourth degree.
(Ord. CM-08-28, passed 10-14-2008)

## *TREES*

### § 93.50 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***STUMP.*** All woody vegetation appearing at or above ground level, after the trunk of the tree or shrub has been cut and removed.

***TREES*** and ***SHRUBS.*** All woody vegetation now or hereafter growing.

## § 93.51 OVERHANGING TREES.

(A) Trees overhanging traveled portion of the street or highway and owners of trees, any part of which overhang or extend over any part of a sidewalk or street in the municipality, shall trim those trees and keep those trees trimmed, that there will be a clearance of 15 feet between the street level and the lowermost branches of the trees.

(B) Trees overhanging sidewalk or lateral strip and owners of trees, any part of which overhang or extend over any part of a sidewalk or lateral strip shall trim those trees and keep those trees trimmed, that there will be a clearance of eight feet between the sidewalk or lateral strip, as the case may be, and the lowermost branches of trees.

## § 93.52 DEAD OR HAZARDOUS TREES.

Owners of dead or dying trees or trees endangering life, health, safety or property, or any parts thereof which overhangs or extends over any part of a sidewalk, street or highway, shall cut down and remove those trees and stumps.

## § 93.53 NOTICE TO OWNER.

On written information that trees in violation of §§ 93.51 and 93.52 are growing on lands in the municipality, the Director of Service shall cause a written notice to be served upon the owner, lessee, agent or tenant having charge of that land, notifying him or her that the trees are in violation of §§ 93.51 and 93.52 and they must be trimmed or cut and destroyed within seven days after the service of the notice. If the owner or other person having charge of those lands is a nonresident whose address is known, the notice shall be sent to his or her address by registered mail. If the address of such owner is unknown, it shall be sufficient to publish a notice once in a newspaper of general circulation in the municipality.

## § 93.54 SERVICE AND RETURN.

The Director of Service, or the Director's designated representative, shall make service and return of the notice provided for in § 93.53.

## § 93.55 PROCEDURE WHEN OWNER FAILS TO COMPLY WITH NOTICE.

If the owner, lessee, agent or tenant having charge of the lands mentioned in § 93.53, fails to comply with the notice required by the section, Council may cause those trees to be cut and may employ the necessary labor

to perform the task. All expenses incurred shall, when approved by Council, be paid out of any money in the treasury of the municipality not otherwise appropriated.

### § 93.56 WRITTEN RETURN TO COUNTY AUDITOR; AMOUNT A LIEN ON A PROPERTY.

The Council shall make a written return to the County Auditor of its action under §§ 93.53 through 93.55, with a statement of the charges for its services, the amount paid for the performing of that labor, and a proper description of the premises. These amounts, when allowed, shall be entered upon the tax duplicate and be a lien on such lands from the date of the entry, and shall be collected as other taxes and returned to the municipality with the general fund.

### § 93.57 PLANTING AND CARE OF TREES.

No person, firm or corporation, other than an authorized agent or municipal employee, shall plant a tree, or cut, poison, trim, injure, destroy or climb or tamper with any living tree, in or on any street, public way, or land owned or under the control of the municipality without first having obtained a permit to do so from the Municipal Manager.

## *MISCELLANEOUS NUISANCES*

### § 93.65 PLACING TRASH.

No person or persons, corporation or company shall place or cause to be placed upon any of the streets, alleys or public thoroughfares within the municipality any ashes, rubbish or filth of any kind.
Penalty, see § 93.99

## *PUBLIC NUISANCES*

### § 93.75 DEFINITION OF NUISANCE; WHEN NUISANCE EXISTS.

For the purposes of abating public nuisances and assessing for the cost thereof, and prescribing the conduct, whether of omission or commission, of any natural person, or business operating as a proprietorship, partnership, unincorporated association or corporation, as owner or occupier of any lot of land within corporate limits of the municipality, or of any building, house, or other structure on any such lot of land, a public nuisance shall exist when such conditions are present.

(A) There is caused or suffered any such building, house or structure to become so out of repair and dilapidated that, in the condition it is permitted to be and remain, it shall or will if such condition is suffered to

continue, endanger the life, limb or property of or cause hurt, damage, or injury to persons or property using or being on the streets or public ways of the municipality adjoining such lot of land, by reason of the collapse of such building, house or structure, or by the falling of parts thereof or of objects therefrom.

(B) There is caused or suffered any tree, stack or other object to remain standing on such lot of land in such condition that it shall or will, if such condition is suffered to continue, endanger the life, limb or property or cause hurt, damage, or injury to persons or property on the public streets, or public ways adjacent thereto, by the falling thereof or of parts thereof.

(C) There is caused or suffered an excavation or cellar on any such lot of land to be unguarded or remain in such a condition that it shall or will, if such condition is suffered to continue, endanger the life, limb or property, or cause hurt, damage or injury to persons using or property being used on the public streets or public ways adjacent thereto, by falling or being cast therein.

(D) There is caused or suffered the accumulation on any such lot of land or in any such building, house or structure of earth, rubbish or other materials which shall or will, if such condition is suffered to continue, attract and propagate vermin or insects endangering the public health.

(E) There is caused or suffered any such building, house or structure to become so out of repair and dilapidated that it constitutes a fire hazard liable to catch on fire or communicate fire because of its condition and lack of repair.

(F) There is caused or suffered the accumulation on any such lot of land or in any building, house or structure, of rubbish or other materials in an amount and in a condition that the same constitutes a fire hazard by reason of the likelihood of its catching on fire or communicating fire.

(G) There is caused or suffered the conduct of any business thereon or therein which by reason of noxious odors generated thereby, or of smoke, dust and dirt being cast therefrom endangers or is harmful to the public health, welfare or safety, or materially interferes with the peaceful and lawful use, comfort and enjoyment of owners or occupants of a proximate or adjacent lot of land or structure thereon.

(H) There is suffered any such building, house or structure to become so out of repair and dilapidated that, due to lack of adequate maintenance or neglect, it endangers the public health, welfare or safety, or materially interferes with the peaceful enjoyment of owners, or occupants of adjacent property.

(I) There is caused or suffered any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others.

(J) There is caused or suffered any placing, throwing or sweeping into any street, avenue, alley, park or public ground, any dirt, paper, nails, pieces of glass or board, fruit parings or skins, garbage, waste, leaves or clippings, ashes, cans, bottles, cartons, boxes, furniture, oil, parts of automobiles or any other matter of an unsightly or unsanitary nature, or the placing, throwing or sweeping of such matter upon any sidewalk, or street crossing, or on any driveway, or upon the floor, stairway or hallway of any public building, theatre, railway depot, railway platform or property of another.

(K) There is caused or suffered any accumulation of any paper, fruit parings or skins, garbage, waste, ashes, cartons, boxes or any other matter of an unsightly or unsanitary nature in such manner that such matter could be blown onto any street, avenue, alley, park, public ground, sidewalk or property of another.

## § 93.76 ADDITIONAL NUISANCES.

In addition to what are specifically declared in this chapter to be public nuisances, those offenses which are known to the common law and the statutes of Ohio as public nuisances may, in case any exists within the municipality limits, be treated as such and be proceeded against as is provided in this chapter; or in accordance with any other provisions of law. Wherever the word nuisance is used in this chapter it refers to a public nuisance.

## § 93.77 SUMMARY ABATEMENT, INSPECTION OF PREMISE.

(A) Whenever complaint is made to the Director of Service of the existence of a public nuisance as defined in § 93.75 and § 93.76 hereof, he or she shall promptly inspect or cause to be inspected the premises on which it is alleged such public nuisance exists. Should the Director of Service after such inspection find that a public nuisance does exist, he or she shall promptly notify the person or persons, firm or corporation who from the property records of Miami County, Ohio, appear to be the owners of the premises. In making his finding of the existence of a public nuisance the Director shall be assisted by the Commissioner of Health, Fire Chief, Police Chief or any other officer who may have knowledge or expertise in the area of the nuisance. The Director of Service shall also leave a copy of the notice with the person in possession or charge of those premises, if any, or if there be no such person, he or she shall post a copy of the notice on the premises. The notice shall refer to the provisions of this chapter and shall state that unless the nuisance is abated proceedings will be taken in accordance herewith.

(B) Upon receipt of request for assistance the above named officials shall inspect the premises and make a written report of their findings, which shall be filed with the Director of Service.

(C) Should the Director of Service find that a public nuisance exists and that the nature is such as to require its summary abatement and, if the condition is within the prohibitions of divisions (D), (G) and (H) of § 93.75 hereof; and the public officials reporting concur in such finding, the Director of Service shall cause photographs to be made of the nuisance and shall within 48 hours thereafter take any action as is necessary to abate the nuisance at the expense of the owner or owners of the premises. In abating any nuisance the Director of Service shall not be required to give any further notice to the owner or owners of the premises upon which any nuisance exists.

## § 93.78 ABATEMENT WITHIN 30 DAYS' OR LESS, NOTICE.

(A) In the event that the Director of Service finds that a public nuisance as defined in §§ 93.75 through 93.76, and Chapter 95 exists and, if the condition is within the prohibitions of paragraph (D), (G) and (H) of § 93.75, the public officials concur in the finding, but that the nature is not such as to require the summary abatement thereof, the Director of Service shall have photographs of the nuisance to be made and filed with the reports of the offices aforesaid and shall cause to be served on the person, persons, firm or corporation who from the property records of Miami County, Ohio, appear to be the owners of the property involved, notice to abate the nuisance within 30 days unless a shorter period of time is reasonable under the circumstances. If a period of less than 30 days is allowed to abate the nuisance the time to be specified shall be determined by the Director of Service, and if the condition is within the prohibitions of § 93.75(D), (G) and (H).

(B) A copy of the notice shall be left with the person in charge or possession of the premises, or if there be no such person, the notice shall be posted on the premises.

(C) Any notice required by this section of this chapter may be served on the owner or owners personally or by certified mail to the address shown on the property records of Miami County, Ohio. Any notice given pursuant to this section shall state that if the nuisance is not abated within the time stated the same will be abated by the municipality at the expense of the owner or owners.
(Am. Ord. CM-864, passed 1-10-1989)

## § 93.79 FAILURE TO ABATE NUISANCE; MUNICIPAL ACTION; ASSESSMENT.

(A) Should the nuisance referred to in § 93.78 not be abated within the time stated in the notice given pursuant to the section, the Director of Service or his authorized representative shall have the right to enter on those premises and to abate the nuisance. In abating any nuisance the Director may take such action as is necessary to complete the abatement of the same and should it be practicable to sell or salvage any material resulting from such abatement, he or she may cause the same to be sold at public or private sale at the best price obtainable and keep an account of the proceeds. The proceeds shall be deposited in the general fund and any difference in the amount so received and the cost of the abatement shall be reported to the Council which shall levy an assessment against the premises on which the nuisance was abated and cause the assessment to be certified and collected as other assessments by the municipality.

(B) Should the proceeds of the sale of any material salvaged in the course of the abatement exceed the cost thereof, the amount of the excess shall be paid to the owner or owners of the premises upon filing of a claim and proof of title and right to that surplus.

(C) The Director of Service may utilize any labor or equipment of the municipality in making the abatement or may contract for the abatement if the contract may be let without any expense whatever to the municipality.

## § 93.80 PROVISIONS OF CHAPTER DO NOT LIMIT MUNICIPALITY'S POWERS.

This chapter shall be deemed to be an enlargement and not a limitation or restriction on the power or authority of the city or any officer thereof to take action or bring any suit or proceeding in respect to public nuisance otherwise provided for by law or ordinance of the municipality.

# *UNSAFE STRUCTURES*

## § 93.85 AUTHORITY OF THE MUNICIPAL MANAGER.

The Municipal Manager or his or her designee is authorized to order and initiate the removal or repair of any building or structure that is found upon inspection by an official acting on behalf of the municipality, Miami County, or the State of Ohio to be unsecure, unsafe, structurally defective, or in material noncompliance with any applicable regulations of West Milton, Miami County, or the State of Ohio.
(Ord. CM-10-07, passed 5-11-2010)

## § 93.86 PROCEDURES FOR ABATEMENT OF UNSAFE STRUCTURES.

When the Municipal Manager or his or her designee determines that an order of abatement should be issued requiring the removal or repair of any building or structure found to be unsecure, unsafe, or structurally defective, or in material noncompliance with applicable regulations, the Municipal Manager or his or her designee shall provide notice of the determination to order such removal or repair to the holders of legal or equitable title of record of the building or structure and real property on which the building or structure is located.

(A) Notice shall be by certified mail.

(B) The notice shall be given no fewer than 30 days prior to such removal or repair. The notice shall state:

(1) That the owner or owners have 30 days within which to provide voluntarily for the complete removal of the building or structure, to the municipality's satisfaction; or

(2) That the owner or owners have 30 days within which to reach an agreement with the municipality according to which the owner or owners will cause the building or structure to be made fully and completely secure, safe, structurally sound, and in compliance with all applicable regulations, so long as the terms and conditions of any such agreement are to the municipality's satisfaction.

(3) Whether the owner or owners elect to remove the building or structure voluntarily, or enter into an agreement with the municipality for the repair of the building or structure, the municipality may require sufficient surety from the owner or owners to guarantee timely completion of the removal or repair, and that the municipality shall have sole discretion regarding the selection of the required surety, which may include (without being limited to):

(a) Cash, bond, or a letter of credit.

(b) If necessary, such notice shall also require the building, structure, or portion thereof to be vacated forthwith and not re-occupied until the specified repairs and improvements are completed, inspected, and approved by the Municipal Manager or his or her designee.

(4) The Municipal Manager or his or her designee shall cause to be posted at each entrance to such building a notice: “This building is unsafe and its use or occupancy has been prohibited by the Municipality of West Milton.”

(a) Such notice shall remain posted until the required repairs are made or demolition is completed.

(b) It shall be unlawful for any person, firm or corporation, or his, her or its agents or other servants, to remove such notice without written permission of the Municipal Manager or for any person to enter the building except for the purpose of making the required repairs or demolishing the same.

(c) If the Municipal Manager or his or her designee determines that circumstances exist as described above, notice may be given other than by certified mail and fewer than 30 days prior to such removal or repair. In this instance, delivery of the notice to an owner of record shall be sufficient notice.

(d) If notice is given by certified mail and the certified mail is returned unclaimed or refused, the notice shall be re-sent by ordinary mail and the owner/s to which notice has been sent shall be deemed to have received said notice on the date after it has been re-sent.
(Ord. CM-10-07, passed 5-11-2010)

## § 93.87 FAILURE TO COMPLY WITH NOTICE OF ABATEMENT.

When the owner/owners of record of the building or structure and of the property fail to comply with the notice of abatement, the Municipal Manager may cause the removal or repair of such building or structure.

(A) The municipality may employ the necessary labor to perform the task.

(B) All expenses incurred shall, when approved by the Municipal Manager, be paid out of any money in the city funds not otherwise appropriated.
(Ord. CM-10-07, passed 5-11-2010)

## § 93.88 REIMBURSEMENT PROCEDURE.

Charges for municipal action to remove or repair an unsafe structure shall be invoiced to the property owner/s of record. The Municipal Manager shall make a written return to the County Auditor with a statement of the charges that remain unpaid for over 30 days for such removal or repair, together with a proper description of the premises. The amounts shall be entered on the tax duplicate, shall constitute a lien on the lands from the date of the entry, and shall be collected as other taxes and returned to the municipality with the general fund.
(Ord. CM-10-07, passed 5-11-2010)

## § 93.89 APPEAL OF ORDER TO ABATE UNSAFE STRUCTURE.

(A) The order to initiate the removal or repair of any building or structure may be appealed to the Council within ten days of the service of the notice of the order. Notice of appeal must be filed with the Municipal Manager and may be filed by the applicant or by any party deemed by Council to have interest in the decision appealed. The appellant and other interested parties shall be advised of the date and time of the appeal before Council. Council shall hear and decide the appeal by motion within 30 days of the filing of the notice of appeal. In deciding the appeal, Council may:

(1) Reverse the decision of the Municipal Manager;

(2) Affirm the decision of the Municipal Manager;

(3) Modify the decision of the Municipal Manager;

(4) Reject the appeal on the ground that the appellant does not have sufficient interest in the decision to file an appeal; or

(5) Remand the appeal to the Municipal Manager for reconsideration if the Council determines there is new evidence.

(B) An appeal shall stay all proceedings in furtherance of the action, unless the Municipal Manager determines that an emergency exists as noted above.
(Ord. CM-10-07, passed 5-11-2010)

## § 93.90 EMERGENCY ORDERS.

Whenever the Municipal Manager finds that a building condition exists which poses an imminent threat, requiring immediate response to protect the public's health and safety, or to protect the occupants thereof from collapse, contamination or conflagration, the Municipal Manager shall issue an order reciting the existence of the emergency conditions and requiring immediate vacation of the premises and abatement of the hazardous condition. The Municipal Manager or his or her designee shall attempt to notify the owner of the property of the specifics of the emergency order through reasonable means. If the owner fails to act immediately to abate the imminent hazard, the Municipal Manager shall have the authority to have the hazard abated through any available public agency or contract or arrangement of private persons, and the cost thereof, if not paid by the owner, shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.
(Ord. CM-10-07, passed 5-11-2010)

## § 93.91 FAILURE TO ABATE.

Any person who shall fail or refuse to abate or remove the same within the reasonable time required and specified in the notice to abate is in violation of this code and is subject to the penalties noted in § 93.99.
(Ord. CM-10-07, passed 5-11-2010)

## § 93.99 PENALTY.

(A) Whoever violates any provision of this chapter, for which another penalty is not already provided, shall be guilty of a minor misdemeanor.

(B) Whoever violates any provision of § 93.27 shall be guilty of a misdemeanor of the third degree.

# CHAPTER 94: PARKS

Section



## § 94.01 DEPOSITING GARBAGE OR RUBBISH IN PARK.

No person shall place or suffer to remain in or on any park any goods, merchandise or other articles in the nature of an obstruction of the use and enjoyment of the park. Nor shall any person place straw, dirt, chips, paper shavings, shells, ashes, swill, garbage or any other rubbish, whether or not such is offensive to health in or on the same.
Penalty, see § 94.99

## § 94.02 DISTRIBUTING CIRCULARS OR POSTING NOTICES IN PARK.

No person shall distribute any circulars, or cards, or any other written or printed material, or post any notice, bill, poster, sign, wire, rod or card to any tree, shrub, fence or any structure of any kind in any park or parkway. This section shall not apply to signs or printed material posted or distributed by the municipality.
Penalty, see § 94.99

## § 94.03 DESTRUCTION OF PARK PROPERTY.

No person shall remove, destroy, break, injure, mutilate, write on or deface in any way any structure, monument, statue, vase, fountain, wall, fence, railing, vehicle, bench, table, tree, shrub, plant, flower, structure or any other property of the municipality in any park or parkway. No person other than an employee of the municipality shall bring upon any park, or have in his or her possession while therein, any tree, shrub or plant or part of unless authorized to do so by the Director of Service.
Penalty, see § 94.99

### § 94.04 RUNNING OF ANIMALS IN PARK RESTRICTED.

Animals, unless accompanied by their owner and held in control on a leash, shall not be allowed in any park. Any animal found running at large in the limits of any park may be impounded. Owners of animals damaging or destroying municipal property will be held liable for the full value of the property damaged or destroyed in addition to the penalties prescribed in this chapter.
Penalty, see § 94.99

### § 94.05 SLEEPING; INDECENT OR BOISTEROUS LANGUAGE; DISORDERLY CONDUCT.

Sleeping in a public park during those times when the park is closed is prohibited. Disorderly conduct, as defined in R.C. § 2917.11 is also prohibited.
Penalty, see § 94.99

### § 94.06 ALCOHOLIC BEVERAGES PROHIBITED IN PARK.

No person shall take into or on any public park or have in his or her possession in any park any intoxicating liquor or other alcoholic beverage. No intoxicated person will be allowed to enter or remain within any park.
Penalty, See § 94.99

### § 94.07 USE OF GOLF BALLS AND HARD BALLS RESTRICTED.

No person shall play golf or hard ball or use golf balls and clubs or hard balls or any other throwing projectile within any park or playground except in areas set aside for such purpose. Any person may, with permission of park supervisors, use the sporting equipment suitable to such area.
Penalty, see § 94.99

### § 94.08 PARK RULES TO BE POSTED AT ENTRANCES.

The Director of Service may cause copies of this chapter and appropriate signs containing prohibition as to the use of the parks to be posted near all entrances to any municipal park.

### § 94.99 PENALTY.

Whoever violates any provision of this chapter, for which another penalty is not specifically provided, shall be fined not more than $100.

# CHAPTER 95: JUNK MOTOR VEHICLES

Section



## § 95.01 DEFINITIONS.

(A) For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ABANDONED MOTOR VEHICLE.***

(a) Any motor vehicle which is left on private property for more than 48 hours without the permission of the person having the right to the possession of the property.

(b) Any motor vehicle which is left on public property for 48 hours or longer without permission of the Chief of Police and Safety Director.

***COLLECTOR'S VEHICLE.*** Any motor vehicle or agricultural tractor or traction engine of special interest having a fair market value of $100 or more, whether operable or not, that is owned, operated, collected preserved, restored, maintained or used essentially as a collector's item, leisure pursuit or investment, but not as the owner's principal means of transportation.

***JUNK MOTOR VEHICLE.*** Any motor vehicle meeting any three of the following requirements:

(a) Three years old, or older;

(b) Disabling damage, such damage including but not limited to any of the following: missing wheels, missing or deflated tires, missing motor or missing transmissions;

(c) Inoperative;

(d) Having a fair market value of $500 or less; and

(e) Unlicensed, or improperly licensed.

***INOPERATIVE MOTOR VEHICLE.*** Any motor vehicle not moved for 30 consecutive days shall be presumed inoperative.

***LICENSED COLLECTOR'S VEHICLE.*** A collector's vehicle, other than an agricultural tractor or traction engine, that displays current, valid license tags issued under R.C. Chapter 4503, or a similar type of motor vehicle that displays current, valid license tags issued under substantially equivalent provisions in the laws of other states.

(B) For the purposes of this chapter, ***PROPERTY*** means any real property within the municipality which is not a street or highway; and ***PERSON, VEHICLE*** and ***STREET*** or ***HIGHWAY*** have the same meaning as given to those terms in § 70.01.
(Ord. CM-864, passed 1-10-1989; Am. Ord. CM-96-38, passed 12-11-1996)

## § 95.02 PROHIBITION AGAINST ABANDONMENT OF JUNK MOTOR VEHICLE.

(A) No person shall knowingly abandon a junk motor vehicle on a public street or upon or within the right-of-way of any street, alley or highway for 48 hours or longer without notification to the Division of Police of the reasons for leaving the motor vehicle in such place.

(B) For the purposes of this section, the fact that a motor vehicle has been so left without notification is prima-facie evidence of abandonment.

(C) Nothing contained in this section shall invalidate any of the provisions regulating the parking of motor vehicles contained in Chapters 76 and 77 of this Code of Ordinances.
(Ord. CM-864, passed 1-10-1989) Penalty, see § 95.99

## § 95.03 KEEPING JUNK MOTOR VEHICLE PROHIBITED; EXCEPTION.

(A) No person in charge, control or having the right to possession of any property within the municipality, whether as owner, tenant, occupant, lesser or otherwise shall allow any junk motor vehicle to remain in the open and exposed on private property for more than 72 hours. The presence of a junk motor vehicle on public or private property is hereby declared to be public nuisance and may be abated as such. This section shall not apply to any person who is operating a junk yard or scrap metal processing facility under authority of R.C. §§ 4737.05 to 4737.12 or regulated under the authority of the municipality; or if the property on which the motor vehicle is left is not subject to licensure or regulation by any governmental authority, unless the person having the right to the possession of the property can establish that the vehicle is part of a bona fide commercial operation established and operated in compliance with Title 15, Land Usage; or if the motor vehicle is a collector's vehicle.

(B) No person shall keep or store an unlicensed collector's vehicle on private property with the permission of the person having the right to the possession of the property unless it is concealed by means of building or screened from visual observation from adjacent properties and public rights-of-way in accordance with § 150.176.
(Ord. CM-864, passed 1-10-1989) Penalty, see § 95.99

## § 95.04 NOTICE; ORDER TO COVER OR REMOVE.

The Chief of Police or a member of the Police Department designated by him, or the Zoning Enforcement Officer shall send notice, of a violation of § 95.03 by certified mail with return receipt requested or by personal service, to the person having the right to possession of the property on which a junk motor vehicle is left requesting its removal within the time limits specified by this chapter.
(Ord. CM-864, passed 1-10-1989)

## § 95.05 CONTENT OF NOTICE.

The notice required by § 95.04 above, shall contain a request for removal of the junk motor vehicle within the time specified by the ordinance and that the junk motor vehicle shall either be covered by being housed in a garage or other suitable structure or removed from the property. The notice shall further advise the person notified that the failure to remove the vehicle within said time constitutes a violation of the ordinance, the maximum penalty as set forth in § 95.99 below. It shall further advise that each 30-day period of nonremoval is a separate violation of this chapter, each violation punishable by the same fine.
(Ord. CM-864, passed 1-10-1989)

## § 95.06 FAILURE TO COVER OR REMOVE JUNK MOTOR VEHICLE.

(A) No person shall knowingly leave a junk motor vehicle uncovered in the open for more than ten days after receipt of the notice as provided in § 95.04.

(B) The fact that a junk motor vehicle is so left is prima-facie evidence of a failure to comply with the notice.
(Ord. CM-864, passed 1-10-1989) Penalty, see § 95.99

## § 95.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the fourth degree, and shall be fined $250 and/or up to 30 days in jail. Each 30-day period that a motor vehicle remains in violation of this chapter shall constitute a separate offense under this section.
(Ord. CM-864, passed 1-10-1989)

# CHAPTER 96: INCOME TAX

Section

## § 96.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

## § 96.011 AUTHORITY TO LEVY TAX.

(A) The tax on income and the withholding tax established by this Chapter 96 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter 96 are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of R.C. Chapter 718.

(B) The tax is an annual tax levied on the income of every person residing in or earning or receiving income in the municipal corporation, and shall be measured by municipal taxable income. The municipality shall tax income at a uniform rate. The tax is levied on municipal taxable income, as defined herein.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Authority to tax income and withhold tax, see R.C. § 718.04*

## § 96.012 PURPOSES OF TAX; RATE.

(A) The purpose of this chapter is to provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities of the municipality for which there shall be levied a tax on salaries, wages, commissions and other compensation, and on net profits as hereinafter provided.

(B) The original 1% portion of the tax shall be used for general purposes as defined in division (A).

(C) The additional 0.5% portion of the tax as defined above in division (A) shall only be spent on police and fire expenses. This portion of the tax is in effect for a five-year period (from January 1, 2012 to December 31, 2016), unless renewed by the voters.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Authority to tax income and withhold tax, see R.C. § 718.04*

## § 96.013 ALLOCATION OF FUNDS.

(A) The funds, derived by the 1% portion of the tax, collected under the provisions of this chapter shall be placed in the municipal general fund, to be used for the purpose of paying all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions hereof; for the payment of other current operating expenses of the municipality; and for payment of the costs of making such permanent improvements as the Municipal Council may determine from time to time.

(B) The funds, derived from the additional 0.5% portion of the tax, collected under the provisions of this chapter shall be placed in the municipal general fund, to be solely used for police and fire expenses.
(Ord. CM-15-32, passed 11-10-2015)

## § 96.014 STATEMENT OF PROCEDURAL HISTORY; STATE MANDATED CHANGES TO MUNICIPAL INCOME TAX.

(A) Significant and wide-ranging amendments to R.C. Chapter 718 were enacted by Am Sub HB 5, passed by the 130th General Assembly, and signed by Governor Kasich on December 19, 2014, and H.B. 5 required municipal corporations to conform to and adopt the provisions of R.C. Chapter 718 in order to have the authority to impose, enforce, administer and collect a municipal income tax.

(B) As mandated by H.B. 5, municipal income tax Ordinance CM-15-32, effective January 1, 2016, comprehensively amends Chapter 96 in accordance with the provisions of R.C. Chapter 718 to allow the municipality to continue the income tax and withholding tax administration and collection efforts on behalf of the municipality.
(Ord. CM-15-32, passed 11-10-2015)

## § 96.02 EFFECTIVE DATE.

(A) Ordinance CM-15-32, effective January 1, 2016, and corresponding changes to R.C. Chapter 718, apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this Chapter 96 apply to taxable years beginning 2016 and succeeding taxable years.

(B) Ordinance CM-15-32 does not repeal the existing sections of Chapter 96 for any taxable year prior to 2016, but rather amends Chapter 96 effective January 1, 2016. For municipal taxable years beginning before January 1, 2016, the municipality shall continue to administer, audit, and enforce the income tax of the municipality under R.C. Chapter 718 and ordinances and resolutions of the municipality as that chapter and those ordinances and resolutions existed before January 1, 2016.
(Ord. CM-15-32, passed 11-10-2015)

## § 96.03 DEFINITIONS.

(A) Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in R.C. Title LVII, unless a different meaning is clearly required. If a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in R.C. Title LVII and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in R.C. Title LVII.

(B) For purposes of this section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

(C) As used in this chapter:

(1) ***ADJUSTED FEDERAL TAXABLE INCOME.*** For a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (C)(23)(d) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(b) Add an amount equal to 5% of intangible income deducted under division (C)(1)(a) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(d) 1. Except as provided in division (C)(1)(d)2. of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

2. Division (C)(1)(d)1. of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(f) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(g) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under R.C. § 4313.02;

(h) 1. Except as limited by divisions (C)(1)(h)2., 3. and 4. of this section, deduct any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017. The amount of such net operating loss shall be deducted from net profit that is reduced by exempt income to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

2. No person shall use the deduction allowed by division (C)(1)(h) of this section to offset qualifying wages.

3. a. For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than 50% of the amount of the deduction otherwise allowed by division (C)(1)(h)1. of this section.

b. For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (C)(1)(h)1. of this section.

4. Any pre-2017 net operating loss carryforward deduction that is available must be utilized before a taxpayer may deduct any amount pursuant to division (C)(1)(h) of this section.

5. Nothing in division (C)(1)(h)3.a. of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (C)(1)(h)3.a. of this section. To the extent that

an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (C)(1)(h)3.a. of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (C)(1)(h)3.a. of this section shall apply to the amount carried forward.

(i) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with § 96.063(E)(3)(b) of this chapter.

(j) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with § 96.063(E)(3)(b) of this chapter.

(k) If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (C)(47)(b) of this section, is not a publicly traded partnership that has made the election described in division (C)(23)(d) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.
Nothing in division (C)(1) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(2) (a) ***ASSESSMENT*** means any of the following:

1. A written finding by the Tax Administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation;

2. A full or partial denial of a refund request issued under § 96.096(B)(2) of this chapter;

3. A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under § 96.062(B)(2) of this chapter; or

4. A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under § 96.062(B)(3) of this chapter.

5. For purposes of division (C)(2)(a)1., 2., 3. and 4. of this section, an assessment shall commence the person's time limitation for making an appeal to the Local Board of Tax Review pursuant to § 96.18 of this chapter, and shall have ASSESSMENT written in all capital letters at the top of such finding.

(b) ***ASSESSMENT*** does not include notice(s) denying a request for refund issued under § 96.096 (B)(3) of this chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a Tax Administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (C)(2)(a) of this section.

(3) ***AUDIT*** means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person, ordered to appear before the Tax Administrator, for the purpose of determining liability for a municipal income tax.

(4) ***BOARD OF REVIEW*** has same meaning as Local Board of Tax Review.

(5) ***CALENDAR QUARTER*** means the three-month period ending on the last day of March, June, September, or December.

(6) ***CASINO OPERATOR*** and ***CASINO FACILITY*** have the same meanings as in R.C. § 3772.01.

(7) ***CERTIFIED MAIL, EXPRESS MAIL, UNITED STATES MAIL, POSTAL SERVICE,*** and similar terms include any delivery service authorized pursuant to R.C. § 5703.056.

(8) ***COMPENSATION*** means any form of remuneration paid to an employee for personal services.

(9) ***DISREGARDED ENTITY*** means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(10) ***DOMICILE*** means the true, fixed and permanent home of the taxpayer to which, whenever absent, the taxpayer intends to return.

(11) ***EXEMPT INCOME*** means all of the following:

(a) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state;

(b) 1. Except as provided in division (C)(11)(b)2. of this section, intangible income;

2. A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.

(c) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (C)(11)(c) of this section,

unemployment compensation does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

(d) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(e) Compensation paid under R.C. §§ 3501.28 or 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed $1,000 for the taxable year. Such compensation in excess of $1,000 for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(f) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;

(g) Alimony and child support received;

(h) Awards for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or awards for punitive damages;

(i) Income of a public utility when that public utility is subject to the tax levied under R.C. § 5727.24 or R.C. § 5727.30. Division (C)(11)(i) of this section does not apply for purposes of R.C. Chapter 5745.

(j) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;

(k) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code;

(l) Employee compensation that is not qualifying wages as defined in division (C)(34) of this section;

(m) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States Air Force that is used for the housing of members of the United States Air Force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(n) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

(o) All of the municipal taxable income earned by individuals under 16 years of age and the earnings of newsboys as such under 18 years of age.

(p) 1. Except as provided in divisions (C)(11)(p)2., 3., and 4. of this section, qualifying wages described in § 96.052(B)(1) or (E) of this chapter to the extent the qualifying wages are not subject to withholding for the municipality under either of those divisions.

2. The exemption provided in division (C)(11)(p)1. of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

3. The exemption provided in division (C)(11)(p)1. of this section does not apply to qualifying wages that an employer elects to withhold under § 96.052(D)(2) of this chapter.

4. The exemption provided in division (C)(11)(p)1. of this section does not apply to qualifying wages if both of the following conditions apply:

a. For qualifying wages described in § 96.052(B)(1) of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in § 96.052(E) of this chapter, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

b. The employee receives a refund of the tax described in division (C)(11)(p)4.a. of this section on the basis of the employee not performing services in that municipal corporation.

(q) 1. Except as provided in division (C)(11)(q)2. or 3. of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the municipality on not more than 20 days in a taxable year.

2. The exemption provided in division (C)(11)(q)1. of this section does not apply under either of the following circumstances:

a. The individual's base of operation is located in the municipality.

b. The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (C)(11)(q)2.b. of this section, ***PROFESSIONAL ATHLETE, PROFESSIONAL ENTERTAINER***, and ***PUBLIC FIGURE*** have the same meanings as in § 96.052 of this chapter.

3. Compensation to which division (C)(11)(q) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

4. For purposes of division (C)(11)(q) of this section, ***BASE OF OPERATION*** means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

(r) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to R.C. § 709.023 on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(s) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (C)(11) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(12) ***FORM 2106*** Means Internal Revenue Service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(13) ***GENERIC FORM*** means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability, including a request for refund.

(14) ***INCOME*** means the following:

(a) 1. For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (C)(23)(d) of this section.

2. For the purposes of division (C)(14)(a)1. of this section:

a. Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (C)(14)(a)4. of this section;

b. The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

3. Division (C)(14)(a)2. of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (C)(11)(n) or division (C)(14)(e) of this section.

4. Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(b) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done, services performed or rendered, or activities conducted in the municipality, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(c) For taxpayers that are not individuals, net profit of the taxpayer;

(d) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings. Credit for tax withheld or paid to another municipal corporation on such winnings paid to the municipal corporation where winnings occur is limited to the credit as specified in § 96.081 of this chapter.

(e) INTENTIONALLY LEFT BLANK.

(15) ***INTANGIBLE INCOME*** means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in R.C. Chapter 5701, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. Intangible income does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(16) ***INTERNAL REVENUE CODE*** means the Internal Revenue Code of 1986, 100 Sta. 2085, 26 U.S.C.A. 1, as amended.

(17) ***LIMITED LIABILITY COMPANY*** means a limited liability company formed under R.C. Chapter 1705 or under the laws of another state.

(18) ***LOCAL BOARD OF TAX REVIEW*** and ***BOARD OF TAX REVIEW*** means the entity created under § 96.18 of this chapter.

(19) ***MUNICIPAL CORPORATION*** means, in general terms, a status conferred upon a local government unit, by state law giving the unit certain autonomous operating authority such as the power of taxation, power of eminent domain, police power and regulatory power, and includes a joint economic

development district or joint economic development zone that levies an income tax under R.C. §§ 718.691, 715.70, 715.71, or 715.74.

(20) (a) ***MUNICIPAL TAXABLE INCOME*** means the following:

1. For a person other than an individual, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situsedto the municipality under § 96.062 of this chapter, and further reduced by any pre-2017 net operating loss carryforward available to the person for the municipality.

2. a. For an individual who is a resident of a municipality other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (C)(20)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipality.

b. For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax on or before December 31, 2013. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of R.C. § 718.03.

3. For an individual who is a nonresident of the municipality, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situsedto the municipality under § 96.062, then reduced as provided in division (C)(20)(b) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipality.

(b) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (C)(20)(a)2.a. or (C)(20)(a)3. of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation.

(21) ***MUNICIPALITY*** means the Village of West Milton, Ohio.

(22) ***NET OPERATING LOSS*** means a loss incurred by a person in the operation of a trade or business. ***NET OPERATING LOSS*** does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.

(23) (a) ***NET PROFIT*** for a person other than an individual means adjusted federal taxable income.

(b) ***NET PROFIT*** for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (C)(23)(a) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (C)(1)(h) of this section.

(c) For the purposes of this chapter, and notwithstanding division (C)(23)(a) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(d) 1. For purposes of this chapter, ***PUBLICLY TRADED PARTNERSHIP*** means any partnership, an interest in which is regularly traded on an established securities market. A publicly traded partnership may have any number of partners.

2. For the purposes of this chapter, and not withstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (C)(23)(d) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

3. A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. Once the election is made, the election is binding for a five-year period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (C)(23)(d)4. of this section.

4. An election to discontinue filing as a C corporation must be made in the first year following the last year of a five-year election period in effect under division (C)(23)(d)3. of this section. The election to discontinue filing as a C corporation is binding for a five-year period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing municipal income tax returns as a partnership for municipal purposes. An election to discontinue filing as a partnership must be made in the first year following the last year of a five-year election period.

5. The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (C)(23)(d) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

6. The individual owners of the partnership not filing as a C Corporation shall be required to file with their municipal corporation of residence, and report partnership distribution of net profit.

(24) ***NONRESIDENT*** means an individual that is not a resident of the municipality.

(25) ***OHIO BUSINESS GATEWAY*** means the online computer network system, created under R.C. § 125.30, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(26) ***OTHER PAYER*** means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. ***OTHER PAYER*** includes casino operators and video lottery terminal sales agents.

(27) ***PASS-THROUGH ENTITY*** means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal income tax purposes. ***PASS-THROUGH ENTITY*** does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

(28) ***PENSION*** means any amount paid to an employee or former employee that is reported to the recipient on an IRS form 1099-R, or successor form. ***PENSION*** does not include deferred compensation, or amounts attributable to nonqualified deferred compensation plans, reported as FICA/Medicare wages on an IRS form W-2, wage and tax statement, or successor form.

(29) ***PERSON*** includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(30) ***POSTAL SERVICE*** means the United States postal service, or private delivery service delivering documents and packages within an agreed upon delivery schedule, or any other carrier service delivering the item.

(31) ***POSTMARK DATE, DATE OF POSTMARK***, and similar terms include the date recorded and marked by a delivery service and recorded electronically to a database kept in the regular course if its business and marked on the cover in which the payment or document is enclosed, the date on which the payment or document was given to the delivery service for delivery

(32) (a) ***PRE-2017 NET OPERATING LOSS CARRYFORWARD*** means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the municipality that was adopted by the municipality before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such municipality in future taxable years.

(b) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(33) ***QUALIFIED MUNICIPAL CORPORATION*** means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Ohio Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.

(34) ***QUALIFYING WAGES*** means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(a) Deduct the following amounts:

1. Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

2. Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

3. INTENTIONALLY LEFT BLANK.

4. INTENTIONALLY LEFT BLANK.

5. Any amount included in wages that is exempt income.

(b) Add the following amounts:

1. Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

2. Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option. Division (C)(34)(b)2. of this section applies only to those amounts constituting ordinary income.

3. Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (C)(34)(b)3. of this section applies only to employee contributions and employee deferrals.

4. Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

5. Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.

6. Any amount not included in wages if all of the following apply:

a. For the taxable year the amount is employee compensation that is earned outside of the United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

b. For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

c. For no succeeding taxable year will the amount constitute wages; and

d. For any taxable year the amount has not otherwise been added to wages pursuant to either division (C)(34)(b) of this section or R.C. § 718.03, as that section existed before the effective date of H.B. 5 of the 130th general assembly, March 23, 2015.

(35) ***RELATED ENTITY*** means any of the following:

(a) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;

(b) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the taxpayer's outstanding stock;

(c) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (C)(35)(d) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation's outstanding stock;

(d) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (C)(35)(a) to (c) of this section have been met.

(36) ***RELATED MEMBER*** means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "20%" shall be substituted for "5%" wherever "5%" appears in section 1563(e) of the Internal Revenue Code.

(37) ***RESIDENT*** means an individual who is domiciled in the municipality as determined under § 96.042 of this chapter.

(38) ***S CORPORATION*** means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(39) ***SCHEDULE C*** Means Internal Revenue Service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(40) ***SCHEDULE E*** means Internal Revenue Service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(41) ***SCHEDULE F*** Means Internal Revenue Service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(42) ***SINGLE MEMBER LIMITED LIABILITY COMPANY*** means a limited liability company that has one direct member.

(43) ***SMALL EMPLOYER*** means any employer that had total revenue of less than $500,000 during the preceding taxable year. For purposes of this division, ***TOTAL REVENUE*** means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. ***SMALL EMPLOYER*** does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

(44) ***TAX ADMINISTRATOR*** means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:

(a) A municipal corporation acting as the agent of another municipal corporation;

(b) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis;

(c) The Central Collection Agency (CCA) or the Regional Income Tax Agency (RITA) or their successors in interest, or another entity organized to perform functions similar to those performed by the Central Collection Agency and the Regional Income Tax Agency.

(45) ***TAX RETURN PREPARER*** means any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

(46) ***TAXABLE YEAR*** means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(47) (a) ***TAXPAYER*** means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. ***TAXPAYER*** does not include a grantor trust or, except as provided in division (C)(47)(b)1. of this section, a disregarded entity.

(b) 1. A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

a. The limited liability company's single member is also a limited liability company.

b. The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.

c. Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under R.C. § 718.01(L) as this section existed on December 31, 2004.

d. The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

e. The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

2. For purposes of division (C)(47)(b)1.e. of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least $400,000.

(48) ***TAXPAYERS' RIGHTS AND RESPONSIBILITIES*** means the rights provided to taxpayers in R.C. §§ 718.11 , 718.12 , 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011 , and 5717.03 and any corresponding ordinances of the municipality, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with R.C. Chapter 718 and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

(49) ***VIDEO LOTTERY TERMINAL*** has the same meaning as in R.C. § 3770.21.

(50) ***VIDEO LOTTERY TERMINAL SALES AGENT*** means a lottery sales agent licensed under R.C. Chapter 3770 to conduct video lottery terminals on behalf of the state pursuant to R.C. § 3770.21.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Related definitions, see R.C. § 718.01*

## § 96.04 INCOME SUBJECT TO TAX FOR INDIVIDUALS.

## § 96.041 DETERMINING MUNICIPAL TAXABLE INCOME FOR INDIVIDUALS.

(A) ***MUNICIPAL TAXABLE INCOME*** for a resident of the municipality is calculated as follows:

(1) "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, reduced by allowable employee business expense deduction as found in § 96.03(C)(20)(b) of this chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals ***MUNICIPAL TAXABLE INCOME***.

(a) ***INCOME*** is defined in § 96.03(C)(14) of this chapter.

1. ***QUALIFYING WAGES*** is defined in § 96.03(C)(34).

2. ***NET PROFIT*** is included in "income", and is defined in § 96.03(C)(23) of this chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in § 96.03(C)(1)(h). Treatment of net profits received by an individual taxpayer from rental real estate is provided in § 96.062(E).

3. Section 96.03(C)(14) provides the following: offsetting and net operating loss carryforward treatment in division (C)(14)(a)2.a.; resident's distributive share of net profit from pass through entity treatment in division (C)(14)(a)2.b.; treatment of S Corporation distributive share of net profit in the hands of the shareholder in division (C)(14)(a)3.; restriction of amount of loss permitted to be carried forward for use by taxpayer in a subsequent taxable year in division (C)(14)(a)4.

4. ***PASS THROUGH ENTITY*** is defined in § 96.03(C)(27).

(b) ***EXEMPT INCOME*** is defined in § 96.03(C)(11) of this chapter.

(c) Allowable employee business expense deduction is described in § 96.03(C)(20)(b) of this chapter, and is subject to the limitations provided in that section.

(d) ***PRE-2017 NET OPERATING LOSS CARRYFORWARD*** is defined in § 96.03(C)(32) of this chapter.

(B) ***MUNICIPAL TAXABLE INCOME*** for a nonresident of the municipality is calculated as follows:

(1) "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, as applicable, apportioned or situsedto the municipality as provided in § 96.062 of this chapter, reduced by allowable employee business expense deduction as found in § 96.03(C)(20)(b) of this chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals ***MUNICIPAL TAXABLE INCOME***.

(a) ***INCOME*** is defined in § 96.03(C)(14) of this chapter.

1. ***QUALIFYING WAGES*** is defined in § 96.03(C)(34).

2. ***NET PROFIT*** is included in "income", and is defined in § 96.03(C)(23) of this chapter. This section also provides that the net operating loss carryforward shall be calculated and deducted in the same manner as provided in § 96.03(C)(1)(h). ***NET PROFIT*** for a nonresident individual includes any net profit of the nonresident, but excludes the distributive share of net profit or loss of only pass through entity owned directly or indirectly by the nonresident.

3. ***PASS THROUGH ENTITY*** is defined in § 96.03(C)(27).

(b) ***EXEMPT INCOME*** is defined in § 96.03(C)(11) of this chapter.

(c) ***APPORTIONED OR SITUSED TO THE MUNICIPALITY AS PROVIDED IN § 96.062 OF THIS CHAPTER*** includes the apportionment of net profit income attributable to work done or services performed in the municipality. Treatment of net profits received by an individual taxpayer from rental real estate is provided in § 96.062(E).

(d) ***ALLOWABLE EMPLOYEE BUSINESS EXPENSE DEDUCTION*** as described in § 96.03(C)(20)(b) of this chapter, is subject to the limitations provided in that section. For a nonresident of the municipality, the deduction is limited to the extent the expenses are related to the performance of personal services by the nonresident in the municipality.

(e) ***PRE-2017 NET OPERATING LOSS CARRYFORWARD*** is defined in § 96.03(C)(32) of this chapter.
(Ord. CM-15-32, passed 11-10-2015)

**§ 96.042 DOMICILE.**

(A) As used in this section:

(1) ***DOMICILE*** means the true, fixed and permanent home of the taxpayer to which whenever absent, the taxpayer intends to return.

(2) An individual is presumed to be domiciled in the municipality for all or part of a taxable year if the individual was domiciled in the municipality on the last day of the immediately preceding taxable year or if the Tax Administrator reasonably concludes that the individual is domiciled in the municipality for all or part of the taxable year.

(3) An individual may rebut the presumption of domicile described in division (A)(1) of this section if the individual establishes by a preponderance of the evidence that the individual was not domiciled in the municipality for all or part of the taxable year.

(B) For the purpose of determining whether an individual is domiciled in the municipality for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

(1) The individual's domicile in other taxable years;

(2) The location at which the individual is registered to vote;

(3) The address on the individual's driver's license;

(4) The location of real estate for which the individual claimed a property tax exemption or reduction allowed on the basis of the individual's residence or domicile;

(5) The location and value of abodes owned or leased by the individual;

(6) Declarations, written or oral, made by the individual regarding the individual's residency;

(7) The primary location at which the individual is employed.

(8) The location of educational institutions attended by the individual's dependents as defined in section 152 of the Internal Revenue Code, to the extent that tuition paid to such educational institution is based on the

residency of the individual or the individual's spouse in the municipal corporation or state where the educational institution is located;

(9) The number of contact periods the individual has with the municipality. For the purposes of this division, an individual has one "contact period" with the municipality if the individual is away overnight from the individual's abode located outside of the municipality and while away overnight from that abode spends at least some portion, however minimal, of each of two consecutive days in the municipality. For purposes of this section, the state's contact period test or bright-line test and resulting determination have no bearing on municipal residency or domicile.

(C) All applicable factors are provided in R.C. § 718.012.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Domicile, see R.C. § 718.012*

## § 96.043 EXEMPTION FOR MEMBER OR EMPLOYEE OF GENERAL ASSEMBLY AND CERTAIN JUDGES.

(A) Only the municipal corporation of residence shall be permitted to levy a tax on the income of any member or employee of the Ohio General Assembly, including the Lieutenant Governor, whose income is received as a result of services rendered as such member or employee and is paid from appropriated funds of this state.

(B) Only the municipal corporation of residence and the City of Columbus shall levy a tax on the income of the Chief Justice or a Justice of the Supreme Court received as a result of services rendered as the Chief Justice or Justice. Only the municipal corporation of residence shall levy a tax on the income of a judge sitting by assignment of the Chief Justice or on the income of a district court of appeals judge sitting in multiple locations within the district, received as a result of services rendered as a judge.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Exclusion of General Assembly employee or member and certain judges from tax, see R.C. § 718.50*

## § 96.05 COLLECTION AT SOURCE.

## § 96.051 COLLECTION AT SOURCE; WITHHOLDING FROM QUALIFYING WAGES.

(A) (1) Each employer, agent of an employer, or other payer located or doing business in the municipality shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the municipality multiplied by the applicable rate of the municipality's income tax, except for qualifying wages for which withholding is not required under § 96.052 of this chapter or divisions (D) or (F) of this section. An employer, agent of an employer, or other payer shall deduct and withhold the tax from qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively pays the qualifying wages to, or credits the qualifying wages to the benefit of, the employee.

(2) In addition to withholding the amounts required under division (A)(1) of this section, an employer, agent of an employer, or other payer may also deduct and withhold, on the request of an employee, taxes for the municipal corporation in which the employee is a resident.

(B) (1) An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the municipality the greater of the income taxes deducted and withheld or the income taxes required to be deducted and withheld by the employer, agent, or other payer, along with any report required by the Tax Administrator to accompany such payment, according to the following schedule:

(a) Any employer, agent of an employer, or other payer not required to make payments under division (B)(1)(b) of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the last day of the month following the last day of each calendar quarter.

(b) Taxes required to be deducted and withheld shall be remitted monthly to the Tax Administrator if the total taxes deducted and withheld or required to be deducted and withheld by the employer, agent, or other payer on behalf of the municipal corporation in the preceding calendar year exceeded $2,399, or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the municipality in any month of the preceding calendar quarter exceeded $200. Payments under division (B)(1)(b) of this section shall be made to the Tax Administrator not later than 15 days after the last day of each month.

(C) An employer, agent of an employer, or other payer shall make and file a return showing the amount of tax withheld by the employer, agent, or other payer from the qualifying wages of each employee and remitted to the Tax Administrator. A return filed by an employer, agent, or other payer under this division shall be accepted by the municipality as the return required of an employee whose sole income subject to the tax under this chapter is the qualifying wages reported by the employee's employer, agent of an employer, or other payer, unless the municipality requires all resident individual taxpayers to file a tax return under § 96.091 of this chapter.

(D) An employer, agent of an employer, or other payer is not required to withhold municipal income tax with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of either the corporation with respect to whose stock the option has been issued or of such corporation's successor entity.

(E) (1) An employee is not relieved from liability for a tax by the failure of the employer, agent of an employer, or other payer to withhold the tax as required under this chapter or by the employer's, agent's, or other payer's exemption from the requirement to withhold the tax.

(2) The failure of an employer, agent of an employer, or other payer to remit to the municipality the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer, agent, or other payer in connection with the failure to remit the tax withheld.

(F) Compensation deferred before June 26, 2003, is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(G) Each employer, agent of an employer, or other payer required to withhold taxes is liable for the payment of that amount required to be withheld, whether or not such taxes have been withheld, and such amount shall be

deemed to be held in trust for the municipality until such time as the withheld amount is remitted to the Tax Administrator.

(H) On or before the last day of February of each year, an employer shall file a withholding reconciliation return with the Tax Administrator listing the names, addresses, and social security numbers of all employees from whose qualifying wages tax was withheld or should have been withheld for the municipality during the preceding calendar year, the amount of tax withheld, if any, from each such employee's qualifying wage, the total amount of qualifying wages paid to such employee during the preceding calendar year, the name of every other municipal corporation for which tax was withheld or should have been withheld from such employee during the preceding calendar year, any other information required for federal income tax reporting purposes on Internal Revenue Service form W-2 or its equivalent form with respect to such employee, and other information as may be required by the Tax Administrator.

(I) The officer or the employee of the employer, agent of an employer, or other payer with control or direct supervision of or charged with the responsibility for withholding the tax or filing the reports and making payments as required by this section, shall be personally liable for a failure to file a report or pay the tax due as required by this section. The dissolution of an employer, agent of an employer, or other payer does not discharge the officer's or employee's liability for a failure of the employer, agent of an employer, or other payer to file returns or pay any tax due.

(J) An employer is required to deduct and withhold municipal income tax on tips and gratuities received by the employer's employees and constituting qualifying wages only to the extent that the tips and gratuities are under the employer's control. For the purposes of this division, a tip or gratuity is under the employer's control if the tip or gratuity is paid by the customer to the employer for subsequent remittance to the employee, or if the customer pays the tip or gratuity by credit card, debit card, or other electronic means.

(K) A Tax Administrator shall consider any tax withheld by an employer at the request of an employee when such tax is not otherwise required to be withheld by this chapter to be tax required to be withheld and remitted for the purposes of this section.
(Ord. CM-15-32, passed 11-10-2015; Am. Ord. CM-16-29, passed 8-23-2016)
***Statutory reference:***
*Withholding from qualifying wages, see R.C. § 718.03*

## § 96.052 COLLECTION AT SOURCE; OCCASIONAL ENTRANT.

(A) The following terms as used in this section:

(1) ***EMPLOYER*** includes a person that is a related member to or of an employer.

(2) ***PROFESSIONAL ATHLETE*** means an athlete who performs services in a professional athletic event for wages or other remuneration.

(3) ***PROFESSIONAL ENTERTAINER*** means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.

(4) ***PUBLIC FIGURE*** means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for wages or other remuneration on a per-event basis.

(5) ***FIXED LOCATION*** means a permanent place of doing business in this state, such as an office, warehouse, storefront, or similar location owned or controlled by an employer.

(6) ***WORKSITE LOCATION*** means a construction site or other temporary worksite in this state at which the employer provides services for more than 20 days during the calendar year. ***WORKSITE LOCATION*** does not include the home of an employee.

(7) ***PRINCIPAL PLACE OF WORK*** means the fixed location to which an employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location, ***PRINCIPAL PLACE OF WORK*** means the worksite location in this state to which the employee is required to report for employment duties on a regular and ordinary basis. If the employee is not required to report for employment duties on a regular and ordinary basis to a fixed location or worksite location, ***PRINCIPAL PLACE OF WORK*** means the location in this state at which the employee spends the greatest number of days in a calendar year performing services for or on behalf of the employee's employer.

(a) If there is not a single municipal corporation in which the employee spent the "greatest number of days in a calendar year" performing services for or on behalf of the employer, but instead there are two or more municipal corporations in which the employee spent an identical number of days that is greater than the number of days the employee spent in any other municipal corporation, the employer shall allocate any of the employee's qualifying wages subject to division (B)(1)(a) of this section among those two or more municipal corporations. The allocation shall be made using any fair and reasonable method, including, but not limited to, an equal allocation among such municipal corporations or an allocation based upon the time spent or sales made by the employee in each such municipal corporation. A municipal corporation to which qualifying wages are allocated under this division shall be the employee's "principal place of work" with respect to those qualifying wages for the purposes of this section.

(b) For the purposes of this division, the location at which an employee spends a particular day shall be deemed in accordance with division (B)(2) of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

(B) (1) Subject to divisions (C), (E), (F), and (G) of this section, an employer is not required to withhold municipal income tax on qualifying wages paid to an employee for the performance of personal services in a municipal corporation that imposes such a tax if the employee performed such services in the municipal corporation on 20 or fewer days in a calendar year, unless one of the following conditions applies:

(a) The employee's principal place of work is located in the municipality.

(b) The employee performed services at one or more presumed worksite locations in the municipality. For the purposes of this division, ***PRESUMED WORKSITE LOCATION*** means a construction site or other temporary worksite in this state at which the employer provides services that can reasonably be expected by the employer to last more than 20 days in a calendar year. Services can "reasonably be expected by the employer to last more than 20 days" if either of the following applies at the time the services commence:

1. The nature of the services are such that it will require more than 20 days of actual services to complete the services;

2. The agreement between the employer and its customer to perform services at a location requires the employer to perform actual services at the location for more than 20 days.

(c) The employee is a resident of the municipality and has requested that the employer withhold tax from the employee's qualifying wages as provided in § 96.051 of this chapter.

(d) The employee is a professional athlete, professional entertainer, or public figure, and the qualifying wages are paid for the performance of services in the employee's capacity as a professional athlete, professional entertainer, or public figure within the municipality.

(2) For the purposes of division (B)(1) of this section, an employee shall be considered to have spent a day performing services in a municipal corporation only if the employee spent more time performing services for or on behalf of the employer in that municipal corporation than in any other municipal corporation on that day. For the purposes of determining the amount of time an employee spent in a particular location, the time spent performing one or more of the following activities shall be considered to have been spent at the employee's principal place of work:

(a) Traveling to the location at which the employee will first perform services for the employer for the day;

(b) Traveling from a location at which the employee was performing services for the employer to any other location;

(c) Traveling from any location to another location in order to pick up or load, for the purpose of transportation or delivery, property that has been purchased, sold, assembled, fabricated, repaired, refurbished, processed, remanufactured, or improved by the employee's employer;

(d) Transporting or delivering property described in division (B)(2)(c) of this section, provided that, upon delivery of the property, the employee does not temporarily or permanently affix the property to real estate owned, used, or controlled by a person other than the employee's employer;

(e) Traveling from the location at which the employee makes the employee's final delivery or pick-up for the day to either the employee's principal place of work or a location at which the employee will not perform services for the employer.

(C) If the principal place of work of an employee is located in a municipal corporation that imposes an income tax in accordance with this chapter, the exception from withholding requirements described in division (B)(1) of this section shall apply only if, with respect to the employee's qualifying wages described in that division, the employer withholds and remits tax on such qualifying wages to the municipal corporation in which the employee's principal place of work is located.

(D) (1) Except as provided in division (D)(2) of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the 20-daythreshold described in division (B)(1) of this section, the employer shall withhold and remit tax to that municipal corporation

for any subsequent days in that calendar year on which the employer pays qualifying wages to the employee for personal services performed in that municipal corporation.

(2) An employer required to begin withholding tax for a municipal corporation under division (D)(1) of this section may elect to withhold tax for that municipal corporation for the first 20 days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.

(3) If an employer makes the election described in division (D)(2) of this section, the taxes withheld and paid by such an employer during those first 20 days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.

(E) Without regard to the number of days in a calendar year on which an employee performs personal services in any municipal corporation, an employer shall withhold municipal income tax on all of the employee's qualifying wages for a taxable year and remit that tax only to the municipal corporation in which the employer's fixed location is located if the employer qualifies as a small employer as defined in § 96.03 of this chapter. To determine whether an employer qualifies as a small employer for a taxable year, a Tax Administrator may require the employer to provide the Tax Administrator with the employer's federal income tax return for the preceding taxable year.

(F) Divisions (B)(1) and (D) of this section shall not apply to the extent that a Tax Administrator and an employer enter into an agreement regarding the manner in which the employer shall comply with the requirements of § 96.051 of this chapter.

(G) (1) In the case of a person performing personal services at a petroleum refinery located in a municipal corporation that imposes a tax on income, an employer is not required to withhold municipal income tax on the qualifying wages of such a person if the person performs those services on 12 or fewer days in a calendar year, unless the principal place of work of the employer is located in another municipal corporation in this state that imposes a tax applying to compensation paid to the person for services performed on those days and the person is not liable to that other municipal corporation for tax on the compensation paid for such services. For the purposes of this division, a petroleum refinery is a facility with a standard industrial classification code facility classification of 2911, petroleum refining.

(2) Notwithstanding division (D) of this section, if, during a calendar year, the number of days an individual performs personal services at a petroleum refinery exceeds 12, the employer shall withhold tax for the municipal corporation for the first 12 days for which the employer paid qualifying wages to the individual and for all subsequent days in the calendar year on which the individual performed services at the refinery.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Definitions, see R.C. § 718.01*
*Occasional entrant, withholding, see R.C. § 718.011*

## § 96.053 COLLECTION AT SOURCE; CASINO AND VLT .

(A) The municipality shall require a casino facility or a casino operator, as defined in Section 6(C)(9) of Article XV, Ohio Constitution, and R.C. § 3772.01, respectively, or a lottery sales agent conducting video lottery

terminals sales on behalf of the state to withhold and remit municipal income tax with respect to amounts other than qualifying wages as provided in this section.

(B) If a person's winnings at a casino facility are an amount for which reporting to the Internal Revenue Service of the amount is required by section 6041 of the Internal Revenue Code, as amended, the casino operator shall deduct and withhold municipal income tax from the person's winnings at the rate of the tax imposed by the municipal corporation in which the casino facility is located.

(C) Amounts deducted and withheld by a casino operator are held in trust for the benefit of the municipal corporation to which the tax is owed.

(1) On or before the tenth day of each month, the casino operator shall file a return electronically with the Tax Administrator of the municipality, providing the name, address, and social security number of the person from whose winnings amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the winnings from which each such amount was withheld, the type of casino gaming that resulted in such winnings, and any other information required by the Tax Administrator. With this return, the casino operator shall remit electronically to the municipality all amounts deducted and withheld during the preceding month.

(2) Annually, on or before the thirty-first day of January, a casino operator shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the casino facility is located, indicating the total amount deducted and withheld during the preceding calendar year. The casino operator shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(3) Annually, on or before the thirty-first day of January, a casino operator shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted from the person's winnings during the preceding year. The casino operator shall provide to the Tax Administrator a copy of each information return issued under this division. The administrator may require that such copies be transmitted electronically.

(4) A casino operator that fails to file a return and remit the amounts deducted and withheld shall be personally liable for the amount withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(5) If a casino operator sells the casino facility or otherwise quits the casino business, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor shall withhold an amount of the purchase money that is sufficient to cover the amounts deducted and withheld along with any penalties and interest thereon until the predecessor casino operator produces either of the following:

(a) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid; or

(b) A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(6) The failure of a casino operator to deduct and withhold the required amount from a person's winnings does not relieve that person from liability for the municipal income tax with respect to those winnings.

(D) If a person's prize award from a video lottery terminal is an amount for which reporting to the Internal Revenue Service is required by section 6041 of the Internal Revenue Code, as amended, the video lottery sales agent shall deduct and withhold municipal income tax from the person's prize award at the rate of the tax imposed by the municipal corporation in which the video lottery terminal facility is located.

(E) Amounts deducted and withheld by a video lottery sales agent are held in trust for the benefit of the municipal corporation to which the tax is owed.

(1) The video lottery sales agent shall issue to a person from whose prize award an amount has been deducted and withheld a receipt for the amount deducted and withheld, and shall obtain from the person receiving a prize award the person's name, address, and social security number in order to facilitate the preparation of returns required by this section.

(2) On or before the tenth day of each month, the video lottery sales agent shall file a return electronically with the Tax Administrator of the municipality providing the names, addresses, and social security numbers of the persons from whose prize awards amounts were deducted and withheld, the amount of each such deduction and withholding during the preceding calendar month, the amount of the prize award from which each such amount was withheld, and any other information required by the Tax Administrator. With the return, the video lottery sales agent shall remit electronically to the Tax Administrator all amounts deducted and withheld during the preceding month.

(3) A video lottery sales agent shall maintain a record of all receipts issued under division (E) of this section and shall make those records available to the Tax Administrator upon request. Such records shall be maintained in accordance with R.C. § 5747.17 and any rules adopted pursuant thereto.

(4) Annually, on or before the thirty-first day of January, each video lottery terminal sales agent shall file an annual return electronically with the Tax Administrator of the municipal corporation in which the facility is located indicating the total amount deducted and withheld during the preceding calendar year. The video lottery sales agent shall remit electronically with the annual return any amount that was deducted and withheld and that was not previously remitted. If the name, address, or social security number of a person or the amount deducted and withheld with respect to that person was omitted on a monthly return for that reporting period, that information shall be indicated on the annual return.

(5) Annually, on or before the thirty-first day of January, a video lottery sales agent shall issue an information return to each person with respect to whom an amount has been deducted and withheld during the preceding calendar year. The information return shall show the total amount of municipal income tax deducted and withheld from the person's prize award by the video lottery sales agent during the preceding year. A video lottery sales agent shall provide to the Tax Administrator of the municipal corporation a copy of each information

return issued under this division. The Tax Administrator may require that such copies be transmitted electronically.

(6) A video lottery sales agent who fails to file a return and remit the amounts deducted and withheld is personally liable for the amount deducted and withheld and not remitted. Such personal liability extends to any penalty and interest imposed for the late filing of a return or the late payment of tax deducted and withheld.

(F) If a video lottery sales agent ceases to operate video lottery terminals, the amounts deducted and withheld along with any penalties and interest thereon are immediately due and payable. The successor of the video lottery sales agent that purchases the video lottery terminals from the agent shall withhold an amount from the purchase money that is sufficient to cover the amounts deducted and withheld and any penalties and interest thereon until the predecessor video lottery sales agent operator produces either of the following:

(1) A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;

(2) A certificate from the Tax Administrator indicating that no amounts are due.

If the successor fails to withhold purchase money, the successor is personally liable for the payment of the amounts deducted and withheld and penalties and interest thereon.

(G) The failure of a video lottery sales agent to deduct and withhold the required amount from a person's prize award does not relieve that person from liability for the municipal income tax with respect to that prize award.

(H) If a casino operator or lottery sales agent files a return late, fails to file a return, remits amounts deducted and withheld late, or fails to remit amounts deducted and withheld as required under this section, the Tax Administrator of a municipal corporation may impose the following applicable penalty:

(1) For the late remittance of, or failure to remit, tax deducted and withheld under this section, a penalty equal to 50% of the tax deducted and withheld;

(2) For the failure to file, or the late filing of, a monthly or annual return, a penalty of $500 for each return not filed or filed late. Interest shall accrue on past due amounts deducted and withheld at the rate prescribed in R.C. § 5703.47.

(I) Amounts deducted and withheld on behalf of a municipal corporation shall be allowed as a credit against payment of the tax imposed by the municipal corporation and shall be treated as taxes paid for purposes of § 96.07 of this chapter. This division applies only to the person for whom the amount is deducted and withheld.

(J) The Tax Administrator shall prescribe the forms of the receipts and returns required under this section. (Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Withholding by casinos and lottery sales agents, see R.C. § 718.031*

## § 96.06 INCOME SUBJECT TO NET PROFIT TAX.

## § 96.061 DETERMINING MUNICIPAL TAXABLE INCOME FOR TAXPAYERS WHO ARE NOT INDIVIDUALS.

"Municipal Taxable Income" for a taxpayer who is not an individual for the municipality is calculated as follows: "Income" reduced by "exempt income" to the extent otherwise included in income, multiplied by apportionment, further reduced by any "pre-2017 net operating loss carryforward" equals "municipal taxable income".

(A) ***INCOME*** for a taxpayer that is not an individual means the "net profit" of the taxpayer.

(1) ***NET PROFIT*** for a person other than an individual is defined in § 96.03(C)(23).

(2) ***ADJUSTED FEDERAL TAXABLE INCOME*** is defined in § 96.03(C)(1) of this chapter.

(B) ***EXEMPT INCOME*** is defined in § 96.03(C)(11) of this chapter.

(C) ***APPORTIONMENT*** means the apportionment as determined by § 96.062 of this chapter.

(D) ***PRE-2017 NET OPERATING LOSS CARRYFORWARD*** is defined in § 96.03(C)(32) of this chapter. (Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Definitions, see R.C. § 718.01*

## § 96.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT.

This section applies to any taxpayer engaged in a business or profession in the municipality unless the taxpayer is an individual who resides in the municipality or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under R.C. Chapter 5745.

(A) Net profit from a business or profession conducted both within and without the boundaries of the municipality shall be considered as having a taxable situs in the municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under § 96.052 of this chapter;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the municipality, the taxpayer may request, or the Tax Administrator of the municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(a) Separate accounting;

(b) The exclusion of one or more of the factors;

(c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipality;

(d) A modification of one or more of the factors.

(2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by § 96.19(A) of this chapter.

(3) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by § 96.19(A) of this chapter.

(4) Nothing in division (B) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.

(C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:

(a) The employer;

(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;

(c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.

(2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

(3) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.

(D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be sitused to a municipal corporation as follows:

(1) Gross receipts from the sale of tangible personal property shall be sitused to the municipal corporation in which the sale originated. For the purposes of this division, a sale of property originates in a municipal corporation if, regardless of where title passes, the property meets any of the following criteria:

(a) The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.

(b) The property is delivered within the municipal corporation from a location outside the municipal corporation, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion.

(2) Gross receipts from the sale of services shall be sitused to the municipal corporation to the extent that such services are performed in the municipal corporation.

(3) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be sitused to the municipal corporation.

(4) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be sitused to the municipal corporation.

(5) Gross receipts from rents and royalties from tangible personal property shall be sitused to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.

(E) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the

individual taxpayer that receives the net profit resides. A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situsedunder this division to the municipal corporation in which the property is located.

(F) (1) Except as provided in division (F)(2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situsedto the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(2) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under § 96.081 of this chapter.

(G) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under § 96.03(C)(11)(l) and (C)(34)(a)4. of this chapter, by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

(H) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.
(Ord. CM-15-32, passed 11-10-2015; Am. Ord. CM-18-08, passed 2-27-2018)
***Statutory reference:***
*Income subject to tax, see R.C. § 718.02*

## § 96.063 CONSOLIDATED FEDERAL INCOME TAX RETURN.

(A) As used in this section:

(1) ***AFFILIATED GROUP OF CORPORATIONS*** means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) ***CONSOLIDATED FEDERAL INCOME TAX RETURN*** means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) ***CONSOLIDATED FEDERAL TAXABLE INCOME*** means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. ***CONSOLIDATED FEDERAL TAXABLE INCOME*** does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.

(4) ***INCUMBENT LOCAL EXCHANGE CARRIER*** has the same meaning as in R.C. § 4927.01.

(5) ***LOCAL EXCHANGE TELEPHONE SERVICE*** has the same meaning as in R.C. § 5727.01.

(B) (1) For taxable years beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated municipal income tax return for a taxable year if at least one member of the affiliated group of corporations is subject to the municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year.

(a) The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law.

(b) The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (B)(2) of this section; or

(c) A taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.

(2) An election to discontinue filing consolidated municipal income tax returns under this section must be made in the first year following the last year of a five-year consolidated municipal income tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated municipal income tax return for that taxable year if the Tax Administrator determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to the municipal corporation. A taxpayer that is required to file a consolidated municipal income tax return for a taxable year shall file a consolidated municipal income tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the Tax Administrator to file a separate return or a taxpayer has experienced a change in circumstances.

(D) A taxpayer shall prepare a consolidated municipal income tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the

consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(E) (1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in § 96.03(C)(1) of this chapter, by substituting "consolidated federal taxable income" for "federal taxable income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under § 96.03(C)(1) of this chapter to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least 80% of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated municipal income tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in § 96.062 of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situsted to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in § 96.062 of this chapter, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situsted to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than 80% of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated municipal income tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in § 96.062 of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit situsted to a municipal corporation;

(b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated municipal income tax return shall make the computations required under § 96.062 of this chapter by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated municipal income tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts imposed by a municipal corporation in accordance with this chapter on the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.

(H) Corporations and their affiliates that made an election or entered into an agreement with a municipal corporation before January 1, 2016, to file a consolidated or combined tax return with such municipal corporation may continue to file consolidated or combined tax returns in accordance with such election or agreement for taxable years beginning on and after January 1, 2016.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Consolidated municipal tax return, see R.C. § 718.06*

## § 96.064 TAX CREDIT FOR BUSINESSES THAT FOSTER NEW JOBS IN OHIO.

The municipality, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer to foster job creation in the municipality. If a credit is granted under this section, it shall be measured as a percentage of the new income tax revenue the municipality derives from new employees of the taxpayer and shall be for a term not exceeding 15 years. Before the municipality passes an ordinance granting a credit, the municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Fostering new jobs; tax credits. see R.C. § 718.15*

## § 96.065 TAX CREDITS TO FOSTER JOB RETENTION.

The municipality, by ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer for the purpose of fostering job retention in the municipality. If a credit is granted under this section, it shall be measured as a percentage of the income tax revenue the municipality derives from the retained employees of the taxpayer, and shall be for a term not exceeding 15 years. Before the municipality passes an ordinance allowing such a credit, the municipality and the taxpayer shall enter into an agreement specifying all the conditions of the credit.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Fostering job retention; tax credits, see R.C. § 718.151*

## § 96.07 DECLARATION OF ESTIMATED TAX.

(A) As used in this section:

(1) ***ESTIMATED TAXES*** means the amount that the taxpayer reasonably estimates to be the taxpayer's tax liability for a municipal corporation's income tax for the current taxable year.

(2) ***TAX LIABILITY*** means the total taxes due to a municipal corporation for the taxable year, after allowing any credit to which the taxpayer is entitled, and after applying any estimated tax payment, withholding payment, or credit from another taxable year.

(B) (1) Every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Administrator, if the amount payable as estimated taxes is at least $200. For the purposes of this section:

(a) Taxes withheld from qualifying wages shall be considered as paid to the municipal corporation for which the taxes were withheld in equal amounts on each payment date. If the taxpayer establishes the dates on which all amounts were actually withheld, the amounts withheld shall be considered as paid on the dates on which the amounts were actually withheld.

(b) An overpayment of tax applied as a credit to a subsequent taxable year is deemed to be paid on the date of the postmark stamped on the cover in which the payment is mailed or, if the payment is made by electronic funds transfer, the date the payment is submitted. As used in this division, ***DATE OF THE POSTMARK*** means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(c) A taxpayer having a taxable year of less than 12 months shall make a declaration under rules prescribed by the Tax Administrator.

(d) Taxes withheld by a casino operator or by a lottery sales agent under R.C. § 718.031 are deemed to be paid to the municipal corporation for which the taxes were withheld on the date the taxes are withheld from the taxpayer's winnings.

(2) Taxpayers filing joint returns shall file joint declarations of estimated taxes.

(3) The declaration of estimated taxes shall be filed on or before the date prescribed for the filing of municipal income tax returns under § 96.091(G) of this chapter or on or before the fifteenth day of the fourth month of the first taxable year after the taxpayer becomes subject to tax for the first time.

(4) Taxpayers reporting on a fiscal year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year or period.

(5) The original declaration or any subsequent amendment may be increased or decreased on or before any subsequent quarterly payment day as provided in this section.

(C) (1) The required portion of the tax liability for the taxable year that shall be paid through estimated taxes made payable to the municipality or Tax Administrator, including the application of tax refunds to estimated taxes and withholding on or before the applicable payment date, shall be as follows:

(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, 22.5% of the tax liability for the taxable year;

(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, 45% of the tax liability for the taxable year;

(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, 67.5% of the tax liability for the taxable year; and

(d) On or before the fifteenth day of the twelfth month of the taxable year, 90% of the tax liability for the taxable year. Effective for taxable years beginning 2018, it shall be on or before the fifteenth day of the first month of the following taxable year, 90% of the tax liability for the taxable year.

(2) A taxpayer may amend a declaration under rules prescribed by the Tax Administrator. When an amended declaration has been filed, the unpaid balance shown due on the amended declaration shall be paid in equal installments on or before the remaining payment dates. The amended declaration must be filed on the next applicable due date as outlined in (C)(1)(a) through (d) of this section.

(3) On or before the fifteenth day of the fourth month of the year following that for which the declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due shall be paid with the return in accordance with § 96.091 of this chapter.

(a) For taxpayers who are individuals, or who are not individuals and are reporting and filing on a calendar year basis, the annual tax return is due on the same date as the filing of the federal tax return, unless extended pursuant to R.C. § 5747.08(G).

(b) For taxpayers who are not individuals, and are reporting and filing on a fiscal year basis or any period other than a calendar year, the annual return is due on the fifteenth day of the fourth month following the end of the taxable year or period.

(4) An amended declaration is required whenever the taxpayer's estimated tax liability changes during the taxable year. A change in estimated tax liability may either increase or decrease the estimated tax liability for the taxable year.

(D) (1) In the case of any underpayment of any portion of a tax liability, penalty and interest may be imposed pursuant to § 96.10 of this chapter upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

(a) For the first payment of estimated taxes each year, 22.5% of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(b) For the second payment of estimated taxes each year, 45% of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(c) For the third payment of estimated taxes each year, 67.5% of the tax liability, less the amount of taxes paid by the date prescribed for that payment;

(d) For the fourth payment of estimated taxes each year, 90% of the tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently required to be paid to avoid any penalty.

(E) An underpayment of any portion of tax liability determined under division (D) of this section shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least 90% of the tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least 100% of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of 12 months and the taxpayer filed a return with the municipal corporation under § 96.091 of this chapter for that year.

(3) The taxpayer is an individual who resides in the municipality but was not domiciled there on the first day of January of the calendar year that includes the first day of the taxable year.

(F) A Tax Administrator may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.
(Ord. CM-15-32, passed 11-10-2015; Am. Ord. CM-18-08, passed 2-27-2018)
***Statutory reference:***
*Estimated taxes, see R.C. § 718.08*

## § 96.08 CREDIT FOR TAX PAID.

## § 96.081 NO CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

Every individual taxpayer who resides in the municipality and who receives income, qualifying wages, net profits, salaries, wages, commissions or other compensation for work done, or services performed or rendered outside the municipality, if it be made to appear that he or she has paid a municipal income tax on the same income taxable under this chapter to another municipality, shall NOT be allowed a credit for the tax paid to the other municipality, against the tax imposed by this chapter, including the 0.5% portion of the municipal income tax to be used for police and fire expenses, which shall be paid by all residents.
(Ord. CM-15-32, passed 11-10-2015)

## § 96.082 REFUNDABLE CREDIT FOR QUALIFYING LOSS.

(A) As used in this section:

(1) ***NONQUALIFIED DEFERRED COMPENSATION PLAN*** means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

(2) (a) Except as provided in division (A)(2)(b) of this section, ***QUALIFYING LOSS*** means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with respect to the taxpayer's receipt of money and property attributable to distributions in connection with the nonqualified deferred compensation plan.

(b) If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan, then the "qualifying loss" is the product of the amount resulting from the calculation described in division (A)(2)(a) of this section computed without regard to division (A)(2)(b) of this section and a fraction the numerator of which is the portion of such compensation on which the taxpayer has paid income tax to one or more municipal corporations and the denominator of which is the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(c) With respect to a nonqualified deferred compensation plan, the taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

(3) ***QUALIFYING TAX RATE*** means the applicable tax rate for the taxable year for which the taxpayer paid income tax to a municipal corporation with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan. If different tax rates applied for different taxable years, then the ***QUALIFYING TAX RATE*** is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the municipal corporation each year with respect to the nonqualified deferred compensation plan.

(B) (1) Except as provided in division (D) of this section, a refundable credit shall be allowed against the income tax imposed by a municipal corporation for each qualifying loss sustained by a taxpayer during the taxable year. The amount of the credit shall be equal to the product of the qualifying loss and the qualifying tax rate.

(2) A taxpayer shall claim the credit allowed under this section from each municipal corporation to which the taxpayer paid municipal income tax with respect to the nonqualified deferred compensation plan in one or more taxable years.

(3) If a taxpayer has paid tax to more than one municipal corporation with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(4) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to a municipal corporation for all taxable years with respect to the nonqualified deferred compensation plan.

(C) (1) For purposes of this section, municipal corporation income tax that has been withheld with respect to a nonqualified deferred compensation plan shall be considered to have been paid by the taxpayer with respect to the nonqualified deferred compensation plan.

(2) Any municipal income tax that has been refunded or otherwise credited for the benefit of the taxpayer with respect to a nonqualified deferred compensation plan shall not be considered to have been paid to the municipal corporation by the taxpayer.

(D) The credit allowed under this section is allowed only to the extent the taxpayer's qualifying loss is attributable to:

(1) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

(2) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Qualifying loss; refundable credit, see R.C. § 718.021*

## § 96.083 CREDIT FOR PERSON WORKING IN JOINT ECONOMIC DEVELOPMENT DISTRICT OR ZONE.

A municipality shall grant a credit against its tax on income to a resident of the municipality who works in a joint economic development zone created under R.C. § 715.691 or a joint economic development district created under R.C. §§ 715.70, 715.71, or 715.72 to the same extent that it grants a credit against its tax on income to its residents who are employed in another municipal corporation, pursuant to § 96.081 of this chapter.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Worker in joint economic development zone or district,*
*see R.C. § 718.16*

## § 96.084 CREDIT FOR TAX BEYOND STATUTE FOR OBTAINING REFUND.

(A) Income tax that has been deposited or paid to the municipality, but should have been deposited or paid to another municipal corporation, is allowable by the municipality as a refund, but is subject to the three-year limitation on refunds as provided in § 96.096 of this chapter.

(B) Income tax that should have been deposited or paid to the municipality, but was deposited or paid to another municipal corporation, shall be subject to collection and recovery by the municipality. To the extent a refund of such tax or withholding is barred by the limitation on refunds as provided in § 96.096, the municipality will allow a non-refundable credit equal to the tax or withholding paid to the other municipality against the income tax the municipality claims is due. If the municipality's tax rate is higher, the tax representing the net difference of the tax rates is also subject to collection by the municipality, along with any penalty and interest accruing during the period of nonpayment.

(C) No carryforward of credit will be permitted when the overpayment is beyond the three-year limitation for refunding of same as provided in § 96.096 of this chapter.

(D) Nothing in this section requires a municipality to allow credit for tax paid to another municipal corporation if the municipality has reduced credit for tax paid to another municipal corporation. Section 96.081 of this chapter regarding any limitation on credit shall prevail.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Second municipality imposing tax after time period allowed for refund, see R.C. § 718.121*

## § 96.09 ANNUAL RETURN.

## § 96.091 RETURN AND PAYMENT OF TAX.

(A) (1) An annual return with respect to the income tax levied on municipal taxable income by the municipality shall be completed and filed by every taxpayer for any taxable year for which the taxpayer is subject to the tax, regardless of whether or not income tax is due.

(2) The Tax Administrator shall accept on behalf of all nonresident individual taxpayers a return filed by an employer, agent of an employer, or other payer located in the municipality under § 96.051(C) of this chapter when the nonresident individual taxpayer's sole income subject to the tax is the qualifying wages reported by the employer, agent of an employer, or other payer, and no additional tax is due to the municipality.

(3) All resident individual taxpayers, 16 years of age and older, shall file an annual municipal income tax return with the municipality, regardless of income or liability, with the exception of individuals who are permanently retired and who have no income subject to taxation by the municipality must file a return for the year following the year in which they become permanently retired. Subsequent filings will then not be required of those retirees receiving no income subject to taxation. However, such retirees may, when deemed necessary by the Tax Administrator, be required to verify their federal tax status.

(B) If an individual is deceased, any return or notice required of that individual shall be completed and filed by that decedent's executor, administrator, or other person charged with the property of that decedent.

(C) If an individual is unable to complete and file a return or notice required by the municipality in accordance with this chapter, the return or notice required of that individual shall be completed and filed by the individual's duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual. Such duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of the person or property of that individual shall provide, with the filing of the return, appropriate documentation to support that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the duly authorized agent, guardian, conservator, fiduciary, or other person.

(D) Returns or notices required of an estate or a trust shall be completed and filed by the fiduciary of the estate or trust. Such fiduciary shall provide, with the filing of the return, appropriate documentation to support

that they are authorized to file a return or notice on behalf of the taxpayer. This notice shall include any legally binding authorizations, and contact information including name, address, and phone number of the fiduciary.

(E) No municipal corporation shall deny spouses the ability to file a joint return.

(F) (1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's social security number or taxpayer identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) A taxpayer who is an individual is required to include, with each annual return, amended return, or request for refund required under this section, copies of only the following documents: all of the taxpayer's Internal Revenue Service form W-2, "wage and tax statements," including all information reported on the taxpayer's federal W-2, as well as taxable wages reported or withheld for any municipal corporation; the taxpayer's Internal Revenue Service form 1040; and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return. An individual taxpayer who files the annual return required by this section electronically is not required to provide paper copies of any of the foregoing to the Tax Administrator unless the Tax Administrator requests such copies after the return has been filed.

(3) A taxpayer that is not an individual is required to include, with each annual net profit return, amended net profit return, or request for refund required under this section, copies of only the following documents: the taxpayer's Internal Revenue Service form 1041, form 1065, form 1120, form 1120-REIT, form 1120F, or form 1120S, and, with respect to an amended tax return or refund request, any other documentation necessary to support the refund request or the adjustments made in the amended return.

(4) A taxpayer that is not an individual and that files an annual net profit return electronically through the Ohio business gateway or in some other manner shall either mail the documents required under this division to the Tax Administrator at the time of filing or, if electronic submission is available, submit the documents electronically through the Ohio business gateway or a portal provided by municipality. The Department of Taxation shall publish a method of electronically submitting the documents required under this division through the Ohio business gateway on or before January 1, 2016. The Department shall transmit all documents submitted electronically under this division to the appropriate Tax Administrator.

(5) After a taxpayer files a tax return, the Tax Administrator shall request, and the taxpayer shall provide, any information, statements, or documents required by the municipality to determine and verify the taxpayer's municipal income tax liability. The requirements imposed under division (F) of this section apply regardless of whether the taxpayer files on a generic form or on a form prescribed by the Tax Administrator.

(6) Any other documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses, or other pertinent factors on the return shall also be included to avoid delay in processing, or disallowance by the Tax Administrator of undocumented credits or losses.

(G) (1) (a) Except as otherwise provided in this chapter, each individual income tax return required to be filed under this section shall be completed and filed as required by the Tax Administrator on or before the date prescribed for the filing of state individual income tax returns under R.C. § 5747.08(G). The taxpayer shall

complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the municipality or Tax Administrator.

(b) Except as otherwise provided in this chapter, each annual net profit income tax return required to be filed under this section by a taxpayer that is not an individual shall be completed and filed as required by the Tax Administrator on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year or period. The taxpayer shall complete and file the return or notice on forms prescribed by the Tax Administrator or on generic forms, together with remittance made payable to the municipality or Tax Administrator.

(c) In the case of individual income tax return required to be filed by an individual, and net profit income tax return required to be filed by a taxpayer who is not an individual, no remittance is required if the amount shown to be due is $10 or less.

(2) If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the municipality in accordance with this chapter, the Tax Administrator may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(3) With respect to taxpayers to whom § 96.092 of this chapter applies, to the extent that any provision in this division conflicts with any provision in § 96.092 of this chapter, the provision in § 96.092 of this chapter prevails.

(H) (1) For taxable years beginning after 2015, the municipality shall not require a taxpayer to remit tax with respect to net profits if the amount due is $10 or less.

(2) Any taxpayer not required to remit tax to the municipality for a taxable year pursuant to division (H)(1) of this section shall file with the municipality an annual net profit return under division (F)(3) and (4) of this section.

(I) (1) If any report, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under this chapter is delivered after that period or that to the Tax Administrator or other municipal official with which the report, claim, statement, or other document is required to be filed, or to which the payment is required to be made, the date of the postmark stamped on the cover in which the report, claim, statement, or other document, or payment is mailed shall be deemed to be the date of delivery or the date of payment. ***THE DATE OF POSTMARK*** means, in the event there is more than one date on the cover, the earliest date imprinted on the cover by the postal service.

(2) If a payment under this chapter is made by electronic funds transfer, the payment shall be considered to be made on the date of the timestamp assigned by the first electronic system receiving that payment.

(J) The amounts withheld for the municipality by an employer, the agent of an employer, or other payer as described in § 96.051 of this chapter shall be allowed to the recipient of the compensation as credits against payment of the tax imposed on the recipient unless the amounts withheld were not remitted to the municipality and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.

(K) Each return required by the municipality to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Administrator about matters pertaining to the return. The return or instructions accompanying the return shall indicate that by checking the box the taxpayer authorizes the Tax Administrator to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the Tax Administrator with information that is missing from the return, to contact the Tax Administrator for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Tax Administrator and has shown to the preparer or other person. Authorization by the taxpayer of another person to communicate with the Tax Administrator about matters pertaining to the return does not preclude the Tax Administrator from contacting the taxpayer regarding such matters.

(L) The Tax Administrator of the municipality shall accept for filing a generic form of any income tax return, report, or document required by the municipality in accordance with this chapter, provided that the generic form, once completed and filed, contains all of the information required by ordinances, resolutions, or rules adopted by the municipality or Tax Administrator, and provided that the taxpayer or tax return preparer filing the generic form otherwise complies with the provisions of this chapter and of the municipality's ordinance or resolution governing the filing of returns, reports, or documents.

(M) When income tax returns, reports, or other documents require the signature of a tax return preparer, the Tax Administrator shall accept a facsimile of such a signature in lieu of a manual signature.

(N) (1) As used in this division, ***WORKSITE LOCATION*** has the same meaning as in § 96.052 of this chapter.

(2) A person may notify a Tax Administrator that the person does not expect to be a taxpayer with respect to the municipal corporation for a taxable year if both of the following conditions apply:

(a) The person was required to file a tax return with the municipal corporation for the immediately preceding taxable year because the person performed services at a worksite location within the municipal corporation, and the person has filed all appropriate and required returns and remitted all applicable income tax and withholding payments as provided by this chapter. The Tax Administrator is not required to accept an affidavit from a taxpayer who has not complied with the provisions of this chapter.

(b) The person no longer provides services in the municipal corporation, and does not expect to be subject to the municipal corporation's income tax for the taxable year.

1. The person shall provide the notice in a signed affidavit that briefly explains the person's circumstances, including the location of the previous worksite location and the last date on which the person performed services or made any sales within the municipal corporation.

2. The affidavit also shall include the following statement: "The affiant has no plans to perform any services within the municipal corporation, make any sales in the municipal corporation, or otherwise become subject to the tax levied by the municipal corporation during the taxable year. If the affiant does become subject to the tax levied by the municipal corporation for the taxable year, the affiant agrees to be considered a

taxpayer and to properly register as a taxpayer with the municipal corporation, if such a registration is required by the municipal corporation's resolutions, ordinances, or rules." The person shall sign the affidavit under penalty of perjury.

(c) If a person submits an affidavit described in division (N)(2) of this section, the Tax Administrator shall not require the person to file any tax return for the taxable year unless the Tax Administrator possesses information that conflicts with the affidavit or if the circumstances described in the affidavit change, or the taxpayer has engaged in activity which results in work being performed, services provided, sales made, or other activity that results in municipal taxable income reportable to the municipality in the taxable year. It shall be the responsibility of the taxpayer to comply with the provisions of this chapter relating to the reporting and filing of municipal taxable income on an annual municipal income tax return, even if an affidavit has been filed with the Tax Administrator for the taxable year. Nothing in division (N) of this section prohibits the Tax Administrator from performing an audit of the person.
(Ord. CM-15-32, passed 11-10-2015; Am. Ord. CM-16-29, passed 8-23-2016)
***Statutory reference:***
*Annual return; filing; extensions, see R.C. § 718.05*

## § 96.092 RETURN AND PAYMENT OF TAX; INDIVIDUALS SERVING IN COMBAT ZONE.

(A) Each member of the national guard of any state and each member of a reserve component of the armed forces of the United States called to active duty pursuant to an executive order issued by the President of the United States or an act of the Congress of the United States, and each civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces, may apply to the Tax Administrator of the municipality for both an extension of time for filing of the return and an extension of time for payment of taxes required by the municipality in accordance with this chapter during the period of the member's or civilian's duty service and for 180 days thereafter. The application shall be filed on or before the one hundred eightieth day after the member's or civilian's duty terminates. An applicant shall provide such evidence as the Tax Administrator considers necessary to demonstrate eligibility for the extension.

(B) (1) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the Tax Administrator shall enter into a contract with the applicant for the payment of the tax in installments that begin on the one hundred eighty-first day after the applicant's active duty or service terminates. Except as provided in division (B)(3) of this section, the Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.

(2) If the Tax Administrator ascertains that an applicant is qualified for an extension under this section, the applicant shall neither be required to file any return, report, or other tax document nor be required to pay any tax otherwise due to the municipality before the one hundred eighty-first day after the applicant's active duty or service terminates.

(3) Taxes paid pursuant to a contract entered into under division (B)(1) of this section are not delinquent. The Tax Administrator shall not require any payments of penalties or interest in connection with those taxes for the extension period.

(C) (1) Nothing in this division denies to any person described in this division the application of divisions (A) and (B) of this section.

(2) (a) A qualifying taxpayer who is eligible for an extension under the Internal Revenue Code shall receive both an extension of time in which to file any return, report, or other tax document and an extension of time in which to make any payment of taxes required by the municipality in accordance with this chapter. The length of any extension granted under division (C)(2)(a) of this section shall be equal to the length of the corresponding extension that the taxpayer receives under the Internal Revenue Code. As used in this section, ***QUALIFYING TAXPAYER*** means a member of the national guard or a member of a reserve component of the armed forces of the United States called to active duty pursuant to either an executive order issued by the President of the United States or an act of the Congress of the United States, or a civilian serving as support personnel in a combat zone or contingency operation in support of the armed forces.

(b) Taxes the payment of which is extended in accordance with division (C)(2)(a) of this section are not delinquent during the extension period. Such taxes become delinquent on the first day after the expiration of the extension period if the taxes are not paid prior to that date. The Tax Administrator shall not require any payment of penalties or interest in connection with those taxes for the extension period. The Tax Administrator shall not include any period of extension granted under division (C)(2)(a) of this section in calculating the penalty or interest due on any unpaid tax.

(D) For each taxable year to which division (A), (B), or (C) of this section applies to a taxpayer, the provisions of divisions (B)(2) and (3) or (C) of this section, as applicable, apply to the spouse of that taxpayer if the filing status of the spouse and the taxpayer is married filing jointly for that year.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Filing extension for certain armed forces service, see R.C. § 718.052*

## § 96.093 USE OF OHIO BUSINESS GATEWAY; TYPES OF FILINGS AUTHORIZED.

(A) Any taxpayer subject to municipal income taxation with respect to the taxpayer's net profit from a business or profession may file any municipal income tax return or, estimated municipal income tax return, or extension for filing a municipal income tax return, and may make payment of amounts shown to be due on such returns, by using the Ohio business gateway.

(B) Any employer, agent of an employer, or other payer may report the amount of municipal income tax withheld from qualifying wages, and may make remittance of such amounts, by using the Ohio business gateway.

(C) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.

(D) The use of the Ohio business gateway by municipal corporations, taxpayers, or other persons does not affect the legal rights of municipalities or taxpayers as otherwise permitted by law. The State of Ohio shall not be a party to the administration of municipal income taxes or to an appeal of a municipal income tax matter, except as otherwise specifically provided by law.

(E) Nothing in this section shall be construed as limiting or removing the authority of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Use of Ohio Business Gateway, see R.C. § 718.051*

## § 96.094 EXTENSION OF TIME TO FILE.

(A) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.

(B) Any taxpayer that qualifies for an automatic federal extension for a period other than six-months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.

(C) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the Tax Administrator on or before the date the municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

(D) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.

(E) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under R.C. § 5747.08(G), a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Annual return; filing; extensions, see R.C. § 718.05*

## § 96.095 AMENDED RETURNS.

(A) (1) A taxpayer shall file an amended return with the Tax Administrator in such form as the Tax Administrator requires if any of the facts, figures, computations, or attachments required in the taxpayer's annual return to determine the tax due levied by the municipality in accordance with this chapter must be altered.

(2) Within 60 days after the final determination of any federal or state tax liability affecting the taxpayer's municipal tax liability, that taxpayer shall make and file an amended municipal return showing income subject to the municipal income tax based upon such final determination of federal or state tax liability, and pay any additional municipal income tax shown due thereon or make a claim for refund of any overpayment, unless the tax or overpayment is $10 or less.

(3) If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Tax Administrator before filing the amended return.

(B) (1) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. If the combined tax shown to be due is $10 or less, such amount need not accompany the amended return. Except as provided under division (B)(2) of this section, the amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless the applicable statute of limitations for civil actions or prosecutions under § 96.19 of this chapter has not expired for a previously filed return.

(2) The additional tax to be paid shall not exceed the amount of tax that would be due if all facts, figures, computations, and attachments were reopened.

(C) (1) In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by § 96.19(E) of this chapter for filing the amended return even if it is filed beyond the period prescribed in that division if it otherwise conforms to the requirements of that division. If the amount of the refund is $10 or less, no refund need be paid by the municipality to the taxpayer. Except as set forth in division (C)(2) of this section, a request filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return unless it is also filed within the time prescribed in § 96.096 of this chapter. Except as set forth in division (C)(2) of this section, the request shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal or state income tax return.

(2) The amount to be refunded shall not exceed the amount of refund that would be due if all facts, figures, computations, and attachments were reopened.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Amended returns, see R.C. § 718.41*
*Limitations, see R.C. § 718.12*

**§ 96.096 REFUNDS.**

(A) Upon receipt of a request for a refund, the Tax Administrator of the municipality, in accordance with this section, shall refund to employers, agents of employers, other payers, or taxpayers, with respect to any income or withholding tax levied by the municipality:

(1) Overpayments of more than $10;

(2) Amounts paid erroneously if the refund requested exceeds $10.

(B) (1) Except as otherwise provided in this chapter, returns setting forth a request for refund shall be filed with the Tax Administrator, within three years after the tax was due or paid, whichever is later. Any documentation that substantiates the taxpayer's claim for a refund must be included with the return filing. Failure to remit all documentation, including schedules, other municipal income tax returns, or other supporting documentation necessary to verify credits, income, losses or other pertinent factors on the return will cause delay in processing, and /or disallowance of undocumented credits or losses.

(2) On filing of the refund request, the Tax Administrator shall determine the amount of refund due and certify such amount to the appropriate municipal corporation official for payment. Except as provided in division (B)(3) of this section, the Administrator shall issue an assessment to any taxpayer whose request for refund is fully or partially denied. The assessment shall state the amount of the refund that was denied, the reasons for the denial, and instructions for appealing the assessment.

(3) If a Tax Administrator denies in whole or in part a refund request included within the taxpayer's originally filed annual income tax return, the Tax Administrator shall notify the taxpayer, in writing, of the amount of the refund that was denied, the reasons for the denial, and instructions for requesting an assessment that may be appealed under § 96.18 of this chapter.

(C) A request for a refund that is received after the last day for filing specified in division (B) of this section shall be considered to have been filed in a timely manner if any of the following situations exist:

(1) The request is delivered by the postal service, and the earliest postal service postmark on the cover in which the request is enclosed is not later than the last day for filing the request.

(2) The request is delivered by the postal service, the only postmark on the cover in which the request is enclosed was affixed by a private postal meter, the date of that postmark is not later than the last day for filing the request, and the request is received within seven days of such last day.

(3) The request is delivered by the postal service, no postmark date was affixed to the cover in which the request is enclosed or the date of the postmark so affixed is not legible, and the request is received within seven days of the last day for making the request.

(D) Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within 90 days after the final filing date of the annual return or 90 days after the completed return is filed, whichever is later, no interest shall be allowed on the refund. For the purpose of computing the payment of interest on amounts overpaid, no amount of tax for any taxable year shall be considered to have been paid before the date on which the return on which the tax is reported is due, without regard to any extension of time for filing that return. Interest shall be paid at the interest rate described in § 96.10(A)(4) of this chapter.

(E) As used in this section, ***WITHHOLDING TAX*** has the same meaning as in § 96.10 of this chapter. (Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Requests for refunds, see R.C. § 718.19*

## § 96.10 PENALTY, INTEREST, FEES, AND CHARGES.

(A) As used in this section:

(1) ***APPLICABLE LAW*** means this chapter, the resolutions, ordinances, codes, directives, instructions, and rules adopted by the municipality provided such resolutions, ordinances, codes, directives,

instructions, and rules impose or directly or indirectly address the levy, payment, remittance, or filing requirements of a municipal income tax.

(2) ***FEDERAL SHORT-TERM RATE*** means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year.

(3) ***INCOME TAX, ESTIMATED INCOME TAX***, and ***WITHHOLDING TAX*** mean any income tax, estimated income tax, and withholding tax imposed by a municipal corporation pursuant to applicable law, including at any time before January 1, 2016.

(4) ***INTEREST RATE AS DESCRIBED IN DIVISION (A) OF THIS SECTION*** means the federal short-term rate, rounded to the nearest whole number per cent, plus 5%. The rate shall apply for the calendar year next following the July of the year in which the federal short-term rate is determined in accordance with division (A)(2) of this section.

(5) ***RETURN*** includes any tax return, report, reconciliation, schedule, and other document required to be filed with a Tax Administrator or municipal corporation by a taxpayer, employer, any agent of the employer, or any other payer pursuant to applicable law, including at any time before January 1, 2016.

(6) ***UNPAID ESTIMATED INCOME TAX*** means estimated income tax due but not paid by the date the tax is required to be paid under applicable law.

(7) ***UNPAID INCOME TAX*** means income tax due but not paid by the date the income tax is required to be paid under applicable law.

(8) ***UNPAID WITHHOLDING TAX*** means withholding tax due but not paid by the date the withholding tax is required to be paid under applicable law.

(9) ***WITHHOLDING TAX*** includes amounts an employer, any agent of an employer, or any other payer did not withhold in whole or in part from an employee's qualifying wages, but that, under applicable law, the employer, agent, or other payer is required to withhold from an employee's qualifying wages.

(B) (1) This section shall apply to the following:

(a) Any return required to be filed under applicable law for taxable years beginning on or after January 1, 2016;

(b) Income tax, estimated income tax, and withholding tax required to be paid or remitted to the municipality on or after January 1, 2016 for taxable years beginning on or after January 1, 2016.

(2) This section does not apply to returns required to be filed or payments required to be made before January 1, 2016, regardless of the filing or payment date. Returns required to be filed or payments required to be made before January 1, 2016, but filed or paid after that date shall be subject to the ordinances or rules, as adopted from time to time before January 1, 2016 of this municipality.

(C) The municipality shall impose on a taxpayer, employer, any agent of the employer, and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the municipality any return required to be filed.

(1) Interest shall be imposed at the rate defined as "interest rate as described in division (A) of this section", per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.

(2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to 15% of the amount not timely paid shall be imposed.

(3) With respect to any unpaid withholding tax, a penalty not to exceed 50% of the amount not timely paid shall be imposed.

(4) With respect to returns other than estimated income tax returns, the municipality shall impose a monthly penalty of $25 for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of $150 in assessed penalty for each failure to timely file a return.

(D) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the municipality shall not impose, seek to collect, or collect any penalty, amount of interest, charges or additional fees not described in this section.

(E) With respect to income taxes, estimated income taxes, withholding taxes, and returns, the municipality shall not refund or credit any penalty, amount of interest, charges, or additional fees that were properly imposed or collected before January 1, 2016.

(F) The Tax Administrator may, in the Tax Administrator's sole discretion, abate or partially abate penalties or interest imposed under this section when the Tax Administrator deems such abatement or partial abatement to be appropriate. Such abatement or partial abatement shall be properly documented and maintained on the record of the taxpayer who received benefit of such abatement or partial abatement.

(G) The municipality shall impose on the taxpayer, employer, any agent of the employer, or any other payer the municipality's post-judgment collection costs and fees, including attorney's fees.
(Ord. CM-15-32, passed 11-10-2015; Am. Ord. CM-18-08, passed 2-27-2018)
***Statutory reference:***
*Interest and penalties, see R.C. § 718.27*

**§ 96.11 AUDIT.**

(A) At or before the commencement of an audit, as defined in § 96.03(C)(3) of this chapter, the Tax Administrator shall provide to the taxpayer a written description of the roles of the Tax Administrator and of the taxpayer during an audit and a statement of the taxpayer's rights, including any right to obtain a refund of an

overpayment of tax. At or before the commencement of an audit, the Tax Administrator shall inform the taxpayer when the audit is considered to have commenced.

(B) Except in cases involving suspected criminal activity, the Tax Administrator shall conduct an audit of a taxpayer during regular business hours and after providing reasonable notice to the taxpayer. A taxpayer who is unable to comply with a proposed time for an audit on the grounds that the proposed time would cause inconvenience or hardship must offer reasonable alternative dates for the audit.

(C) At all stages of an audit by the Tax Administrator, a taxpayer is entitled to be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner. The Tax Administrator shall prescribe a form by which a taxpayer may designate such a person to assist or represent the taxpayer in the conduct of any proceedings resulting from actions by the Tax Administrator. If a taxpayer has not submitted such a form, the Tax Administrator may accept other evidence, as the Tax Administrator considers appropriate, that a person is the authorized representative of a taxpayer. A taxpayer may refuse to answer any questions asked by the person conducting an audit until the taxpayer has an opportunity to consult with the taxpayer's attorney, accountant, bookkeeper, or other tax practitioner. This division does not authorize the practice of law by a person who is not an attorney.

(D) A taxpayer may record, electronically or otherwise, the audit examination.

(E) The failure of the Tax Administrator to comply with a provision of this section shall neither excuse a taxpayer from payment of any taxes owed by the taxpayer nor cure any procedural defect in a taxpayer's case.

(F) If the Tax Administrator fails to substantially comply with the provisions of this section, the Tax Administrator, upon application by the taxpayer, shall excuse the taxpayer from penalties and interest arising from the audit.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Audits, see R.C. § 718.36*

## § 96.12 ROUNDING.

A person may round to the nearest whole dollar all amounts the person is required to enter on any return, report, voucher, or other document required under this chapter. Any fractional part of a dollar that equals or exceeds $0.50 shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than $0.50 shall be dropped, rounding down to the nearest whole dollar. If a person chooses to round amounts entered on a document, the person shall round all amounts entered on the document.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Rounding of amounts, see R.C. § 718.25*

## § 96.13 AUTHORITY AND POWERS OF THE TAX ADMINISTRATOR.

## § 96.131 AUTHORITY OF TAX ADMINISTRATOR; ADMINISTRATIVE POWERS OF THE TAX ADMINISTRATOR.

The Tax Administrator has the authority to perform all duties and functions necessary and appropriate to implement the provisions of this chapter, including without limitation:

(A) Exercise all powers whatsoever of an inquisitorial nature as provided by law, including, the right to inspect books, accounts, records, memorandums, and federal and state income tax returns, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths; provided that the powers referred to in this division of this section shall be exercised by the Tax Administrator only in connection with the performance of the duties respectively assigned to the Tax Administrator under a municipal corporation income tax ordinance or resolution adopted in accordance with this chapter;

(B) Appoint agents and prescribe their powers and duties;

(C) Confer and meet with officers of other municipal corporations and states and officers of the United States on any matters pertaining to their respective official duties as provided by law;

(D) Exercise the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes, including penalties and interest thereon, illegally or erroneously imposed or collected, or for any other reason overpaid, and, in addition, the Tax Administrator may investigate any claim of overpayment and make a written statement of the Tax Administrator's findings, and, if the Tax Administrator finds that there has been an overpayment, approve and issue a refund payable to the taxpayer, the taxpayer's assigns, or legal representative as provided in this chapter;

(E) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(F) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with § 96.062 of this chapter;

(G) Make all tax findings, determinations, computations, assessments and orders the Tax Administrator is by law authorized and required to make and, pursuant to time limitations provided by law, on the Tax Administrator's own motion, review, redetermine, or correct any tax findings, determinations, computations, assessments or orders the Tax Administrator has made, but the Tax Administrator shall not review, redetermine, or correct any tax finding, determination, computation, assessment or order which the Tax Administrator has made for which an appeal has been filed with the Local Board of Tax Review or other appropriate tribunal, unless such appeal or application is withdrawn by the appellant or applicant, is dismissed, or is otherwise final;

(H) Destroy any or all returns or other tax documents in the manner authorized by law;

(I) Enter into an agreement with a taxpayer to simplify the withholding obligations described in § 96.051 of this chapter.

(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Authority of Tax Administrator, see R.C. § 718.24*

## § 96.132 AUTHORITY OF TAX ADMINISTRATOR; COMPROMISE OF CLAIM AND PAYMENT OVER TIME.

(A) As used in this section, ***CLAIM*** means a claim for an amount payable to the municipality that arises pursuant to the municipal income tax imposed in accordance with this chapter.

(B) The Tax Administrator may do either of the following if such action is in the best interests of the municipality:

(1) Compromise a claim;

(2) Extend for a reasonable period the time for payment of a claim by agreeing to accept monthly or other periodic payments, upon such terms and conditions as the Tax Administrator may require.

(C) The Tax Administrator's rejection of a compromise or payment-over-time agreement proposed by a person with respect to a claim shall not be appealable.

(D) A compromise or payment-over-time agreement with respect to a claim shall be binding upon and shall inure to the benefit of only the parties to the compromise or agreement, and shall not extinguish or otherwise affect the liability of any other person.

(E) (1) A compromise or payment-over-time agreement with respect to a claim shall be void if the taxpayer defaults under the compromise or agreement or if the compromise or agreement was obtained by fraud or by misrepresentation of a material fact. Any amount that was due before the compromise or agreement and that is unpaid shall remain due, and any penalties or interest that would have accrued in the absence of the compromise or agreement shall continue to accrue and be due.

(2) The Tax Administrator shall have sole discretion to determine whether or not penalty, interest, charges or applicable fees will be assessed through the duration of any compromise or payment-over-time agreement.

(F) The Tax Administrator may require that the taxpayer provide detailed financial documentation and information, in order to determine whether or not a payment-over-time agreement will be authorized. The taxpayer's failure to provide the necessary and required information by the Tax Administrator shall preclude consideration of a payment-over-time agreement.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Administration of claims, see R.C. § 718.28*

## § 96.133 AUTHORITY OF TAX ADMINISTRATOR; RIGHT TO EXAMINE.

(A) The Tax Administrator, or any authorized agent or employee thereof may examine the books, papers, records, and federal and state income tax returns of any employer, taxpayer, or other person that is subject to, or that the Tax Administrator believes is subject to, the provisions of this chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due under this chapter. Upon written

request by the Tax Administrator or a duly authorized agent or employee thereof, every employer, taxpayer, or other person subject to this section is required to furnish the opportunity for the Tax Administrator, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer, employer, or other person that is subject to, or that a Tax Administrator believes is subject to, the provisions of this chapter shall be open to the Tax Administrator's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Tax Administrator, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Tax Administrator of a municipal corporation may require any person, by notice served on that person, to keep such records as the Tax Administrator determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by the municipality or for the withholding of such tax.

(C) The Tax Administrator may examine under oath any person that the Tax Administrator reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Tax Administrator may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal and state income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(D) No person issued written notice by the Tax Administrator compelling attendance at a hearing or examination or the production of books, papers, records, or federal and state income tax returns under this section shall fail to comply.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Accuracy of returns; verification, see R.C. § 718.23*

## § 96.134 AUTHORITY OF TAX ADMINISTRATOR; REQUIRING IDENTIFYING INFORMATION.

(A) The Tax Administrator may require any person filing a tax document with the Tax Administrator to provide identifying information, which may include the person's social security number, federal employer identification number, or other identification number requested by the Tax Administrator. A person required by the Tax Administrator to provide identifying information that has experienced any change with respect to that information shall notify the Tax Administrator of the change before, or upon, filing the next tax document requiring the identifying information.

(B) (1) If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within 30 days of making the request, nothing in this chapter prohibits the Tax Administrator from imposing a penalty upon the person to whom the request was directed pursuant to § 96.10 of this chapter, in addition to any applicable penalty described in § 96.99 of this chapter.

(2) If a person required by the Tax Administrator to provide identifying information does not notify the Tax Administrator of a change with respect to that information as required under division (A) of this section

within 30 days after filing the next tax document requiring such identifying information, nothing in this chapter prohibits the Tax Administrator from imposing a penalty pursuant to § 96.10 of this chapter.

(3) The penalties provided for under divisions (B)(1) and (2) of this section may be billed and imposed in the same manner as the tax or fee with respect to which the identifying information is sought and are in addition to any applicable criminal penalties described in § 96.99 of this chapter for a violation of § 96.15 of this chapter, and any other penalties that may be imposed by the Tax Administrator by law.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Identification information, see R.C. § 718.26*

## § 96.14 CONFIDENTIALITY.

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by R.C. Chapter 718 or by the charter or ordinance of the municipality is confidential, and no person shall access or disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the municipality as authorized by R.C. Chapter 718 or the charter or ordinance authorizing the levy. The Tax Administrator of the municipality or a designee thereof may furnish copies of returns filed or otherwise received under this chapter and other related tax information to the Internal Revenue Service, the State Tax Commissioner, and Tax Administrators of other municipal corporations.

(B) This section does not prohibit the municipality from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Tax information confidential, see R.C. § 718.13*

## § 96.15 FRAUD.

No person shall knowingly make, present, aid, or assist in the preparation or presentation of a false or fraudulent report, return, schedule, statement, claim, or document authorized or required by municipal corporation ordinance or state law to be filed with the Tax Administrator, or knowingly procure, counsel, or advise the preparation or presentation of such report, return, schedule, statement, claim, or document, or knowingly change, alter, or amend, or knowingly procure, counsel or advise such change, alteration, or amendment of the records upon which such report, return, schedule, statement, claim, or document is based with intent to defraud the municipality or the Tax Administrator.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Fraud, see R.C. § 718.35*

## § 96.16 OPINION OF THE TAX ADMINISTRATOR.

(A) An ***OPINION OF THE TAX ADMINISTRATOR*** means an opinion issued under this section with respect to prospective municipal income tax liability. It does not include ordinary correspondence of the Tax Administrator.

(B) A taxpayer may submit a written request for an opinion of the Tax Administrator as to whether or how certain income, source of income, or a certain activity or transaction will be taxed. The written response of the Tax Administrator shall be an opinion of the Tax Administrator and shall bind the Tax Administrator, in accordance with divisions (C), (G), and (H) of this section, provided all of the following conditions are satisfied:

(1) The taxpayer's request fully and accurately describes the specific facts or circumstances relevant to a determination of the taxability of the income, source of income, activity, or transaction, and, if an activity or transaction, all parties involved in the activity or transaction are clearly identified by name, location, or other pertinent facts.

(2) The request relates to a tax imposed by the municipality in accordance with this chapter.

(3) The Tax Administrator's response is signed by the Tax Administrator and designated as an opinion of the Tax Administrator.

(C) An opinion of the Tax Administrator shall remain in effect and shall protect the taxpayer for whom the opinion was prepared and who reasonably relies on it from liability for any taxes, penalty, or interest otherwise chargeable on the activity or transaction specifically held by the Tax Administrator's opinion to be taxable in a particular manner or not to be subject to taxation for any taxable years that may be specified in the opinion, or until the earliest of the following dates:

(1) The effective date of a written revocation by the Tax Administrator sent to the taxpayer by certified mail, return receipt requested. The effective date of the revocation shall be the taxpayer's date of receipt or one year after the issuance of the opinion, whichever is later;

(2) The effective date of any amendment or enactment of a relevant section of the Ohio Revised Code, uncodified state law, or the municipality's income tax ordinance that would substantially change the analysis and conclusion of the opinion of the Tax Administrator;

(3) The date on which a court issues an opinion establishing or changing relevant case law with respect to the Ohio Revised Code, uncodified state law, or the municipality's income tax ordinance;

(4) If the opinion of the Tax Administrator was based on the interpretation of federal law, the effective date of any change in the relevant federal statutes or regulations, or the date on which a court issues an opinion establishing or changing relevant case law with respect to federal statutes or regulations;

(5) The effective date of any change in the taxpayer's material facts or circumstances;

(6) The effective date of the expiration of the opinion, if specified in the opinion.

(D) (1) A taxpayer is not relieved of tax liability for any activity or transaction related to a request for an opinion that contained any misrepresentation or omission of one or more material facts.

(2) If the taxpayer knowingly has misrepresented the pertinent facts or omitted material facts with intent to defraud the municipality in order to obtain a more favorable opinion, the taxpayer may be in violation of § 96.15 of this chapter.

(E) If a Tax Administrator provides written advice under this section, the opinion shall include a statement that:

(1) The tax consequences stated in the opinion may be subject to change for any of the reasons stated in division (C) of this section;

(2) It is the duty of the taxpayer to be aware of such changes.

(F) A Tax Administrator may refuse to offer an opinion on any request received under this section.

(G) This section binds a Tax Administrator only with respect to opinions of the Tax Administrator issued on or after January 1, 2016.

(H) An opinion of a Tax Administrator binds that Tax Administrator only with respect to the taxpayer for whom the opinion was prepared and does not bind the Tax Administrator of any other municipal corporation.

(I) A Tax Administrator shall make available the text of all opinions issued under this section, except those opinions prepared for a taxpayer who has requested that the text of the opinion remain confidential. In no event shall the text of an opinion be made available until the Tax Administrator has removed all information that identifies the taxpayer and any other parties involved in the activity or transaction.

(J) An opinion of the Tax Administrator issued under this section or a refusal to offer an opinion under division (F) of this section may not be appealed.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Opinion of Tax Commissioner; request, see R.C. § 718.38*

## § 96.17 ASSESSMENT; APPEAL BASED ON PRESUMPTION OF DELIVERY.

(A) (1) The Tax Administrator shall serve an assessment either by personal service, by certified mail, or by a delivery service authorized under R.C. § 5703.056.

(2) The Tax Administrator may deliver the assessment through alternative means as provided in this section, including, but not limited to, delivery by secure electronic mail. Such alternative delivery method must be authorized by the person subject to the assessment.

(3) Once service of the assessment has been made by the Tax Administrator or other municipal official, or the designee of either, the person to whom the assessment is directed may protest the ruling of that assessment

by filing an appeal with the Local Board of Tax Review within 60 days after the receipt of service. The delivery of an assessment of the Tax Administrator as prescribed in R.C. § 718.18 is prima facie evidence that delivery is complete and that the assessment is served.

(B) (1) A person may challenge the presumption of delivery and service as set forth in this division. A person disputing the presumption of delivery and service under this section bears the burden of proving by a preponderance of the evidence that the address to which the assessment was sent was not an address with which the person was associated at the time the Tax Administrator originally mailed the assessment by certified mail. For the purposes of this section, a person is associated with an address at the time the Tax Administrator originally mailed the assessment if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the assessment was mailed, the person's agent or the person's affiliate was conducting business at the address. For the purposes of this section, a person's affiliate is any other person that, at the time the assessment was mailed, owned or controlled at least 20%, as determined by voting rights, of the addressee's business.

(2) If a person elects to appeal an assessment on the basis described in division (B)(1) of this section, and if that assessment is subject to collection and is not otherwise appealable, the person must do so within 60 days after the initial contact by the Tax Administrator or other municipal official, or the designee of either, with the person. Nothing in this division prevents the Tax Administrator or other official from entering into a compromise with the person if the person does not actually file such an appeal with the Local Board of Tax Review.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Service of assessment; presumption, see R.C. § 718.18*

## § 96.18 LOCAL BOARD OF TAX REVIEW; APPEAL TO LOCAL BOARD OF TAX REVIEW.

(A) (1) The legislative authority of the municipality shall maintain a Local Board of Tax Review to hear appeals as provided in R.C. Chapter 718.

(2) The Local Board of Tax Review shall consist of three members. The three members of the Local Board of Tax Review may be domiciled in the municipality, but the appointing authority may consider membership from individuals who are not domiciled within the municipality. Two members shall be appointed by the legislative authority of the municipality, and may not be employees, elected officials, or contractors with the municipality at any time during their term or in the five years immediately preceding the date of appointment. One member shall be appointed by the top administrative official of the municipality. This member may be an employee of the municipality, but may not be the Director of Finance or equivalent officer, or the Tax Administrator or other similar official or an employee directly involved in municipal tax matters, or any direct subordinate thereof.

(3) The term for members of the Local Board of Tax Review appointed by the legislative authority of the municipality shall be two years. There is no limit on the number of terms that a member may serve should the member be reappointed by the legislative authority. The Board member appointed by the top administrative official of the municipality shall serve at the discretion of the administrative official.

(4) Members of the Board of Tax Review appointed by the legislative authority may be removed by the legislative authority as set forth in R.C. § 718.11(A)(4).

(5) A member of the Board who, for any reason, ceases to meet the qualifications for the position prescribed by this section shall resign immediately by operation of law.

(6) A vacancy in an unexpired term shall be filled in the same manner as the original appointment within 60 days of when the vacancy was created. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. No vacancy on the Board shall impair the power and authority of the remaining members to exercise all the powers of the Board.

(7) If a member is temporarily unable to serve on the Board due to a conflict of interest, illness, absence, or similar reason, the legislative authority or top administrative official that appointed the member shall appoint another individual to temporarily serve on the Board in the member's place. This appointment shall be subject to the same requirements and limitations as are applicable to the appointment of the member temporarily unable to serve.

(8) No member of the Local Board of Tax Review shall receive compensation, fee, or reimbursement of expenses for service on the Board.

(B) Whenever a Tax Administrator issues an assessment, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the assessment, the manner in which the taxpayer may appeal the assessment, and the address to which the appeal should be directed, and to whom the appeal should be directed.

(C) Any person who has been issued an assessment may appeal the assessment to the Board by filing a request with the Board. The request shall be in writing, shall specify the reason or reasons why the assessment should be deemed incorrect or unlawful, and shall be filed within 60 days after the taxpayer receives the assessment.

(D) The Local Board of Tax Review shall schedule a hearing to be held within 60 days after receiving an appeal of an assessment under division (C) of this section, unless the taxpayer requests additional time to prepare or waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and/or may be represented by an attorney at law, certified public accountant, or other representative. The Board may allow a hearing to be continued as jointly agreed to by the parties. In such a case, the hearing must be completed within 120 days after the first day of the hearing unless the parties agree otherwise.

(E) The Board may affirm, reverse, or modify the Tax Administrator's assessment or any part of that assessment. The Board shall issue a final determination on the appeal within 90 days after the Board's final hearing on the appeal, and send a copy of its final determination by ordinary mail to all of the parties to the appeal within 15 days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the Board's final determination as provided in R.C. § 5717.011.

(F) The Local Board of Tax Review created pursuant to this section shall adopt rules governing its procedures, including a schedule of related costs, and shall keep a record of its transactions. The rules governing

the Local Board of Tax Review procedures shall be in writing, and may be amended as needed by the Local Board of Tax Review. Such records are not public records available for inspection under R.C. § 149.43. For this reason, any documentation, copies of returns or reports, final determinations, or working papers for each case must be maintained in a secure location under the control of the Tax Administrator. No member of the Local Board of Tax Review may remove such documentation, copies of returns or reports, final determinations, or working papers from the hearing. Hearings requested by a taxpayer before a Local Board of Tax Review created pursuant to this section are not meetings of a public body subject to R.C. § 121.22. For this reason, such hearings shall not be open to the public, and only those parties to the case may be present during the hearing. (Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Local Board of Tax Review, see R.C. § 718.11*

## § 96.19 ACTIONS TO RECOVER; STATUTE OF LIMITATIONS.

(A) (1) (a) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within the latter of:

1. Three years after the tax was due or the return was filed, whichever is later; or

2. One year after the conclusion of the qualifying deferral period, if any.

(b) The time limit described in division (A)(1)(a) of this section may be extended at any time if both the Tax Administrator and the employer, agent of the employer, other payer, or taxpayer consent in writing to the extension. Any extension shall also extend for the same period of time the time limit described in division (C) of this section.

(2) As used in this section, ***QUALIFYING DEFERRAL PERIOD*** means a period of time beginning and ending as follows:

(a) Beginning on the date a person who is aggrieved by an assessment files with a Local Board of Tax Review the request described in § 96.18 of this chapter. That date shall not be affected by any subsequent decision, finding, or holding by any administrative body or court that the Local Board of Tax Review with which the aggrieved person filed the request did not have jurisdiction to affirm, reverse, or modify the assessment or any part of that assessment.

(b) Ending the later of the sixtieth day after the date on which the final determination of the Local Board of Tax Review becomes final or, if any party appeals from the determination of the Local Board of Tax Review, the sixtieth day after the date on which the final determination of the Local Board of Tax Review is either ultimately affirmed in whole or in part or ultimately reversed and no further appeal of either that affirmation, in whole or in part, or that reversal is available or taken.

(B) Prosecutions for an offense made punishable under a resolution or ordinance imposing an income tax shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of 25% or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense.

(C) A claim for a refund of municipal income taxes shall be brought within the time limitation provided in § 96.096 of this chapter.

(D) (1) Notwithstanding the fact that an appeal is pending, the petitioner may pay all or a portion of the assessment that is the subject of the appeal. The acceptance of a payment by the municipality does not prejudice any claim for refund upon final determination of the appeal.

(2) If upon final determination of the appeal an error in the assessment is corrected by the Tax Administrator, upon an appeal so filed or pursuant to a final determination of the Local Board of Tax Review created under § 96.18 of this chapter, of the Ohio Board of Tax Appeals, or any court to which the decision of the Ohio Board of Tax Appeals has been appealed, so that the amount due from the party assessed under the corrected assessment is less than the amount paid, there shall be issued to the appellant or to the appellant's assigns or legal representative a refund in the amount of the overpayment as provided by § 96.096 of this chapter, with interest on that amount as provided by division (D) of this section.

(E) No civil action to recover municipal income tax or related penalties or interest shall be brought during either of the following time periods:

(1) The period during which a taxpayer has a right to appeal the imposition of that tax or interest or those penalties;

(2) The period during which an appeal related to the imposition of that tax or interest or those penalties is pending.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Statute of limitations, see R.C. § 718.12*

## § 96.20 ADOPTION OF RULES.

(A) Pursuant to R.C. § 718.30, the municipality, pursuant to this chapter, grants authority to the Tax Administrator to adopt rules to administer the income tax imposed by the municipality.

(B) All rules adopted under this section shall be published and posted on the internet.
(Ord. CM-15-32, passed 11-10-2015)
***Statutory reference:***
*Adoption of rules, see R.C. § 718.30*

## § 96.21 LANDLORD REPORTING.

The owners of rental property located in the municipality shall, on or before October 31 of each year, submit a current listing of all renters to the Tax Administrator. The list shall contain the name, address and date of occupancy of each tenant. Any change in occupancy that occurs during the year must be reported to the Tax Administrator immediately. A form or forms needed in making such reports will be furnished by the Tax

Administrator and are available upon requested. However, substitute forms are acceptable if such forms contain the applicable information of name, address and date of occupancy of all tenants.
(Ord. CM-15-32, passed 11-10-2015)

## § 96.66 FILING NET PROFIT TAXES.

## § 96.661 ELECTION TO BE SUBJECT TO PROVISIONS OF CHAPTER.

(A) A taxpayer may elect to be subject to §§ 96.66 through 96.6616 of this chapter in lieu of the provisions set forth in the remainder of this chapter. Notwithstanding any other provision of this chapter, upon the taxpayer's election, both of the following shall apply:

(1) The State Tax Commissioner shall serve as the sole administrator of the municipal net profit tax for which the taxpayer as defined in § 96.662(C) of this chapter is liable for the term of the election;

(2) The Commissioner shall administer the tax pursuant to R.C. §§ 718.80 to 718.95, §§ 96.66 through 96.6616 of this chapter, and any applicable provision of R.C. Chapter 5703.

(B) (1) A taxpayer shall make the initial election on or before the first day of the third month after the beginning of the taxpayer's taxable year by notifying the Tax Commissioner and the village, on a form prescribed by the Tax Commissioner.

(2) (a) The election, once made by the taxpayer, applies to the taxable year in which the election is made and to each subsequent taxable year until the taxpayer notifies the Tax Commissioner and the village of its termination of the election.

(b) A notification of termination shall be made, on a form prescribed by the Tax Commissioner, on or before the first day of the third month of any taxable year.

(c) Upon a timely and valid termination of the election, the taxpayer is no longer subject to section §§ 96.66 through 96.6616 of this chapter, and is instead subject to the provisions set forth in the remainder of this chapter.

(C) The Tax Commissioner shall enforce and administer §§ 96.66 through 96.6616 of this chapter. In addition to any other powers conferred upon the Tax Commissioner by law, the Tax Commissioner may:

(1) Prescribe all forms necessary to administer those sections;

(2) Adopt such rules as the Tax Commissioner finds necessary to carry out those sections;

(3) Appoint and employ such personnel as are necessary to carry out the duties imposed upon the Tax Commissioner by those sections.

(D) The Tax Commissioner shall not be considered a Tax Administrator, as that term is defined in R.C. § 718.01 and § 96.03 of this chapter.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.662 DEFINITIONS.

If a term used in §§ 96.66 through 96.6616 of this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in R.C. Title LVII and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall have control over the use of the term in R.C. Title LVII, unless the term is defined in R.C. Chapter 5703, in which case the definition in that chapter shall control. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States related to federal income taxes. If a term is defined in both this section and § 96.03 of this chapter, the definition in this section shall control for all uses of that term in §§ 96.66 through 96.6616 of this chapter. As used in §§ 96.66 through 96.6616 of this chapter only:

(A) ***MUNICIPAL TAXABLE INCOME*** means income apportioned or situsedto the municipal corporation under § 96.663 of this chapter, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.

(B) ***ADJUSTED FEDERAL TAXABLE INCOME,*** for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation as described in R.C. § 718.01(D)(5) and § 96.03(C)(23)(d) of this chapter, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(2) Add an amount equal to 5% of intangible income deducted under division (B)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code.

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

(4) (a) Except as provided in division (B)(4)(b) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code.

(b) Division (B)(4)(a) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

(6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income.

(7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under R.C. § 4313.02.

(8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

(9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division § 96.667(E)(3)(b) of this chapter.

(10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with § 96.667(E)(3)(b) of this chapter.

(11) If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in § 96.03(C)(47)(b) of this chapter, and is not a publicly traded partnership that has made the election described in § 96.03(C)(23)(d), the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

(12) Nothing in division (B) of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(C) ***TAXPAYER*** has the same meaning as in § 96.03 of this chapter, except that ***TAXPAYER*** does not include natural persons or entities subject to the tax imposed under R.C. Chapter 5745. ***TAXPAYER*** may include receivers, assignees, or trustees in bankruptcy when such persons are required to assume the role of a taxpayer.

(D) ***TAX RETURN*** or ***RETURN*** means the notifications and reports required to be filed pursuant to §§ 96.66 through 96.6616 of this chapter for the purpose of reporting municipal income taxes, and includes declarations of estimated tax.

(E) ***TAXABLE YEAR*** means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the calculation of the taxpayer's adjusted federal taxable income is based pursuant to this chapter. If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of §§ 96.66 through 96.6616 of this chapter is changed accordingly but may consist of an aggregation of more than one taxable year for federal income tax purposes. The Tax Commissioner may prescribe by rule an appropriate period as the taxable year for a taxpayer that has had a change of its taxable year for

federal income tax purposes, for a taxpayer that has two or more short taxable years for federal income tax purposes as the result of a change of ownership, or for a new taxpayer that would otherwise have no taxable year.

(F) ***ASSESSMENT*** means a notice of underpayment or nonpayment of a tax issued pursuant to § 96.6611 of this chapter.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.663 APPLICABILITY: TAXABLE SITUS; APPORTIONMENT.

This section applies to any taxpayer that is engaged in a business or profession in the village and that has made the election under § 96.661 of this chapter.

(A) Except as otherwise provided in division (B) of this section, net profit from a business or profession conducted both within and without the boundaries of the village shall be considered as having a taxable situs in the village for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the village during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated. As used in this paragraph, "tangible personal or real property" shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the village to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under § 96.052 of this chapter;

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the village to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the village, the taxpayer may request, or the Tax Commissioner may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(a) Separate accounting;

(b) The exclusion of one or more of the factors;

(c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipal corporation; and/or

(d) A modification of one or more of the factors.

(2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Commissioner denies the request in an assessment issued within the period prescribed by division (A) of § 96.6611 of this chapter.

(3) The Tax Commissioner may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by § 96.6611(A) of this chapter.

(C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:

(1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following;

(a) The employer;

(b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient; or

(c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.

(2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;

(3) Any other location, if the Tax Commissioner determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If the Tax Commissioner makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Commissioner's determination was unreasonable.

(D) For the purposes of division (A)(3) of this section, receipts from sales and rentals made and services performed shall be sitused to the village as follows:

(1) Gross receipts from the sale of tangible personal property shall be sitused to the village only if, regardless of where title passes, the property meets either of the following criteria:

(a) The property is shipped to or delivered within the village from a stock of goods located within the village; or

(b) The property is delivered within the village from a location outside the village, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the village and the sales result from such solicitation or promotion.

(2) Gross receipts from the sale of services shall be sitused to the village to the extent that such services are performed in the village.

(3) To the extent included in income, gross receipts from the sale of real property located in the village shall be sitused to the village.

(4) To the extent included in income, gross receipts from rents and royalties from real property located in the village shall be sitused to the village.

(5) Gross receipts from rents and royalties from tangible personal property shall be sitused to the village based upon the extent to which the tangible personal property is used in the village.

(E) Commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be sitused to the village in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to the village based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the village to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.

(F) (1) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under § 96.03(C)(11)(l) of this chapter by the village or substantially similar provision of the codified ordinances of another municipal corporation, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the village. In no case shall a taxpayer be required to add to its net profit that was apportioned to the village any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

(2) This division (F) applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to the village under this section.

(G) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.664 INFORMATION PROVIDED TO TAX ADMINISTRATORS; CONFIDENTIALITY.

(A) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by §§ 96.66 through 96.6616 of this chapter is confidential, and no person shall disclose such information, except for official purposes, in accordance with a proper judicial order, or as provided in R.C. §§ 4123.271 or 5703.21. The Tax Commissioner may furnish the Internal Revenue Service with copies of returns filed. This section does not prohibit the publication of statistics in a form which does not disclose information with respect to particular taxpayers.

(B) In May and November of each year, the Tax Commissioner shall provide the Village Tax Administrator with the following information for every taxpayer that filed tax returns with the Commissioner under §§ 96.66 through 96.6616 of this chapter and that had municipal taxable income apportionable to the village under this chapter for any prior year:

(1) The taxpayer's name, address, and federal employer identification number;

(2) The taxpayer's apportionment ratio for, and amount of municipal taxable income apportionable to, the village pursuant to § 96.663;

(3) The amount of any pre-2017 net operating loss carryforward utilized by the taxpayer;

(4) Whether the taxpayer requested that any overpayment be carried forward to a future taxable year; and

(5) The amount of any credit claimed under R.C. § 718.94.

(C) Not later than 30 days after each distribution made to municipal corporations under R.C. § 718.83, the Tax Commissioner shall provide to the village a report stating the name and federal identification number of every taxpayer that made estimated payments that are attributable to the village and the amount of each such taxpayer's estimated payment.

(D) The information described under divisions (B) and (C) of this section shall be provided to the individual or individuals designated by the Village Tax Administrator under R.C. § 718.83(D).

(E) (1) The village expects that the Tax Commissioner will, pursuant to R.C. § 718.84(E), provide tax returns and other information it receives in the performance of its administration of the municipal net profits tax for taxpayers making the election provided in § 96.661. The Tax Administrator shall review these returns and information, as well as the information received pursuant to divisions (B) and (C) of this section, and has discretion to refer any taxpayer for audit by the Tax Commissioner. Such referral shall be made on a form prescribed by the Commissioner and shall include any information that forms the basis for the referral.

(2) If the Tax Commissioner declines to audit a taxpayer referred by the Tax Administrator under this section, the village reserves its right to pursue any and all remedies, whether at law or in equity, to ensure that the correct tax liability has been calculated and paid by the taxpayer.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.665 FILING OF ANNUAL RETURN; REMITTANCE; DISPOSITION OF FUNDS.

(A) (1) For each taxable year, every taxpayer shall file an annual return. Such return, along with the amount of tax shown to be due on the return less the amount paid for the taxable year under § 96.669 of this chapter, shall be submitted to the Tax Commissioner, on a form and in the manner prescribed by the Commissioner, on or before the fifteenth day of the fourth month following the end of the taxpayer's taxable year.

(2) If a taxpayer has multiple taxable years ending within one calendar year, the taxpayer shall aggregate the facts and figures necessary to compute the tax due under this chapter, in accordance with §§ 96.661, 96.662, and, if applicable, 96.667 of this chapter onto its annual return.

(3) The remittance shall be made payable to the Treasurer of State and in the form prescribed by the Tax Commissioner. If the amount payable with the tax return is $10 or less, no remittance is required.

(B) (1) Each return required to be filed under this section shall contain the signature of the taxpayer or the taxpayer's duly authorized agent and of the person who prepared the return for the taxpayer, and shall include the taxpayer's identification number. Each return shall be verified by a declaration under penalty of perjury.

(2) (a) The Tax Commissioner may require a taxpayer to include, with each annual tax return, amended return, or request for refund filed with the Commissioner under §§ 96.66 through 96.6616 of this chapter, copies of any relevant documents or other information.

(b) A taxpayer that files an annual tax return electronically through the Ohio business gateway or in another manner as prescribed by the Tax Commissioner shall either submit the documents required under this division electronically as prescribed at the time of filing or, if electronic submission is not available, mail the documents to the Tax Commissioner. The Department of Taxation shall publish a method of electronically submitting the documents required under this division on or before January 1, 2019.

(3) After a taxpayer files a tax return, the Tax Commissioner may request, and the taxpayer shall provide, any information, statements, or documents required to determine and verify the taxpayer's municipal income tax.

(D) (1) (a) Any taxpayer that has duly requested an automatic extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a tax return with the Commissioner under this section. The extended due date of the return shall be the fifteenth day of the tenth month after the last day of the taxable year to which the return relates.

(b) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Commissioner grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the Commissioner receives the request on or before the date the municipal income tax return is due, the Commissioner shall grant the taxpayer's extension request.

(c) An extension of time to file under division (D)(1) of this section is not an extension of the time to pay any tax due unless the Tax Commissioner grants an extension of that date.

(2) If the Commissioner considers it necessary in order to ensure payment of a tax imposed in accordance with § 96.01 of this chapter, the Commissioner may require taxpayers to file returns and make payments otherwise than as provided in this section, including taxpayers not otherwise required to file annual returns.

(E) Each return required to be filed in accordance with this section shall include a box that the taxpayer may check to authorize another person, including a tax return preparer who prepared the return, to communicate with the Tax Commissioner about matters pertaining to the return. The return or instructions accompanying the return

shall indicate that by checking the box the taxpayer authorizes the Commissioner to contact the preparer or other person concerning questions that arise during the examination or other review of the return and authorizes the preparer or other person only to provide the Commissioner with information that is missing from the return, to contact the Commissioner for information about the examination or other review of the return or the status of the taxpayer's refund or payments, and to respond to notices about mathematical errors, offsets, or return preparation that the taxpayer has received from the Commissioner and has shown to the preparer or other person.

(F) When income tax returns or other documents require the signature of a tax return preparer, the Tax Commissioner shall accept a facsimile or electronic version of such a signature in lieu of a manual signature. (Ord. CM-18-08, passed 2-27-2018)

## § 96.666 ELECTRONIC FILING.

(A) All taxpayers that have made the election allowed under § 96.661 of this chapter shall file any tax return or extension for filing a tax return, and shall make payment of amounts shown to be due on such returns, electronically, either through the Ohio business gateway or in another manner as prescribed by the Tax Commissioner.

(B) A taxpayer may apply to the Commissioner, on a form prescribed by the Commissioner, to be excused from the requirement to file returns and make payments electronically. For good cause shown, the Commissioner may excuse the applicant from the requirement and permit the applicant to file the returns or make the payments by non-electronic means.

(C) The Tax Commissioner may adopt rules establishing the following:

(1) The format of documents to be used by taxpayers to file returns and make payments by electronic means; and

(2) The information taxpayers must submit when filing tax returns by electronic means. (Ord. CM-18-08, passed 2-27-2018)

## § 96.667 CONSOLIDATED RETURNS.

(A) As used in this section:

(1) ***AFFILIATED GROUP OF CORPORATIONS*** means an affiliated group as defined in section 1504 of the Internal Revenue Code, except that, if such a group includes at least one incumbent local exchange carrier that is primarily engaged in the business of providing local exchange telephone service in this state, the affiliated group shall not include any incumbent local exchange carrier that would otherwise be included in the group.

(2) ***CONSOLIDATED FEDERAL INCOME TAX RETURN*** means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

(3) ***CONSOLIDATED FEDERAL TAXABLE INCOME*** means the consolidated taxable income of an affiliated group of corporations, as computed for the purposes of filing a consolidated federal income tax return, before consideration of net operating losses or special deductions. ***CONSOLIDATED FEDERAL TAXABLE INCOME*** does not include income or loss of an incumbent local exchange carrier that is excluded from the affiliated group under division (A)(1) of this section.

(4) ***INCUMBENT LOCAL EXCHANGE CARRIER*** has the same meaning as in R.C. § 4927.01.

(5) ***LOCAL EXCHANGE TELEPHONE SERVICE*** has the same meaning as in R.C. § 5727.01.

(B) (1) A taxpayer that is a member of an affiliated group of corporations may elect to file a consolidated tax return for a taxable year if at least one member of the affiliated group of corporations is subject to municipal income tax in that taxable year and if the affiliated group of corporations filed a consolidated federal income tax return with respect to that taxable year. The election is binding for a five-year period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law. The election continues to be binding for each subsequent five-year period unless the taxpayer elects to discontinue filing consolidated tax returns under division (B)(2) of this section or a taxpayer receives permission from the Tax Commissioner. The Tax Commissioner shall approve such a request for good cause shown.

(2) An ejection to discontinue filing consolidated tax returns under this section must be made on or before the fifteenth day of the fourth month of the year following the last year of a five-year consolidated tax return election period in effect under division (B)(1) of this section. The election to discontinue filing a consolidated tax return is binding for a five-year period beginning with the first taxable year of the election.

(3) An election made under division (B)(1) or (2) of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.

(4) When a taxpayer makes the election allowed under § 96.661 of this chapter, a valid election made by the taxpayer under § 96.667(B)(1) or (B)(2) is binding upon the Tax Commissioner for the remainder of the five-year period.

(5) When an election made under § 96.661 of this chapter is terminated, a valid election made under this section is binding upon the Tax Administrator for the remainder of the five-year period.

(C) A taxpayer that is a member of an affiliated group of corporations that filed a consolidated federal income tax return for a taxable year shall file a consolidated tax return for that taxable year if the Tax Commissioner determines, by a preponderance of the evidence, that intercompany transactions have not been conducted at arm's length and that there has been a distortive shifting of income or expenses with regard to allocation of net profits to a municipal corporation. A taxpayer that is required to file a consolidated tax return for a taxable year shall file a consolidated tax return for all subsequent taxable years unless the taxpayer requests and receives written permission from the Commissioner to file a separate return or a taxpayer has experienced a change in circumstances.

(D) A taxpayer shall prepare a consolidated tax return in the same manner as is required under the United States Department of Treasury regulations that prescribe procedures for the preparation of the consolidated federal income tax return required to be filed by the common parent of the affiliated group of which the taxpayer is a member.

(E) (1) Except as otherwise provided in divisions (E)(2), (3), and (4) of this section, corporations that file a consolidated tax return shall compute adjusted federal taxable income, as defined in § 96.662 of this chapter, by substituting "consolidated federal taxable income" for "federal taxable Income" wherever "federal taxable income" appears in that division and by substituting "an affiliated group of corporation's" for "a C corporation's" wherever "a C corporation's" appears in that division.

(2) No corporation filing a consolidated tax return shall make any adjustment otherwise required under § 96.662(B) of this chapter to the extent that the item of income or deduction otherwise subject to the adjustment has been eliminated or consolidated in the computation of consolidated federal taxable income.

(3) If the net profit or loss of a pass-through entity having at least 80% of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, the corporation filing a consolidated tax return shall do one of the following with respect to that pass-through entity's net profit or loss for that taxable year:

(a) Exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in § 96.663 of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so excluded, the entity shall be subject to taxation as a separate taxpayer on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(b) Include the pass-through entity's net profit or loss in the consolidated federal taxable income of the affiliated group and, for the purpose of making the computations required in § 96.663 of this chapter, include the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation. If the entity's net profit or loss is so included, the entity shall not be subject to taxation as a separate taxpayer on the basis of the entity's net profits that are included in the consolidated federal taxable income of the affiliated group.

(4) If the net profit or loss of a pass-through entity having less than 80% of the value of its ownership interest owned or controlled, directly or indirectly, by an affiliated group of corporations is included in that affiliated group's consolidated federal taxable income for a taxable year, all of the following shall apply:

(a) The corporation filing the consolidated tax return shall exclude the pass-through entity's net profit or loss from the consolidated federal taxable income of the affiliated group and, for the purposes of making the computations required in § 96.663 of this chapter, exclude the property, payroll, and gross receipts of the pass-through entity in the computation of the affiliated group's net profit sitused to a municipal corporation;

(b) The pass-through entity shall be subject to municipal income taxation as a separate taxpayer in accordance with §§ 96.66 through 96.6616 of this chapter on the basis of the entity's net profits that would otherwise be included in the consolidated federal taxable income of the affiliated group.

(F) Corporations filing a consolidated tax return shall make the computations required under § 96.663 of this chapter by substituting "consolidated federal taxable income attributable to" for "net profit from" wherever "net profit from" appears in that section and by substituting "affiliated group of corporations" for "taxpayer" wherever "taxpayer" appears in that section.

(G) Each corporation filing a consolidated tax return is jointly and severally liable for any tax, interest, penalties, fines, charges, or other amounts applicable under §§ 96.66 through 96.6616 of this chapter or R.C. Chapter 5703 to the corporation, an affiliated group of which the corporation is a member for any portion of the taxable year, or any one or more members of such an affiliated group.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.668 FAILURE TO PAY TAX.

If a taxpayer that has made the election allowed under § 96.661 of this chapter fails to pay any tax as required under §§ 96.66 through 96.6616 of this chapter, or any portion of that tax, on or before the date prescribed for its payment, interest shall be assessed, collected, and paid, in the same manner as the tax, upon such unpaid amount at the rate per annum prescribed by R.C. § 5703.47 from the date prescribed for its payment until it is paid or until the date an assessment is issued under § 96.6611 of this chapter, whichever occurs first.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.669 DECLARATION OF ESTIMATED TAXES.

(A) As used in this section:

(1) ***COMBINED TAX LIABILITY*** means the total amount of a taxpayer's income tax liabilities to all municipal corporations in this state for a taxable year.

(2) ***ESTIMATED TAXES*** means the amount that the taxpayer reasonably estimates to be the taxpayer's combined tax liability for the current taxable year.

(B) (1) Except as provided in division (B)(4) of this section, every taxpayer shall make a declaration of estimated taxes for the current taxable year, on the form prescribed by the Tax Commissioner, if the amount payable as estimated taxes is at least $200.

(2) Except as provided in division (B)(4) of this section, a taxpayer having a taxable year of less than 12 months shall make a declaration under rules prescribed by the Commissioner.

(3) The declaration of estimated taxes shall be filed on or before the fifteenth day of the fourth month after the beginning of the taxable year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to tax for the first time.

(4) The Tax Commissioner may waive the requirement for filing a declaration of estimated taxes for any class of taxpayers after finding that the waiver is reasonable and proper in view of administrative costs and other factors.

(C) Each taxpayer shall file the declaration of estimated taxes with, and remit estimated taxes to, the Tax Commissioner at the times and in the amounts prescribed in division (C)(1) of this section. Remitted taxes shall be made payable to the Treasurer of State.

(1) The required portion of the combined tax liability for the taxable year that shall be paid through estimated taxes shall be as follows:

(a) On or before the fifteenth day of the fourth month after the beginning of the taxable year, 22.5% of the combined tax liability for the taxable year;

(b) On or before the fifteenth day of the sixth month after the beginning of the taxable year, 45% of the combined tax liability for the taxable year;

(c) On or before the fifteenth day of the ninth month after the beginning of the taxable year, 67.5% of the combined tax liability for the taxable year;

(d) On or before the fifteenth day of the twelfth month of the taxable year, 90% of the combined tax liability for the taxable year.

(2) If the taxpayer determines that its declaration of estimated taxes will not accurately reflect the taxpayer's tax liability for the taxable year, the taxpayer shall increase or decrease, as appropriate, its subsequent payments in equal installments to result in a more accurate payment of estimated taxes.

(3) (a) Each taxpayer shall report on the declaration of estimated taxes the portion of the remittance that the taxpayer estimates that it owes to each municipal corporation for the taxable year.

(b) Upon receiving a payment of estimated taxes under this section, the Commissioner shall immediately forward the payment to the Treasurer of State. The Treasurer shall credit the payment in the same manner as in R.C. § 718.85(B).

(D) (1) In the case of any underpayment of estimated taxes, there shall be added to the taxes an amount determined at the rate per annum prescribed by R.C. § 5703.47 upon the amount of underpayment for the period of underpayment, unless the underpayment is due to reasonable cause as described in division (E) of this section. The amount of the underpayment shall be determined as follows:

(a) For the first payment of estimated taxes each year, 22.5% of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(b) For the second payment of estimated taxes each year, 45% of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(c) For the third payment of estimated taxes each year, 67.5% of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment;

(d) For the fourth payment of estimated taxes each year, 90% of the combined tax liability, less the amount of taxes paid by the date prescribed for that payment.

(2) The period of the underpayment shall run from the day the estimated payment was required to be made to the date on which the payment is made. For purposes of this section, a payment of estimated taxes on or before any payment date shall be considered a payment of any previous underpayment only to the extent the payment of estimated taxes exceeds the amount of the payment presently due.

(3) All amounts collected under this section shall be considered as taxes collected under §§ 96.66 through 96.6616 of this chapter and shall be credited and distributed to municipal corporations in accordance with R.C. § 718.83.

(E) An underpayment of any portion of a combined tax liability shall be due to reasonable cause and the penalty imposed by this section shall not be added to the taxes for the taxable year if any of the following apply:

(1) The amount of estimated taxes that were paid equals at least 90% of the combined tax liability for the current taxable year, determined by annualizing the income received during the year up to the end of the month immediately preceding the month in which the payment is due.

(2) The amount of estimated taxes that were paid equals at least of the tax liability shown on the return of the taxpayer for the preceding taxable year, provided that the immediately preceding taxable year reflected a period of 12 months and the taxpayer filed a municipal income tax return for that year.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.6610 ADDITIONAL PENALTIES.

(A) In addition to any other penalty imposed by §§ 96.66 through 96.6616 of this chapter or R.C. Chapter 5703, the following penalties shall apply:

(1) If a taxpayer required to file a tax return under §§ 96.66 through 96.6616 of this chapter fails to make and file the return within the time prescribed, including any extensions of time granted by the Tax Commissioner, the Commissioner may impose a penalty not exceeding $25 per month or fraction of a month, for each month or fraction of a month elapsing between the due date, including extensions of the due date, and the date on which the return is filed. The aggregate penalty, per instance, under this division shall not exceed $150.

(2) If a person required to file a tax return electronically under §§ 96.66 through 96.6616 of this chapter fails to do so, the Commissioner may impose a penalty not to exceed the following:

(a) For each of the first two failures, 5% of the amount required to be reported on the return;

(b) For the third and any subsequent failure, 10% of the amount required to be reported on the return.

(3) If a taxpayer that has made the election allowed under § 96.661 of this chapter fails to timely pay an amount of tax required to be paid under this chapter, the Commissioner may impose a penalty equal to 15% of the amount not timely paid.

(4) If a taxpayer files what purports to be a tax return required by §§ 96.66 through 96.6616 of this chapter that does not contain information upon which the substantial correctness of the return may be judged or contains information that on its face indicates that the return is substantially incorrect, and the filing of the return in that manner is due to a position that is frivolous or a desire that is apparent from the return to delay or impede the administration of §§ 96.66 through 96.6616 of this chapter, a penalty of up to $500 may be imposed.

(5) If a taxpayer makes a fraudulent attempt to evade the reporting or payment of the tax required to be shown on any return required under §§ 96.66 through 96.6616 of this chapter, a penalty may be imposed not exceeding the greater of $1,000 or 100% of the tax required to be shown on the return.

(6) If any person makes a false or fraudulent claim for a refund under § 96.6612 of this chapter, a penalty may be imposed not exceeding the greater of $1,000 or 100% of the claim. Any penalty imposed under this division, any refund issued on the claim, and interest on any refund from the date of the refund, may be assessed under § 96.6611 of this chapter without regard to any time limitation for the assessment imposed by division (A) of that section.

(B) For purposes of this section, the tax required to be shown on a tax return shall be reduced by the amount of any part of the tax paid on or before the date, including any extensions of the date, prescribed for filing the return.

(C) Each penalty imposed under this section shall be in addition to any other penalty imposed under this section. All or part of any penalty imposed under this section may be abated by the Tax Commissioner. The Commissioner may adopt rules governing the imposition and abatement of such penalties.

(D) All amounts collected under this section shall be considered as taxes collected under §§ 96.66 through 96.6616 of this chapter and shall be credited and distributed to municipal corporations in the same proportion as the underlying tax liability is required to be distributed to such municipal corporations under R.C. § 718.83. (Ord. CM-18-08, passed 2-27-2018)

## § 96.6611 ASSESSMENTS AGAINST TAXPAYER.

(A) (1) If any taxpayer required to file a return under §§ 96.66 through 96.6616 of this chapter fails to file the return within the time prescribed, files an incorrect return, or fails to remit the full amount of the tax due for the period covered by the return, the Tax Commissioner may make an assessment against the taxpayer for any deficiency for the period for which the return or tax is due, based upon any information in the Commissioner's possession.

(2) The Tax Commissioner shall not make or issue an assessment against a taxpayer more than three years after the later of the date the return subject to assessment was required to be filed or the date the return was filed. Such time limit may be extended if both the taxpayer and the Commissioner consent in writing to the extension. Any such extension shall extend the three-year time limit in § 96.6612 of this chapter for the same period of time. There shall be no bar or limit to an assessment against a taxpayer that fails to file a return subject to assessment as required by §§ 96.66 through 96.6616 of this chapter, or that files a fraudulent return. The Commissioner shall give the taxpayer assessed written notice of the assessment as provided in R.C. § 5703.37. With the notice, the Commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the taxpayer assessed files with the Tax Commissioner within 60 days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment signed by the authorized agent of the taxpayer assessed having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the taxpayer to the Treasurer of State. The petition shall indicate the

taxpayer's objections, but additional objections may be raised in writing if received by the Commissioner prior to the date shown on the final determination. If the petition has been properly filed, the Commissioner shall proceed under R.C. § 5703.60.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the Tax Commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the taxpayer has an office or place of business in this state, the county in which the taxpayer's statutory agent is located, or Franklin County.

(1) Immediately upon the filing of the entry, the clerk shall enter a judgment against the taxpayer assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for municipal income taxes," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the Tax Commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

(2) If the assessment is not paid in its entirety within 60 days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by R.C. § 5703.47 from the day the Commissioner issues the assessment until the assessment is paid or until it is certified to the attorney general for collection under R.C. § 131.02, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by R.C. § 5703.47 from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected under this section shall be credited to the municipal income tax fund and distributed to the municipal corporation to which the money is owed based on the assessment issued under this section.

(E) If the Tax Commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the Commissioner may issue a jeopardy assessment against the taxpayer liable for the tax. Immediately upon the issuance of the jeopardy assessment, the Commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section. Notice of the jeopardy assessment shall be served on the taxpayer assessed or the taxpayer's legal representative in the manner provided in R.C. § 5703.37 within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the taxpayer assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the Commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the Commissioner's consideration of the petition for reassessment.

(F) (1) Notwithstanding the fact that a petition for reassessment is pending, the taxpayer may pay all or a portion of the assessment that is the subject of the petition. The acceptance of a payment by the Treasurer of State does not prejudice any claim for refund upon final determination of the petition.

(2) If upon final determination of the petition an error in the assessment is corrected by the Tax Commissioner, upon petition so filed or pursuant to a decision of the Board of Tax Appeals or any court to which the determination or decision has been appealed, so that the amount due from the taxpayer under the corrected assessment is less than the portion paid, there shall be issued to the taxpayer, its assigns, or legal representative

a refund in the amount of the overpayment as provided by § 96.6612 of this chapter, with interest on that amount as provided by that section.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.6612 REFUND APPLICATIONS.

(A) An application to refund to a taxpayer the amount of taxes paid on any illegal, erroneous, or excessive payment of tax under §§ 96.66 through 96.6616 of this chapter, including assessments, shall be filed with the Tax
Commissioner within three years after the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by § 96.6611(A) of this chapter. The application shall be filed in the form prescribed by the Tax Commissioner.

(B) (1) On the filing of a refund application, the Tax Commissioner shall determine the amount of refund to which the applicant is entitled. The amount determined shall be based on the amount overpaid per return or assessment. If the amount is greater than $10 and not less than that claimed, the Commissioner shall certify that amount to the Director of Budget and Management and the Treasurer of State for payment from the tax refund fund created in R.C. § 5703.052. If the amount is greater than $10 but less than that claimed, the Commissioner shall proceed in accordance with R.C. § 5703.70.

(2) Upon issuance of a refund under this section, the Commissioner shall notify each municipal corporation of the amount refunded to the taxpayer attributable to that municipal corporation, which shall be deducted from the municipal corporation's next distribution under R.C. § 718.83.

(C) Any portion of a refund determined under division (B) of this section that is not issued within 90 days after such determination shall bear interest at the rate per annum prescribed by R.C. § 5703.47 from the ninety-first day after such determination until the day the refund is paid or credited. On an illegal or erroneous assessment. Interest shall be paid at that rate from the date of payment on the illegal or erroneous assessment until the day the refund is paid or credited.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.6613 AMENDED RETURNS.

(A) If any of the facts, figures, computations, or attachments required in an annual return filed by a taxpayer that has made the election allowed under § 96.661 of this chapter and used to determine the tax due under §§ 96.66 through 96.6616 of this chapter must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether initiated by the taxpayer or the Internal Revenue Service, and such alteration affects the taxpayer's tax liability under those sections, the taxpayer shall file an amended return with the Tax Commissioner in such form as the Commissioner requires. The amended return shall be filed not later than 60 days after the adjustment is agreed upon or finally determined for federal income tax purposes or after any federal income tax deficiency or refund, or the abatement or credit resulting therefrom, has been assessed or paid, whichever occurs first. If a taxpayer intends to file an amended consolidated municipal income tax return, or to amend its type of return from a separate return to a consolidated return, based on the taxpayer's consolidated federal income tax return, the taxpayer shall notify the Commissioner before filing the amended return.

(B) In the case of an underpayment, the amended return shall be accompanied by payment of any combined additional tax due together with any penalty and interest thereon. An amended return required by this section is a return subject to assessment under § 96.6612 of this chapter for the purpose of assessing any additional tax due under this section, together with any applicable penalty and interest. The amended return shall not reopen those facts, figures, computations, or attachments from a previously filed return no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal tax return.

(C) In the case of an overpayment, an application for refund may be filed under this division within the 60-day period prescribed for filing the amended return, even if that period extends beyond the period prescribed in § 96.6612 of this chapter, if the application otherwise conforms to the requirements of that section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's annual return that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed in § 96.6612 of this chapter. The application shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.6614 EXAMINATION OF RECORDS AND OTHER DOCUMENTS AND PERSONS.

(A) The Tax Commissioner, or any authorized agent or employee thereof, may examine the books, papers, records, and federal and state income tax returns of any taxpayer or other person that is subject to §§ 96.66 through 96.6616 of this chapter for the purpose of verifying the accuracy of any return made or, if no return was filed, to ascertain the tax due as required under those sections. Upon written request by the Commissioner or a duly authorized agent or employee thereof, every taxpayer or other person subject to this section is required to furnish the opportunity for the Commissioner, authorized agent, or employee to investigate and examine such books, papers, records, and federal and state income tax returns at a reasonable time and place designated in the request.

(B) The records and other documents of any taxpayer or other person that is subject to §§ 96.66 through 96.6616 of this chapter shall be open to the Tax Commissioner's inspection during business hours and shall be preserved for a period of six years following the end of the taxable year to which the records or documents relate, unless the Commissioner, in writing, consents to their destruction within that period, or by order requires that they be kept longer. The Commissioner may require any person, by notice served on that person, to keep such records as the Commissioner determines necessary to show whether or not that person is liable, and the extent of such liability, for the income tax levied by a municipal corporation.

(C) The Tax Commissioner may examine under oath any person that the Commissioner reasonably believes has knowledge concerning any income that was or would have been returned for taxation or any transaction tending to affect such income. The Commissioner may, for this purpose, compel any such person to attend a hearing or examination and to produce any books, papers, records, and federal income tax returns in such person's possession or control. The person may be assisted or represented by an attorney, accountant, bookkeeper, or other tax practitioner at any such hearing or examination. This division does not authorize the practice of law by a person who is not an attorney.

(D) No person issued written notice by the Tax Commissioner compelling attendance at a hearing or examination or the production of books, papers, records, or federal income tax returns under this section shall fail to comply.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.6615 CREDITS.

(A) A credit, granted by resolution or ordinance of the village pursuant to §§ 96.064 or 96.065 of this chapter, shall be available to a taxpayer that has made the election allowed under § 96.661 of this chapter, against the municipal corporation's tax on income. A municipal corporation shall submit the following information to the
Tax Commissioner on or before the later of January 31, 2018, or the thirty-first day of January of the first year in which the taxpayer is eligible to receive the credit:

(1) A copy of the agreement entered into by the village and taxpayer under §§ 96.064 or 96.065 of this chapter;

(2) A copy of the ordinance or resolution authorizing the agreement entered into between the village and the taxpayer.

(B) (1) Each taxpayer that claims a credit shall submit, with the taxpayer's tax return, documentation issued by the village granting the credit that confirms the eligibility of the taxpayer for the credit, the amount of the credit for which the taxpayer is eligible, and the tax year to which the credit is to be applied.

(2) Such documentation shall be provided in the form prescribed by the Tax Commissioner.

(3) Nothing in this section shall be construed to authorize the Tax Commissioner to enter into an agreement with a taxpayer to grant a credit, to determine if a taxpayer meets the conditions of a tax credit agreement entered into by the village and taxpayer under §§ 96.064 or 96.065 of this chapter, or to modify the terms or conditions of any such existing agreement.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.6616 RECKLESS VIOLATIONS; PENALTIES.

(A) Except as provided in division (B) of this section, whoever recklessly violates § 96.664(A) of this chapter shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than $1,000 or imprisonment for a term of up to six months, or both.

(B) Each instance of access or disclosure in violation of § 96.664(A) of this chapter constitutes a separate offense.

(C) These specific penalties shall not be construed to prevent the village from prosecuting any and all other offenses that may apply.
(Ord. CM-18-08, passed 2-27-2018)

## § 96.97 COLLECTION AFTER TERMINATION OF CHAPTER.

(A) This chapter shall continue in full force and effect insofar as the levy of taxes is concerned until repealed, and insofar as the collection of taxes levied hereunder and actions proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue in full force and effect until all of the taxes levied in the aforesaid period are fully paid and any and all suits and prosecutors for the collection of taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in § 96.19.

(B) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in § 96.091 as though the same were continuing.
(Ord. CM-15-32, passed 11-10-2015)

## § 96.98 SAVINGS CLAUSE.

If any sentence, clause, section or part of this chapter, or any tax imposed against, or exemption from tax granted to, any taxpayer or forms of income specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this chapter so found and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of the legislative authority of the municipality that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included in this chapter.
(Ord. CM-15-32, passed 11-10-2015)

## § 96.99 VIOLATIONS; PENALTY.

(A) Except as provided in division (B) of this section, whoever violates § 96.15 of this chapter, § 96.14(A) of this chapter, or § 96.051 of this chapter by failing to remit municipal income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than $1,000 or imprisonment for a term of up to six months, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.

(B) Any person who discloses information received from the Internal Revenue Service in violation of Internal Revenue Code sections 7213(a), 7213A, or 7431 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than $5,000 plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. In addition, the violation is punishable by dismissal from office or discharge from employment, or both.

(C) Each instance of access or disclosure in violation of 96.14(A) of this chapter constitutes a separate offense.

(D) Whoever violates any provision of this chapter for which violation no penalty is otherwise provided, is guilty of a misdemeanor of the third degree. By way of an illustrative enumeration, violations of this chapter shall include but not be limited to the following acts, conduct, and/or omissions:

(1) Fail, neglect or refuse to make any return or declaration required by this chapter;

(2) Knowingly make any incomplete return;

(3) Willfully fail, neglect, or refuse to pay the tax, penalties, and interest, or any combination thereof, imposed by this chapter;

(4) Cause to not be remitted the city income tax withheld from qualifying wages of employees to the municipality municipal corporation as required by § 96.051;

(5) Neglect or refuse to withhold or remit municipal income tax from employees;

(6) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer;

(7) Fail to appear before the Tax Administrator and to produce his or her books, records, papers, federal and state income tax returns, or any documentation relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;

(8) Refuse to disclose to the Tax Administrator any information with respect to such person's income or net profits, or in the case of a person responsible for maintaining information relating to his or her employers' income or net profits, such person's employer's income or net profits;

(9) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator;

(10) To avoid imposition or collection of municipal income tax, willfully give to an employer or prospective employer false information as to his or her true name, correct social security number and residence address, or willfully fail to promptly notify an employer or a prospective employer of any change in residence address and date thereof;

(11) Fail, as an employer, agent of an employer, or other payer, to maintain proper records of employees residence addresses, total qualifying wages paid and municipal tax withheld, or to knowingly give the Tax Administrator false information;

(12) Willfully fail, neglect, or refuse to make any payment of estimated municipal income tax for any taxable year or any part of any taxable year in accordance with this chapter; or

(13) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(14) For purposes of this section, any violation that does not specify a culpable mental state or intent, shall be one of strict liability and no culpable mental state or intent shall be required for a person to be guilty of that violation.

(15) For purposes of this section, the term ***PERSON*** shall, in addition to the meaning prescribed in § 96.03, include in the case of a corporation, association, pass-through entity or unincorporated business entity not having any resident owner or officer within the city, any employee or agent of such corporation, association, pass-through entity or unincorporated business entity who has control or supervision over or is charged with the responsibility of filing the municipal income tax returns and making the payments of the municipal income tax as required by this chapter.
(Ord. CM-15-32, passed 11-10-2015)

***Statutory reference:***

*Violations; penalties, see R.C. § 718.99*

# CHAPTER 97: CURFEW

Section



## § 97.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***MINOR.*** Any person under the age of 18 or, in equivalent phrasing after herein employed, any person 17 or less years of age.

***PARENT.*** Any person having legal custody of a minor:

(1) As a natural or adoptive parent;

(2) As a legal guardian;

(3) As a person who stands in loco parentis; and

(4) As a person to whom legal custody has been given by order or court.

***REMAIN.*** To stay behind, to tarry or to stay unnecessarily.

***STREET.*** A way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof, for pedestrian travel. ***STREET*** includes the legal right-of-way, including but not limited to the traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term applies irrespective of what it is called or formally named, whether alley, avenue, court, road or otherwise.

***TIME OF NIGHT.*** Referred to herein, is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed at that hour by the public in the municipality, prima facie the time then observed in the Municipal Administrative Offices and Police Station.

***YEAR OF AGE.*** Continues from one birthday, such as the seventeenth to, but not including the day of, the next, such as the eighteenth birthday, making it clear that 17 or less years of age is treated as equivalent to the phrase "under 18 years of age." Similarly, for example, 11 or less years of age means under 12 years of age.

## § 97.02 DECLARATION OF A CURFEW.

At such times as minors are loitering, idling, wandering, strolling or playing in or on public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, within the municipality, and such conduct in the opinion of the Mayor or Municipal Council is adversely affecting the health, safety or welfare of the citizens of the municipality, the Mayor or Municipal Council may declare a curfew in effect against such conduct (for the hours prescribed by § 97.03) by advertising the curfew in a newspaper of general circulation in the municipality; and such curfew shall be effective immediately on one such advertisement of the same. The curfew shall continue until terminated by the Mayor by the advertising of the termination in a newspaper of general circulation in the municipality or in Miami County. The Mayor or the Municipal Council may continue the period of time, not exceeding one year, as they determine to be necessary for the protection of the health, safety or welfare of the citizens of the municipality.

## § 97.03 CURFEW HOURS.

During the period of curfew declared by the Mayor or Municipal Council pursuant to § 97.02, no person 17 or less years of age shall be or remain in or on the streets, alleys, parks, playgrounds or other public places and public buildings, vacant lots or place of amusement, within the municipality at night during the period ending at 6:00 a.m. and beginning, on the previous evening:

(A) At 10:00 p.m. for minors 13 or less years of age; and

(B) At 11:00 p.m. for minors 14 or more years of age.

## § 97.04 CURFEW EXCEPTIONS.

In the following exceptional cases, a minor on a street during the nocturnal hours for which § 97.03 is intended to provide the maximum limits of regulations shall not be considered in violation of this chapter.

(A) When accompanied by a parent of the minor;

(B) When accompanied by an adult authorized by a parent of the minor to take the parent's place in accompanying the minor for a designated period of time and purpose within a specified area;

(C) When exercising First Amendment rights protected by the United States Constitution, such as free exercise of religion, freedom of speech and the right of assembly; (The minor shall evidence the bona fides of such exercise by delivering to the Chief of Police or officer designated by him or her, written communication

signed by such minor and countersigned if practicable by a parent of the minor with their home address and telephone number, specifying when, where, and in what matter the minor will be on the streets at nights, during the hours when this chapter is otherwise applicable to the minor, in the exercise of a First Amendment right specified in such communication.)

(D) When the minor is on the sidewalk of the place where the minor resides, or on the sidewalk of either next-door neighbor not objecting to the presence thereon of the minor;

(E) When any school, church, civic organization, city organization, parent or guardian desires to sponsor entertainment for minors, and which entertainment requires the minors to be out at a later hour than that called for in § 97.03, then the person or persons sponsoring the event or entertainment shall advise the Chief of Police or officer designated by him or her of the place of the entertainment and the time it will end; (Minors who attend such function shall be required to be in compliance with § 97.03 no later than 30 minutes following either the time of termination of the activity or the time the minor leaves the activity, whichever is earlier.)

(F) When the minor is gainfully employed and the employment requires the minor to be in violation of § 97.03, and the employment is with the consent and permission of the parents; and

(G) Each of the foregoing exceptions, and their several limitations are severable, and additional, also severable, exceptions, broadening with the progress toward maturity of minors enrolled respectively in elementary, junior high and high schools, will be considered by Council as warranted by future experience illuminated by the view of student government associations, school personnel, citizens, associations, neighborhood spokesmen, parents, officers and persons in authority concerned positively with minors as well as with juvenile delinquency.

## § 97.05 DISPOSITION OF MINOR.

A police officer, on finding a minor on the street in prima facie violation of this chapter normally shall take the minor to the Police Department, where a parent shall immediately be notified to come for the minor. When the parent has come to take charge of the minor, the minor shall be released to the custody of the parent. If the parent cannot be located, or fails to take charge of the minor, then the minor shall be released to the juvenile authorities or the minor may temporarily be entrusted to a relative, neighbor or other person who will on behalf of a parent assume the responsibility of caring for the minor pending the availability or arrival of a parent.

## § 97.06 PARENTAL RESPONSIBILITY.

(A) No parent having the lawful care, custody or control of a minor shall knowingly permit or allow the minor to be or remain on any street in violation of § 97.03. ***KNOWINGLY*** includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's custody or control. It shall be no defense that a parent was completely indifferent to the activities or whereabouts of the minor.

(B) It shall be prima facie evidence of a violation of this section that the child of a parent, guardian or person having lawful custody was found in violation of § 97.03.

(C) Whoever violates this section is guilty of a minor misdemeanor.

# CHAPTER 98: EXTERIOR PROPERTY MAINTENANCE CODE

Section



## § 98.01 PURPOSE.

The purpose of the Exterior Property Maintenance Code (hereinafter referred to as "this code") is to protect the public health, safety and welfare by establishing minimum standards governing the maintenance, appearance and condition of all residential and nonresidential premises; to fix certain responsibilities and duties upon owners and operators; to authorize and establish procedures for the inspection of residential and nonresidential premises; to fix penalties or the violations of this chapter and to provide or the right of access across adjoining premises to permit repairs. This Code is hereby declared to be remedial and essential for the public interest and it is intended that this Code be liberally construed to effectuate the purposes as stated herein.
(Ord. CM-769, passed 9-9-1986)

## § 98.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACCESSORY STRUCTURE.*** A structure, the use of which is incidental to that of the main building and which is attached hereto or located on the same premises.

***BUILDING.*** A structure which is permanently affixed to the land having one or more floors and a roof, being bounded by either open space or lot lines, and used as a shelter or enclosure for persons, animals or enclosure for property. The term shall be used synonymously with "structure" unless otherwise noted, and shall be construed as if followed by the words "part or parts thereof."

***BUILDING CODE.*** The Building Code of the village, as amended from time to time.

***DETERMINATION.*** The condition or appearance of a building or part thereof, characterized by holes, breaks, rot, crumbling, crackling, peeling, rusting or other evidence of physical decay, neglect or lack of maintenance.

***DWELLING.*** A building designed or occupied exclusively for nontransient residential use and permitted accessory uses including one-family, two-family or multi-family buildings.

***DWELLING UNIT.*** Space, within a dwelling, comprising living, dining, sleeping room or rooms, storage closets, as well as space and equipment for cooking, bathing and toilet facilities, all used by only one family and its household employees.

***EXPOSED TO PUBLIC VIEW.*** Any premises, or any part thereof or any building or any part, which may be lawfully viewed by the public or any member thereof, from a sidewalk, street, alleyway, open-air parking lot or from any adjoining or neighboring premises.

***EXTERIOR OF THE PREMISES.*** Those portions of a building which are exposed to public view and open space of any premises outside of any building erected thereon.

***FIRE CHIEF.*** The Chief of the Fire Department of the village.

***FIRE HAZARD.*** Any thing or act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service of preventing, suppressing or extinguishing fire, or that which may obstruct, delay or hinder or may become the cause of an obstruction, delay, hazard of hindrance to the prevention, suppression or extinguishment of fire, or any other fire hazard defined in the Code of Ordinances. (See also ***NUISANCE*** hereinbelow).

***GARBAGE.*** Putrescible animal and vegetable waste resultant from handling, preparation, cooking and consumption of food. (See also ***REFUSE*** and ***RUBBISH*** hereinbelow).

***IMMEDIATE NEIGHBORHOOD.*** An area separated by no appreciable space and specially denoting a limited number of properties in a very close space relationship to each other.

***INFESTATION.*** The presence of insects, rodents, vermin or other pests on the premises which constitutes a health hazard.

***MIXED OCCUPANCY.*** Any building containing one or more dwelling units or rooming units and also having a portion thereof devoted to nondwelling uses.

***NUISANCE.***

(1) Any public nuisance known in equity jurisprudence, or as provided by state statutes, or the ordinances of the village;

(2) Conditions dangerous to human life or detrimental to the health of persons on or near the premises where the conditions exist and where the condition is perilous by active and negligent operation thereof;

(3) Unsanitary conditions or anything offensive to the senses or dangerous to health, in violation of this chapter; or

(4) Fire hazards.

***OPERATOR.*** Any person who has charge, care or control of a building, structure, dwelling or premises, or a part thereof, whether with or without the knowledge and consent of the owner.

***OWNER.*** The owner or owners of the premises, including the holder of title thereto subject to contract of purchase, a vendee in possession, a mortgagee or receiver in possession, a lessee or joint lessees or the whole thereof, or an agent or any other person, firm, corporation or fiduciary directly in control of the premises.

***PREMISES.*** A lot, plot or parcel of land, including the buildings or structures thereon.

***PROPERTY MAINTENANCE OFFICER.*** The Municipal Manager or his or her designee.

***REFUSE.*** All putrescible and nonputrescible solid wastes, except body wastes, including but not limited to garbage, rubbish, ashes, street cleanings, dead animals and solid market and industrial wastes. (See also ***GARBAGE*** and ***RUBBISH*** as set forth in this section).

***REGISTERED MAIL.*** Registered or certified mail.

***ROOMING UNIT.*** Any room or group of rooms forming a single habitable unit other than a dwelling unit, which is rented or available for rent for sleeping purposes, with or without cooking facilities.

***RUBBISH.*** Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, tin cans, yard clippings, leaves, wood, glass, crockery and similar materials. (See also ***GARBAGE*** and ***REFUSE*** as set forth in this section).

***STRUCTURE.*** A combination of any materials whether fixed or portable forming a construction.

***WEATHERING.*** Deterioration, decay or damage caused by exposure to the elements.
(Ord. CM-769, passed 9-9-1986)

## § 98.03 APPLICATION OF PROVISIONS.

Every residential and nonresidential building and the premises on which it is situated in the municipality, used or intended to be used for dwelling, retail, commercial, business, manufacturing or industrial occupancy, shall comply with the provisions of this chapter, whether or not such building has been constructed, altered or

repairs before or after the enactment of this chapter, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or for the installation or repair or equipment or facilities prior to the effective of this chapter. This chapter establishes minimum standards for the initial and continued occupancy and use of all such buildings and does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building, except as provided in § 98.04. Whether there is mixed occupancy, residential or nonresidential use therein shall be nevertheless regulated by and subject to the provisions of this chapter.
(Ord. CM-769, passed 9-9-1986)

## § 98.04 CONFLICT.

In any cases where the provisions of this chapter impose a higher standard than set forth in ordinances of the municipality or under state statutes, then the standards as set forth herein shall prevail, but if the provisions of this chapter impose a lower standard than any ordinances of the municipality or of state statutes, then the higher standard contained in any such ordinances or law shall prevail.
(Ord. CM-769, passed 9-9-1986)

## § 98.05 PERMIT REQUIRED.

(A) Remodeling, rehabilitation and new construction activities shall require the same permits, from the municipality, or other authorizing source, and the payment of the same fees, as would be required on a new structure. This requirement shall pertain to structural and building support systems and shall not necessarily pertain to superficial structural embellishments like new siding, roofing and the like.

(B) Whenever it comes to the attention of the Property Maintenance Officer that work is being performed contrary to this chapter, a stop-work order shall be promptly issued to the owner of the premises involved, the agent of the owner, or the person(s) doing the work. The Property Maintenance Officer shall also post a placard at the site of the work informing the public and all concerned that work at the site has been stopped by official order. The order shall be written and shall, in any case, state the conditions under which the work may be resumed. The order shall also direct the performance of the work as may be necessary to remove any violations of the provisions. Any stop-work order may be appealed in the same manner as provided in § 98.09.
(Ord. CM-769, passed 9-9-1986)

## § 98.06 ENFORCEMENT OF AND COMPLIANCE WITH OTHER ORDINANCES.

No license or permit or other certification of compliance with this chapter shall constitute a defense against any violation or any ordinance of the municipality applicable to any structure or premises, nor shall any provision herein relieve any owner, operator or occupant from complying with any such other provision, nor any official of the municipality from enforcing any such other provision.
(Ord. CM-769, passed 9-9-1986)

## § 98.07 OWNER, OPERATOR AND OCCUPANT RESPONSIBILITIES.

(A) Owners and operator shall have all the duties and responsibilities as prescribed in this chapter and the regulations promulgated pursuant thereto. No owner or operator shall be relieved from any such duty and responsibility, nor be entitled to defend against any charge of violation thereof by reason of the fact that the occupant is also responsible therefor and in violation thereof.

(B) Unless expressly provided to the contrary in this chapter, the respective obligations and responsibilities of the owner and operator on one hand and the occupant on the other, shall not be altered or affected by an agreement or contract by and between any of the aforesaid or between them and other parties.
(Ord. CM-769, passed 9-9-1986)

## § 98.08 MAINTENANCE OF EXTERIOR OR PREMISES.

(A) *Freedom from hazards and unsanitary conditions.* The exterior of the premises and all structures thereon shall be kept free of all nuisances and any hazards to the safety of occupants, pedestrians and other person utilizing the premises, free of unsanitary conditions, and any of the foregoing shall be promptly removed and abated by the owner or operator. It shall be the duty of the owner or operator to keep the premises free of hazards which include but are not limited to the following.

(B) *Refuse.* Refuse or any accumulation of brush, broken glass, stumps and roots that present a safety hazard, and includes garbage, trash and debris which presents an unsanitary and/or a safety hazard.

(C) *Natural growth.* ***NATURAL GROWTH*** means dead trees and limbs or other natural growth which, by reason of rotting or deteriorating conditions or storm damage, constitute a hazard to persons in the vicinity thereof.

(D) *Overhangings.* ***OVERHANGINGS*** means loose and overhanging objects which, by reason of location above ground level, constitute a danger of falling on persons in the vicinity thereof.

(E) *Foundation walls.* Foundation walls shall be kept structurally sound, free from defects and damage and capable of bearing imposed loads safely.

(F) *Chimneys and flue vent attachments.* Chimneys and all flue and vent attachments thereto shall be maintained structurally sound, free from defects and so maintained as to capably perform at all times the functions for which they were designed, and the same shall be capable of withstanding the action of flue gases.

(G) *Exterior appearance of residential premises and structures.* The exterior of the premises, and exterior of dwelling structures and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the residential standards of the immediate neighborhood so that the appearance of the premises and structures shall not constitute a deterioration, fire hazard or nuisance for adjoining property owners nor an element leading to the progressive deterioration and downgrading of the immediate neighborhood with the accompanying diminution or property values, including the following:

(1) There shall not be stored or used at a location visible from the sidewalk, street or other public areas, equipment and materials relating to commercial or industrial uses, unless permitted under the zoning ordinances for the premises.

(2) Lawns, hedges and bushes shall be kept from becoming overgrown and unsightly where exposed to public view and where the same constitutes a deterioration factor depreciating adjoining property and imparting the good residential character of the immediate neighborhood.

(3) All signs permitted by reason of other regulations or as a lawful nonconforming use shall be maintained in good repair and printed matter, pictures or illustrations contained therein shall be completely maintained or when no longer in use, completely removed.

(4) The exterior of every structure or accessory structure, including surfaces thereon shall be kept painted where necessary for purposes of preservation and appearance, or surface coated with a protective coating or treated to prevent rot and decay. The same shall be maintained free of broken windows, crumbling stone or brick, peeling paint or other conditions reflective of deterioration or inadequate maintenance to the end that the property itself may be preserved, safety and fire hazards eliminated and adjoining properties and the immediate neighborhood protected.

(5) All drainage shall be handled by suitable collectors and downspouts connected to a public storm sewer. Where storm sewer or other storm drainage outlet is not available, downspouts may discharge into splash blocks or other devices, provided that no excess water will flow in adjoining property or sidewalks. Connection of any pipe carrying roof water or yard drainage to a sanitary sewer is prohibited.

(6) Garish design schemes must be modified to eliminate obvious negative impacts on surrounding properties.

(H) *Exterior appearance of nonresidential premises and structures.* The exterior of the premises and the condition of accessory structures shall be maintained so that the appearance of the premises and all buildings thereon shall reflect a level of maintenance in keeping with the standards of the immediate neighborhood so that the appearance of the premises and structures shall not constitute a deterioration, fire hazard or nuisance for adjoining property owners nor an element leading to the progressive deterioration and downgrading or the immediate neighborhood with the accompanying diminution of property values, including the following:

(1) Lawns, hedges and bushes shall be kept from becoming overgrown and unsightly where exposed to public view.

(2) All permanent signs and billboards exposed to public view permitted by reason of other regulations or as a lawful nonconforming use, shall be maintained in good repair. Any signs which have weathered or faded or those upon which the paint has peeled or cracked shall, with their supporting members be removed forthwith or put into good state of repair. All nonoperative or broken electrical signs shall be repaired or shall, with their supporting members be removed forthwith.

(3) All store fronts shall be kept in good repair, painted where required, and shall not constitute a safety hazard or nuisance. In the event repairs to a store front become necessary, the repairs shall be made with

the same or similar materials used in the construction of the store front in such a manner as to permanently repair the damaged area or areas. Any cornice visible above a store front shall be kept painted, where required, and in good repair.

(4) Except for "For Rent" signs, any temporary sign or other paper advertising material glued or otherwise attached to a window or windows otherwise exposed to public view shall be removed at the expiration of the event or sale for which it is erected or within 60 days after erection, whichever shall occur sooner.

(5) Any awning or marquee and its accompanying structural members which extend over any street, sidewalk or other portion of the premises shall be maintained in good repair and shall not constitute a nuisance or safety hazard. In the event such awning or marquees are not properly maintained in accordance with the forgoing, they shall, together with their supporting members, be removed forthwith. In the event the awnings or marquees are made of cloth, plastic or of similar materials, the cloth or plastic, where exposed to public view, shall be maintained in good condition and shall not show evidence of weathering, discoloration, ripping, tearing or holes. Nothing herein shall be construed to authorize any encroachment on streets, sidewalks or other parts of the public domain.

(I) *Residential exterior structural soundness and general maintenance.* Every dwelling and accessory structure and every part thereof shall be kept structurally sound and in a state of good repair to avoid safety, health or fire hazards, including:

(1) All exposed surfaces susceptible to decay shall be kept painted at all times or otherwise provided with a protective coating sufficient to prevent deterioration and rot.

(2) Exterior walls, sidings and roofs shall be kept structurally sound, in good repair and free from unsafe defects. Damaged materials shall be repaired or replaced; places showing signs of substantial rot, deterioration or excessive corrosion are to be restored and protected.

(J) *Nonresidential exterior structural soundness and general maintenance.* The exterior of every structure or accessory structure, including fences, signs and store fronts, shall be maintained in good repair and all surfaces thereof shall be kept painted where necessary for purposes of preservation and appearance, or surface coated with a protective coating or treated to prevent rot and decay. All peeling paint or other conditions reflective of deterioration or inadequate maintenance to the end that the property itself may be preserved, safety and fire hazards eliminated, and adjoining property and the immediate neighborhood protected.

(K) *Reconstruction of walls and sidings.* All reconstruction of walls and sidings shall be of standard quality and appearance commensurate with the character of the properties in the same area and on both sides of the street on which the premises front, such that the materials used will not be of a kind that by their appearance under preappraisal practices and standards, will depreciate the value of neighboring and adjoining premises, as aforesaid. All parts of the premises shall be maintained so as to prevent infestation.
(Ord. CM-769, passed 9-9-1986)

## § 98.09 PROPERTY MAINTENANCE OFFICER; DUTIES.

The Municipal Manager is hereby designated to serve as Property Maintenance Officer hereunder and all inspection, regulations enforcement and hearings on violations of the provisions of this chapter, unless expressly

stated to the contrary, shall be under his or her direction and supervision. He or she may appoint, designate or employ persons to perform duties as may be necessary to the enforcement of this chapter, including the making of inspections.
(Ord. CM-769, passed 9-9-1986)

## § 98.10 INSPECTIONS.

(A) *When residential inspections are to be made.* All building and premises subject to this chapter are subject to inspections from time to time by the Property Maintenance Officer. At the time of the inspections all exterior parts of the premises shall be available and accessible for the inspections, and the owner, operator and occupant are required to provide the necessary arrangement to facilitate the inspections. The inspections shall be made between 8:30 a.m. and 4:00 p.m., unless the premises are not available during the foregoing hours for inspections or there is a reason to believe a violation exists of a character which is an immediate threat to health or safety, requiring inspection and abatement without delay.

(B) *When non-residential inspections are to be made.* All building and premises subject to this chapter are subject to inspections from time to time by the Property Maintenance Officer. At the time of such inspections all exterior parts of the premises shall be available and accessible for the inspections, and the owner, operator are required to provide the necessary arrangement to facilitate the inspections. The inspections shall be made during the regular open hours of business occupying the premises unless there is a reason to believe a violation exists of a character which is an immediate threat to health or safety, requiring inspection and abatement without delay.

(C) *Conduct of inspectors.* Inspectors shall conduct themselves as to avoid intentional embarrassment or inconvenience to occupants.

(D) *Where access by inspector is refused.* Where the Property Maintenance Officer or his agent is refused access or is otherwise impeded or prevented by the owner, occupant, or operator from conducting an inspection of the premises, the person shall be in violation of this chapter and subject to the penalties hereunder.
(Ord. CM-769, passed 9-9-1986)

## § 98.11 NOTICE OF VIOLATIONS; HEARINGS.

(A) *Search warrant or access warrant.* In addition to the provisions of § 98.10(D), the Property Maintenance Officer may, upon affidavit, apply to the Municipal Court of Miami County, or other court of proper jurisdiction for a search warrant setting forth factually the actual conditions and circumstances that provide a reasonable basis for believing that a nuisance or violation of this chapter exists on the premises and if the court is satisfied as to the matter set forth in such affidavit, the court may authorize the issuance of a search warrant permitting access to and inspection of that part of the premises on which the nuisance or violation exists. Warrant for access may be issued by the court upon affidavit of the Property Maintenance Officer establishing grounds therefor pursuant to § 98.15(D).

(B) *Procedure where violation discovered.* Where a violation of this chapter or the regulations hereunder is found to exist, a written notice from the Property Maintenance Officer shall be served on the person or persons responsible for the correction thereof.

(C) *Contents of notice.* The notice shall specify the violation or violations committed, what must be done to correct the same, a reasonable period of time, not to exceed 45 days, to correct or abate the violation, the right of the person served to request a hearing, and that the notice shall become an order of the Property Maintenance Officer in ten days after service unless a hearing is requested pursuant to division (E) of this section.

(D) *Service of notice.* Notice may be served personally or by mail with postage paid, addressed to the last known address of the person to be served. Where it is ascertained that the owner does not reside on the premises, the last known address shall be the address of the owner as shown in the office of the County Auditor. If the last known address cannot be ascertained, the notice may be posted on the outside front entrance of the building. The Property Maintenance officer shall file and provide notice to any owner or operator of any violation at any address other than the last known address provided hereunder if the other address is filed with the Property Maintenance Officer personally or by certified mail addressed to the Property Maintenance Officer. Date of service of the notice shall be determined where service is by mail as of the day following the day of mailing for notices to addresses within the village, and as the fourth day after the day of mailing for notices to addresses outside the village. Where the day of service would fall upon a Sunday or other day when mail is not ordinarily delivered, then the day of service shall be the next regular delivery day.

(E) *Notice to become an order unless hearing requested.* Within ten days of the date of service of a notice, the notice shall constitute a final order unless any person affected by the notice requests a hearing thereon, before the Zoning Board of Appeals in the manner prescribed herein, by serving a written request within the ten-day period, in person or by mail upon the Municipal Manager. The request for a hearing before the Board shall set forth briefly the grounds or reasons on which the request for a hearing is based and the factual matters contained in the notice of violation which are to be disputed at the hearing. The Chairperson to the Board, upon receipt of the request from the Municipal Manager, shall within 30 days therefrom and upon ten days notice to the party aggrieved, set the matter down for hearing.

(F) *Determination at hearing.* At any hearing provided hereunder, the Chairperson of the Zoning Board of Appeals shall be vested with all the powers provided by law to compel the attendance of witnesses and parties in interest by the issuance and service of subpoena, and require, by subpoena the production of books, records or other documents at any such hearing which may be pertinent to matters to be determined by him or her and to enforce any such subpoena or secure any other for the enforcement of any such subpoena, as provided by law. A final determination shall be made within ten days from the completion of the hearing. The Zoning Board of Appeals shall issue an order either incorporating the determinations and directions contained in the notice, modifying the same or withdraw the notice.

(G) *Extension of time.* The Property Maintenance Officer may extend the time for correction or abatement of the violations for an additional period of time not to exceed 30 days, except where major capital improvements or renovations are involved, in which instance the time for completion may be extended for a period not to exceed 90 days beyond the expiration date of the original notice.

(H) *Noncompliance with notice.* Whenever the owner, agent, occupant or operator of a structure or premises fails, neglects or refuses to comply with any notice of the Property Maintenance Officer that becomes a final order, as provided in division (E) of this section, the Property Maintenance Officer may advise the Director of Law of the circumstances and request the Director of Law to institute an appropriate action at law to compel compliance.

(I) *Referral of violation.* Any violation of any ordinance other than this chapter, discovered by the Property Maintenance Officer or his or her representative, shall be reported to the official or agency responsible for the enforcement of the ordinance.

(J) *Where notice and hearing not required prior to court proceedings.* Notwithstanding the requirements of divisions (B) - (F) of this section, violations at § 98.10(D) and § 98.15(A) may be prosecuted without notice by the filing of a complaint by the Property Maintenance Office in the Miami County Municipal Court, Troy, Miami County, Ohio, or other court of property jurisdiction.

(K) *Effect of notice on owner.* For the purposes of the enforcement of this chapter, the service of a notice on an owner, whether or not the owner is also the operator, shall constitute notice of violations set forth therein until the violations are abated in conformity with this chapter and other applicable ordinances of the municipality.
(Ord. CM-769, passed 9-9-1986)

## § 98.12 VIOLATIONS.

(A) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the fourth degree for each violation committed hereunder.

(B) Each violation of a section of this chapter shall constitute a separate and distinct violation independent of any other section or division or any order issued pursuant to this chapter. Each day's failure to comply with any such section or division shall constitute a separate and distinct violation independent of any other section or division or any order issued pursuant to this chapter. Each day's failure to comply with any such section or division shall constitute a separate violation.

(C) Where the defendant is other than a natural person or persons, divisions (A) and (B) hereof shall also apply to any agent, superintendent, officer, member or partner who shall along or with others have charge, care or control of the premises.

(D) The imposition of any penalty shall not preclude the Director of Law from instituting any appropriate action or proceeding in a court of proper jurisdiction to prevent an unlawful repair or maintenance, or to restrain, correct or abate a violation, to prevent the occupancy of a building, structure or premises, to require compliance with the provisions of this chapter, other applicable laws, ordinances, rules or regulations or the orders or determinations of the Property Maintenance Officer or the Zoning Board of Appeals.
(Ord. CM-769, passed 9-9-1986)

## § 98.13 EXISTING OFFENSES AND VIOLATIONS NOT DISCHARGED.

The repeal of any provisions of any other ordinances by this chapter shall not affect any action for prosecution or abatement under any such ordinance or any notice, complaint or order issued by any officer or agency of the municipality, prior to the effective date hereof or concerning any prosecution or other steps of enforcement which have been taken or area being taken within any administrative agency or in the court of proper jurisdiction for enforcement thereof.
(Ord. CM-769, passed 9-9-1986)

## § 98.14 INSPECTION AND STATUS REPORTS.

(A) Whenever an owner, operator, occupant bona fide prospective purchaser, mortgage or bona fide prospective occupant applies to the Property Maintenance Officer for an inspection in order to ascertain if any section of this chapter has been violated, the Property Maintenance Officer shall, upon payment of the fee hereunder stated, cause an inspection to be made of the premises and insure an informational certificate or report of the inspection to the applicant, indicating therein any violations of this chapter on the premises. The applicant for the inspection shall state in writing his or her full name, residence and reasons and basis for which the inspection is requested. The Property Maintenance officer may deny the application for failure to comply with this requirement.

(B) Where, in lieu of an inspection, an owner, operator, occupant, lessee, bona fide prospective purchaser, mortgagee or bona fide prospective occupant requests a status report as to whether or not there are any known violations presently pending on the premises, upon payment of the fee prescribed herein and written request, a copy of any notice or order on any violation then pending shall be sent to the applicant.

(C) No inspection report issued under division (A) of this section or status report under division (B) hereof shall be construed as providing a defense against any violation of this chapter or any other ordinance of the municipality which may be discovered thereafter, whether or not the condition or violation existed at the time of any such inspection or status report. The inspection or status report is provided as a convenience to the public and shall not constitute a limitation on the full enforcement of this chapter. The inspection or status report shall include only such matters as are embraced in this chapter.

(D) Inspection and status report fees.

(1) The minimum fee for any inspection made under division (A) of this section shall be $20. Dwellings of more than ten dwelling units or rooming units shall pay an additional fee of $1 for each unit in excess of ten.

(2) The fee for any status report under division (B) of this section shall be $5.
(Ord. CM-769, passed 9-9-1986)

## § 98.15 CERTIFICATE OF NECESSITY.

(A) Where any owner, operator or occupant is required to make repairs or otherwise improve his property and is unable to comply with this chapter without having right to access to the building or premises through or across adjoining premises not owned by him or her or under his or her control, and where right of access has been refused the owner, operator or occupant, or where the owner or person responsible for granting permission cannot be found or located, then upon filing of an affidavit setting forth the facts with the Property Maintenance Officer, the Property Maintenance Officer shall serve a five-day written notice of a hearing upon the owner, operator or occupant of any adjoining premises affected by the application.

(B) On the day fixed for hearing, the Zoning Board of Appeals shall provide opportunity for the owner, operator or occupant of the adjoining property or properties to state why access should not be granted across such adjoining properties.

(C) If the Zoning Board of Appeals determines that access is deemed absolutely necessary to accomplish or complete repairs or improvements necessary for compliance with this chapter, then the Zoning Board of Appeals shall issue a certificate of necessity setting forth therein the person or persons to whom the certificate shall apply, such conditions as shall be necessary to protect the adjoining property, reasonable time limits during which such certificate shall operate, precautions to be taken to avoid damages and, where the Board deems proper, that a bond be procured at the expense of any persons seeking access to secure the adjoining property against damage to persons or property arising out of the rights of access. The bond shall not exceed $10,000 unless conditions deemed advisable by the Board appear otherwise, and the amount set shall take into consideration the extent, nature and duration of the repairs, the proximity of the improvement on the premises affected and potential risk of damage thereto. The bond shall be filed with the Property Maintenance Officer.

(D) Any refusal to comply with this section or any interference with access to premise pursuant to a certificate issued hereunder shall be a violation of this chapter, and, in addition to penalties provided hereunder, the Property Maintenance Officer may, upon affidavit, apply to the Miami County Municipal Court, Troy, Miami County, Ohio, or other court of competent jurisdiction for a warrant under the procedure set forth in § 98.11(A) authorizing access to the premises under appropriate conditions and circumstances as provided under division (C) hereof.
(Ord. CM-769, passed 9-9-1986)

# CHAPTER 99: EQUAL HOUSING OPPORTUNITY LAW

Section



## § 99.01 DESIGNATION OF POLICY.

It is hereby designated to the continuing policy of the municipality, to do all things necessary and proper to secure for all its citizens, their right to equal housing opportunities regardless of their race, color, creed, sex, marital status, religious belief, national origin or handicap.
(Ord. CM-824, passed 4-12-1988)

## § 99.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***DISCRIMINATION, DISCRIMINATING*** or ***DISCRIMINATE.*** To render any differences in treatment to any person in the sale, lease, rental or financing of a dwelling or housing unit because of a person's race, color, creed, sex, marital status, religious belief, national origin or handicap.

***HOUSING.*** Any building, facility or structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more persons, groups, or families and any vacant land offered for sale or lease for the construction or location thereof of such building, facility or structure.

***PERSON.*** One or more individuals, corporations, partnerships, associations, firms or enterprises, labor organizations, legal representative, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

***REAL ESTATE AGENT.*** Includes any real estate broker, real estate salesperson or an agent thereof, or any other person, partnership, association or corporation who for consideration sells, purchases, exchanges, rents negotiates, offers of attempts to negotiate the sale, purchase, exchange or rental of real property or hold himself out as engaged in the business of selling, purchasing, exchanging, renting or otherwise transferring any interest in real property.

***LENDING INSTITUTION.*** Any bank, building and loan association savings and loan association, insurance company or other persons whose business consists in whole or in part in the lending of money or guaranteeing of loans.
(Ord. CM-824, passed 4-12-1988)

## § 99.03 UNLAWFUL HOUSING PRACTICES.

(A) It shall be an unlawful housing practice and a violation of this chapter for any person or real estate agent to do any of the following:

(1) Discriminate against any person in the selling, leasing, subleasing, renting, assigning or otherwise transferring of any interest in housing;

(2) Discriminate against any person by refusing to negotiate, refusing to transmit a bona fide offer, making false representations on the availability of the housing unit for inspection, sale or rental, or withdrawing from the market a housing unit which is for sale, lease, sublease or rental;

(3) Include in the terms, conditions or privileges of any sale, lease, sublease, rental assignment or other transfer of any housing, any clause, condition or restrictions discriminating against any person in the use or occupancy of such housing; and

(4) Discriminate in the furnishing of any facilities, repairs, improvements or services or in the terms, conditions, privileges or tenure of occupancy of any person.

(B) It shall be an unlawful housing practice and a violation of this chapter for any lending institution to do any of the following:

(1) Discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making available funds for purchasing, constructing, improving, altering, repairing, rehabilitating or maintaining any housing or to discriminate against the fixing of the amount, interest rate, duration or the terms, conditions or provisions of any such financial assistance; and

(2) Discriminate in the lending of money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making of funds available on the basis of the geographic location.

(C) It shall be an unlawful housing practice and a violation of this chapter for any person, real estate agent or lending institution with respect to any prohibited act specified in this chapter, to publish, to circulate or cause

to be published or circulated, any notice, statement, listing or advertisement, or to announce a policy or to make any record in connection with the perspective sale, lease, sublease, rental or financing of any housing which indicates reliance, determination or decision based on race, color, creed, sex, marital status, religious belief, national origin or handicap.

(D) It shall be an unlawful housing practice and a violation of this chapter for any person or real estate agent to assist in, compel or coerce the doing of any act declared to be as an unlawful housing practice under this chapter, or to obstruct or prevent endorsement or compliance with provisions of this chapter, or to attempt directly or indirectly to commit any act declared by this chapter to be an unlawful housing practice.

(E) It shall be an unlawful housing practice and a violation of this chapter for any person, real estate agent or lending institution to do any of the following:

(1) Induce or attempt to induce the sale, transfer of interest or listing for sale of any housing by making representations regarding the existing or potential proximity of real property owned, used or occupied by any person of any particular race, color, creed, sex, marital status, religious belief, national origin or handicap by direct or indirect methods;

(2) Make any representation to a prospective purchaser or lessee that any housing in a particular block, neighborhood or area may undergo, is undergoing or has undergone a change with respect to race, color, creed, sex, marital status, religion, national origin or handicap of the block, neighborhood or area; and

(3) Induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, color, creed, sex, marital status, religion, national origin or handicap in the block, neighborhood or area will or may result in:

(a) The lowering of property values;

(b) A change in the racial, color, religious, nationality or ethnic composition of the block, neighborhood or area in which the property is located;

(c) An increase in criminal or antisocial behavior in the area; and

(d) A decline in the quality of the schools serving the area.

(F) It shall be an unlawful housing practice and a violation of this chapter for any person or real estate agent to cause or coerce or attempt to cause or coerce retaliation against any person because the person has lawfully opposed any act or failure to act that is a violation of this chapter or has, in good faith, filed a complaint, testified, participated or assisted in any way proceedings under this chapter or prevent any person from complying with this chapter.

(G) It shall be an unlawful housing practice and a violation of this chapter to do any other thing or engage in conduct which would otherwise make unavailable equal housing opportunities.

(H) Nothing in this chapter shall bar any religious or denominational institution or organization, or any charitable or educational organization that is operated, supervised or controlled by or in connection with a religious organization, or any bona fide private or fraternal organization from giving preference to persons of the same religion or denomination, or to members of the private or fraternal organization or from making the selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.
(Ord. CM-824, passed 4-12-1988) Penalty, see § 99.99

## § 99.04 SCOPE OF PROVISIONS.

The provisions of this chapter shall apply to all housing located within the corporate limits of the municipality.
(Ord. CM-824, passed 4-12-1988)

## § 99.05 MIAMI COUNTY FAIR HOUSING COMMITTEE.

(A) This chapter does hereby reference the Miami County Fair Housing Committee to assist with the implementation of the stated policies herein established by this chapter.

(B) The Miami County Fair Housing Committee is charged with the following duties:

(1) To investigate all complaints involving unlawful discriminatory practices in the municipality, which are filed with the Fair Housing Officer.

(2) As the results of the investigations and where such investigations merit consideration, the Committee shall:

(a) Endeavor by conciliation to resolve the complaints;

(b) Dismiss the complaints that are unfounded;

(c) Recommend that the parties involved file a complaint with the Civil Rights Commission of Ohio as provided in R.C. § 4112.05;

(d) Take such other action as it deems necessary in reference to the facts presented; and

(e) Make such recommendations to the Law Director of the municipality, for proper action on the complaint.
(Ord. CM-824, passed 4-12-1988)

## § 99.06 OTHER LEGAL ACTION.

Nothing contained in those chapter shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled or from filing any complaint with any other agency or court of law.
(Ord. CM-824, passed 4-12-1988)

## § 99.99 PENALTY.

Any violation of this chapter shall subject such person to a court action for compensatory damages of not more than $1,000, along with court costs. The court may also order such other relief as it deems necessary. (Ord. CM-824, passed 4-12-1988)

# TITLE XI: BUSINESS REGULATIONS

Chapter

# CHAPTER 110: GENERAL LICENSING PROVISIONS

Section



## § 110.01 LICENSES REQUIRED.

No person shall engage in any of the trades, businesses or professions for which licenses are required by Title XI or by any other ordinance or provision of this code without applying for and obtaining a license from the Clerk or other duly authorized issuing authority.

## § 110.02 APPLICATION FOR LICENSE.

(A) All original applications for licenses, unless otherwise specifically provided, shall be made to the Municipal Clerk in writing upon forms to be furnished by him or her and shall contain:

(1) The name of the applicant and of each officer, partner or business associate;

(2) His or her present occupation and place of business;

(3) His or her place of residence of five years next preceding the date of application;

(4) The nature and location of the intended business or enterprise;

(5) The period of time for which the license is desired;

(6) A description of the merchandise to be sold, if for a vendor; and

(7) Such other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.

(B) Renewal of an annual license may be granted to a license in good standing upon the original application, unless otherwise provided.

(C) With each original or renewal application, the appliance shall deposit the fee required for the license requested.

(D) It shall be unlawful knowingly to make any false statement or representation in the license application.
Penalty, see § 110.99

## § 110.03 ISSUANCE OF LICENSE.

Upon receipt of such application for a license, accompanied by the proper fee, if approval by another officer or department is not required, the Clerk, by and with the written approval of the Director of Safety, or other administrative officer, shall forthwith deposit the fee in the treasury and issue to the applicant a proper license certificate signed by the Clerk and Director of Service, or other administrative officer. If for any reason the license is not issued, this fee less $5 to cover expenses of considering the application, shall be returned to the applicant.

## § 110.04 DATE AND DURATION OF LICENSE.

A license shall not be valid beyond the expiration date therein specified and, unless otherwise provided, shall not extend beyond December 31 of the year issued. However, at any time after December 14 licenses may be issued for the ensuing calendar yard. Unless otherwise specified the full annual fee will be required of licenses irrespective of the date of issue of the license.

## § 110.05 LICENSE NOT TRANSFERABLE.

Every license shall be issued to a real party in interest in the enterprise or business, and unless otherwise provided no license shall be assigned or transferred.
Penalty, see § 110.99

## § 110.06 LICENSE CERTIFICATE TO BE DISPLAYED.

Every license carrying on business at a fixed location shall keep posted in a prominent place upon the licensed premises, the license certificate. Other licensees shall carry their license certificates at all times and whenever requested by any officer or citizen, shall exhibit the same.
Penalty, see § 110.99

## § 110.07 REVOCATION OR SUSPENSION.

(A) Any license may be revoked by the Director of Safety or other administrative officer at any time for conditions or considerations which, had they existed at the time of issuance, would have been valid grounds for its denial; for any misrepresentation of a material fact in the application discovered after issuance of the license; for violation of any provision of this chapter or other law or ordinance relating to the operation of the business or enterprise for which the license has been issued; or upon conviction of a license for any federal, state or municipal law or ordinance involving moral turpitude.

(B) The revocation shall become effective upon notice served upon such license or posted upon the premises affected.

(C) As a preliminary to revocation, the Director of Safety or other administrative officer may issue an order suspending the license, which shall become effective immediately upon service of written notice to such licensee. This notice shall specify the reason for suspension, and may provide conditions under which reinstatement of the license may be obtained. Upon compliance with the conditions within the time specified, the license may be restored.

## § 110.08 APPEAL AND REVIEW.

In case any applicant has been denied a license, or if his or her license has been revoked or suspended, the applicant or licensee as the case may be, shall within 3 business days have the right to appeal to the Council from the denial, revocation or suspension. Notice of appeal shall be filed in writing with the Clerk who shall fix the time and place for a hearing which shall be held not later than 1 week thereafter. The Clerk shall notify the Mayor and all members of Council of the time and place of such hearing not less than 24 hours in advance thereof. Three members of Council shall constitute a quorum to hear the appeal. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of Council present at such meeting declare in favor of the applicant, the license shall be issued or fully reinstated as the case may be; otherwise the order appealed from shall become final.

## § 110.99 PENALTY.

Whoever violates any provision of this title, for which another penalty is not already provided, shall be fined not more than $100.

# CHAPTER 111: TAXICABS

Section



## § 111.01 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

***TAXICAB.*** Any vehicle used to carry passengers for hire but not operating on a fixed route.

***Statutory reference:***

*Power of municipality to regulate taxicabs, R.C. § 715.66*

## § 111.02 TAXICAB; LICENSE FEE.

(A) No person, firm or corporation shall operate or cause to be operated a taxicab or proffer the services of any vehicle as a taxicab unless the owner of the vehicle has obtained a taxicab license covering the vehicle.

(B) Every such taxicab license shall expire on December 31 for the year in which issued. Licenses issued on or after July 1 of any year shall be issued at l/2 the annual license fee herein provided.

(C) The annual license fee for each taxicab shall be $10.

Penalty, see § 110.99

## § 111.03 APPLICATION FOR LICENSE.

In addition to the information required by § 110.02, each applicant for a taxicab license shall present and file with the Clerk his or her signed application setting forth the trade name under which he or she intends to do business; the number of vehicles and a general description of each vehicle for which a license is desired, the marking or lettering to be used thereon; and any other information required by the Clerk pertinent to the issuance of the license.

## § 111.04 ISSUANCE OF LICENSE.

(A) The Municipal Manager shall investigate and hold a hearing upon each application for a license. If the Municipal Manager finds, on the investigation and hearing, that the public convenience and necessity do not justify the operation of the vehicle for which license is desired, he or she shall forthwith notify the applicant of his or her findings. If he or she finds, from the investigation and hearing, that the public convenience and necessity do justify the operation of the vehicle or vehicles for which license is desired, he or she shall forthwith notify the applicant. Within 60 days thereafter, applicant shall furnish and file with the Clerk the following:

(1) A full transcript of the information appearing on the certificate of title of each vehicle for which license is desired, and the state license number of each vehicle;

(2) An unexpired official certificate from an authorized motor vehicle inspection station of the municipality, or if none exists from a neighboring city in Ohio, that each vehicle for which a license is desired has been inspected and tested and found to meet the standards fixed by statute and that each such vehicle is roadworthy and safe for operation as a taxicab;

(3) The name of each person who will operate the taxicab, with chauffeur's license number of each such person; and

(4) Insurance or bond.

(a) A policy or policies of liability insurance issued for the life of the license applied for or longer, by a responsible insurance company, approved as to sufficiency by the Treasurer and as to legality by the Solicitor, providing indemnity for or protection to the applicant against loss resulting from the operation of each such taxicab to the extent of $10,000 on account of injury or death of 1 person in any 1 accident; $20,000 on account of injury or death of more than 1 person in any 1 accident; and $5,000 for property damage caused in any 1 accident.

(b) In lieu of the policies of insurance above described, applicant may furnish a bond binding the principal and sureties to liability for the payment of a judgment or judgments to the extent of $10,000, $20,000 and $5,000 respectively, as above set forth, with at least 2 approved persons as sureties or 1 approved corporate surety approved as to sufficiency by the Treasurer and as to legality by the Solicitor.

(B) Thereupon, the Municipal Manager shall examine the supporting information and documents and being satisfied that the applicant is the owner of any such vehicle, that the same is a safe and fit conveyance, and that

satisfactory insurance or bond has been issued and is in force thereon, he or she shall, upon payment of the prescribed license fee, issue a license to the applicant.

(C) A certified copy of the license shall be exhibited in a prominent place in each taxicab at all times.

## § 111.05 TAXICAB STANDS.

At the time of issuing the license, the Director of Safety shall designate a regulate parking space for the taxicab or taxicabs, and he or she may prescribe rules for unsafe of this stands suitable to applicant's business and agreeable with the public convenience and welfare.

## § 111.06 DISPLAYING RATES; EXCESSIVE CHARGES.

Every taxicab shall display at all times a printed list of the fares and rates to be charged passengers for transportation; and it shall be unlawful for any owner or driver to charge any amount in excess of such printed rates unless by mutual agreement between passenger and driver entered into before leaving the point of departure.
Penalty, see § 110.99

## § 111.07 ALL DRIVERS TO BE LICENSED.

No person under 21 years of age and no person other than a chauffeur duly licensed as such under the laws of the state shall operate a taxicab on any street or alley of the municipality.
Penalty, see § 110.99

## § 111.08 SUSPENSION OR REVOCATION OF LICENSE.

(A) Whenever a licensee shall for a period of 60 days fail to make a reasonable or consistent effort to operate any such taxicab or taxicabs the Municipal Manager may either suspend or revoke the license pursuant to the provisions of § 110.07.

(B) This power to suspend or revoke shall not limit the powers granted to the Municipal Manager elsewhere in this code.

## § 111.09 RENEWAL OF LICENSE.

All owners of taxicabs hereby licensed, at the completion of the year for which such license was issued, shall be entitled to a renewal for each succeeding year without a finding of convenience or necessity providing all other requirements of this code have been complied with.

## § 111.10 VEHICLE INSPECTION; REQUIREMENTS.

(A) It shall be unlawful for the owner or other person having possession or control of any taxicab, to operate it upon the streets unless the vehicle has an unexpired seal of inspection indicating that it has been duly inspected and found safe and roadworthy within the preceding 6 months.

(B) If any such taxicab is damaged by reason of a collision, or from any cause, it shall be unlawful for the owner or other person having possession or control thereof to operate it upon the streets unless the vehicle has been tested and approved at an authorized inspection station within 24 hours after the vehicle has been returned to service.

(C) A violation of this section shall constitute grounds for revocation of a taxicab license.
Penalty, see § 110.99

# CHAPTER 112: PEDDLERS AND SOLICITORS

Section



## § 112.01 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CANVASSER*** or ***SOLICITOR.*** Any person, whether resident of the municipality or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house or from street to street, taking or attempting to take orders in person or by telephone for sale of goods, wares and merchandise or personal property of any nature, for future delivery or for services to be furnished or performed in the future.

***COLD CANVASS.*** The uninvited telephone contact of a person by a canvasser or solicitor not having a permanent place of business within the municipality or for and on behalf of a person, firm, or corporation not having a permanent place of business within the municipality.

***ITINERANT VENDOR*** or ***TRANSIENT DEALER.*** Any person, whether principal or agent, who engages in or conducts in this municipality a temporary or transient business of selling goods, wares and

merchandise, with the intention of continuing in such business for a period of not more than 120 days and who, for the purpose of carrying on such business, hires, leases or occupies either in whole or part a room, building or other structure, or any motor vehicle, commercial tractor, trailer, house trailer, semitrailer or travel trailer as defined in R.C. § 4501.01 for the exhibition and sale of such goods, wares and merchandise.

***PEDDLER.*** Any person, whether a resident of the municipality or not, who carries with him or her for the purpose of sale and immediate delivery from house to house, goods, wares and merchandise.

(B) Exceptions to the definitions of the terms ***PEDDLER***, ***CANVASSER*** or ***SOLICITOR*** are as follows.

(1) A person selling or making delivery of goods, wares or merchandise previously sold by an establishment having a permanent place of business within the municipality;

(2) A minor under 18 years of age;

(3) A person making sales of the following items for daily household consumption:

(a) Baked goods;

(b) Fruits, vegetables, eggs and similar agricultural products; and/or

(c) Dairy products, except dealers of frozen desserts from vehicles.

(4) A person working for or on behalf of any recognized educational, political, civic, religious, medical or charitable organization or causes.

## § 112.02 PERMIT AND LICENSE REQUIRED.

No person, firm or corporation shall engage in the business or activity of a peddler, solicitor, canvasser, itinerant vendor or transient dealer within the municipality without first obtaining a license, as provided in this chapter.
Penalty, see § 112.99

## § 112.03 COLD CANVASS PROHIBITED.

No person, firm or corporation shall engage in a cold canvass within the municipality.
Penalty, see § 112.99

## § 112.04 LICENSE APPLICATION AND REQUIREMENTS.

(A) Applications for licenses for peddlers, solicitors, canvassers, itinerant vendors and transient dealers shall be filed with the Director of Safety on a form to be furnished by him or her which shall require, at least, the following information.

(1) Name of applicant;

(2) Home address of applicant;

(3) Name and address of the person by whom employed;

(4) Length of service with such employer;

(5) All places of residence and all employment during the preceding year;

(6) The nature and character of the goods to be sold or service to be furnished by the applicant;

(7) Names of other towns in which the applicant has recently conducted a business for which license is herein required; and

(8) A personal description and history of the applicant.

(B) Applicant shall furnish 2 recent photographs of himself or herself not more than 1 year old and approximately a 3-inch by 3-inch square. Fingerprints of the applicant shall be furnished and made in duplicate. The application shall be made at least 10 days before the license is required.

(C) If the Director of Safety determines after an investigation, that the applicant proposes to engage in a lawful commercial or professional enterprise and does not, based upon past record, constitute a clear and present danger to the residents of the municipality, he or she shall issue a license to the applicant.

**§ 112.05 FEES.**

For the license to be issued under the provisions of this chapter, each applicant shall pay to the village the sum of $30. All licenses issued shall be for a period of 1 year or less which shall end on December 31 of that calendar year in which they are acquired, regardless of the date of license is issued.
(Am. Ord. CM-741, passed 6-11-1985; Am. Ord. CM-943, passed 4-10-1990)

**§ 112.06 APPEALS.**

Any applicant who has applied for a license in accordance with this chapter and to whom the Director of Safety has, after an investigation, denied a license or revoked a license may appeal to the Council. Notice of the appeal shall be filed with the Clerk of Council within 5 days after the denial or revocation by the Director of Safety. The Council on appeal may affirm or reverse the action of the Director or Safety.

**§ 112.07 CARRYING OR EXHIBITING LICENSE.**

The license issued under the provisions of this chapter shall be exhibited in the place of business by itinerant vendor or transient dealer, and shall be carried by any peddler, solicitor or canvasser at all times when peddling,

soliciting or canvassing and shall be exhibited to any person being solicited or any police officer on request. Further, an identification badge may be issued to all peddlers, solicitors or canvassers, which shall be worn by them when peddling, soliciting or canvassing.

### § 112.08 HOURS REGULATED.

All peddling, soliciting or canvassing done under license issued by virtue of this chapter shall be conducted between the hours of 9:00 a.m. and 7:00 p.m. on weekdays. No peddling, soliciting or canvassing shall be conducted on Sunday.
Penalty, see § 112.99

### § 112.09 LOUD NOISES AND SPEAKING DEVICES.

No peddler, or any person in his or her behalf, shall shout, make any cry out, blow a horn, ring a bell, or use any sound device, including any loud-speaking radio or sound amplifying system, upon any of the streets, alleys, parks or other public places of the municipality or on any private premises in the municipality, where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard at a distance of 75 feet from the source of the sound.
(Ord. CM-17-08, passed 5-9-2017) Penalty, see § 112.99

### § 112.10 LICENSE TRANSFER AND USE.

No license shall be assigned or transferred. No licensee shall authorize any person, firm or corporation other than the one named therein to do business. No licensee shall conduct any other business than is listed in his or her application to be transacted. A separate license shall be required for each individual peddler, solicitor, canvasser, itinerant vendor or transient dealer, whether or not employed by one person, firm or corporation.
Penalty, see § 112.99

### § 112.11 REVOCATION OF LICENSE.

Any license issued under the provisions of this chapter may be revoked at any time, should the person to whom it is issued be guilty of any fraud, misrepresentation or unlawful act in connection with his or her business. Also, if he or she is found to be a person not fit to be engaged in such business or he or she violates any of the provisions of this chapter.

### § 112.12 IGNORING "NO PEDDLERS" AND OTHER SIGNS.

It shall be unlawful for any peddler or solicitor or any person pretending to be a peddler or solicitor for the purpose of peddling or soliciting or pretending to peddle or solicit to ring the bell or knock at any building

whereon there is painted, affixed or displayed to public view any sign containing any or all of the following words, “No Peddlers,” “No Solicitors” or “No Agents” or which purports to prohibit peddling or soliciting on the premises.
Penalty, see § 112.99

## § 112.13 PAYMENT OF LICENSE FEE DESPITE CONVICTION.

Conviction and punishment of any person or for peddling or soliciting without a license shall neither excuse nor exempt that person from the payment of any license fee due or unpaid at the time of his or her conviction. Nothing in this chapter shall prevent criminal prosecution for any violation of any provision of this chapter.

## § 112.99 PENALTY.

Whoever violates any provision of this chapter, for which another penalty is not specifically provided, shall be fined not more than $100.

# CHAPTER 113: COMMERCIAL AMUSEMENTS

Section



## *GENERAL PROVISIONS*

### § 113.01 BILLIARDS AND POOL.

It shall be unlawful to permit betting or gambling in connection with the use of a billiard or pool table. (Am. Ord. CM-601, passed 12-8-1981) Penalty, see § 113.99

***Statutory reference:***

*Power of municipality to regulate billiards, R.C. § 715.51*

### § 113.02 CIRCUSES, MENAGERIES, CARNIVALS.

(A) Each person, desiring to conduct, state or give a circus, menagerie, carnival, sideshow, musical or minstrel entertainment or exhibition of monsters or freaks of nature, for which money or reward is demanded or received, shall first obtain a license and pay the license fee or fees provided herein.

(B) In addition to the requirements of § 110.02, the applicant for a license to conduct or stage such exhibition shall give at least 1 week's notice in writing to the Municipal Manager stating the dates of the performances, and the location at which they are to be presented. The Municipal Manager shall give his or her consent to the issuance of the license if he or she deems that the location is suitable for the purpose; that it will properly accommodate the patrons; that the nature of the performance or exhibition is morally proper; and that the use of the location will not throw too great a burden upon the Police and Fire Departments.

(C) No circus, menagerie or carnival shall be given for more than 2 consecutive days, except in cases where Council by special resolution shall allow a longer period, or where such exhibition is to be conducted on municipal property and the use thereof for a longer period shall have been approved by Council.
Penalty, see § 110.99

### § 113.03 DEPOSIT REQUIRED.

At the time application for a license is made, where use of municipal grounds is contemplated, the applicant shall deposit with the Clerk a cash bond 10 times the license fee as noted in § 113.04, conditioned upon the restoration and cleaning up of the grounds in a manner satisfactory to the Municipal Manager. In the event the grounds are restored and cleaned up properly following the exhibition, the deposit shall be returned; otherwise the same shall be forfeited to the municipality.

### § 113.04 LICENSE FEE FOR PUBLIC ENTERTAINMENT OR EXHIBITION.

The fee for the license shall be as follows: For each circus, carnival, sideshow, musical or minstrel entertainment or exhibition of monsters or freaks of nature, $50 for the first day, $25 for each day thereafter. However, the fee shall not amount to more than $150 in any 1 week.

### § 113.05 LICENSE FEE MAY BE WAIVED IN CIVIC INTEREST.

The Municipal Manager may, in his discretion, grant without cost a license for the holding of a circus, carnival, sideshow, musical or minstrel entertainment for not more than 6 consecutive days, where all of the performances are fostered and supervised by civic interests of the municipality, and a substantial part of the funds derived therefrom is expended for charitable or civic purposes.

## *COIN-OPERATED AMUSEMENT DEVICES*

### § 113.10 LICENSE REQUIRED.

No person or persons, firm or corporation, shall have in his, her, their or its possession and expose in any public place or operate a pin ball machine, juke box, billiard table, pool table, electronic game machine or any

other coin-operated or token-operated amusement device without first obtaining a license therefore from the Municipal Manager.
(Am. Ord. CM-601, passed 12-8-1981) Penalty, see § 113.99

## § 113.11 ISSUANCE OF LICENSE.

(A) The Municipal Manager is authorized to issue a license for the operation of the devices or machines mentioned in § 113.10 hereof, to any person upon the payment of a license fee of $75 per year, payable annually on or before January 1 of each year, for each device or machine possessed, exposed or operated in the municipality, except juke boxes on which shall be paid a license fee of $10 per year payable annually on or before January 1 of each year. The revised license fee shall take effect on December 31, 1993.

(B) Any license so issued shall be extended from year to year upon the payment of the yearly license fee, or until revoked by the Municipal Manager. Any of the coin-operated devices in operation at the time a license is issued may be substituted by another device of like nature and character during the year without paying an additional tax.

(C) The Municipal Manager, upon payment of the fee, shall issue to licensee a certificate for the pin ball machine, juke box, billiard table, pool table, electronic game machine or other coin-operated or token-operated amusement device which certificate shall be serially numbered, giving the date of issue and signed by the Municipal Manager.

(D) The certificate shall be attached to the device in a conspicuous place in such a manner that it cannot be removed by other than the licensee.

(E) The Municipal Manager may, in his discretion, grant without cost a license for the operation of the devices or machines mentioned in § 113.10 hereof, for not more than 6 consecutive days, where the operation thereof is fostered and supervised by civic or religious interests of the municipality, and a substantial part of the proceeds derived from the operation of such devices or machines is expended for charitable or civic purposes.
(Am. Ord. CM-601, passed 12-8-1981; Am. Ord. CM-93-10, passed 5-11-1993) Penalty, see § 113.99(B)

## § 113.12 MINORS FORBIDDEN TO OPERATE; EXCEPTION.

No pin ball machine, billiard table, pool table, electronic game machine or other coin-operated or token-operated amusement device, except juke boxes, shall be operated by any minor under 16 years of age, and subject to all the conditions and provisions of Chapter 98 of this Code of Ordinances and any subsequent amendments thereto.
(Am. Ord. CM-601, passed 12-8-1981; Am. Ord. CM-717, passed 9-11-1984) Penalty, see § 113.99

## § 113.99 PENALTY.

(A) A person convicted of a violation of any of the provisions of §§ 113.01 through 113.05, shall be fined not more than $100.

(B) Whoever violates any of the provisions of §§ 113.10 through 113.12 shall forfeit any license so issued and shall be fined not more than $100 for each offense, and each day's operation in violation of any such provision shall constitute a separate offense.

(C) Notice of intention to revoke a license shall be mailed by certified mail to the address of the owner or manager given in the application for license, or served by a policeman on any person in charge of the business and an opportunity to be heard before the Municipal Manager given before revocation.

# CHAPTER 114: CASUAL SALES

Section



## § 114.01 DEFINITION.

As used in this chapter, ***CASUAL SALE*** means the sale of personal property to the general public conducted in a zoning district at a location at which the principal use is residential or one where commercial activity is not expressly permitted as a principal use to include garage sales, yard sales, patio sales, porch sales, driveway sales and similar activities.
(Ord. CM-06-22, passed 6-13-2006)

## § 114.02 INTENT.

It is the intent of this chapter to regulate casual sales on residential premises in zoning districts where the principal permitted use is for residential purposes in a manner that mitigates any effects such sales may have on other residential properties and to control the advertisement of such sales so as to mitigate nuisance conditions in public rights-of-way.
(Ord. CM-06-22, passed 6-13-2006)

## § 114.03 PROHIBITIONS.

Casual sales of personal property are prohibited in the municipality, except under the following conditions:

(A) No casual sale shall be conducted at any one location in the municipality more than three times in any calendar year;

(B) No casual sale shall be conducted before 8:00 a.m. or after 8:00 p.m. and in no event shall a casual sale last more than three consecutive days.

(C) No casual sale shall offer any merchandise for sale that has been purchased for the purpose of resale during such casual sales. Any new merchandise offered for sale shall be prima facie evidence as merchandise purchased for resale at such casual sales.

(D) Only one on-premises, non-illuminated sign, not exceeding four square feet in size or more than three feet in height, may be used during the sale. Not more than two off-premises signs meeting the same dimensional requirements may be used during the sale to provide directions. The directional signs must be located on private property with the owner's consent. No signs may be located in the public right-of-way, including traffic or utility poles, advertising or providing directions to the casual sale. Any such signs may be removed by municipal officials at the direction of the Municipal Manager or Chief of Police and shall be prima facie evidence of a violation of this chapter. All signs shall be removed within 24 hours of the sale date.
(Ord. CM-06-22, passed 6-13-2006)

## § 114.04 REGISTRATION.

The owner of the premises upon which the sale is to be conducted shall register with the municipality the address, date and hours proposed for such casual sale no less than 72 hours in advance of its commencement.
(Ord. CM-06-22, passed 6-13-2006)

## § 114.05 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter shall be fined not more than $100.
(Ord. CM-06-22, passed 6-13-2006)

# CHAPTER 115: VIDEO SERVICE PROVIDER FEES

Section



## § 115.01 VSP FEE ESTABLISHED.

Council hereby establishes a VSP fee calculated by applying a VSP fee percentage of 5% to the video service provider's gross revenues as defined in R.C. § 1332.32(B) of the Video Law. For purposes of calculating the VSP fee, the provider's gross revenues shall include advertising revenues in accordance with R.C. § 1332.23(B)(2)(g) of the Video Law.
(Ord. CM-08-03, passed 1-4-2008)

## § 115.02 PAYMENT BY PROVIDER.

The VSP fee shall be paid by each video service provider providing service in the municipality on a quarterly basis, but not sooner than 45 days, nor later than 60 days after the end of each calendar quarter, R.C. § 1332.32.
(Ord. CM-08-03, passed 1-4-2008)

## § 115.03 NOTIFICATION.

The Manager is authorized and directed to provide any VSP with notice of the VSP fee percentage and gross revenues definition as determined by this Council, which notice shall be given by certified mail, upon receipt of notice from such VSP that it will begin providing video service in the municipality pursuant to a state-issued video service authorization.
(Ord. CM-08-03, passed 1-4-2008)

# CHAPTER 116: TATTOO AND/OR BODY PIERCING ENTERPRISES

Section



## § 116.01 PROHIBITION.

In accordance with the current laws and regulations governing tattooing, body piercing, scarification, and branding, the municipality does hereby ban the establishment of such businesses, in any and all zoning districts in the municipality.
(Ord. CM-07-31, passed 10-9-2007)

## § 116.02 EXCEPTIONS.

(A) No part of this chapter shall apply to tattoos and/or other forms of identifications made to animals for the purposes of identification, ownership, or lineage.

(B) No part of this chapter shall apply to properly licensed physicians or properly licensed medical professionals who routinely pierce bodies via inoculation, lancing, or routine surgery which may result in scarring.
(Ord. CM-07-31, passed 10-9-2007)

## § 116.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BODY PIERCING.*** The piercing of any part of the body, except the ear.

***BODY PIERCING STUDIO/PARLOR/BUSINESS.*** Any premises in which a body piercing specialist conducts such practice.

***BRANDING.*** The use of heat, cold, or any chemical compound to imprint permanent markings on the human skin by any means other than tattooing.

***SCARIFICATION.*** The cutting or tearing of human skin for the purpose of creating a permanent mark or design on the skin.

***TATTOO.*** A mark on the body of a person made with indelible ink or pigments injected beneath an outer layer of the skin.

***TATTOO STUDIO/PARLOR/BUSINESS.*** Any premises in which a tattooist conducts the practice of tattooing.

***TATTOOIST.*** Any person who applies a tattoo to the body of any other person.
(Ord. CM-07-31, passed 10-9-2007)

# TITLE XIII: GENERAL OFFENSES

Chapter

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| 2925.51 | 138.11 |
| 2925.511 | 138.11 |
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| 2925.56 | 138.18 |
| 2925.57 | 138.18 |
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| 2927.01 | 135.28 |
| 2927.02 | 135.25(A) |
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| 2927.022 | 135.25(C) |
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| 2929.26 | 130.99(E) |
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| 2935.36(E) | 130.02 |
| 2981.07 | 131.30 |
| 2981.11 | 130.17(A) |
| 2981.12 | 130.17(B) |
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| 3701.81 | 135.27(A) - (C) |
| 3701.99(C) | 135.27(D) |
| 3715.05 | 138.18 |
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| 3719.08(A), (E) | 138.14(A), (B) |
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| 5589.99(B) | 131.10(K)(2) |

# CHAPTER 130: GENERAL PROVISIONS

Section



***Statutory reference:***

*Mayor's Court generally, see R.C. Chapter 1905*
*Municipal Court generally, see R.C. Chapter 1901*
*Trials, Magistrate Courts, see R.C. Chapter 2938*

## *GENERAL PROVISIONS*

### § 130.01 APPLICATION OF TITLE XIII.

(A) Title XIII of this code of ordinances embodies and prescribes penalties for offenses against the municipality not classifiable in previous titles and chapters. The word "misdemeanors", as used in this title, is not exhaustive and does not imply that offenses found elsewhere in this code of ordinances are not also misdemeanors and punishable as such.

(B) Each act or omission for which a fine, imprisonment, or both is provided under this Title or elsewhere in this code, or each act or omission which is declared a violation of this code, is unlawful and is hereby made a misdemeanor. Upon conviction, the penalty or penalties so provided shall be imposed by the court.

### § 130.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CONTRABAND.*** Any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. The term includes but is not limited to all of the following:

(1) Any controlled substance, as defined in R.C. § 3719.01, or any device or paraphernalia related thereto;

(2) Any unlawful gambling device or paraphernalia;

(3) Any dangerous ordnance or obscene material.

***DANGEROUS OFFENDER.*** A person who has committed an offense, whose history, character and condition reveal a substantial risk that he or she will be a danger to others, and whose conduct has been characterized by a pattern of repetitive, compulsive or aggressive behavior with heedless indifference to the consequences.

***DEADLY FORCE.*** Any force that carries a substantial risk that it will proximately result in the death of any person.

***FORCE.*** Any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.

***LAW ENFORCEMENT OFFICER.*** Any of the following:

(1) A Sheriff, deputy sheriff, constable, police officer of a township or joint police district, Marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under R.C. § 3735.31(D) or state highway patrol trooper.

(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 a capacity as chief conservator of the peace within the municipality.

(4) A member of an auxiliary police force organized by the county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission.

(5) A person lawfully called pursuant to R.C. § 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called.

(6) A person appointed by a Mayor pursuant to R.C. § 737.01 as a special patrolling officer during a riot or emergency, for the purposes and during the time when the person is appointed.

(7) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence.

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor.

(9) A veterans' home police officer appointed under R.C. § 5907.02.

(10) A member of a police force employed by a regional transit authority under R.C. § 306.35(Y).

(11) A special police officer employed by a port authority under R.C. § 4582.04 or 4582.28.

(12) The House of Representatives Sergeant at Arms if the House of Representatives Sergeant at Arms has arrest authority pursuant to R.C. § 101.311(E)(1) and an Assistant House of Representatives Sergeant at Arms.

(13) The Senate Sergeant at Arms and an Assistant Senate Sergeant at Arms;

(14) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in 14 C.F.R. § 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation as provided in 49 C.F.R. parts 1542 and 1544, as amended.

***NOT GUILTY BY REASON OF INSANITY.*** A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in R.C. § 2901.05, that at the time of the commission of the offense, he or she did not know, as a result of a severe mental disease or defect, the wrongfulness of his or her acts.

***OFFENSE OF VIOLENCE.***

(1) A violation of R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1) of R.C. § 2903.34, of division (A)(1), (A)(2) or (A)(3) of R.C. § 2911.12, or of division (B)(1), (B)(2), (B)(3) or (B)(4) of R.C. § 2919.22, or felonious sexual penetration in violation of former R.C. § 2907.12;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or of the United States, substantially equivalent to any section, division or offense listed in division (1) of this definition;

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or of 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 division (1), (2), or (3) of this definition.

***PERSON.***

(1) (a) Subject to division (2) of this definition, as used in any section contained in Title XIII of this code that sets forth a criminal offense, the term includes all of the following:

1. An individual, corporation, business trust, estate, trust, partnership and association.

2. An unborn human who is viable.

(b) As used in any section contained in Title XIII of this code that does not set forth a criminal offense, the term includes an individual, corporation, business trust, estate, partnership and association.

(c) As used in division (1)(a)2. of this definition, “unborn human” means an individual organism of the species *Homo sapiens* from fertilization until live birth. “Viable” means the stage of development of a human fetus at which there is a realistic probability of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (1)(a) of this definition, in no case shall the portion of the definition of the term “person” that is set forth in division (1)(a)2. of this definition be applied or construed in any section contained in Title XIII of this code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (2)(a) of this definition, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08,

2903.11, 2903.12, 2903.13, 2903.14, 2903.21 or 2903.22, or any substantially equivalent municipal ordinance, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence but that does violate R.C. § 2919.12, 2919.13(B), 2919.151, 2919.17 or 2919.18, or any substantially equivalent municipal ordinance, may be punished as a violation of such section, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with R.C. § 2919.12.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

1. Her delivery of a stillborn baby;

2. Her causing, in any other manner, the death *in utero* of a viable, unborn human that she is carrying;

3. Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;

4. Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;

5. Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other psychological illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

***PHYSICAL HARM TO PERSONS.*** Any injury, illness, or other physiological impairment, regardless of its gravity or duration.

***PHYSICAL HARM TO PROPERTY.*** Any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. The term does not include wear and tear occasioned by normal use.

***PRIVILEGE.*** 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.

***PROPERTY.***

(1) Any property, real or personal, tangible or intangible, and any interest or license in that property. The term includes but is not limited to cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human-readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright or patent. “Financial instruments associated with computers” include but are not limited to checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(2) As used in this definition, "trade secret" has the same meaning as in R.C. § 1333.61, and "telecommunications service" and "information service" have the same meanings as in R.C. § 2913.01.

(3) As used in this definition and in the definition of "contraband" in this section, "cable television service," "computer," "computer network," "computer software," "computer system," "data," and "telecommunications device" have the same meanings as in R.C. § 2913.01.

***REPEAT OFFENDER.*** A person who has a history of persistent criminal activity and whose character and condition reveal a substantial risk that he or she will commit another offense. It is prima facie evidence that a person is a repeat offender if any of the following applies:

(1) Having been convicted of one or more offenses of violence, as defined in R.C. § 2901.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent offense of violence;

(2) Having been convicted of one or more sexually oriented offenses, as defined in R.C. § 2950.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent sexually oriented offense;

(3) Having been convicted of one or more theft offenses, as defined in R.C. § 2913.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent theft offense;

(4) Having been convicted of one or more felony drug abuse offenses, as defined in R.C. § 2925.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent felony drug abuse offense;

(5) Having been convicted of two or more felonies, and having been imprisoned pursuant to sentence for any such offense, he or she commits a subsequent offense;

(6) Having been convicted of three or more offenses of any type or degree other than traffic offenses, alcoholic intoxication offenses, or minor misdemeanors, and having been imprisoned pursuant to sentence for any such offense, he or she commits a subsequent offense.

***RISK.*** A significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

***SCHOOL.*** Has the same meaning as in R.C. § 2925.01.

***SCHOOL ACTIVITY.*** Any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under R.C. Chapter 3314; a governing board of an educational service center; or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07.

***SCHOOL BUILDING.*** Has the same meaning as in R.C. § 2925.01.

***SCHOOL BUS.*** Has the same meaning as in R.C. § 4511.01.

***SCHOOL PREMISES.*** Has the same meaning as in R.C. § 2925.01.

***SCHOOL SAFETY ZONE.*** Consists of a school, school building, school premises, school activity, and school bus.

***SERIOUS PHYSICAL HARM TO PERSONS.*** 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 that carries a substantial risk of death;

(3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(4) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;

(5) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

***SERIOUS PHYSICAL HARM TO PROPERTY.*** Any physical harm to property that 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.

***SUBSTANTIAL RISK.*** A strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.
(R.C. §§ 2901.01, 2935.36(E))

## § 130.03 CLASSIFICATION OF OFFENSES.

As used in this Title:

(A) Offenses include misdemeanors of the first, second, third, and fourth degree, minor misdemeanors, and offenses not specifically classified.

(B) Regardless of the penalty that 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 that may be imposed is one of the following:

(1) For an offense committed prior to January 1, 2004, a fine not exceeding $100;

(2) For an offense committed on or after January 1, 2004, a fine not exceeding $150, community service under R.C. § 2929.27(D), or a financial sanction other than a fine under R.C. § 2929.28.
(R.C. § 2901.02)

## § 130.04 COMMON LAW OFFENSES ABROGATED.

(A) No conduct constitutes a criminal offense against the municipality unless it is defined as an offense in this code.

(B) An offense is defined when one or more sections of this 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.

(C) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment or decree.
(R.C. § 2901.03)

## § 130.05 RULES OF CONSTRUCTION.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of this code defining offenses or penalties shall be strictly construed against the municipality and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of this code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of this code that refers to a previous conviction of or plea of guilty to a violation of a section of this code, the Ohio Revised Code or a division of a section of this code or the Ohio Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this municipality, state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of this code that refers to a section, or to a division of a section, of this code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.
(R.C. § 2901.04)

## § 130.06 LIMITATION OF CRIMINAL PROSECUTIONS.

(A) (1) Except as provided in division (A)(2), (A)(3) or (A)(4) of this section or as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

(a) For a felony, six years;

(b) For a misdemeanor other than a minor misdemeanor, two years;

(c) For a minor misdemeanor, six months.

(2) There is no period of limitation for the prosecution of a violation of R.C. § 2903.01 or R.C. § 2903.02.

(3) Except as otherwise provided in divisions (B) through (J) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within 20 years after the offense is committed:

(a) A violation of R.C. § 2903.03, 2903.04, 2905.01, 2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02, a violation of R.C. § 2903.11 or 2903.12 if the victim is a peace officer, a violation of R.C. § 2903.13 that is a felony, or a violation of former R.C. § 2907.12.

(b) A conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in division (A)(3)(a) of this section.

(4) Except as otherwise provided in divisions (D) to (L) of this section, a prosecution of a violation of R.C. § 2907.02 or 2907.03 or a conspiracy to commit, attempt to commit, or complicity in committing a violation of either section shall be barred unless it is commenced within 25 years after the offense is committed.

(B) (1) Except as otherwise provided in division (B)(2) of this section, if the period of limitation provided in division (A)(1) or (A)(3) of this section 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 the aggrieved person's legal representative who is not a party to the offense.

(2) If the period of limitation provided in division (A)(1) or (A)(3) of this section has expired, prosecution for a violation of R.C. § 2913.49 shall be commenced within five years after discovery of the offense either by an aggrieved person or the aggrieved person's legal representative who is not a party to the offense.

(C) (1) If the period of limitation provided in division (A)(1) or (A)(3) of this section has expired, prosecution shall be commenced for the following offenses during the following specified periods of time:

(a) 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;

(b) For an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant, at any time while that public servant remains a public servant, or within two years thereafter.

(2) As used in this division:

***OFFENSE IS DIRECTLY RELATED TO THE MISCONDUCT IN OFFICE OF A PUBLIC SERVANT.*** The phrase includes but is not limited to a violation of R.C. § 101.71, 101.91, 121.61 or 2921.13, 102.03(F) or (H), 2921.02(A), 2921.43(A) or (B), or 3517.13(F) or (G), that is directly related to an offense involving misconduct in office of a public servant, or a violation of any municipal ordinance substantially equivalent to those Ohio Revised Code sections listed in this division (C)(2).

***PUBLIC SERVANT.*** Has the same meaning as in R.C. § 2921.01.

(D) (1) If a DNA record made in connection with the criminal investigation of the commission of a violation of R.C. § 2907.02 or 2907.03 is determined to match another DNA record that is of an identifiable person and if the time of the determination is later than 25 years after the offense is committed, prosecution of that person for a violation of the section may be commenced within five years after the determination is complete.

(2) If a DNA record made in connection with the criminal investigation of the commission of a violation of R.C. § 2907.02 or 2907.03 is determined to match another DNA record that is of an identifiable person and if the time of the determination is within 25 years after the offense is committed, prosecution of that person for a violation of the section may be commenced within the longer of 25 years after the offense is committed or five years after the determination is complete.

(3) As used in this division, ***DNA RECORD*** has the same meaning as in R.C. § 109.573.

(E) 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.

(F) 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.

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

(H) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this municipality or conceals the accused's identity or whereabouts is prima facie evidence of the accused's purpose to avoid prosecution.

(I) 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 that commenced the

prosecution is quashed or the proceedings on the indictment, information, or process are set aside or reversed on appeal.

(J) The period of limitation for a violation of this Title XIII or Title XXIX of the Ohio Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a child with a developmental disability or physical impairment under 21 years of age shall not begin to run until either of the following occurs:

(1) The victim of the offense reaches the age of majority.

(2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

(K) As used in this section, ***PEACE OFFICER*** has the same meaning as in R.C. § 2935.01.

(L) The amendments to divisions (A) and (D) of this section apply to a violation of R.C. § 2907.02 or 2907.03 committed on and after July 16, 2015, and apply to a violation of either of those sections committed prior to July 16, 2015, if prosecution for that violation was not barred under this section as it existed on July 15, 2015.
(R.C. § 2901.13)
***Statutory reference:***
*Limitation for income tax violations, see R.C. § 718.12*

## § 130.07 REQUIREMENTS FOR CRIMINAL LIABILITY; VOLUNTARY INTOXICATION.

(A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

(1) The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing;

(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the language defining the offense.

(B) When the language 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 the section, then culpability is not required for a person to be guilty of the offense. The fact that one division of a section plainly indicates a purpose to impose strict liability for an offense defined in that division does not by itself plainly indicate a purpose to impose strict criminal liability for an offense defined in other divisions of the section that do not specify a degree of culpability.

(C) (1) When language defining an element of an offense that is related to knowledge or intent or to which mens rea could fairly be applied neither specifies culpability nor plainly indicates a purpose to impose strict liability, the element of the offense is established only if a person acts recklessly.

(2) Division (C)(1) of this section does not apply to offenses defined in R.C. Title XLV.

(3) Division (C)(1) of this section does not relieve the prosecution of the burden of proving the culpable mental state required by any definition incorporated into the offense.

(D) Voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.

(E) As used in this section:

***CULPABILITY.*** Means purpose, knowledge, recklessness, or negligence, as defined in R.C. § 2901.22.

***INTOXICATION.*** Includes but is not limited to intoxication resulting from the ingestion of alcohol, a drug, or alcohol and a drug.

***INVOLUNTARY ACTS.*** Means 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.

***POSSESSION.*** Means a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.
(R.C. § 2901.21)

## § 130.08 CULPABLE MENTAL STATES.

(A) A person acts purposely when it is the person's 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 the offender's specific intention to engage in conduct of that nature.

(B) A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

(C) A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's 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, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

(D) A person acts negligently when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that the person's 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 lapse from due care, the person 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.
(R.C. § 2901.22)

## § 130.09 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 or her 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 or her 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 or her 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 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. The term does not include an entity organized as or by a governmental agency for the execution of a governmental program.
(R.C. § 2901.23)

## § 130.10 PERSONAL ACCOUNTABILITY FOR ORGANIZATIONAL CONDUCT.

(A) An officer, agent, or employee of an organization, as defined in R.C. § 2901.23, may be prosecuted for an offense committed by such organization, if he or she acts with the kind of culpability required for the commission of the offense, and any of the following apply:

(1) In the name of the organization or in its behalf, he or she 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 or she has direct responsibility;

(2) He or she 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 or she is subject to the same penalty as if he or she had acted in his or her own behalf.
(R.C. § 2901.24)

## § 130.11 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 that, 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 that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be.

(C) No person who is convicted of committing a specific offense, of complicity in the commission of an offense, or of conspiracy to commit an 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 or her effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose.

(E) (1) Whoever violates this section is guilty of an attempt to commit an offense. An attempt to commit aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life is a felony of the first degree, to be prosecuted under appropriate state law. An attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. An attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. In the case of an attempt to commit an offense other than a violation of R.C. Chapter 3734 that is 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. In the case of an attempt to commit a violation

of any provision of R.C. Chapter 3734, other than R.C. § 3734.18, that relates to hazardous wastes, an attempt is a felony to be prosecuted under appropriate state law. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense under this section.

(2) In addition to any other sanctions imposed pursuant to division (E)(1) of this section for an attempt to commit aggravated murder or murder in violation of division (A) of this section, if the offender used a motor vehicle as the means to attempt to commit the offense, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in R.C. § 4510.02(A)(2).

(3) If a person is convicted of or pleads guilty to attempted rape and also is convicted of or pleads guilty to a specification of the type described in R.C. § 2941.1418, 2941.1419, or 2941.1420, the offender shall be sentenced to a prison term or term of life imprisonment pursuant to R.C. § 2971.03.

(F) As used in this section:

***DRUG ABUSE OFFENSE.*** Has the same meaning as in R.C. § 2925.01.

***MOTOR VEHICLE.*** Has the same meaning as in R.C. § 4501.01.
(R.C. § 2923.02)
***Statutory reference:***
*Conspiracy, see R.C. § 2923.01*
*Solid and hazardous wastes, see R.C. Chapter 3734*

## § 130.12 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 R.C. § 2923.01;

(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 R.C. § 2923.02 or a substantially equivalent municipal ordinance.

(D) If an alleged accomplice of the defendant testifies against the defendant in a case in which the defendant is charged with complicity in the commission of or an attempt to commit an offense, an attempt to commit an offense, or an offense, the court shall charge the jury in accordance with R.C. § 2923.03(D).

(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 or her complicity, under circumstances manifesting a complete and voluntary renunciation of his or her 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 or she were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense.
(R.C. § 2923.03)
***Statutory reference:***
*Conspiracy, see R.C. § 2923.01*

## § 130.13 PRESUMPTION OF INNOCENCE; PROOF OF OFFENSE; AFFIRMATIVE DEFENSE.

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(B) (1) Subject to division (B)(2) of this section, a person is presumed to have acted in self defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.

(2) (a) The presumption set forth in division (B)(1) of this section does not apply if the person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle.

(b) The presumption set forth in division (B)(1) of this section does not apply if the person who uses the defensive force uses it while in a residence or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle.

(3) The presumption set forth in division (B)(1) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence.

(C) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt", contained in division (D) of this section.

(D) As used in this section:

***AFFIRMATIVE DEFENSE.*** An affirmative defense is either of the following:

(a) A defense expressly designated as affirmative;

(b) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.

***DWELLING.*** Means a building or conveyance of any kind that has a roof over it and that is designed to be occupied by people lodging in the building or conveyance at night, regardless of whether the building or conveyance is temporary or permanent or is mobile or immobile. As used in this division, a building or conveyance includes but is not limited to an attached porch, and a building or conveyance with a roof over it includes but is not limited to a tent.

***PROOF BEYOND A REASONABLE DOUBT.*** Proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

***REASONABLE DOUBT.*** Reasonable doubt is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reasonable and common sense. The term is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt.

***RESIDENCE.*** Means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

***VEHICLE.*** Means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.
(R.C. § 2901.05)

## § 130.14 BATTERED WOMAN SYNDROME.

(A) The municipality hereby declares that it recognizes both of the following, in relation to the "battered woman syndrome": that the syndrome currently is a matter of commonly accepted scientific knowledge, and that the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

(B) If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self defense, the person may introduce expert testimony of the "battered woman syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of force in question. The introduction of any expert testimony under this division shall be in accordance with the Ohio Rules of Evidence.
(R.C. § 2901.06)

## § 130.15 DELINQUENCY ADJUDICATIONS DEEMED CONVICTIONS.

(A) If a person is alleged to have committed an offense and if the person previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, except as provided in division (B) of this section, the adjudication as a delinquent child or as a juvenile traffic offender is a conviction for a violation of the law for purposes of determining the offense with which the person should be charged and, if the person is convicted of or pleads guilty to an offense, the sentence to be imposed upon the person relative to the conviction or guilty plea.

(B) A previous adjudication of a person as a delinquent child or juvenile traffic offender for a violation of a law or ordinance is not a conviction for a violation of the law or ordinance for purposes of determining any of the following:

(1) Whether the person is a repeat violent offender, as defined in R.C. § 2929.01, or whether the person should be sentenced as a repeat violent offender under R.C. § 2929.14(B)(2) and R.C. § 2941.149;

(2) Whether the person is a violent career criminal as defined in R.C. § 2923.132, whether the person has committed unlawful use of a weapon by a violent career criminal in violation of R.C. § 2923.132 or should be sentenced for that offense under that section, or whether the person should be sentenced under R.C. § 2929.14(K) as a violent career criminal who had a firearm on or about the person's person or under the person's control while committing a violent felony offense and displayed or brandished the firearm, indicated that the offender possessed a firearm, or used the firearm to facilitate the offense.
(R.C. § 2901.08)

## § 130.16 CRIMINAL LAW JURISDICTION.

(A) A person is subject to criminal prosecution and punishment in this municipality if any of the following occur:

(1) The person commits an offense under the laws of this municipality, any element of which takes place in this municipality;

(2) While in this municipality, the person attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of this municipality and the other jurisdiction, or, while in this municipality, the person conspires to commit an offense in another jurisdiction, which offense is an offense under both the laws of this municipality and the other jurisdiction, and a substantial overt act in furtherance of the conspiracy is undertaken in this municipality by the person or another person involved in the conspiracy, subsequent to the person's entrance into the conspiracy. In any case in which a person attempts to commit, is guilty of complicity in the commission of, or conspires to commit an offense in another jurisdiction as described in this division, the person is subject to criminal prosecution and punishment in this municipality for the attempt, complicity, or conspiracy, and for any resulting offense that is committed or completed in the other jurisdiction;

(3) While out of this municipality, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in this municipality;

(4) While out of this municipality, the person omits to perform a legal duty imposed by the laws of this municipality, which omission affects a legitimate interest of the municipality in protecting, governing or regulating any person, property, thing, transaction, or activity in this municipality;

(5) While out of this municipality, the person unlawfully takes or retains property and subsequently brings any of the unlawfully taken or retained property into this municipality;

(6) While out of this municipality, the person unlawfully takes or entices another person and subsequently brings the other person into this municipality;

(7) The person, by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, causes or knowingly permits any writing, data, image or other telecommunication to be disseminated or transmitted into this municipality in violation of the law of this state or municipality.

(B) In homicide, the element referred to in division (A)(1) of this section includes the act that causes death, the physical contact that causes death, the death itself, or any other element that is set forth in the offense in question. If any part of the body of a homicide victim is found in this municipality, the death is presumed to have occurred within this municipality.

(C) (1) This municipality includes the land and water within its boundaries and the air space above that land and water, with respect to which this municipality has either exclusive or concurrent legislative jurisdiction. Where the boundary between this municipality and another jurisdiction is disputed, the disputed territory is conclusively presumed to be within this municipality for purposes of this section.

(2) The courts of common pleas of Adams, Athens, Belmont, Brown, Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, Meigs, Monroe, Scioto, and Washington counties have jurisdiction beyond the north or northwest shore of the Ohio River extending to the opposite shore line, between the extended boundary lines of any adjacent counties or adjacent state. Each of those courts of common pleas has concurrent jurisdiction on the Ohio River with any adjacent court of common pleas that borders on that river and with any court of Kentucky or of West Virginia that borders on the Ohio River and that has jurisdiction on the Ohio River under the law of Kentucky or the law of West Virginia, whichever is applicable, or under federal law.

(D) When an offense is committed under the laws of this municipality, and it appears beyond a reasonable doubt that the offense or any element of the offense took place either in this municipality or in another jurisdiction or jurisdictions, but it cannot reasonably be determined in which it took place, the offense or element is conclusively presumed to have taken place in this municipality for purposes of this section.

(E) When a person is subject to criminal prosecution and punishment in this municipality for an offense committed or completed outside this municipality, the person is subject to all specifications for that offense that would be applicable if the offense had been committed within this municipality.

(F) Any act, conduct, or element that is a basis of a person being subject under this section to criminal prosecution and punishment in this municipality need not be committed personally by the person as long as it is committed by another person who is in complicity or conspiracy with the person.

(G) This section shall be liberally construed, consistent with constitutional limitations, to allow this municipality the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting, this municipality.

(H) For purposes of division (A)(2) of this section, an overt act is substantial when it is of a character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed.

(I) As used in this section, ***COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK, INFORMATION SERVICE, TELECOMMUNICATION, TELECOMMUNICATIONS DEVICE, TELECOMMUNICATIONS SERVICE, DATA*** and ***WRITING*** have the same meanings as in R.C. § 2913.01. (R.C. § 2901.11)

***Statutory reference:***

*State criminal law jurisdiction, see R.C. § 2901.11*

## § 130.17 DISPOSITION OF UNCLAIMED OR FORFEITED PROPERTY HELD BY POLICE DEPARTMENT.

(A) *Safekeeping of property in custody.*

(1) (a) Any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of the Police Department shall be kept safely by the Police Department, pending the time it no longer is needed as evidence or for another lawful purpose, and shall be disposed of pursuant to this section or R.C. §§ 2981.12 and 2981.13.

(b) This section does not apply to the custody and disposal of any of the following:

1. Vehicles subject to forfeiture under R.C. Title 45, except as provided in division (B)(1)(f) of this section;

2. Abandoned junk motor vehicles or other property of negligible value;

3. Property held by a department of rehabilitation and correction institution that is unclaimed, that does not have an identified owner, that the owner agrees to dispose of, or that is identified by the department as having little value;

4. Animals taken, and devices used in unlawfully taking animals, under R.C. § 1531.20;

5. Controlled substances sold by a peace officer in the performance of the officer's official duties under R.C. § 3719.141;

6. Property recovered by a township law enforcement agency under R.C. §§ 505.105 to 505.109;

7. Property held and disposed of under an ordinance of the municipality or under R.C. §§ 737.29 to 737.33, except that if the municipality has received notice of a citizens' reward program as provided in division (B)(5) of this section and disposes of property under an ordinance shall pay 25% of any moneys acquired from any sale or auction to the citizens' reward program.

(2) (a) The Police Department shall adopt and comply with a written internal control policy that does all of the following:

1. Provides for keeping detailed records as to the amount of property acquired by the Police Department and the date property was acquired;

2. Provides for keeping detailed records of the disposition of the property, which shall include but not be limited to both of the following:

a. The manner in which it was disposed, the date of disposition, detailed financial records concerning any property sold, and the name of any person who received the property. The record shall not identify or enable identification of the individual officer who seized any item of property.

b. An itemized list of the specific expenditures made with amounts that are gained from the sale of the property and that are retained by the agency, including the specific amount expended on each expenditure, except that the policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation.

3. Complies with R.C. § 2981.13 if the Police Department has a Law Enforcement Trust Fund or similar fund created under that section.

(b) The records kept under the internal control policy shall be open to public inspection during the Police Department's regular business hours. The policy adopted under this section is a public record open for inspection under R.C. § 149.43.

(3) The Police Department, with custody of property to be disposed of under this section or R.C. §§ 2981.12 or 2981.13, shall make a reasonable effort to locate persons entitled to possession of the property, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to possession, it is sufficient notice to advertise in a newspaper of general circulation in the county and to briefly describe the nature of the property in custody and inviting persons to view and establish their right to it.

(4) As used in this section:

***CITIZENS' REWARD PROGRAM.*** Has the same meaning as in R.C. § 9.92.

***LAW ENFORCEMENT AGENCY.*** Includes correctional institutions.

***TOWNSHIP LAW ENFORCEMENT AGENCY.*** Means an organized police department of a township, a township police district, a joint police district, or the office of a township constable.
(R.C. § 2981.11)

(B) *Disposition of unclaimed or forfeited property.*

(1) Unclaimed or forfeited property in the custody of the Police Department, other than property described in division (A)(1)(b) of this section, shall be disposed of by order of any court of record that has territorial jurisdiction over the municipality, as follows:

(a) Drugs shall be disposed of pursuant to R.C. § 3719.11 or 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.

(b) Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collectors' items may be sold at public auction pursuant to division (B)(2) of this section. The Police Department may sell other firearms and dangerous ordnance to a federally licensed firearms dealer in a manner that the court considers proper. The Police Department shall destroy any firearms or dangerous ordnance not given to a law enforcement agency or sold or shall send them to the Bureau of Criminal Identification and Investigation for destruction by the Bureau.

(c) Obscene materials shall be destroyed.

(d) Beer, intoxicating liquor, or alcohol seized from a person who does not hold a permit issued under R.C. Chapters 4301 and 4303 or otherwise forfeited to the state for an offense under R.C. § 4301.45 or R.C. § 4301.53 shall be sold by the Division of Liquor Control if the Division determines that it is fit for sale or shall be placed in the custody of the Investigations Unit in the Ohio Department of Public Safety and be used for training relating to law enforcement activities. The Ohio Department of Public Safety, with the assistance of the Division of Liquor Control, shall adopt rules in accordance with R.C. Chapter 119 to provide for the distribution to state or local law enforcement agencies upon their request. If any tax imposed under R.C. Title 43 has not been paid in relation to the beer, intoxicating liquor, or alcohol, any moneys acquired from the sale shall first be used to pay the tax. All other money collected under this division (B)(1)(d) shall be paid into the State Treasury. Any beer, intoxicating liquor, or alcohol that the Division determines to be unfit for sale shall be destroyed.

(e) Money received by an inmate of a correctional institution from an unauthorized source or in an unauthorized manner shall be returned to the sender, if known, or deposited in the Inmates' Industrial and Entertainment Fund of the institution if the sender is not known.

(f) 1. Any mobile instrumentality forfeited under R.C. Chapter 2981 may be given to the law enforcement agency that initially seized the mobile instrumentality for use in performing its duties, if the agency wants the mobile instrumentality. The agency shall take the mobile instrumentality subject to any security interest or lien on the mobile instrumentality.

2. Vehicles and vehicle parts forfeited under R.C. §§ 4549.61 to 4549.63 may be given to a law enforcement agency for use in performing its duties. Those parts may be incorporated into any other official vehicle. Parts that do not bear vehicle identification numbers or derivatives of them may be sold or disposed of as provided by rules of the Director of Public Safety. Parts from which a vehicle identification number or derivative of it 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.

(g) Computers, computer networks, computer systems, and computer software suitable for police work may be given to a law enforcement agency for that purpose or disposed of under division (B)(2) of this section.

(h) Money seized in connection with a violation of R.C. § 2905.32, 2907.21, or 2907.22 shall be deposited in the Victims of Human Trafficking Fund created by R.C. § 5101.87.

(2) Unclaimed or forfeited property that is not described in division (B)(1) of this section or division (A)(1)(b) of this section, with court approval, may be used by the law enforcement agency in possession of it.

If it is not used by the agency, it may be sold without appraisal at a public auction to the highest bidder for cash or disposed of in another manner that the court considers proper.

(3) Except as provided in divisions (B)(1) and (B)(5) of this section and after compliance with division (B)(4) of this section when applicable, any moneys acquired from the sale of property disposed of pursuant to this section shall be placed in the General Revenue Fund of the state, or the General Fund of the municipality.

(4) If the property was in the possession of the Police Department in relation to a delinquent child proceeding in a juvenile court, 10% of any moneys acquired from the sale of property disposed of under this section shall be applied to one or more community addiction services providers, as defined in R.C. § 5119.01. A juvenile court shall not specify a services provider, except as provided in this division, unless the services provider is in the same county as the court or in a contiguous county. If no services provider is located in any of those counties, the juvenile court may specify a services provider anywhere in Ohio. The remaining 90% of the proceeds or cash shall be applied as provided in division (B)(3) of this section.

(5) (a) If the Board of County Commissioners recognizes a citizens' reward program under R.C. § 9.92, the Board shall notify the Police Department of the recognition by filing a copy of its resolution conferring that recognition with the Police Department. When the Board recognizes a citizens' reward program and the county includes a part, but not all, of the territory of the municipality, the Board shall so notify the Police Department of the recognition of the citizens' reward program only if the county contains the highest percentage of the municipality's population.

(b) Upon being so notified, the Police Department shall pay 25% of any forfeited proceeds or cash derived from each sale of property disposed of pursuant to this section to the citizens' reward program for use exclusively to pay rewards. No part of the funds may be used to pay expenses associated with the program. If a citizens' reward program that operates in more than one county or in another state in addition to this state receives funds under this section, the funds shall be used to pay rewards only for tips and information to law enforcement agencies concerning offenses committed in the county from which the funds were received.

(6) Any property forfeited under R.C. Chapter 2981 not be used to pay any fine imposed upon a person who is convicted of or pleads guilty to an underlying criminal offense or a different offense arising out of the same facts and circumstances.

(7) Any moneys acquired from the sale of personal effects, tools, or other property seized because the personal effects, tools, or other property were used in the commission of a violation of R.C. § 2905.32, 2907.21, or 2907.22 or derived from the proceeds of the commission of a violation of R.C. § 2905.32, 2907.21, or 2907.22 and disposed of pursuant to this division (B) shall be placed in the Victims of Human Trafficking Fund created by R.C. § 5101.87.
(R.C. § 2981.12)

(C) *Disposition of contraband, proceeds, or instrumentalities.* Except as otherwise provided in R.C. § 2981.13, property ordered forfeited as contraband, proceeds, or an instrumentality pursuant to R.C. Chapter 2981 shall be disposed of, used, or sold pursuant to division (B) of this section or R.C. § 2981.12. If the property is to be sold under division (B) of this section or R.C. § 2981.12, the prosecutor shall cause notice of the proposed sale to be given in accordance with law.
(R.C. § 2981.13(A))

***Statutory reference:***

*Forfeiture of property generally, see R.C. Chapter 2981*

## § 130.18 IMPOSING SENTENCE FOR MISDEMEANOR.

(A) (1) Unless a mandatory jail term is required to be imposed by R.C. § 1547.99(G), 4510.14(B), or 4511.19(G), or any other provision of the Ohio Revised Code, or any municipal ordinance, a court that imposes a sentence under this chapter upon an offender for a misdemeanor or minor misdemeanor has discretion to determine the most effective way to achieve the purposes and principles of sentencing set forth in § 130.99(B).

(2) Unless a specific sanction is required to be imposed or is precluded from being imposed by the section setting forth an offense or the penalty for an offense or by any provision of § 130.99 or 133.99 of this code or R.C. §§ 2929.23 through 2929.28, a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under § 130.99(C) through (G). The court shall not impose a sentence that imposes an unnecessary burden on local government resources.

(B) (1) In determining the appropriate sentence for a misdemeanor, the court shall consider all of the following factors:

(a) The nature and circumstances of the offense or offenses;

(b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;

(c) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;

(d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;

(e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B)(1)(b) and (B)(1)(c) of this section;

(f) Whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses;

(g) The offender's military service record.

(2) In determining the appropriate sentence for a misdemeanor, in addition to complying with division (B)(1) of this section, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing set forth in § 130.99(B).

(C) Before imposing a jail term as a sentence for a misdemeanor, a court shall consider the appropriateness of imposing a community control sanction or a combination of community control sanctions under § 130.99(D), (E), (F), and (G). A court may impose the longest jail term authorized under § 130.99(C) only upon offenders

who commit the worst forms of the offense or upon offenders whose conduct and response to prior sanctions for prior offenses demonstrate that the imposition of the longest jail term is necessary to deter the offender from committing a future crime.

(D) (1) A sentencing court shall consider any relevant oral or written statement made by the victim, the defendant, the defense attorney, or the prosecuting authority regarding sentencing for a misdemeanor. This division does not create any rights to notice other than those rights authorized by R.C. Chapter 2930.

(2) At the time of sentencing for a misdemeanor or as soon as possible after sentencing, the court shall notify the victim of the offense of the victim's right to file an application for an award of reparations pursuant to R.C. §§ 2743.51 through 2743.72.
(R.C. § 2929.22)

## § 130.19 MULTIPLE SENTENCES.

(A) Except as provided in division (B) of this section, R.C. § 2929.14(C), or R.C. § 2971.03(D) or (E), a prison term, jail term, or sentence of imprisonment shall be served concurrently with any other prison term, jail term, or sentence of imprisonment imposed by a court of this municipality, this state, another state, or the United States. Except as provided in division (B)(2) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B) (1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term, or sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of R.C. § 2907.322, 2921.34 or 2923.131. When consecutive sentences are imposed for misdemeanors under this division, the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed 18 months.

(2) A jail term or sentence of imprisonment imposed for a misdemeanor violation of R.C. § 4510.11, 4510.14, 4510.16, 4510.21, or 4511.19, or a substantially equivalent municipal ordinance, shall be served consecutively to a prison term that is imposed for a felony violation of R.C. § 2903.06, 2903.07, 2903.08 or 4511.19 or a felony violation of R.C. § 2903.04 involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively. When consecutive jail terms or sentences of imprisonment and prison terms are imposed for one or more misdemeanors and one or more felonies under this division, the term to be served is the aggregate of the consecutive terms imposed, and the offender shall serve all terms imposed for a felony before serving any term imposed for a misdemeanor.
(R.C. § 2929.41)

## § 130.20 SELF DEFENSE: LIMITATIONS ON DUTY TO RETREAT PRIOR TO USING FORCE.

(A) As used in this section, ***RESIDENCE*** and ***VEHICLE*** have the same meanings as in R.C. § 2901.05.

(B) For purposes of any section of this code that sets forth a criminal offense, a person who lawfully is in that person's residence has no duty to retreat before using force in self defense, defense of another, or defense of that person's residence, and a person who lawfully is an occupant of that person's vehicle or who lawfully is an occupant in a vehicle owned by an immediate family member of the person has no duty to retreat before using force in self defense or defense of another.
(R.C. § 2901.09)

## § 130.21 APPREHENSION, DETENTION, OR ARREST OF PERSON ON BOND.

(A) No person, other than a law enforcement officer, shall apprehend, detain, or arrest a principal on bond, wherever issued, unless that person meets all of the following criteria:

(1) The person is any of the following:

(a) Qualified, licensed, and appointed as a surety bail bond agent under R.C. §§ 3905.83 through 3905.95;

(b) Licensed as a surety bail bond agent by the state where the bond was written;

(c) Licensed as a private investigator under R.C. Chapter 4749;

(d) Licensed as a private investigator by the state where the bond was written;

(e) An off-duty peace officer, as defined in R.C. § 2921.51.

(2) The person, prior to apprehending, detaining, or arresting the principal, has entered into a written contract with the surety or with a licensed surety bail bond agent appointed by the surety, which contract sets forth the name of the principal who is to be apprehended, detained, or arrested. For purposes of this division (A)(2), ***SURETY*** has the same meaning as in R.C. § 3905.83.

(3) The person, prior to apprehending, detaining, or arresting the principal, has notified the local law enforcement agency having jurisdiction over the area in which such activities will be performed and has provided any form or identification or other information requested by the law enforcement agency.

(B) No person shall represent the person's self to be a bail enforcement agent or bounty hunter, or claim any similar title, in this municipality.

(C) Whoever violates this section is guilty of illegal bail bond agent practices.

(1) A violation of division (A) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (A) of this section, or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law.

(2) A violation of division (B) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) of this section, or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law.
(R.C. § 2927.27)

## *LOCAL REGULATIONS*

### § 130.35 LOCAL POLICE REGULATIONS EXTENDED.

The jurisdiction of local police regulations of West Milton, Ohio, as conferred by § 3, Article XVIII of the Constitution of Ohio and R.C. § 715.50 is extended to include all lands beyond its corporate limits owned or used by the municipality for municipal purposes.

### § 130.36 LOCAL POLICE REGULATIONS IN FORCE AND EFFECT AS EXTENDED.

The local police regulations, including applicable penalties as provided for in this title, as were heretofore adopted by the Council and made applicable within the corporate limits of the municipality are incorporated by reference and made a part of this title as though fully set out herein, and the same are in full force and effect, to regulate and protect all lands owned or used by this municipality for municipal purposes beyond the corporate limits of the municipality.

### § 130.37 PROSECUTION IN MUNICIPAL COURT.

Whoever violates any regulations as provided for in this title as specified in § 130.14 may be prosecuted in the Municipal Court of Miami County, Ohio.

### § 130.38 PAYMENT OF COST OF CONFINEMENT.

(A) Any person convicted of a criminal offense other than a minor misdemeanor, and who as a consequence thereof, is confined in the Miami County Jail, shall reimburse the Municipality of West Milton for its expenses incurred by reason of his or her confinement, including but not limited to, the expenses relating to the provision of food, clothing, medical care and shelter.

(B) The Law Director is hereby authorized to institute any appropriate civil suit in the Miami County Court of Common Pleas for recovery of the expenses referred to in division (A) hereof, the amount of reimbursement to be determined by the Court pursuant to R.C. § 2929.37.
(Ord. CM-758, passed 4-8-1986)

## § 130.99 PENALTY FOR TITLE XIII.

(A) *Generally.* Except where otherwise specifically classified within the body of the section of a chapter of this title, a violation of such section shall be deemed a misdemeanor punishable upon conviction by a fine of not more than $500, imprisonment of not more than six months, or both.
(R.C. § 715.67)

(B) *Considerations in misdemeanor sentencing.*

(1) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Ohio Revised Code, or of any municipal ordinance that is substantially equivalent to a misdemeanor or minor misdemeanor violation of a provision of the Ohio Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the defender, and making restitution to the victim of the offense, the public, or the victim and the public.

(2) A sentence imposed for a misdemeanor or minor misdemeanor violation of an Ohio Revised Code provision or for a violation of a municipal ordinance that is subject to division (B)(1) of this section shall be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in division (B)(1) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.

(3) A court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor violation of an Ohio Revised Code provision or for a violation of a municipal ordinance that is subject to division (B)(1) of this section shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

(4) Divisions (B)(1) and (B)(2) of this section shall not apply to any offense that is disposed of by a traffic violations bureau of any court pursuant to Traffic Rule 13 and shall not apply to any violation of any provision of the Ohio Revised Code that is a minor misdemeanor and that is disposed of without a court appearance. Divisions (B)(1) through (B)(3) of this section do not affect any penalties established by the municipality for a violation of its ordinances that are not substantially equivalent to a misdemeanor or minor misdemeanor violation of a provision of the Ohio Revised Code.
(R.C. § 2929.21)

(C) *Misdemeanor jail terms.*

(1) Except as provided in § 130.18 or 133.99 of this code or R.C. § 2929.22 or 2929.23 or division (C)(5) or (C)(6) of this section and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

(a) For a misdemeanor of the first degree, not more than 180 days;

(b) For a misdemeanor of the second degree, not more than 90 days;

(c) For a misdemeanor of the third degree, not more than 60 days;

(d) For a misdemeanor of the fourth degree, not more than 30 days.

(2) (a) A court that sentences an offender to a jail term under division (C) of this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in division (E)(2) of this section. The court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but the court shall not reduce any mandatory jail term.

(b) 1. If a prosecutor, as defined in R.C. § 2935.01, has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court shall notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor may request a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, and, if the prosecutor requests a hearing, the court shall notify the eligible offender of the hearing.

2. If the prosecutor requests a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, the court shall hold the hearing before considering whether or not to release the offender from the offender's jail sentence.

(3) If a court sentences an offender to a jail term under division (C) of this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to R.C. § 5147.30, the court shall specify, as part of the sentence, whether the offender may be considered for participation in the program. During the offender's term in the county jail, the court retains jurisdiction to modify its specification regarding the offender's participation in the county jail industry program.

(4) If a person sentenced to a jail term pursuant to division (C) of this section, the court may impose as part of the sentence pursuant to R.C. § 2929.28 a reimbursement sanction, and, if the local detention facility in which the term is to be served is covered by a policy adopted pursuant to R.C. § 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 and R.C. § 2929.37, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

1. If the person is presented with an itemized bill pursuant to R.C. § 2929.37 for payment of the costs of confinement, the person is required to pay the bill in accordance with that section.

2. If the person does not dispute the bill described in division (C)(4)(a)1. of this section and does not pay the bill by the times specified in R.C. § 2929.37, the clerk of the court may issue a certificate of judgment against the person as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (C)(4)(a)2. of this section.

(5) If an offender who is convicted of or pleads guilty to a violation of R.C. § 4511.19(B), or any substantially equivalent municipal ordinance, also is convicted of or also pleads guilty to a specification of the

type described in R.C. § 2941.1414 and if the court imposes a jail term on the offender for the underlying offense, the court shall impose upon the offender an additional definite jail term of not more than six months. The additional jail term shall not be reduced pursuant to any provision of the Ohio Revised Code. The offender shall serve the additional jail term consecutively to and prior to the jail term imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense.

(6) (a) If an offender is convicted of or pleads guilty to a misdemeanor violation of R.C. § 2907.23, 2907.24, 2907.241, or 2907.25, or any substantially equivalent municipal ordinance, and to a specification of the type described in R.C. § 2941.1421 and if the court imposes a jail term on the offender for the misdemeanor violation, the court may impose upon the offender an additional definite jail term as follows:

1. Subject to division (C)(6)(a)2. of this section, an additional definite jail term of not more than 60 days;

2. If the offender previously has been convicted of or pleaded guilty to one or more misdemeanor or felony violations of R.C. § 2907.22, 2907.23, 2907.24, 2907.241, or 2907.25, or any substantially equivalent municipal ordinance, and also was convicted of or pleaded guilty to a specification of the type described in R.C. § 2941.1421 regarding one or more of those violations, an additional definite jail term of not more than 120 days.

(b) In lieu of imposing an additional definite jail term under division (C)(6)(a) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional jail term that the court could have imposed upon the offender under division (C)(6)(a) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the jail term imposed for the misdemeanor violation of R.C. § 2907.23, 2907.24, 2907.241, or 2907.25, or any substantially equivalent municipal ordinance, and any residential sanction imposed for the violation under division (E) of this section or R.C. § 2929.26. A sanction imposed under this division shall be considered to be a community control sanction for purposes of division (D) or this section or R.C. § 2929.25, and all provisions of this code and the Ohio Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(7) If an offender is convicted of or pleads guilty to a misdemeanor violation of R.C. § 2903.13 and also is convicted of or pleads guilty to a specification of the type described in R.C. § 2941.1423 that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, the court shall impose on the offender a mandatory jail term that is a definite term of at least 30 days.

(8) If a court sentences an offender to a jail term under this division (C), the sentencing court retains jurisdiction over the offender and the jail term. Upon motion of either party or upon the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may substitute one or more community control sanctions under division (E) or (F) of this section for any jail days that are not mandatory jail days. (R.C. § 2929.24)

(D) *Misdemeanor community control sanctions.*

(1) (a) Except as provided in §§ 130.18 and 133.99 of this code or R.C. §§ 2929.22 and 2929.23 or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following:

1. Directly impose a sentence that consists of one or more community control sanctions authorized by divisions (E), (F), or (G) of this section. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

2. Impose a jail term under division (C) of this section from the range of jail terms authorized under that division for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under divisions (E), (F), or (G) of this section.

(b) The duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years.

(c) At sentencing, if a court directly imposes a community control sanction or combination of community control sanctions pursuant to division (D)(1)(a)1. of this section, the court shall state the duration of the community control sanctions imposed and shall notify the offender that if any of the conditions of the community control sanctions are violated the court may do any of the following:

1. Impose a longer time under the same community control sanction if the total time under all of the offender's community control sanctions does not exceed the five-year limit specified in division (D)(1)(b) of this section;

2. Impose a more restrictive community control sanction under division (E), (F), or (G) of this section, but the court is not required to impose any particular sanction or sanctions;

3. Impose a definite jail term from the range of jail terms authorized for the offense under division (C) of this section.

(2) If a court sentences an offender to any community control sanction or combination of community control sanctions pursuant to division (D)(1)(a)1. of this section, the sentencing court retains jurisdiction over the offender and the period of community control for the duration of the period of community control. Upon the motion of either party or on the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may modify the community control sanctions or conditions of release previously imposed, substitute a community control sanction or condition of release for another community control sanction or condition of release previously imposed, or impose an additional community control sanction or condition of release.

(3) (a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized under division (E), (F), or (G) of this section, the court shall place the

offender under the general control and supervision of the court or of a department of probation in the jurisdiction that serves the court for purposes of reporting to the court a violation of any of the conditions of the sanctions imposed. If the offender resides in another jurisdiction and a department of probation has been established to serve the municipal court or county court in that jurisdiction, the sentencing court may request the municipal court or the county court to receive the offender into the general control and supervision of that department of probation for purposes of reporting to the sentencing court a violation of any of the conditions of the sanctions imposed. The sentencing court retains jurisdiction over any offender whom it sentences for the duration of the sanction or sanctions imposed.

(b) The sentencing court shall require as a condition of any community control sanction that the offender abide by the law and not leave the state without the permission of the court or the offender's probation officer. In the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender. The offender's compliance with the additional requirements also shall be a condition of the community control sanction imposed upon the offender.

(4) (a) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized under division (E), (F), or (G) of this section, and the offender violates any of the conditions of the sanctions, the public or private person or entity that supervises or administers the program or activity that comprises the sanction shall report the violation directly to the sentencing court or to the department of probation or probation officer with general control and supervision over the offender. If the public or private person or entity reports the violation to the department of probation or probation officer, the department or officer shall report the violation to the sentencing court.

(b) If an offender violates any condition of a community control sanction, the sentencing court may impose upon the violator one or more of the following penalties:

1. A longer time under the same community control sanction if the total time under all of the community control sanctions imposed on the violator does not exceed the five-year limit specified in division (D)(1)(b) of this section;

2. A more restrictive community control sanction;

3. A combination of community control sanctions, including a jail term.

(c) If an offender was acting pursuant to R.C. § 2925.11(B)(2)(b), or any substantially equivalent municipal ordinance, and in so doing violated the conditions of a community control sanction based on a minor drug possession offense, as defined in R.C. § 2925.11, the sentencing court may consider the offender's conduct in seeking or obtaining medical assistance for another in good faith or for self or may consider the offender being the subject of another person seeking or obtaining medical assistance in accordance with that division as a mitigating factor before imposing any of the penalties described in division (D)(4)(b) of this section.

(d) If the court imposes a jail term upon a violator pursuant to division (D)(4)(b) of this section, the total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed. The court may reduce the longer period of time that the violator is required to spend under the longer sanction or the more restrictive sanction imposed under division (D)(4)(b) of this section by all or part of the time the violator successfully spent under the sanction that was initially imposed.

(5) Except as otherwise provided in this division, if an offender, for a significant period of time, fulfills the conditions of a community control sanction imposed pursuant to division (E), (F), or (G) of this section in an exemplary manner, the court may reduce the period of time under the community control sanction or impose a less restrictive community control sanction. Fulfilling the conditions of a community control sanction does not relieve the offender of a duty to make restitution under division (G) of this section. (R.C. § 2929.25)

(E) *Community residential sanction.*

(1) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any community residential sanction or combination of community residential sanctions under this division (E). Community residential sanctions include but are not limited to the following:

(a) A term of up to 180 days in a halfway house or a term in a halfway house not to exceed the longest jail term available for the offense, whichever is shorter, if the political subdivision that would have responsibility for paying the costs of confining the offender in a jail has entered into a contract with the halfway house for use of the facility for misdemeanor offenders;

(b) If the offender is an eligible offender, as defined in R.C. § 307.932, a term in a community alternative sentencing center or district community alternative sentencing center established and operated in accordance with that section, in the circumstances specified in that section, with one of the conditions of the sanction being that the offender successfully complete the portion of the sentence to be served in the center.

(2) A sentence to a community residential sanction under division (E)(1)(b) of this section shall be in accordance with R.C. § 307.932. In all other cases, the court that sentences an offender to a community residential sanction under this division (E) may do either or both of the following:

(a) Permit the offender to serve the offender's sentence in intermittent confinement, overnight, on weekends or at any other time or times that will allow the offender to continue at the offender's occupation or care for the offender's family;

(b) Authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, receive treatment, perform community service, or otherwise fulfill an obligation imposed by law or by the court. A release pursuant to this division shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of release.

(3) The court may order that a reasonable portion of the income earned by the offender upon a release pursuant to division (E)(2) of this section be applied to any financial sanction imposed under division (G) of this section.

(4) No court shall sentence any person to a prison term for a misdemeanor or minor misdemeanor or to a jail term for a minor misdemeanor.

(5) If a court sentences a person who has been convicted of or pleaded guilty to a misdemeanor to a community residential sanction as described in division (E)(1) of this section, at the time of reception and at other times the person in charge of the operation of the halfway house, community alternative sentencing center, district community alternative sentencing center, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the halfway house, community alternative sentencing center, district community alternative sentencing center, or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, and other contagious diseases. The person in charge of the operation of the halfway house, community alternative sentencing center, district community alternative sentencing center, or other place at which the offender will serve the residential sanction may cause a convicted offender in the halfway house, community alternative sentencing center, district community alternative sentencing center, or other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B, and C, or another contagious disease to be tested and treated involuntarily.

(6) The municipality may enter into a contract with a halfway house for use of the halfway house to house misdemeanor offenders under a sanction imposed under division (E)(1)(a) of this section.
(R.C. § 2929.26)

(F) *Nonresidential sanction where jail term is not mandatory.*

(1) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any nonresidential sanction or combination of nonresidential sanctions authorized under this division. Nonresidential sanctions include but are not limited to the following:

(a) A term of day reporting;

(b) A term of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring;

(c) A term of community service of up to 500 hours for misdemeanor of the first degree or 200 hours for a misdemeanor of the second, third, or fourth degree;

(d) A term in a drug treatment program with a level of security for the offender as determined necessary by the court;

(e) A term of intensive probation supervision;

(f) A term of basic probation supervision;

(g) A term of monitored time;

(h) A term of drug and alcohol use monitoring, including random drug testing;

(i) A curfew term;

(j) A requirement that the offender obtain employment;

(k) A requirement that the offender obtain education or training;

(l) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;

(m) If authorized by law, suspension of the offender's privilege to operate a motor vehicle, immobilization or forfeiture of the offender's motor vehicle, a requirement that the offender obtain a valid motor vehicle operator's license, or any other related sanction;

(n) A requirement that the offender obtain counseling if the offense is a violation of R.C. § 2919.25 or a substantially equivalent municipal ordinance or a violation of R.C. § 2903.13 or a substantially equivalent municipal ordinance involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children. This division does not limit the court in requiring that the offender obtain counseling for any offense or in any circumstance not specified in this division.

(2) If the court imposes a term of community service pursuant to division (F)(1)(c) of this section, the offender may request that the court modify the sentence to authorize the offender to make a reasonable contribution, as determined by the court, to the general fund of the county, municipality, or other local entity that provides funding to the court. The court may grant the request if the offender demonstrates a change in circumstances from the date the court imposes the sentence or that the modification would otherwise be in the interests of justice. If the court grants the request, the offender shall make a reasonable contribution to the court, and the clerk of the court shall deposit that contribution into the general fund of the county, municipality, or other local entity that provides funding to the court. If more than one entity provides funding to the court, the clerk shall deposit a percentage of the reasonable contribution equal to the percentage of funding the entity provides to the court in that entity's general fund.

(3) In addition to the sanctions authorized under division (F)(1) of this section, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, upon an offender who is not required to serve a mandatory jail term may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.

(4) The court imposing a sentence for a minor misdemeanor may impose a term of community service in lieu of all or part of a fine. The term of community service imposed for a minor misdemeanor shall not exceed 30 hours. After imposing a term of community service, the court may modify the sentence to authorize a reasonable contribution, as determined by the court, to the appropriate general fund as provided in division (F)(2) of this section.
(R.C. § 2929.27)

(G) *Financial sanctions.*

(1) In addition to imposing court costs pursuant to R.C. § 2947.23, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this division (G). If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include but are not limited to the following:

(a) *Restitution.*

1. Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the Traffic Violations Bureau serving the court under Traffic Rule 13, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based upon the victim's economic loss. The court may not impose restitution as a sanction pursuant to this division if the offense is a minor misdemeanor or could be disposed of by the Traffic Violations Bureau serving the court under Traffic Rule 13. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim.

2. If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

3. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. No person may introduce evidence of an award of restitution under this section in a civil action for purposes of imposing liability against an insurer under R.C. § 3937.18.

4. If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than 5% of the amount of the restitution otherwise ordered, to the entity responsible for collecting and processing restitution payments.

5. The victim or survivor of the victim may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(b) *Fines.* A fine of the type described in divisions (G)(1)(b)1. and (G)(1)(b)2. of this section payable to the appropriate entity as required by law:

1. A fine in the following amount:

a. For a misdemeanor of the first degree, not more than $1,000;

b. For a misdemeanor of the second degree, not more than $750;

c. For a misdemeanor of the third degree, not more than $500;

d. For a misdemeanor of the fourth degree, not more than $250;

e. For a minor misdemeanor, not more than $150.

2. A state fine or cost as defined in R.C. § 2949.111.

(c) *Reimbursement.*

1. Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including but not limited to the following:

a. All or part of the costs of implementing any community control sanction, including a supervision fee under R.C. § 2951.021;

b. All or part of the costs of confinement in a jail or other residential facility, including but not limited to a per diem fee for room and board, the costs of medical and dental treatment, and the costs of repairing property damaged by the offender while confined;

c. All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under R.C. § 4510.13.

2. The amount of reimbursement under division (G)(1)(c)1. of this section shall not exceed the total amount of reimbursement the offender is able to pay and shall not exceed the actual cost of the sanctions. The court may collect any amount of reimbursement the offender is required to pay under that division. If the court does not order reimbursement under that division, confinement costs may be assessed pursuant to a repayment policy adopted under R.C. § 2929.37. In addition, the offender may be required to pay the fees specified in R.C. § 2929.38 in accordance with that section.

(2) (a) If the court determines a hearing is necessary, the court may hold a hearing to determine whether the offender is able to pay the financial sanction imposed pursuant to this division (G) or court costs or is likely in the future to be able to pay the sanction or costs.

(b) If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court shall consider imposing and may impose a term of community service under division (F)(1) of this section in lieu of imposing a financial sanction or court costs. If the court does not determine that the offender is indigent, the court may impose a term of community service under division (F)(1) of this section in lieu of or in addition to imposing a financial sanction under this division (G) and in addition to imposing court costs. The court may order community service for a minor misdemeanor pursuant to division (F)(4) of this section in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs.

If a person fails to pay a financial sanction or court costs, the court may order community service in lieu of the financial sanction or court costs.

(3) (a) The offender shall pay reimbursements imposed upon the offender pursuant to division (G)(1)(c) of this section to pay the costs incurred by a county pursuant to any sanction imposed under division (E), (F), or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section to the county treasurer. The county treasurer shall deposit the reimbursements in the county's General Fund. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under division (E), (F), or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section.

(b) The offender shall pay reimbursements imposed upon the offender pursuant to division (G)(1)(c) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under division (E), (F), or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in the municipal corporation's General Fund. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under division (E), (F), or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section.

(c) The offender shall pay reimbursements imposed pursuant to division (G)(1)(c) of this section for the costs incurred by a private provider pursuant to a sanction imposed under division (E), (F), or (G) of this section to the provider.

(4) In addition to any other fine that is or may be imposed under this division (G), the court imposing sentence upon an offender for misdemeanor domestic violence or menacing by stalking may impose a fine of not less than $70 nor more than $500, which shall be transmitted to the Treasurer of Ohio to be credited to the address confidentiality program fund created by R.C. § 111.48.

(5) (a) Except as otherwise provided in this division (G)(5), a financial sanction imposed under division (G)(1) of this section is a judgment in favor of the state or the political subdivision that operates the court that imposed the financial sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (G)(1)(c)1.a. of this section upon an offender is a judgment in favor of the entity administering the community control sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (G)(1)(c)1.b. of this section upon an offender confined in a jail or other residential facility is a judgment in favor of the entity operating the jail or other residential facility, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (G)(1)(a) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (G)(5)(b)1. of this section, through execution as described in division (G)(5)(b)2. of this section or through an order as described in division (G)(5)(b)3. of this section and the offender shall be considered for purposes of the collection as a judgment debtor.

(b) Once a financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following:

1. Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;

2. Obtain execution of the judgment or order through any available procedure, including any of the procedures identified in R.C. § 2929.18(D)(1) and (D)(2) or a substantially equivalent municipal ordinance.

3. Obtain an order for the assignment of wages of the judgment debtor under R.C. § 1321.33 or a substantially equivalent municipal ordinance.

(6) The civil remedies authorized under division (G)(5) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence.

(7) Each court imposing a financial sanction upon an offender under this division (G) may designate the clerk of the court or another person to collect the financial sanction. The clerk, or another person authorized by law or the court to collect the financial sanction may do the following:

(a) Enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this division (G), a court shall comply with R.C. §§ 307.86 through 307.92.

(b) Permit payment of all or any portion of the sanction in installments, by financial transaction device if the court is a county court or a municipal court operated by a county, or by any other reasonable method, in any time, and on any terms that the court considers just, except that the maximum time permitted for payment shall not exceed five years. If the court is a county court or a municipal court operated by a county, the acceptance of payments by any financial transaction device shall be governed by the policy adopted by the board of county commissioners of the county pursuant to R.C. § 301.28. If the court is a municipal court not operated by a county, the clerk may pay any fee associated with processing an electronic transfer out of public money or may charge the fee to the offender.

(c) To defray administrative costs, charge a reasonable fee to an offender who elects a payment plan rather than a lump sum payment of any financial sanction.

(8) No financial sanction imposed under this division (G) shall preclude a victim from bringing a civil action against the offender.
(R.C. § 2929.28)

(H) *Organizational penalties.*

(1) Regardless of the other penalties provided in this section, an organization convicted of an offense pursuant to § 130.09 shall be fined by the court as follows:

(a) For a misdemeanor of the first degree, not more than $5,000;

(b) For a misdemeanor of the second degree, not more than $4,000;

(c) For a misdemeanor of the third degree, not more than $3,000;

(d) For a misdemeanor of the fourth degree, not more than $2,000;

(e) For a minor misdemeanor, not more than $1,000;

(f) For a misdemeanor not specifically classified, not more than $2,000;

(g) For a minor misdemeanor not specifically classified, not more than $1,000.

(2) When an organization is convicted of an offense not specifically classified, and the section defining the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then such penalty shall be imposed in lieu of the penalty provided in this section.

(3) When an organization is convicted of an offense not specifically classified, and the penalty provided includes a higher fine than that provided in this section, then the penalty imposed shall be pursuant to the penalty provided for violation of the section defining the offense.

(4) This section does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to § 130.09, either in addition to or in lieu of a fine imposed pursuant to this section.

(R.C. § 2929.31)

***Cross-reference:***

*Sentencing for sexually oriented offenses; sexual predators; registration, see § 133.99*

***Statutory reference:***

*Citation issuance and limitations on arrest for minor misdemeanors, see R.C. § 2935.26*
*Crime Victim's Reparations Fund, see R.C. § 2929.32*
*Habitual sex offender and sexual predator registration, see R.C. Chapter 2950*
*Reimbursement for costs of confinement, see R.C. §§ 2929.36 et seq.*
*Reports to health care licensing boards of criminal offenses, see R.C. § 2929.42*

# CHAPTER 131: OFFENSES AGAINST PROPERTY

Section



***Cross-reference:***

*Animals, offenses against, see §§ 90.10 et seq.*

*Property recovered by police, deposit of stolen property, see §§ 34.10 et seq.*

***Statutory reference:***

*Cable television service devices, unauthorized sale or possession, felony, see R.C. § 2913.041*
*Deceptive acts or practices in connection with consumer transactions, see O.A.C. Chapter 109:4-3*
*Disrupting public services, felony, see R.C. § 2909.04*
*E-mail advertisements, civil offenses and felony forgery offense, see R.C. § 2307.64*
*E-mail spam, civil offenses and felony offenses, see R.C. § 2913.421*
*Food stamps, illegal use, see R.C. § 2913.46*
*Telecommunications: fraud and unlawful use of a device, felony offenses, see R.C. §§ 2913.05 and 2913.06*
*Terrorism involving agricultural products or equipment, see R.C. § 901.511*

## § 131.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACTIVE DUTY SERVICE MEMBER.*** Any member of the armed forces of the United States performing active duty under Title 10 of the United States Code.

***ANHYDROUS AMMONIA.*** A compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the manner described below. Anhydrous ammonia is one part nitrogen to three parts hydrogen ($NH_3$). Anhydrous ammonia by weight is fourteen parts nitrogen to three parts hydrogen, which is approximately 82% nitrogen to 18% hydrogen.

***ASSISTANCE DOG.*** Has the same meaning as in R.C. § 955.011.

***CABLE TELEVISION SERVICE.*** Any services provided by or through the facilities of any cable television system or other similar closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

***COIN MACHINE.*** Any mechanical or electronic device designed to do both of the following:

(1) Receive a coin or bill, or token made for that purpose;

(2) In return for the insertion or deposit of a coin, bill, or token, automatically dispense property, provide a service, or grant a license.

***COMPUTER.*** An electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. The term includes but is not limited to all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature.

***COMPUTER CONTAMINANT.*** Means a computer program that is designed to modify, damage, destroy, disable, deny or degrade access to, allow unauthorized access to, functionally impair, record, or transmit information within a computer, computer system, or computer network without the express or implied consent of the owner or other person authorized to give consent and that is of a type or kind described in divisions (1) through (4) of this definition or of a type or kind similar to a type or kind described in divisions (1) through (4) of this definition:

(1) A group of computer programs commonly known as "viruses" and "worms" that are self-replicating or self-propagating and that are designed to contaminate other computer programs, compromise computer security, consume computer resources, modify, destroy, record, or transmit data, or disrupt the normal operation of the computer, computer system, or computer network;

(2) A group of computer programs commonly known as "Trojans" or "Trojan horses" that are not self-replicating or self-propagating and that are designed to compromise computer security, consume computer resources, modify, destroy, record, or transmit data, or disrupt the normal operation of the computer, computer system, or computer network;

(3) A group of computer programs commonly known as "zombies" that are designed to use a computer without the knowledge and consent of the owner, or other person authorized to give consent, and that are designed to send large quantities of data to a targeted computer network for the purpose of degrading the targeted computer's or network's performance, or denying access through the network to the targeted computer or network, resulting in what is commonly known as "denial of service" or "distributed denial of service" attacks;

(4) A group of computer programs commonly known as "trap doors", "back doors", or "root kits" that are designed to bypass standard authentication software and that are designed to allow access or use of a computer without the knowledge or consent of the owner, or other person authorized to give consent.

***COMPUTER HACKING.***

(1) The term means any of the following:

(a) Gaining access or attempting to gain access to all or part of a computer, computer system, or a computer network without express or implied authorization with the intent to defraud or with intent to commit a crime;

(b) Misusing computer or network services including but not limited to mail transfer programs, file transfer programs, proxy servers, and web servers by performing functions not authorized by the owner of the computer, computer system, or computer network or other person authorized to give consent. As used in this division, "misuse of computer and network services" includes but is not limited to the unauthorized use of any of the following:

1. Mail transfer programs to send mail to persons other than the authorized users of that computer or computer network;

2. File transfer program services or proxy servers to access other computers, computer systems, or computer networks;

3. Web servers to redirect users to other web pages or web servers.

(c) 1. Subject to division (1)(c)2. of this definition, using a group of computer programs commonly known as "port scanners" or "probes" to intentionally access any computer, computer system, or computer network without the permission of the owner of the computer, computer system, or computer network or other person authorized to give consent. The group of computer programs referred to in this division includes but is not limited to those computer programs that use a computer network to access a computer, computer system, or another computer network to determine any of the following: the presence or types of computers or computer systems on a network; the computer network's facilities and capabilities; the availability of computer or network services; the presence or versions of computer software including but not limited to operating systems, computer services, or computer contaminants; the presence of a known computer software deficiency that can be used to gain unauthorized access to a computer, computer system, or computer network; or any other information about a computer, computer system, or computer network not necessary for the normal and lawful operation of the computer initiating the access.

2. The group of computer programs referred to in division (1)(c)1. of this definition does not include standard computer software used for the normal operation, administration, management, and test of a computer, computer system, or computer network including but not limited to domain name services, mail transfer services, and other operating system services, computer programs commonly called "ping", "tcpdump", and "traceroute" and other network monitoring and management computer software, and computer programs commonly knows as "nslookup" and "whois" and other systems administration computer software.

(d) The intentional use of a computer, computer system, or a computer network in a manner that exceeds any right or permission granted by the owner of the computer, computer system, or computer network or other person authorized to give consent.

(2) The term does not include the introduction of a computer contaminant, as defined in this section, into a computer, computer system, computer program, or computer network.

***COMPUTER NETWORK.*** A set of related and remotely-connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities.

***COMPUTER PROGRAM.*** An ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to process data.

***COMPUTER SERVICES.*** Includes but is not limited to the use of a computer system, computer network, computer program, data that is prepared for computer use, or data that is contained within a computer system or computer network.

***COMPUTER SOFTWARE.*** Computer programs, procedures, and other documentation associated with the operation of a computer system.

***COMPUTER SYSTEM.*** A computer and related devices, whether connected or unconnected, including but not limited to data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks.

***COUNTERFEIT TELECOMMUNICATIONS DEVICE.*** A telecommunications device that, alone or with another telecommunications device, has been altered, constructed, manufactured, or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service or information service without the authority or consent of the provider of the telecommunications service or information service. The phrase includes but is not limited to a clone telephone, clone microchip, tumbler telephone, or tumbler microchip; a wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of telecommunications service or information service without immediate detection; or a device, equipment, hardware, or software designed for, or capable of, altering or changing the electronic serial number in a wireless telephone.

***CREATE A SUBSTANTIAL RISK OF SERIOUS PHYSICAL HARM TO ANY PERSON.*** Includes the creation of a substantial risk of serious physical harm to any emergency personnel.

***CREDIT CARD.*** Includes but is not limited to a card, code, device, or other means of access to a customer's account for the purpose of obtaining money, property, labor, or services on credit, or for initiating an electronic fund transfer at a point-of-sale terminal, an automated teller machine, or a cash dispensing machine. It also includes a county procurement card issued under R.C. § 301.29.

***DANGEROUS DRUG.*** Has the same meaning as in R.C. § 4729.01.

***DANGEROUS ORDNANCE.*** Has the same meaning as in R.C. § 2923.11.

***DATA.*** A representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer, computer system, or computer network.

***DECEPTION.*** To knowingly deceive another or cause another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

***DEFRAUD.*** To knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

***DEPRIVE.*** To do any of the following:

(1) To withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;

(2) To dispose of property so as to make it unlikely that the owner will recover it;

(3) To accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration.

***DISABLED ADULT.*** A person who is 18 years of age or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise

would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons.

***DRUG ABUSE OFFENSE.*** Has the same meaning as in R.C. § 2925.01.

***ELDERLY PERSON.*** A person who is 65 years of age or older.

***ELECTRONIC FUND TRANSFER.*** Has the same meaning as in 92 Stat. 3728, 15 U.S.C. § 1693a, as amended.

***EMERGENCY PERSONNEL.*** Means any of the following persons:

(1) A peace officer, as defined in R.C. § 2935.01;

(2) A member of a fire department or other firefighting agency of a municipal corporation, township, township fire district, joint fire district, other political subdivision, or combination of political subdivisions;

(3) A member of a private fire company, as defined in R.C. § 9.60, or a volunteer firefighter;

(4) A member of a joint ambulance district or joint emergency medical services district;

(5) An emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, ambulance operator, or other member of an emergency medical service that is owned or operated by a political subdivision or a private entity;

(6) The State Fire Marshal, the Chief Deputy State Fire Marshal, or an assistant state fire marshal;

(7) A fire prevention officer of a political subdivision or an arson, fire, or similar investigator of a political subdivision.

***FEDERALLY-LICENSED FIREARMS DEALER.*** Has the same meaning as in R.C. § 5502.63.

***FIREARM.*** Has the same meaning as in R.C. § 2923.11.

***FORGE.*** To fabricate or create, in whole or in part and by any means, any spurious writing, or to make, execute, alter, complete, reproduce, or otherwise purport to authenticate any writing, when the writing in fact is not authenticated by that conduct.

***GAIN ACCESS.*** To approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network, or any cable service or cable system both as defined in R.C. § 2913.04.

***INFORMATION SERVICE.***

(1) Subject to division (2) of this definition, the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including but not limited to electronic publishing.

(2) The term does not include any use of a capability of a type described in division (1) of this definition for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

***INTERNET.*** Has the same meaning as in R.C. § 341.42.

***MOTOR VEHICLE.*** Has the same meaning as in R.C. § 4501.01.

***OCCUPIED STRUCTURE.*** Means any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof, to which any of the following applies:

(1) It is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether nor not any person is actually present;

(2) At the time, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present;

(3) At the time, it is specially adapted for the overnight accommodation of any person, whether or not any person is actually present;

(4) At the time, any person is present or likely to be present in it.

***OWNER.*** Unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful.

***POLICE DOG OR HORSE.*** Has the same meaning as in R.C. § 2921.321.

***POLITICAL SUBDIVISION.*** Has the same meaning as in R.C. § 2744.01.

***RENTED PROPERTY.*** Personal property in which the right of possession and use of the property is for a short and possibly indeterminate term in return for consideration; the rentee generally controls the duration of possession of the property within any applicable minimum or maximum term; and the amount of consideration is generally determined by the duration of possession of the property.

***SERVICES.*** Includes labor, personal services, professional services, rental services, public utility services including wireless service as defined in R.C. § 128.01(F)(1), common carrier services, and food, drink, transportation, entertainment, and cable television services and, for purposes of R.C. § 2913.04 or any substantially equivalent municipal ordinance, includes cable services as defined in that section.

***SLUG.*** An object that, by virtue of its size, shape, composition, or other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill, or token made for that purpose.

***STATE.*** Has the same meaning as in R.C. § 2744.01.

***TELECOMMUNICATION.*** The origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence or intelligence of any nature over any communications system by any method, including but not limited to a fiber optic, electronic, magnetic, optical, digital or analog method.

***TELECOMMUNICATIONS DEVICE.*** Any instrument, equipment, machine, or other device that facilitates telecommunication, including but not limited to a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.

***TELECOMMUNICATIONS SERVICE.*** The providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system.

***THEFT OFFENSE.*** Any of the following:

(1) A violation of R.C. § 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, 2913.48, former R.C. § 2913.47 or 2913.48, or R.C. § 2913.51, 2915.05, or 2921.41;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or of the United States substantially equivalent to any section listed in division (1) of this definition, or a violation of R.C. § 2913.41, 2913.81 or 2915.06 as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;

(4) A conspiracy to commit, attempt to commit, or complicity in committing any offense under division (1), (2), or (3) of this definition.

***UTTER.*** To issue, publish, transfer, use, put or send into circulation, deliver, or display.

***WRITING.*** Any computer software, document, letter, memorandum, note, paper, plate, data, film, or other thing having in or upon it any written, type-written, or printed matter, and any token, stamp, seal, credit card, badge, trademark, label, or other symbol of value, right, privilege, license, or identification.
(R.C. §§ 2909.01, 2913.01)

## § 131.02 ARSON; DETERMINING PROPERTY VALUE OR AMOUNT OF PHYSICAL HARM.

(A) No person, by means of fire or explosion, shall knowingly do any of the following:

(1) Cause, or create a substantial risk of, physical harm to any property of another without the other person's consent;

(2) Cause, or create a substantial risk of, physical harm to any property of the offender or another, with purpose to defraud;

(3) Cause, or create a substantial risk of, physical harm to the statehouse or a courthouse, school building, or other building or structure that is owned or controlled by the state, any political subdivision, or any department, agency, or instrumentality of the state or a political subdivision, and that is used for public purposes;

(4) Cause, or create a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any property of another without the other person's consent or to any property of the offender or another with purpose to defraud;

(5) Cause, or create a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision without the consent of the other person, the state, or the political subdivision;

(6) With purpose to defraud, cause, or create a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by the offender, another person, the state, or a political subdivision.

(B) No person, by means of fire or explosion, shall knowingly do any of the following:

(1) Cause, or create a substantial risk of, physical harm to any structure of another that is not an occupied structure;

(2) Cause, or create a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any structure of another that is not an occupied structure;

(3) Cause, or create a substantial risk of, physical harm to any structure that is not an occupied structure and that is in or on any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision.

(C) (1) It is an affirmative defense to a charge under division (B)(1) or (B)(2) of this section that the defendant acted with the consent of the other person.

(2) It is an affirmative defense to a charge under division (B)(3) of this section that the defendant acted with the consent of the other person, the state, or the political subdivision.

(D) (1) Whoever violates this section is guilty of arson.

(2) A violation of division (A)(1) or (B)(1) of this section is one of the following:

(a) Except as otherwise provided in division (D)(2)(b) of this section, a misdemeanor of the first degree;

(b) If the value of the property or the amount of the physical harm involved is $1,000 or more, a felony to be prosecuted under appropriate state law.

(3) A violation of division (A)(2), (A)(3), (A)(4), (A)(5), (A)(6), (B)(2) or (B)(3) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2909.03)

(E) *Determining property value or amount of physical harm.*

(1) The following criteria shall be used in determining the value of property or amount of physical harm involved in a violation of division (A)(1) or (B)(1) of this section:

(a) If the property is an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that is either irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, the value of the property or the amount of physical harm involved is the amount that would compensate the owner for its loss.

(b) If the property is not covered under division (B)(1)(a) of this section, and the physical harm is such that the property can be restored substantially to its former condition, the amount of physical harm involved is the reasonable cost of restoring the property.

(c) If the property is not covered under division (B)(1)(a) of this section, and the physical harm is such that the property cannot be restored substantially to its former condition, the value of the property, in the case of personal property, is the cost of replacing the property with new property of like kind and quality, and in the case of real property or real property fixtures, is the difference in the fair market value of the property immediately before and immediately after the offense.

(2) As used in this section, ***FAIR MARKET VALUE*** has the same meaning as in R.C. § 2913.61.

(3) Prima facie evidence of the value of property, as provided in R.C. § 2913.61(D), may be used to establish the value of property pursuant to this section.
(R.C. § 2909.11(B) - (D))

***Statutory reference:***

*Aggravated arson, felony offense, see R.C. § 2909.02*
*Arson offender registration, see R.C. §§ 2909.13, 2909.14 and 2909.15*
*Convicted arsonist to make restitution to public agency, see R.C. § 2929.71*

## § 131.03 CRIMINAL DAMAGING OR ENDANGERING; VEHICULAR VANDALISM.

(A) *Criminal damaging or endangering.*

(1) No person shall cause or create a substantial risk of physical harm to any property of another without the other person's consent:

(a) Knowingly, by any means; or

(b) Recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.

(2) Whoever violates this division (A) is guilty of criminal damaging or endangering, a misdemeanor of the second degree. If violation of this division (A) creates a risk of physical harm to any person, criminal damaging or endangering is a misdemeanor of the first degree. If the property involved in a violation of this division (A) is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a risk of physical harm to any person, criminal damaging or endangering is a felony to be prosecuted under appropriate state law. If the property involved in a violation of this division (A) is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this division (A) is an occupied aircraft, criminal damaging or endangering is a felony to be prosecuted under appropriate state law.
(R.C. § 2909.06)

(B) *Vehicular vandalism.*

(1) As used in this division (B):

***ALLEY.*** Has the same meaning as in R.C. § 4511.01.

***HIGHWAY.*** Means any highway as defined in R.C. § 4511.01 or any lane, road, street, alley, bridge, or overpass.

***STREET.*** Has the same meaning as in R.C. § 4511.01.

***VEHICLE.*** Has the same meaning as in R.C. § 4511.01.

***VESSEL.*** Has the same meaning as in R.C. § 1546.01.

***WATERS IN THIS STATE.*** Has the same meaning as in R.C. § 1546.01.

(2) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of any of the following:

(a) Any vehicle on a highway;

(b) Any boat or vessel on any of the waters in this state.

(3) Whoever violates this division (B) is guilty of vehicular vandalism. Except as otherwise provided in this division (B)(3), vehicular vandalism is a misdemeanor of the first degree. If the violation of this division (B) creates a substantial risk of physical harm to any person or the violation of this division (B) causes serious physical harm to property, vehicular vandalism is a felony to be prosecuted under appropriate state law. If the

violation of this division (B) causes physical harm to any person or serious physical harm to any person, vehicular vandalism is a felony to be prosecuted under appropriate state law.
(R.C. § 2909.09)

***Statutory reference:***

*Disrupting public services, felony offense, see R.C. § 2909.04*
*Railroad grade crossing device vandalism, see R.C. § 2909.101*
*Railroad vandalism, see R.C. § 2909.10*
*Vandalism, felony offense, see R.C. § 2909.05*

## § 131.04 CRIMINAL MISCHIEF.

(A) No person shall:

(1) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with the either of the following:

(a) The property of another;

(b) One's own residential real property with the purpose to decrease the value of or enjoyment of the residential real property, if both of the following apply:

1. The residential real property is subject to a mortgage.

2. The person has been served with a summons and complaint in a pending residential mortgage loan foreclosure action relating to that real property. As used in this division, "pending" includes the time between judgment entry and confirmation of sale.

(2) With purpose to interfere with the use or enjoyment of property of another, employ a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed, or that tends to cause public alarm;

(3) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with a bench mark, triangulation station, boundary marker, or other survey station, monument, or marker;

(4) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with any safety device, the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose;

(5) With purpose to interfere with the use or enjoyment of the property of another, set a fire on the land of another or place personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land;

(6) Without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, knowingly do any of the following:

(a) In any manner or by any means, including but not limited to computer hacking, alter, damage, destroy, or modify a computer, computer system, computer network, computer software, or computer program or data contained in a computer, computer system, computer network, computer software, or computer program;

(b) Introduce a computer contaminant into a computer, computer system, computer network, computer software, or computer program.

(B) As used in this section, ***SAFETY DEVICE*** means any fire extinguisher, fire hose, or fire axe, or any fire escape, emergency exit, or emergency escape equipment, or any life line, life-saving ring, life preserver, or life boat or raft, or any alarm, light, flare, signal, sign, or notice intended to warn of danger or emergency, or intended for other safety purposes, or any guard railing or safety barricade, or any traffic sign or signal, or any railroad grade crossing sign, signal, or gate, or any first aid or survival equipment, or any other device, apparatus, or equipment intended for protecting or preserving the safety of persons or property.

(C) Whoever violates this section is guilty of criminal mischief, and shall be punished as provided in division (C)(1) or (C)(2) of this section.

(1) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of this section is a misdemeanor of the third degree. Except as otherwise provided in this division, if the violation of division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of this section creates a risk of physical harm to any person, criminal mischief committed in violation of division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of this section is a misdemeanor of the first degree. If the property involved in the violation of division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates any risk of physical harm to any person, or if the aircraft in question is an occupied aircraft, criminal mischief committed in violation of division (A)(1), (A)(2), (A)(3), (A)(4), or (A)(5) of this section is a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(6) of this section is a misdemeanor of the first degree. If the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is $1,000 or more, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) is used or intended to be used in the operation of an aircraft and the violation creates any risk of physical harm to any person, or if the aircraft in question is an occupied aircraft, criminal mischief committed in violation of division (A)(6) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2909.07)

## § 131.05 DAMAGING OR ENDANGERING AIRCRAFT OR AIRPORT OPERATIONS.

(A) As used in this section:

***AIR GUN.*** Means a hand pistol or rifle that propels its projectile by means of releasing compressed air, carbon dioxide, or other gas.

***AIRPORT OPERATIONAL SURFACE.*** Means any surface of land or water that is developed, posted, or marked so as to give an observer reasonable notice that the surface is designed and developed for the purpose of storing, parking, taxiing, or operating aircraft, or any surface of land or water that is actually being used for any of those purposes.

***FIREARM.*** Has the same meaning as in R.C. § 2923.11.

***SPRING-OPERATED GUN.*** Means a hand pistol or rifle that propels a projectile not less than four or more than five millimeters in diameter by means of a spring.

(B) No person shall do either of the following:

(1) Knowingly throw an object at, or drop an object upon, any moving aircraft.

(2) Knowingly shoot with a bow and arrow, or knowingly discharge a firearm, air gun, or spring-operated gun, at or toward any aircraft.

(C) No person shall knowingly or recklessly shoot with a bow and arrow, or shall knowingly or recklessly discharge a firearm, air gun, or spring-operated gun, upon or over any airport operational surface. This division does not apply to the following:

(1) An officer, agent, or employee of this or any other state or of the United States, or a law enforcement officer, authorized to discharge firearms and acting within the scope of his or her duties.

(2) A person who, with the consent of the owner or operator of the airport operational surface or the authorized agent of either, is lawfully engaged in any hunting or sporting activity or is otherwise lawfully discharging a firearm.

(D) Whoever violates division (B) of this section is guilty of endangering aircraft, a misdemeanor of the first degree. If the violation creates any risk of physical harm to any person, or if the aircraft that is the subject of the violation is occupied, endangering aircraft is a felony to be prosecuted under appropriate state law.

(E) Whoever violates division (C) of this section is guilty of endangering airport operations, a misdemeanor of the second degree. If the violation creates a risk of physical harm to any person or substantial risk of serious harm to any person, endangering airport operations is a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for the violation, the hunting license or permit of a person who violates division (C) of this section while hunting shall be suspended or revoked pursuant to R.C. § 1533.68.
(R.C. § 2909.08(A) - (E))

## § 131.06 CRIMINAL TRESPASS; AGGRAVATED TRESPASS.

(A) No person, without privilege to do so, shall do any of the following:

(1) Knowingly enter or remain on the land or premises of another;

(2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;

(3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;

(4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.

(B) It is no defense to a charge under this section that the land or premises involved was owned, controlled, or in custody of a public agency.

(C) It is no defense to a charge under this section that the offender was authorized to enter or remain on the land or premises involved, when the authorization was secured by deception.

(D) (1) Whoever violates division (A) of this section is guilty of criminal trespass, a misdemeanor of the fourth degree.

(2) Notwithstanding R.C. § 2929.28, if the person, in committing the violation of this section, used a snowmobile, off-highway motorcycle, or all-purpose vehicle, the court shall impose a fine of two times the usual amount imposed for the violation.

(3) If an offender previously has been convicted of or pleaded guilty to two or more violations of this section, R.C. § 2911.21 or a substantially equivalent municipal ordinance, and the offender, in committing each violation, used a snowmobile, off-highway motorcycle, or all-purpose vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impound the certificate of registration of that snowmobile or off-highway motorcycle or the certificate of registration and license plate of that all-purpose vehicle for not less than 60 days. In such a case, R.C. § 4519.47 applies.

(E) Notwithstanding any provision of the Ohio Revised Code, if the offender, in committing the violation of this section, used an all-purpose vehicle, the Clerk of the Court shall pay the fine imposed pursuant to this section to the State Recreational Vehicle Fund created by R.C. § 4519.11.

(F) As used in this section:

(1) ***ALL-PURPOSE VEHICLE***, ***OFF-HIGHWAY MOTORCYCLE***, and ***SNOWMOBILE*** have the same meanings as in R.C. § 4519.01.

(2) ***LAND*** or ***PREMISES*** includes any land, building, structure, or place belonging to, controlled by, or in custody of another, and any separate enclosure or room, or portion thereof.
(R.C. § 2911.21)

(G) Aggravated trespass.

(1) No person shall enter or remain on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to him or her.

(2) Whoever violates this division (G) is guilty of aggravated trespass, a misdemeanor of the first degree.
(R.C. § 2911.211)

(H) Criminal trespass on a place of public amusement.

(1) As used in this division (H), ***PLACE OF PUBLIC AMUSEMENT*** means a stadium, theater, or other facility, whether licensed or not, at which a live performance, sporting event, or other activity takes place for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged.

(2) No person, without privilege to do so, shall knowingly enter or remain on any restricted portion of a place of public amusement and, as a result of that conduct, interrupt or cause the delay of the live performance, sporting event, or other activity taking place at the place of public amusement after a printed written notice has been given as provided in division (H)(4)(a) of this section that the general public is restricted from access to that restricted portion of the place of public amusement. A restricted portion of a place of public amusement may include but is not limited to a playing field, an athletic surface, or a stage located at the place of public amusement.

(3) An owner or lessee of a place of public amusement, an agent of the owner or lessee, or a performer or participant at a place of public amusement may use reasonable force to restrain and remove a person from a restricted portion of the place of public amusement if the person enters or remains on the restricted portion of the place of public amusement and, as a result of that conduct, interrupts or causes the delay of the live performance, sporting event, or other activity taking place at the place of public amusement. This division does not provide immunity from criminal liability for any use of force beyond reasonable force by an owner or lessee of a place of public amusement, an agent of either the owner or lessee, or a performer or participant at a place of public amusement.

(4) (a) Notice has been given that the general public is restricted from access to a portion of a place of public amusement if a printed written notice of the restricted access has been conspicuously posted or exhibited at the entrance to that portion of the place of public amusement. If a printed written notice is posted or exhibited as described in this division regarding a portion of a place of public amusement, in addition to that posting or exhibition, notice that the general public is restricted from access to that portion of the place of public amusement also may be given, but is not required to be given, by either of the following means:

1. By notifying the person personally, either orally or in writing, that access to that portion of the place of public amusement is restricted;

2. By broadcasting over the public address system of the place of public amusement an oral warning that access to that portion of the place of public amusement is restricted.

(b) If notice that the general public is restricted from access to a portion of a place of public amusement is provided by the posting or exhibition of a printed written notice as described in division (H)(4)(a) of this section, the municipality, in a criminal prosecution for a violation of division (H)(2) of this section, is not required to prove that the defendant received actual notice that the general public is restricted from access to a portion of a place of public amusement.

(5) (a) Whoever violates division (H)(2) of this section is guilty of criminal trespass on a place of public amusement, a misdemeanor of the first degree.

(b) In addition to any jail term, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to division (H)(5)(a) of this section, a court may require an offender who violates this section to perform not less than 30 and not more than 120 hours of supervised community service work.
(R.C. § 2911.23)

***Cross-reference:***

*Jurisdictional limitation on Mayor regarding violations of division (F) of this section, see § 33.01(E)*
*Violation of protection orders, see § 135.23*

## § 131.07 TAMPERING WITH COIN MACHINES.

(A) No person, with purpose to commit theft or to defraud, shall knowingly enter, force an entrance into, tamper with, or insert any part of an instrument into any coin machine.

(B) Whoever violates this section is guilty of tampering with coin machines, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section or of any theft offense as defined in R.C. § 2913.01, tampering with coin machines is a felony to be prosecuted under appropriate state law.
(R.C. § 2911.32)

## § 131.08 THEFT.

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat;

(5) By intimidation.

(B) Whoever violates this section is guilty of theft. Except as otherwise provided in this division, a violation of this section is petty theft, a misdemeanor of the first degree. If any of the following criteria are met, then a violation of this section is a felony to be prosecuted under appropriate state law:

(1) If the value of the property or services is $1,000 or more;

(2) If the property stolen is any of the property listed in R.C. § 2913.71;

(3) If the victim of the offense is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member;

(4) If the property stolen is a firearm or dangerous ordnance;

(5) If the property stolen is a motor vehicle;

(6) If the property stolen is any dangerous drug, or if the offender previously has been convicted of a felony drug abuse offense;

(7) If the property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog;

(8) If the property stolen is anhydrous ammonia; or

(9) If the property stolen is a special purchase article as defined in R.C. § 4737.04 or is a bulk merchandise container as defined in R.C. § 4737.012.

(C) In addition to the penalties described in division (B) of this section, if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following:

(1) Unless division (C)(2) of this section applies, suspend for not more than six months the offenders driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege;

(2) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to division (C)(1) of this section, or any other substantially equivalent state or local law, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in R.C. § 4510.02(A)(7), provided that the suspension shall be at least six months;

(3) The court, in lieu of suspending the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege pursuant to division (C)(1) or (C)(2) of this section, instead may require the offender to perform community service for a number of hours determined by the court.

(D) In addition to the penalties described in division (B) of this section, if the offender committed the violation by stealing rented property or rental services, the court may order that the offender make restitution pursuant to R.C. § 2929.18 or R.C. § 2929.28. Restitution may include, but is not limited to, the cost of repairing or replacing the stolen property, or the cost of repairing the stolen property and any loss of revenue resulting from

deprivation of the property due to theft of rental services that is less than or equal to the actual value of the property at the time it was rented. Evidence of intent to commit theft of rented property or rental services shall be determined pursuant to the provisions of R.C. § 2913.72.

(E) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under division (C) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with R.C. Chapter 4510.
(R.C. § 2913.02)
***Statutory reference:***
*Felony theft provisions, see R.C. § 2913.02(B)*

## § 131.09 UNAUTHORIZED USE OF A VEHICLE.

(A) No person shall knowingly use or operate an aircraft, motor vehicle, motorcycle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.

(B) No person shall knowingly use or operate an aircraft, motor vehicle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent, and either remove it from this state, or keep possession of it for more than 48 hours.

(C) The following are affirmative defenses to a charge under this section:

(1) At the time of the alleged offense, the actor, though mistaken, reasonably believed that he or she was authorized to use or operate the property.

(2) At the time of the alleged offense, the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property.

(D) Whoever violates this section is guilty of unauthorized use of a vehicle.

(1) Except as otherwise provided in this division (D)(1), a violation of division (A) of this section is a misdemeanor of the first degree. If the victim of the offense is an elderly person or disabled adult and if the victim incurs a loss as a result of the violation, a violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) A violation of division (B) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.03)
***Statutory reference:***
*Theft offense involving a motor vehicle, offender to pay towing and storage fees, see R.C. § 2913.82*

## § 131.10 UNAUTHORIZED USE OF PROPERTY, INCLUDING TELECOMMUNICATION PROPERTY AND COMPUTERS; POSSESSION OF MUNICIPAL PROPERTY.

(A) No person shall knowingly use or operate the property of another without the consent of the owner or person authorized to give consent.

(B) No person, in any manner and by any means, including but not limited to computer hacking, shall knowingly gain access to, attempt to gain access to, or cause access to be gained to any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service or other person authorized to give consent.

(C) Except as permitted under R.C. § 5503.101, no person shall knowingly gain access to, attempt to gain access to, cause access to be granted to, or disseminate information gained from access to the law enforcement automated database system created pursuant to R.C. § 5503.10 without the consent of, or beyond the scope of the express or implied consent of, the chair of the Law Enforcement Automated Data System Steering Committee.

(D) No person shall knowingly gain access to, attempt to gain access to, cause access to be granted to, or disseminate information gained from access to the Ohio law enforcement gateway established and operated pursuant to R.C. § 109.57(C)(1) without the consent of, or beyond the scope of the express or implied consent of, the Superintendent of the Bureau of Criminal Identification and Investigation.

(E) The affirmative defenses contained in R.C. § 2913.03(C) are affirmative defenses to a charge under this section.

(F) Whoever violates division (A) of this section is guilty of unauthorized use of property. Except as otherwise provided in this division, unauthorized use of property is a misdemeanor of the fourth degree.

(1) If unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is whichever of the following is applicable:

(a) Except as otherwise provided below, unauthorized use of property is a misdemeanor of the first degree.

(b) If the value of the property or services or the loss to the victim is $1,000 or more, it is a felony to be prosecuted under appropriate state law.

(2) If the victim of the offense is an elderly person or disabled adult, unauthorized use of property is a felony to be prosecuted under appropriate state law.

(G) Whoever violates division (B) of this section is guilty of unauthorized use of computer, cable, or telecommunication property, a felony to be prosecuted under appropriate state law.

(H) Whoever violates division (C) of this section is guilty of unauthorized use of the law enforcement automated database system, a felony to be prosecuted under appropriate state law.

(I) Whoever violates division (D) of this section is guilty of unauthorized use of the Ohio law enforcement gateway, a felony to be prosecuted under appropriate state law.

(J) As used in this section:

***CABLE OPERATOR.*** Means any person or group of persons that does either of the following:

(a) Provides cable service over a cable system and directly through one or more affiliates owns a significant interest in that cable system;

(b) Otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

***CABLE SERVICE.*** Means any of the following:

(a) The one-way transmission to subscribers of video programming or of information that a cable operator makes available to all subscribers generally;

(b) Subscriber interaction, if any, that is required for the selection or use of video programming or of information that a cable operator makes available to all subscribers generally, both as described in division (a) of this definition;

(c) Any cable television service.

***CABLE SYSTEM.*** Means any facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. The term does not include any of the following:

(a) Any facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) Any facility that serves subscribers without using any public right-of-way;

(c) Any facility of a common carrier that, under 47 U.S.C. § 522(7)(c), is excluded from the term "cable system" as defined in 47 U.S.C. § 522(7);

(d) Any open video system that complies with 47 U.S.C. § 573;

(e) Any facility of any electric utility used solely for operating its electric utility system.
(R.C. § 2913.04)

(K) Possession of municipal property.

(1) No person shall, without being authorized, have in his or her control or possession any equipment, tools, implements or other property belonging to the municipality.
(R.C. § 5589.12)

(2) Whoever violates this division (K) is guilty of a minor misdemeanor.
(R.C. § 5589.99(B))

***Statutory reference:***

*Telecommunications: fraud and unlawful use of a device, felony offenses, see R.C. §§ 2913.05 and 2913.06*

## § 131.11 PASSING BAD CHECKS.

(A) As used in this section:

***CHECK.*** Includes any form of debit from a demand deposit account, including but not limited to any of the following:

(a) A check, bill of exchange, draft, order of withdrawal, or similar negotiable or non-negotiable instrument;

(b) An electronic check, electronic transaction, debit card transaction, check card transaction, substitute check, web check, or any form of automated clearing house transaction.

***ISSUE A CHECK.*** Means causing any form of debit from a demand deposit account.

(B) No person, with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument.

(C) For purposes of this section, a person who issues or transfers a check or other negotiable instrument is presumed to know that it will be dishonored if either of the following occurs:

(1) The drawer has no account with the drawee at the time of issue or the stated date, whichever is later.

(2) The check or other negotiable instrument was properly refused payment for insufficient funds upon presentment within 30 days after issue or the stated date, whichever is later, and the liability of the drawer, indorser, or any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor.

(D) For purposes of this section, a person who issues or transfers a check, bill of exchange, or other draft is presumed to have the purpose to defraud if the drawer fails to comply with R.C. § 1349.16 by doing any of the following when opening a checking account intended for personal, family, or household purposes at a financial institution:

(1) Falsely stating that he or she has not been issued a valid driver's or commercial driver's license or identification card issued under R.C. § 4507.50;

(2) Furnishing the license or card, or another identification document that contains false information;

(3) Making a false statement with respect to the drawer's current address or any additional relevant information reasonably required by the financial institution.

(E) In determining the value of the payment for purposes of division (F) of this section, the court may aggregate all checks and other negotiable instruments that the offender issued or transferred or caused to be issued or transferred in violation of division (B) of this section within a period of 180 consecutive days.

(F) Whoever violates this section is guilty of passing bad checks. Except as otherwise provided in this division, passing bad checks is a misdemeanor of the first degree. If the check or checks or other negotiable instrument or instruments are issued or transferred to a single vendor or single other person for the payment of $1,000 or more, or if the check or checks or other negotiable instrument or instruments are issued or transferred to multiple vendors or persons for the payment of $1,500 or more, passing bad checks is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.11)

## § 131.12 MISUSE OF CREDIT CARDS.

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

(1) Practice deception for the purpose of procuring the issuance of a credit card, when a credit card is issued in actual reliance thereon;

(2) Knowingly buy or sell a credit card from or to a person other than the issuer.

(B) No person, with purpose to defraud, shall do any of the following:

(1) Obtain control over a credit card as security for a debt;

(2) Obtain property or services by the use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law;

(3) Furnish property or services upon presentation of a credit card, knowing that the card is being used in violation of law;

(4) Represent or cause to be represented to the issuer of a credit card that property or services have been furnished, knowing that the representation is false.

(C) No person, with purpose to violate this section, shall receive, possess, control, or dispose of a credit card.

(D) Whoever violates this section is guilty of misuse of credit cards.

(1) Except as otherwise provided in division (D)(3) of this section, a violation of division (A), (B)(1), or (C) of this section is a misdemeanor of the first degree.

(2) Except as otherwise provided in this division or division (D)(3) of this section, a violation of division (B)(2), (B)(3), or (B)(4) of this section is a misdemeanor of the first degree. If the cumulative retail value of the property and services involved in one or more violations of division (B)(2), (B)(3), or (B)(4) of this section which violations involve one or more credit card accounts and occur within a period of 90 consecutive days commencing on the date of the first violation, is $1,000 or more, misuse of credit cards is a felony to be prosecuted under appropriate state law.

(3) If the victim of the offense is an elderly person or disabled adult, and if the offense involves a violation of division (B)(1) or (B)(2) of this section, misuse of credit cards is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.21)

## § 131.13 MAKING OR USING SLUGS.

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

(1) Insert or deposit a slug in a coin machine, with purpose to defraud;

(2) Make, possess, or dispose of a slug, with purpose of enabling another to defraud by inserting or depositing it in a coin machine.

(B) Whoever violates this section is guilty of making or using slugs, a misdemeanor of the second degree.
(R.C. § 2913.33)

## § 131.14 PRIMA FACIE EVIDENCE OF PURPOSE TO DEFRAUD.

In a prosecution of a person for a theft offense that alleges that the person, with purpose to defraud or knowing that he or she was facilitating a fraud, hired or rented an aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy, or other property or equipment, kept or operated any of the same that has been hired or rented, or engaged accommodations at a hotel, motel, inn, campground, or other hostelry, it is prima facie evidence of purpose to defraud if the person did any of the following:

(A) Used deception to induce the rental agency to furnish the person with the aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy, or other property or equipment, or used deception to induce the hostelry to furnish the person with accommodations;

(B) Hired or rented any aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy, or other property or equipment, or engaged accommodations, knowing that he or she is without sufficient means to pay the hire or rental;

(C) Absconded without paying the hire or rental;

(D) Knowingly failed to pay the hire or rental as required by the contract of hire or rental, without reasonable excuse for the failure;

(E) Knowingly failed to return hired or rented property as required by the contract of hire or rental, without reasonable excuse for the failure.
(R.C. § 2913.41)

## § 131.15 TAMPERING WITH RECORDS.

(A) No person, knowing that he or she has no privilege to do so, and with purpose to defraud or knowing that he or she is facilitating a fraud, shall do any of the following:

(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;

(2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.

(B) Whoever violates this section is guilty of tampering with records.

(1) Except as provided in division (B)(3) of this section, if the offense does not involve data or computer software, tampering with records is whichever of the following is applicable:

(a) If division (B)(1)(b) of this section does not apply, it is a misdemeanor of the first degree.

(b) If the writing or record is a will unrevoked at the time of the offense, it is a felony to be prosecuted under appropriate state law.

(2) Except as provided in division (B)(3) of this section, if the offense involves a violation of division (A) of this section involving data or computer software, tampering with records is whichever of the following is applicable:

(a) Except as otherwise provided in division (B)(2)(b) of this section, it is a misdemeanor of the first degree;

(b) If the value of the data or computer software involved in the offense or the loss to the victim is $1,000 or more or if the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services and the value of the property or services or the loss to the victim is $7,500 or more, it is a felony to be prosecuted under appropriate state law.

(3) If the writing, data, computer software, or record is kept by or belongs to a local, state, or federal governmental entity, it is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.42)

## § 131.16 SECURING WRITINGS BY DECEPTION.

(A) No person, by deception, shall cause another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred.

(B) Whoever violates this section is guilty of securing writings by deception. Except as otherwise provided in this division, securing writings by deception is a misdemeanor of the first degree. If the value of the property or the obligation involved is $1,000 or more, securing writings by deception is a felony to be prosecuted under appropriate to state law. If the victim of the offense is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, securing writings by deception is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.43)

## § 131.17 DEFRAUDING CREDITORS.

(A) No person, with purpose to defraud one or more of his or her creditors, shall do any of the following:

(1) Remove, conceal, destroy, encumber, convey, or otherwise deal with any of his or her property;

(2) Misrepresent or refuse to disclose to a fiduciary appointed to administer or manage his or her affairs or estate, the existence, amount, or location of any of his or her property, or any other information regarding the property which he or she is legally required to furnish to the fiduciary.

(B) Whoever violates this section is guilty of defrauding creditors. Except as otherwise provided in this division, defrauding creditors is a misdemeanor of the first degree. If the value of the property involved is $1,000 or more, defrauding creditors is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.45)

## § 131.18 RECEIVING STOLEN PROPERTY.

(A) No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

(B) It is not a defense to a charge of receiving stolen property in violation of this section that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(C) Whoever violates this section is guilty of receiving stolen property. Except as otherwise provided in this division, receiving stolen property is a misdemeanor of the first degree. If any of the following criteria are met, then a violation of this section is a felony to be prosecuted under appropriate state law:

(1) The value of the property involved is $1,000 or more;

(2) The property involved is any of the property listed in R.C. § 2913.71;

(3) The property involved is a firearm or dangerous ordnance, as defined in R.C. § 2923.11;

(4) The property involved is a motor vehicle as defined in R.C. § 4501.01;

(5) The property involved is any dangerous drug, as defined in R.C. § 4729.01; or

(6) The property involved in violation of this section is a special purchase article as defined in R.C. § 4737.04 or a bulk merchandise container as defined in R.C. § 4737.012.
(R.C. § 2913.51)

## § 131.19 VALUE OF STOLEN PROPERTY.

(A) If more than one item of property or services is involved in a theft offense or in a violation of R.C. § 1716.14(A) involving a victim who is an elderly person or disabled adult, or any substantially equivalent municipal ordinance, the value of the property or services involved for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property or services involved in the offense.

(B) (1) When a series of offenses under R.C. § 2913.02, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of R.C. § 1716.14(A), R.C. § 2913.02, 2913.03, or 2913.04, R.C. § 2913.21(B)(1) or (B)(2), or R.C. § 2913.31 or 2913.43 involving a victim who is an elderly person or disabled adult, or any substantially equivalent municipal ordinance to any of these offenses, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses shall be tried as a single offense. When a series of offenses under R.C. § 2913.02, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of R.C. § 2913.02 or 2913.43 involving a victim who is an active duty service member or spouse of an active duty service member, or any substantially equivalent municipal ordinance to any of these offenses, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses shall be tried as a single offense. The value of the property or services involved in the series of offenses for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property and services involved in all offenses in the series.

(2) If an offender commits a series of offenses under R.C. § 2913.02 that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of R.C. § 1716.14(A), R.C. § 2913.02, 2913.03, or 2913.04, R.C. § 2913.21(B)(1) or (B)(2), or R.C. § 2913.31 or 2913.43, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, or any substantially equivalent municipal ordinance to any of these offenses, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of R.C. § 2913.02 or 2913.43, or any substantially equivalent municipal ordinance to any of these offenses, whether committed against one victim or more than one victim, involving a victim who is an active duty service member or spouse of an active duty service member pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property and services involved in all of the offenses in the course of conduct.

(3) When a series of two or more offenses under R.C. § 2913.40, 2913.48, or 2921.41 is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property and services involved in all of the offenses in the series of two or more offenses.

(4) In prosecuting a single offense under division (B)(1), (B)(2) or (B)(3) of this section, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses or violations of R.C. § 2913.40, 2913.48, or 2921.41 in the offender's same employment, capacity, or relationship to another as described in division (B)(1) or (B)(3) of this section, or committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in division (B)(2) of this section. While it is not necessary to separately allege and prove each offense in the series in order to prosecute a single offense under division (B)(1), (B)(2), or (B)(3) of this section, it remains necessary in prosecuting them as a single offense to prove the aggregate value of the property or services in order to meet the requisite statutory offense level sought by the prosecution.

(C) The following criteria shall be used in determining the value of property or services involved in a theft offense:

(1) The value of an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that has intrinsic worth to its owner and that either is irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, is the amount which would compensate the owner for its loss.

(2) The value of personal effects and household goods, and of materials, supplies, equipment, and fixtures used in the profession, business, trade, occupation, or avocation of its owner, which property is not covered under division (C)(1) of this section, and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing such property with new property of like kind and quality.

(3) The value of any real or personal property that is not covered under division (C)(1) or (C)(2) of this section, and the value of services, is the fair market value of the property or services. As used in this section,

***FAIR MARKET VALUE*** is the money consideration which a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act.

(D) Without limitation on the evidence which may be used to establish the value of property or services involved in a theft offense:

(1) When the property involved is personal property held for sale at wholesale or retail, the price at which the property was held for sale is prima facie evidence of its value.

(2) When the property involved is a security or commodity traded on an exchange, the closing price or, if there is no closing price, the asked price, given in the latest marked quotation prior to the offense, is prima facie evidence of the value of the security or commodity.

(3) When the property involved is livestock, poultry, or raw agricultural products for which a local market price is available, the latest local market price prior to the offense is prima facie evidence of the value of the livestock, poultry, or products.

(4) When the property involved is a negotiable instrument, the face value is prima facie evidence of the value of the instrument.

(5) When the property involved is a warehouse receipt, bill of lading, pawn ticket, claim check, or other instrument entitling the holder or bearer to receive property, the face value or, if there is no face value, the value of the property covered by the instrument less any payment necessary to receive the property, is prima facie evidence of the value of the instrument.

(6) When the property involved is a ticket of admission, ticket for transportation, coupon, token, or other instrument entitling the holder or bearer to receive property or services, the face value or, if there is no face value, the value of the property or services which may be received by the instrument is prima facie evidence of the value of the instrument.

(7) When the services involved are gas, electricity, water, telephone, transportation, shipping, or other services for which the rate is established by law, the duly established rate is prima facie evidence of the value of the services.

(8) When the services involved are services for which the rate is not established by law, and the offender has been notified prior to the offense of the rate for the services, either in writing, or orally, or by posting in a manner reasonably calculated to come to the attention of potential offenders, the rate contained in the notice is prima facie evidence of the value of the services.
(R.C. § 2913.61(B) - (E))

## § 131.20 DEGREE OF OFFENSE WHEN CERTAIN PROPERTY INVOLVED.

Regardless of the value of the property involved, and regardless of whether the offender previously has been convicted of a theft offense, a violation of § 131.08 or § 131.18 is a felony to be prosecuted under appropriate state law if the property involved is any of the following:

(A) A credit card;

(B) A printed form for a check or other negotiable instrument, that on its face identifies the drawer or maker for whose use it is designed or identifies the account on which it is to be drawn, and that has not been executed by the drawer or maker or on which the amount is blank;

(C) A motor vehicle identification license plate as prescribed by R.C. § 4503.22, a temporary license placard or windshield sticker as prescribed by R.C. § 4503.182, or any comparable license plate, placard, or sticker as prescribed by the applicable law of another state or the United States;

(D) A blank form for a certificate of title or a manufacturer's or importer's certificate to a motor vehicle, as prescribed by R.C. § 4505.07;

(E) A blank form for any license listed in R.C. § 4507.01.
(R.C. § 2913.71)

## § 131.21 INJURING VINES, BUSHES, TREES, OR CROPS.

(A) No person, without privilege to do so, shall recklessly cut down, destroy, girdle, or otherwise injure a vine, bush, shrub, sapling, tree, or crop standing or growing on the land of another or upon public land.

(B) In addition to the penalty provided in division (C) of this section, whoever violates this section is liable in treble damages for the injury caused.
(R.C. § 901.51)

(C) Whoever violates this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 901.99(A))

## § 131.22 DETENTION AND ARREST OF SHOPLIFTERS AND THOSE COMMITTING MOTION PICTURE PIRACY; PROTECTION OF INSTITUTIONAL PROPERTY.

(A) As used in this section:

***ARCHIVAL INSTITUTION.*** Means any public or private building, structure, or shelter in which are stored historical documents, devices, records, manuscripts, or items of public interest, which historical materials are stored to preserve the materials or the information in the materials, to disseminate the information contained in the materials, or to make the materials available for public inspection or for inspection by certain persons who have a particular interest in, use for, or knowledge concerning the materials.

***AUDIOVISUAL RECORDING FUNCTION.*** Has the same meaning as in R.C. § 2913.07.

***FACILITY.*** Has the same meaning as in R.C. § 2913.07.

***MUSEUM.*** Means any public or private nonprofit institution that is permanently organized for primarily educational or aesthetic purposes, owns or borrows objects or items of public interest, and cares for and exhibits to the public the objects or items.

***PRETRIAL DIVERSION PROGRAM.*** Means a rehabilitative, educational program designed to reduce recidivism and promote personal responsibility that is at least four hours in length and that has been approved by any court in this state.

(B) A merchant, or an employee or agent of a merchant, who has probable cause to believe that things offered for sale by a mercantile establishment have been unlawfully taken by a person, may, for the purposes set forth in division (D) below, detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity.

(C) Any officer, employee, or agent of a library, museum, or archival institution may, for the purposes set forth in division (D) below or for the purpose of conducting a reasonable investigation of a belief that the person has acted in a manner described in divisions (C)(1) and (C)(2) below, detain a person in a reasonable manner for a reasonable length of time within, or in the immediate vicinity of, the library, museum, or archival institution, if the officer, employee, or agent has probable cause to believe that the person has:

(1) Without privilege to do so, knowingly moved, defaced, damaged, destroyed, or otherwise improperly tampered with property owned by or in the custody of the library, museum, or archival institution; or

(2) With purpose to deprive the library, museum, or archival institution of property owned by it or in its custody, knowingly obtained or exerted control over the property without the consent of the owner or person authorized to give consent, beyond the scope of the express or implied consent of the owner or person authorized to give consent, by deception, or by threat.

(D) An officer, agent, or employee of a library, museum, or archival institution pursuant to division (C) above or a merchant or an employee or agent of a merchant pursuant to division (B) above may detain another person for any of the following purposes:

(1) To recover the property that is the subject of the unlawful taking, criminal mischief, or theft;

(2) To cause an arrest to be made by a peace officer;

(3) To obtain a warrant of arrest;

(4) To offer the person, if the person is suspected of the unlawful taking, criminal mischief, or theft and notwithstanding any other provision of this Code or the Ohio Revised Code, an opportunity to complete a pretrial diversion program and to inform the person of the other legal remedies available to the library, museum, archival institution, or merchant.

(E) The owner or lessee of a facility in which a motion picture is being shown, or the owner's or lessee's employee or agent, who has probable cause to believe that a person is or has been operating an audiovisual recording function of a device in violation of R.C. § 2917.07 may, for the purpose of causing an arrest to be made by a peace officer or of obtaining an arrest warrant, detain the person in a reasonable manner for a reasonable length of time within the facility or its immediate vicinity.

(F) The officer, agent, or employee of the library, museum, or archival institution, the merchant or an employee or agent of a merchant, or the owner, lessee, employee, or agent of the facility acting under divisions (B), (C) or (E) above shall not search the person detained, search or seize any property belonging to the person detained without the person's consent, or use undue restraint upon the person detained.

(G) Any peace officer may arrest without a warrant any person that the officer has probable cause to believe has committed any act described in divisions (C)(1) or (C)(2) above, that the officer has probable cause to believe

has committed an unlawful taking in a mercantile establishment, or that the officer has reasonable cause to believe has committed an act prohibited by R.C. § 2913.07. An arrest under this division shall be made within a reasonable time after the commission of the act or unlawful taking.
(R.C. § 2935.041)
***Statutory reference:***
*Arrest without a warrant generally, see R.C. § 2935.03*
*Probable cause, see R.C. § 2933.22*

## § 131.23 INSURANCE FRAUD; WORKERS' COMPENSATION FRAUD; MEDICAID FRAUD.

(A) *Insurance fraud.*

(1) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do either of the following:

(a) Present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive;

(b) Assist, aid, abet, solicit, procure, or conspire with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive.

(2) Whoever violates this division (A) is guilty of insurance fraud. Except as otherwise provided in this division, insurance fraud is a misdemeanor of the first degree. If the amount of the claim that is false or deceptive is $1,000 or more, insurance fraud is a felony to be prosecuted under appropriate state law.

(3) This division (A) shall not be construed to abrogate, waive, or modify R.C. § 2317.02(A).

(4) As used in this division (A):

***DATA.*** Has the same meaning as in R.C. § 2913.01 and additionally includes any other representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner.

***DECEPTIVE.*** Means that a statement, in whole or in part, would cause another to be deceived because it contains a misleading representation, withholds information, prevents the acquisition of information, or by any other conduct, act, or omission creates, confirms, or perpetuates a false impression, including but not limited to a false impression as to law, value, state of mind, or other objective or subjective fact.

***INSURER.*** Means any person that is authorized to engage in the business of insurance in this state under R.C. Title 39, the Ohio Fair Plan Underwriting Association created under R.C. § 3929.43, any health insuring corporation, and any legal entity that is self-insured and provides benefits to its employees or members.

***POLICY.*** Means a policy, certificate, contract, or plan that is issued by an insurer.

***STATEMENT.*** Includes but is not limited to any notice, letter, or memorandum; proof of loss; bill of lading; receipt for payment; invoice, account, or other financial statement; estimate of property damage; bill for services; diagnosis or prognosis; prescription; hospital, medical, or dental chart or other record; x-ray, photograph, videotape, or movie film; test result; other evidence of loss, injury, or expense; computer-generated document; and data in any form.
(R.C. § 2913.47)

(B) *Workers' compensation fraud.*

(1) No person, with purpose to defraud or knowing that the person is facilitating a fraud shall do any of the following:

(a) Receive workers' compensation benefits to which the person is not entitled;

(b) Make or present or cause to be made or presented a false or misleading statement with the purpose to secure payment for goods or services rendered under R.C. Chapter 4121, 4123, 4127, or 4131 or to secure workers' compensation benefits;

(c) Alter, falsify, destroy, conceal, or remove any record or document that is necessary to fully establish the validity of any claim filed with, or necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or is requested from the Bureau of Workers' Compensation, or a self-insuring employer under R.C. Chapter 4121, 4123, 4127, or 4131;

(d) Enter into an agreement or conspiracy to defraud the Bureau of Workers' Compensation or a self-insuring employer by making or presenting or causing to be made or presented a false claim for workers' compensation benefits;

(e) Make or present or cause to be made or presented a false statement concerning manual codes, classification or employees, payroll, paid compensation, or number of personnel, when information of that nature is necessary to determine the actual workers' compensation premium or assessment owed to the Bureau by an employer;

(f) Alter, forge, or create a workers' compensation certificate or falsely show current or correct workers' compensation coverage;

(g) Fail to secure or maintain workers' compensation coverage as required by R.C. Chapter 4123 with the intent to defraud the Bureau of Workers' Compensation.

(2) Whoever violates this division (B) is guilty of workers' compensation fraud. Except as otherwise provided in this division, workers' compensation fraud is a misdemeanor of the first degree. If the value of premiums and assessments unpaid pursuant to actions described in divisions (B)(1)(e), (B)(1)(f), or (B)(1)(g) of this section, or goods, services, property, or money stolen is $1,000 or more, workers' compensation fraud is a felony to be prosecuted under appropriate state law.

(3) Upon application of the governmental body that conducted the investigation and prosecution of a violation of this division (B), the court shall order the person who is convicted of the violation to pay the governmental body its costs of investigating and prosecuting the case. These costs are in addition to any other costs or penalty provided under federal, state or local law.

(4) The remedies and penalties provided in this division (B) are not exclusive remedies and penalties and do not preclude the use of any other criminal or civil remedy or penalty for any act that is in violation of this division (B).

(5) As used in this division (B):

***CLAIM.*** Means any attempt to cause the Bureau of Workers' Compensation, an independent third party with whom the administrator or an employer contracts under R.C. § 4121.44, or a self-insuring employer to make payment or reimbursement for workers' compensation benefits.

***EMPLOYEE.*** Has the same meaning as in R.C. § 4123.01.

***EMPLOYER.*** Has the same meaning as in R.C. § 4123.01.

***EMPLOYMENT.*** Means participating in any trade, occupation, business, service, or profession for substantial gainful remuneration.

***FALSE.*** Means wholly or partially untrue or deceptive.

***GOODS.*** Includes but is not limited to medical supplies, appliances, rehabilitative equipment, and any other apparatus or furnishing provided or used in the care, treatment, or rehabilitation of a claimant for workers' compensation benefits.

***RECORDS.*** Means any medical, professional, financial, or business record relating to the treatment or care of any person, to goods or services provided to any person, or to rates paid for goods or services provided to any person, or any record that the administrator of workers' compensation requires pursuant to rule.

***REMUNERATION.*** Includes but is not limited to wages, commissions, rebates, and any other reward or consideration.

***SELF-INSURING EMPLOYER.*** Has the same meaning as in R.C. § 4123.01.

***SERVICES.*** Includes but is not limited to any service provided by any health care provider to a claimant for workers' compensation benefits and any and all services provided by the Bureau as part of workers' compensation insurance coverage.

***STATEMENT.*** Includes but is not limited to any oral, written, electronic, electronic impulse, or magnetic communication notice, letter, memorandum, receipt for payment, invoice, account, financial statement, or bill for services; a diagnosis, prognosis, prescription, hospital, medical, or dental chart or other record; and a computer generated document.

***WORKERS' COMPENSATION BENEFITS.*** Means any compensation or benefits payable under R.C. Chapter 4121, 4123, 4127, or 4131.
(R.C. § 2913.48)

(C) *Medicaid fraud.*

(1) No person shall knowingly make or cause to be made a false or misleading statement or representation for use in obtaining reimbursement from the Medicaid program.

(2) No person, with purpose to commit fraud or knowing that the person is facilitating a fraud, shall do either of the following:

(a) Contrary to the terms of the person's provider agreement, charge, solicit, accept or receive for goods or services that the person provides under the Medicaid program any property, money or other consideration in addition to the amount of reimbursement under the Medicaid program and the person's provider agreement for the goods or services and any cost-sharing expenses authorized by R.C. § 5162.20 or rules adopted by the Medicaid Director regarding the Medicaid program.

(b) Solicit, offer or receive any remuneration, other than any cost-sharing expenses authorized by R.C. § 5162.20 or rules adopted by the Medicaid Director regarding the Medicaid program, in cash or in kind, including but not limited to a kickback or rebate, in connection with the furnishing of goods or services for which whole or partial reimbursement is or may be made under the Medicaid program.

(3) No person, having submitted a claim for or provided goods or services under the Medicaid program, shall do either of the following for a period of at least six years after a reimbursement pursuant to that claim, or a reimbursement for those goods or services, is received under the Medicaid program:

(a) Knowingly alter, falsify, destroy, conceal or remove any records that are necessary to fully disclose the nature of all goods or services for which the claim was submitted, or for which reimbursement was received, by the person; or

(b) Knowingly alter, falsify, destroy, conceal or remove any records that are necessary to disclose fully all income and expenditures upon which rates of reimbursements were based for the person.

(4) Whoever violates this division (C) is guilty of Medicaid fraud. Except as otherwise provided in this division, Medicaid fraud is a misdemeanor of the first degree. If the value of the property, services or funds obtained in violation of this section is $1,000 or more, Medicaid fraud is a felony to be prosecuted under appropriate State law.

(5) Upon application of the governmental agency, office or other entity that conducted the investigation and prosecution in a case under this section, the court shall order any person who is convicted of a violation of this section for receiving any reimbursement for furnishing goods or services under the Medicaid program to which the person is not entitled to pay to the applicant its cost of investigating and prosecuting the case. The costs of investigation and prosecution that a defendant is ordered to pay pursuant to this division shall be in addition to any other penalties for the receipt of that reimbursement that are provided in this section, R.C. § 2913.40 or 5164.35, or any other provision of law.

(6) The provisions of this section are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy for any act that is in violation of this section.

(7) As used in this division (C):

***PROVIDER.*** Means any person who has signed a provider agreement with the Department of Medicaid to provide goods or services pursuant to the Medicaid program or any person who has signed an agreement with a party to such a provider agreement under which the person agrees to provide goods or services that are reimbursable under the Medicaid program.

***PROVIDER AGREEMENT.*** Has the same meaning as in R.C. § 5164.01.

***RECIPIENT.*** Means any individual who receives goods or services from a provider under the Medicaid program.

***RECORDS.*** Means any medical, professional, financial or business records relating to the treatment or care of any recipient, to goods or services provided to any recipient, or to rates paid for goods or services provided to any recipient, and any records that are required by the rules of the Medicaid Director to be kept for the Medicaid program.

***STATEMENT*** or ***REPRESENTATION.*** Means any oral, written, electronic, electronic impulse or magnetic communication that is used to identify an item of goods or a service for which reimbursement may be made under the Medicaid program or that states income and expense and is or may be used to determine a rate of reimbursement under the Medicaid program.
(R.C. § 2913.40)

(D) *Medicaid eligibility fraud.*

(1) No person shall knowingly do any of the following in an application for enrollment in the Medicaid program or in a document that requires a disclosure of assets for the purpose of determining eligibility for the Medicaid program:

(a) Make or cause to be made a false or misleading statement;

(b) Conceal an interest in property;

(c) 1. Except as provided in division (D)(1)(c)2. of this section, fail to disclose a transfer of property that occurred during the period beginning 36 months before submission of the application or document and ending on the date the application or document was submitted;

2. Fail to disclose a transfer of property that occurred during the period beginning 60 months before submission of the application or document and ending on the date the application or document was submitted and that was made to an irrevocable trust a portion of which is not distributable to the applicant for or recipient of Medicaid or to a revocable trust.

(2) (a) Whoever violates this division (D) is guilty of Medicaid eligibility fraud. Except as otherwise provided in this division, a violation of this division (D) is a misdemeanor of the first degree. If the value of the Medicaid services paid as a result of the violation is $1,000 or more, a violation of this division (D) is a felony to be prosecuted under appropriate state law.

(b) In addition to imposing a sentence under division (D)(2)(a) of this section, the court shall order that a person who is guilty of Medicaid eligibility fraud make restitution in the full amount of any Medicaid services paid on behalf of an applicant for or recipient of Medicaid for which the applicant or recipient was not eligible, plus interest at the rate applicable to judgments on unreimbursed amounts from the date on which the Medicaid services were paid to the date on which restitution is made.

(c) The remedies and penalties provided in this division (D) are not exclusive and do not preclude the use of any other criminal or civil remedy for any act that is in violation of this division (D).

(3) This division (D) does not apply to a person who fully disclosed in an application for Medicaid or in a document that requires a disclosure of assets for the purpose of determining eligibility for Medicaid all of the interests in property of the applicant for or recipient of Medicaid, all transfers of property by the applicant for or recipient of Medicaid, and the circumstances of all those transfers.

(4) Any amounts of Medicaid services recovered as restitution under this division (D) and any interest on those amounts shall be credited to the General Revenue Fund, and any applicable federal share shall be returned to the appropriate agency or department of the United States.

(5) As used in this division (D):

***MEDICAID SERVICES.*** Has the same meaning as in R.C. § 5164.01.

***PROPERTY.*** Means any real or personal property or other asset in which a person has any legal title or interest.
(R.C. § 2913.401)

## § 131.24 INJURY TO PROPERTY BY HUNTERS.

(A) No person in the act of hunting, pursuing, taking, or killing a wild animal shall act in a negligent, careless, or reckless manner so as to injure property.
(R.C. § 1533.171(A))

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 1533.99(C))
***Statutory reference:***
*Violation, license revocation, see R.C. § 1533.171(B) through (E)*

## § 131.25 EVIDENCE OF INTENT TO COMMIT THEFT OF RENTED PROPERTY OR RENTAL SERVICES; EVIDENCE OF LACK OF CAPACITY TO CONSENT.

(A) *Evidence of intent to commit theft of rented property or rental services.*

(1) As used in this division (A):

***RENTER.*** Means a person who owns rented property.

***RENTEE.*** Means a person who pays consideration to a renter for the use of rented property.

(2) Each of the following shall be considered evidence of intent to commit theft of rented property or rental services:

(a) At the time of entering into the rental contract, the rentee presented the renter with identification that was materially false, fictitious, or not current with respect to name, address, place of employment, or other relevant information.

(b) After receiving a notice demanding the return of the rented property as provided in division (A)(3) of this section, the rentee neither returned the rented property nor made arrangements acceptable with the renter to return the rented property.

(3) To establish that a rentee has an intent to commit theft of rented property or rental services under division (A)(2)(b) above, a renter may issue a notice to a rentee demanding the return of the rented property. The renter shall mail the notice by certified mail, return receipt requested, to the rentee at the address the rentee gave when the rental contract was executed, or to the rentee at the last address the rentee or the rentee's agent furnished in writing to the renter.

(4) A demand for the return of the rented property is not a prerequisite for the prosecution of a rentee for theft of rented property or rental services. The evidence specified in division (A)(2) above does not constitute the only evidence that may be considered as evidence of intent to commit theft of rented property or rental services.
(R.C. § 2913.72)

(B) *Evidence of lack of capacity to consent.*

(1) In a prosecution for any alleged violation of § 131.08 through 131.20, 131.23, 131.25 through 131.29, or 132.11, if the lack of consent of the victim is an element of the provision that allegedly was violated, evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent.

(2) As used in this section, ***LACKS THE CAPACITY TO CONSENT*** means being impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person or the person's resources.
(R.C. § 2913.73)

## § 131.26 FORGERY OF IDENTIFICATION CARDS.

(A) No person shall knowingly do either of the following:

(1) Forge an identification card.

(2) Sell or otherwise distribute a card that purports to be an identification card, knowing it was forged.

(B) As used in this section, ***IDENTIFICATION CARD*** means a card that includes personal information or characteristics of an individual, a purpose of which is to establish the identity of the bearer described on the card, whether the words "identity," "identification," "identification card," or other similar words appear on the card.

(C) Whoever violates this section is guilty of forging identification cards or selling or distributing forged identification cards. Except as otherwise provided in this division, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (A) of this section or a substantially equivalent state law or municipal ordinance, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree and, in addition, the court shall impose upon the offender a fine not less than $250.
(R.C. § 2913.31(B), (C)(2))

***Statutory reference:***

*Forgery, felony provisions, see R.C. § 2913.31(A) and (C)(1)*
*Forgery of originating address or other routing information in connection with the transmission of an electronic mail advertisement, felony provisions, see R.C. § 2307.64*

## § 131.27 CRIMINAL SIMULATION.

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Make or alter any object so that it appears to have value because of antiquity, rarity, curiosity, source, or authorship, which it does not in fact possess.

(2) Practice deception in making, retouching, editing, or reproducing any photograph, movie film, video tape, phonograph record, or recording tape.

(3) Falsely or fraudulently make, simulate, forge, alter, or counterfeit any wrapper, label, stamp, cork or cap prescribed by the Liquor Control Commission under R.C. Chapters 4301 and 4303, falsely or fraudulently cause to be made, simulated, forged, altered, or counterfeited any wrapper, label, stamp, cork or cap prescribed by the Liquor Control Commission under R.C. Chapters 4301 and 4303, or use more than once any wrapper, label, stamp, cork or cap prescribed by the Liquor Control Commission under R.C. Chapters 4301 and 4303.

(4) Offer, or possess with the purpose to offer, any object that the person knows to have been simulated as provided in divisions (A)(1), (A)(2) or (A)(3) of this section.

(B) Whoever violates this section is guilty of criminal simulation. Except as otherwise provided in this division, criminal simulation is a misdemeanor of the first degree. If the loss to the victim is $1,000 or more, criminal simulation is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.32)

## § 131.28 PERSONATING AN OFFICER.

(A) No person, with purpose to defraud or knowing that he or she is facilitating a fraud, or with purpose to induce another to purchase property or services, shall personate a law enforcement officer, or an inspector, investigator, or agent of any governmental agency.

(B) Whoever violates this section is guilty of personating an officer, a misdemeanor of the first degree.
(R.C. § 2913.44)
***Cross-reference:***
*Impersonating an officer (non-fraud offense), see § 132.12*

## § 131.29 TRADEMARK COUNTERFEITING.

(A) No person shall knowingly do any of the following:

(1) Attach, affix, or otherwise use a counterfeit mark in connection with the manufacture of goods or services, whether or not the goods or services are intended for sale or resale.

(2) Possess, sell, or offer for sale tools, machines, instruments, materials, articles, or other items of personal property with the knowledge that they are designed for the production or reproduction of counterfeit marks.

(3) Purchase or otherwise acquire goods, and keep or otherwise have the goods in the person's possession, with the knowledge that a counterfeit mark is attached to, affixed to, or otherwise used in connection with the goods and with the intent to sell or otherwise dispose of the goods.

(4) Sell, offer for sale, or otherwise dispose of goods with the knowledge that a counterfeit mark is attached to, affixed to, or otherwise used in connection with the goods.

(5) Sell, offer for sale, or otherwise provide services with the knowledge that a counterfeit mark is used in connection with that sale, offer for sale, or other provision of the services.

(B) Whoever violates this section is guilty of trademark counterfeiting.

(1) A violation of division (A)(1) of this section is guilty of a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in this division, a violation of division (A)(2) of this section is a misdemeanor of the first degree. If the circumstances of the violation indicate that the tools, machines,

instruments, materials, articles, or other items of personal property involved in the violation were intended for use in the commission of a felony, a violation of division (A)(2) is a felony to be prosecuted under appropriate state law.

(3) Except as otherwise provided in this division, a violation of division (A)(3), (A)(4) or (A)(5) of this section is a misdemeanor of the first degree. If the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed or otherwise used in the offense is $1,000 or more, a violation of division (A)(3), (A)(4) or (A)(5) is a felony to be prosecuted under appropriate state law.

(C) A defendant may assert as an affirmative defense to a charge of a violation of this section defenses, affirmative defenses, and limitations on remedies that would be available in a civil, criminal or administrative action or proceeding under the Lanham Act, being 15 U.S.C. §§ 1051 through 1127, as amended, the Trademark Counterfeiting Act of 1984, being 18 U.S.C. § 2320, as amended, R.C. Chapter 1329 or another section of the Ohio Revised Code, or common law.

(D) (1) Law enforcement officers may seize pursuant to Criminal Rule 41, R.C. Chapter 2933, or R.C. Chapter 2981 either of the following:

(a) Goods to which or in connection with which a person attached, affixed, otherwise used, or intended to attach, affix or otherwise use a counterfeit mark in violation of this section.

(b) Tools, machines, instruments, materials, articles, vehicles or other items of personal property that are possessed, sold, offered for sale, or used in a violation of this section or in an attempt to commit or complicity in the commission of a violation of this section.

(2) Notwithstanding any contrary provision of R.C. Chapter 2981, if a person is convicted of or pleads guilty to a violation of this section, an attempt to violate this section, or complicity in a violation of this section, the court involved shall declare that the goods described in division (D)(1)(a) of this section and the personal property described in division (D)(1)(b) of this section are contraband and are forfeited. Prior to the court's entry of judgment under Criminal Rule 32, the owner of a registered trademark or service mark that is the subject to the counterfeit mark may recommend a manner in which the forfeited goods and forfeited personal property should be disposed of. If that owner makes a timely recommendation of a manner of disposition, the court is not bound by the recommendation. If that owner makes a timely recommendation of a manner of disposition, the court may include in its entry of judgment an order that requires appropriate persons to dispose of the forfeited goods and forfeited personal property in the recommended manner. If the owner fails to make a timely recommendation of a manner of disposition or if that owner makes a timely recommendation of a manner of disposition but the court determines to not follow the recommendation, the court shall include in its entry of judgement an order that requires the law enforcement agency that employs the law enforcement officer who seized the forfeited goods or the forfeited personal property to destroy them or cause their destruction.

(E) This section does not affect the rights of an owner of a trademark or service mark, or the enforcement in a civil action or in administrative proceedings of the rights of an owner or a trademark or service mark under the Lanham Act, being 15 U.S.C. §§ 1051 through 1127, as amended, the Trademark Counterfeiting Act of 1984, being 18 U.S.C. § 2320, as amended, R.C. Chapter 1329, or another section of the Ohio Revised Code, or common law.

(F) As used in this section:

***COUNTERFEIT MARK.***

(a) Except as provided in division (b) of this definition, the term means a spurious trademark or a spurious service mark that satisfies both of the following:

1. It is identical with or substantially indistinguishable from a mark that is registered on the principal register in the United States Patent and Trademark Office for the same goods or services as the goods or services to which or in connection with which the spurious trademark or spurious service mark is attached, affixed, or otherwise used, or from a mark that is registered with the Secretary of State pursuant to R.C. §§ 1329.54 through 1329.67 for the same goods or services as the goods or services to which or in connection with which the spurious trademark or spurious service mark is attached, affixed, or otherwise used, and the owner of the registration uses that registered trademark, whether or not the offender knows that the mark is registered in a manner described in this division (a)1.

2. Its use is likely to cause confusion or mistake or to deceive other persons.

(b) The term does not include a mark or other designation that is attached to, affixed to, or otherwise used in connection with goods or services if the holder of the right to use the mark or other designation authorizes the manufacturer, producer, or vendor of those goods or services to attach, affix, or otherwise use the mark or other designation in connection with those goods or services at the time of their manufacture, production or sale.

***CUMULATIVE SALES PRICE.*** Means the product of the lowest single unit sales price charged or sought to be charged by an offender for goods to which or in connection with which a counterfeit mark is attached, affixed, or otherwise used or of the lowest single service transaction price charged or sought to be charged by an offender for services in connection with which a counterfeit mark is used, multiplied by the total number of those goods or services, whether or not units of goods are sold or are in an offender's possession, custody or control.

***REGISTERED TRADEMARK OR SERVICE MARK.*** Means a trademark or service mark that is registered in a manner described in division (a) of the definition of "counterfeit mark."

***SERVICE MARK.*** Has the same meaning as in R.C. § 1329.54.

***TRADEMARK.*** Has the same meaning as in R.C. § 1329.54.
(R.C. § 2913.34)

## § 131.30 DIMINISHING OR INTERFERING WITH FORFEITABLE PROPERTY.

(A) No person shall destroy, damage, remove, or transfer property that is subject to forfeiture or otherwise take any action in regard to property that is subject to forfeiture with purpose to do any of the following:

(1) Prevent or impair the state's or political subdivision's lawful authority to take the property into its custody or control under R.C. Chapter 2981 or to continue holding the property under its lawful custody or control;

(2) Impair or defeat the court's continuing jurisdiction over the person and property;

(3) Devalue property that the person knows, or has reasonable cause to believe, is subject to forfeiture proceedings under R.C. Chapter 2981.

(B) Whoever violates this section is guilty of interference with or diminishing forfeitable property. Except as otherwise provided in this division (B), interference with or diminishing forfeitable property is a misdemeanor of the first degree. If the value of the property is $1,000 or more, interference with or diminishing forfeitable property is a felony to be prosecuted under appropriate state law.
(R.C. § 2981.07)

## § 131.31 RECORDING CREDIT CARD, TELEPHONE OR SOCIAL SECURITY NUMBERS.

(A) No person shall record or cause to be recorded either of the following:

(1) A credit card account number of the other party to a transaction, when a check, bill of exchange or other draft is presented for payment; or

(2) The telephone number or Social Security account number of the other party to a transaction, when payment is made by credit card charge agreement, check, bill of exchange or other draft.

(B) Division (A) of this section does not apply to a transaction, if all of the following conditions are met:

(1) The credit card account number, Social Security account number or telephone number is recorded for a legitimate business purpose, including collection purposes.

(2) The other party to the transaction consents to the recording of the credit card account number, Social Security account number or telephone number.

(3) The credit card account number, Social Security account number or telephone number that is recorded during the course of the transaction is not disclosed to any third party for any purposes other than collection purposes and is not used to market goods or services unrelated to the goods or services purchased in the transaction.

(C) Nothing in this section prohibits the recording of the number of a credit card account when given in lieu of a deposit to secure payment in the event of default, loss, damage or other occurrence, or requires a person to accept a check presented for payment, if the other party to the transaction refuses to consent to the recording of the number of the party's Social Security account or license to operate a motor vehicle.
(R.C. § 1349.17)

(D) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor.
(R.C. § 1349.99)

## § 131.32 PROSECUTIONS FOR THEFT OF UTILITIES.

(A) In a prosecution for a theft offense, as defined in R.C. § 2913.01, that involves alleged tampering with a gas, electric, steam or water meter, conduit or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit or attachment of a utility has been tampered with is prima facie evidence that the person who is obligated to pay for the service rendered through the meter, conduit or attachment, and who is in possession or control of the meter, conduit or attachment at the time the tampering occurred has caused the tampering with intent to commit a theft offense.

(B) In a prosecution for a theft offense, as defined in R.C. § 2913.01, that involves the alleged reconnection of a gas, electric, steam or water meter, conduit or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit or attachment disconnected by a utility has been reconnected without the consent of the utility is prima facie evidence that the person in possession or control of the meter, conduit or attachment at the time of the reconnection has reconnected the meter, conduit or attachment with intent to commit a theft offense.

(C) As used in this section:

***TAMPER.*** Means to interfere with, damage or bypass a utility meter, conduit or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so as to reduce the amount of utility service that is registered on the meter.

***UTILITY.*** Means any electric light company, gas company, natural gas company, pipe-line company, water-works company or heating or cooling company, as defined in R.C. § 4905.03(C), (D), (E), (F), (G), or (H), its lessees, trustees or receivers, or any similar utility owned or operated by a political subdivision.
(R.C. § 4933.18)

(D) Each electric light company, gas company, natural gas company, pipeline company, waterworks company or heating or cooling company, as defined by R.C. § 4905.03(C), (D), (E), (F), (G), or (H), or its lessees, trustees or receivers, and each similar utility owned or operated by a political subdivision, shall notify its customers, on an annual basis, that tampering with or bypassing a meter constitutes a theft offense that could result in the imposition of criminal sanctions.
(R.C. § 4933.19)

## § 131.33 MOTION PICTURE PIRACY.

(A) As used in this section:

***AUDIOVISUAL RECORDING FUNCTION.*** Means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology existing on, or developed after, March 9, 2004.

***FACILITY.*** Means a movie theater.

(B) No person, without the written consent of the owner or lessee of the facility and of the licensor of the motion picture, shall knowingly operate an audiovisual recording function of a device in a facility in which the motion picture is being shown.

(C) Whoever violates division (B) of this section is guilty of motion picture piracy, a misdemeanor of the first degree on the first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.

(D) This section does not prohibit or restrict a lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent of the government of this state or a political subdivision of this state, or of the federal government, when acting in an official capacity, from operating an audiovisual recording function of a device in any facility in which a motion picture is being shown.

(E) Division (B) of this section does not limit or affect the application of any other prohibition in this code or the Ohio Revised Code. Any act that is a violation of both division (B) of this section and another provision of this code or the Ohio Revised Code may be prosecuted under this section, under the other provision of this code or the Ohio Revised Code, or under both this section and the other provision of this code or the Ohio Revised Code.
(R.C. § 2913.07)

# CHAPTER 132: OFFENSES AGAINST PUBLIC PEACE

Section



***Cross-reference:***

*Personating an officer (fraud offense), see § 131.28*

***Statutory reference:***

*Misuse of "Block Parent" or "McGruff House" symbol, see R.C. § 2917.46*

## § 132.01 RIOT.

(A) No person shall participate with four or more others in a course of disorderly conduct in violation of R.C. § 2917.11 or a substantially equivalent municipal ordinance:

(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 the institution.

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

(C) Whoever violates this section is guilty of riot, a misdemeanor of the first degree.
(R.C. § 2917.03)

(D) For the purposes of prosecuting violations of this section, the prosecution is not required to allege or prove that the offender expressly agreed with four or more others to commit any act that constitutes a violation this section prior to or while committing those acts.
(R.C. § 2917.031)
***Statutory reference:***
*Aggravated riot, felony provisions, see R.C. § 2917.02*

## § 132.02 FAILURE TO DISPERSE.

(A) Where five or more persons are participating in a course of disorderly conduct in violation of R.C. § 2917.11 or a substantially equivalent municipal ordinance, 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 the other persons to disperse. No person shall knowingly fail to obey the order.

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

(C) (1) Whoever violates this section is guilty of failure to disperse.

(2) Except as otherwise provided in division (C)(3) of this section, failure to disperse is a minor misdemeanor.

(3) Failure to disperse is a misdemeanor of the fourth degree if the failure to obey the order described in division (A) of this section creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind.
(R.C. § 2917.04)

## § 132.03 JUSTIFIABLE USE OF FORCE TO SUPPRESS RIOT.

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

(A) Is justified in using force, other than deadly force, when and to the extent he or she 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 or she 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.
(R.C. § 2917.05)

## § 132.04 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 an 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 that 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 that serves no lawful and reasonable purpose of the offender;

(5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that 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 or she were not intoxicated, should know is likely to have such effect on others;

(2) Engage in conduct or create a condition that presents a risk of physical harm to himself, herself 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 while under the influence of alcohol or any drug of abuse is not a violation of division (B) of this section.

(D) If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that the person is voluntarily intoxicated for purposes of division (B) of this section.

(E) Whoever violates this section is guilty of disorderly conduct.

(1) Except as otherwise provided in division (E)(2) of this section, disorderly conduct is a minor misdemeanor.

(2) Disorderly conduct is a misdemeanor of the fourth degree if any of the following applies:

(a) The offender persists in disorderly conduct after reasonable warning or request to desist.

(b) The offense is committed in the vicinity of a school or in a school safety zone.

(c) The offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind.

(d) The offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.

(F) As used in this section:

***COMMITTED IN THE VICINITY OF A SCHOOL.*** Has the same meaning as in R.C. § 2925.01.

***EMERGENCY FACILITY.*** Has the same meaning as in R.C. § 2909.04.

***EMERGENCY FACILITY PERSON.*** Is the singular of "emergency facility personnel" as defined in R.C. § 2909.04.

***EMERGENCY MEDICAL SERVICES PERSON.*** Is the singular of "emergency medical services personnel" as defined in R.C. § 2133.21.
(R.C. § 2917.11)

## § 132.05 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 the meeting, procession, or gathering.

(2) Make any utterance, gesture, or display which outrages the sensibilities of the group.

(B) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree.
(R.C. § 2917.12)

## § 132.06 MISCONDUCT AT AN EMERGENCY.

(A) No person shall knowingly do any of the following:

(1) Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Hamper the lawful activities of any emergency facility person who is engaged in the person's duties in an emergency facility;

(3) Fail to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's 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 the news media representative's duties.

(C) Whoever violates this section is guilty of misconduct at an emergency. Except as otherwise provided in this division, misconduct at an emergency is a misdemeanor of the fourth degree. If violation of this section creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the first degree.

(D) As used in this section:

***EMERGENCY FACILITY.*** Has the same meaning as in R.C. § 2909.04.

***EMERGENCY FACILITY PERSON.*** Is the singular of "emergency facility personnel" as defined in R.C. § 2909.04.

***EMERGENCY MEDICAL SERVICES PERSON.*** Is the singular of "emergency medical services personnel" as defined in R.C. § 2133.21.
(R.C. § 2917.13)

## § 132.07 TELECOMMUNICATIONS HARASSMENT.

(A) No person shall knowingly make or cause to be made a telecommunication, or knowingly permit a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:

(1) Makes the telecommunication with purpose to harass, intimidate, or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient;

(2) Describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made;

(3) During the telecommunication, violates R.C. § 2903.21 or a substantially equivalent municipal ordinance;

(4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;

(5) Knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises;

(6) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten, or harass the recipient;

(7) Without a lawful business purpose, knowingly interrupts the telecommunication service of any person;

(8) Without a lawful business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document, or other communication that prevents that person from using the person's telephone service or electronic communication device;

(9) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of the recipient of the telecommunication or family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the recipient;

(10) Knowingly incites another person through a telecommunication or other means to harass or participate in the harassment of a person;

(11) Knowingly alarms the recipient by making a telecommunication without a lawful purpose at an hour or hours known to be inconvenient to the recipient and in an offensive or repetitive manner.

(B) (1) No person shall make or cause to be made a telecommunication or permit a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten, or harass another person.

(2) No person shall knowingly post a text or audio statement or an image on an internet web site or web page for the purpose of abusing, threatening, or harassing another person.

(C) (1) Whoever violates this section is guilty of telecommunications harassment.

(2) A violation of division (A)(1), (A)(2), (A)(3), (A)(5), (A)(6), (A)(7), (A)(8), (A)(9), (A)(10), or (A)(11) or (B) of this section is a misdemeanor of the first degree on a first offense and a felony on each subsequent offense, which shall be prosecuted under appropriate state law.

(3) Except as otherwise provided in this division (C)(3), a violation of division (A)(4) of this section is a misdemeanor of the first degree on a first offense and a felony on each subsequent offense, to be prosecuted under appropriate state law. If a violation of division (A)(4) of this section results in economic harm of $1,000 or more, telecommunications harassment is a felony to be prosecuted under appropriate state law.

(D) No cause of action may be asserted in any court of this municipality against any provider of a telecommunications service, interactive computer service as defined in 47 U.S.C. § 230, or information service,

or against any officer, employee, or agent of a telecommunications service, interactive computer service as defined in 47 U.S.C. § 230, or information service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section. A provider of a telecommunications service, interactive computer service as defined in 47 U.S.C. § 230, or information service, or an officer, employee, or agent of a telecommunications service, interactive computer service as defined in 47 U.S.C. § 230, or information service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section.

(E) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that the person believes is, or will be sent, in violation of this section.

(2) Division (E)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of this section except as otherwise provided by law.

(3) Division (E)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

(4) A provider or user of an interactive computer service, as defined in 47 U.S.C. § 230, shall neither be treated as the publisher or speaker of any information provided by another information content provider, as defined in 47 U.S.C. § 230, nor held civilly or criminally liable for the creation or development of information provided by another information content provider, as defined in 47 U.S.C. § 230. Nothing in this division shall be construed to protect a person from liability to the extent that the person developed or created any content in violation of this section.

(F) Divisions (A)(5) to (A)(11) and (B)(2) of this section do not apply to a person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, cable channel or cable operator, or radio or television station, is gathering, processing, transmitting, compiling, editing, or disseminating information for the general public within the scope of the person's employment in that capacity or the person's contractual authority in that capacity.

(G) As used in divisions (A) through (D) of this section:

***CABLE OPERATOR.*** Has the same meaning as in R.C. § 1332.21.

***CALLER.*** Means the person described in division (A) of this section who makes or causes to be made a telecommunication or who permits a telecommunication to be made from a telecommunications device under that person's control.

***ECONOMIC HARM.*** Means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of the criminal conduct. The term includes but is not limited to all of the following:

(a) All wages, salaries or other compensation lost as a result of the criminal conduct;

(b) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(c) The overhead costs incurred from the time that a business is shut down as a result of the criminal conduct;

(d) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

***FAMILY OR HOUSEHOLD MEMBER.*** Means any of the following:

(a) Any of the following who is residing or has resided with the recipient of the telecommunication against whom the act prohibited in division (A)(9) of this section is committed:

1. A spouse, a person living as a spouse, or a former spouse of the recipient;

2. A parent, a foster parent, or a child of the recipient, or another person related by consanguinity or affinity to the recipient;

3. A parent or a child of a spouse, person living as a spouse, or former spouse of the recipient, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the recipient.

(b) The natural parent of any child of whom the recipient of the telecommunication against whom the act prohibited in division (A)(9) of this section is committed is the other natural parent or is the putative other natural parent.

***PERSON LIVING AS A SPOUSE.*** Means a person who is living or has lived with the recipient of the telecommunication against whom the act prohibited in division (A)(9) of this section is committed in a common law marital relationship, who otherwise is cohabiting with the recipient, or who otherwise has cohabited with the recipient within five years prior to the date of the alleged commission of the act in question.

***SEXUAL ACTIVITY.*** Has the same meaning as in R.C. § 2907.01.

***TELECOMMUNICATION.*** Has the same meaning as in R.C. § 2913.01.

***TELECOMMUNICATIONS DEVICE.*** Has the same meaning as in R.C. § 2913.01.

(H) Nothing in this section prohibits a person from making a telecommunication to a debtor that is in compliance with the "Fair Debt Collection Practices Act," 15 U.S.C. § 1692, as amended, or the "Telephone Consumer Protection Act," 47 U.S.C. § 227, as amended.
(R.C. § 2917.21)

## § 132.08 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 the 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) Division (A)(1) of this section does not apply to any person conducting an authorized fire or emergency drill.

(C) (1) Whoever violates this section is guilty of inducing panic.

(2) Except as otherwise provided in division (C)(3), inducing panic is a misdemeanor of the first degree.

(3) If a violation of this section results in physical harm to any person, inducing panic is a felony to be prosecuted under appropriate state law. If a violation of this section results in economic harm of $1,000 or more, inducing panic is a felony to be prosecuted under appropriate state law. If the public place involved in a violation of division (A)(1) is a school or an institution of higher education, inducing panic is a felony to be prosecuted under appropriate state law. If a violation of this section pertains to a purported, threatened or actual use of a weapon of mass destruction, inducing panic is a felony to be prosecuted under appropriate state law.

(D) (1) It is not a defense to a charge under this section that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction.

(2) Any act that is a violation of this section and any other section of the Ohio Revised Code or this code may be prosecuted under this section, the other section, or both sections.

(E) As used in this section:

***BIOLOGICAL AGENT***. Has the same meaning as in R.C. § 2917.33.

***ECONOMIC HARM.*** Means any of the following:

(a) All direct, incidental and consequential pecuniary harm suffered by a victim as a result of the criminal conduct. "Economic harm" as described in this division includes but is not limited to all of the following:

1. All wages, salaries or other compensation lost as a result of the criminal conduct;

2. The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

3. The overhead costs incurred from the time that a business is shut down as a result of the criminal conduct;

4. The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

(b) All costs incurred by the state or any political subdivision as a result of, or in making any response to, the criminal conduct that constituted the violation of this section or R.C. § 2917.32, or any substantially equivalent municipal ordinance, including but not limited to all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the state or the political subdivision.

***EMERGENCY MEDICAL SERVICES PERSONNEL.*** Has the same meaning as in R.C. § 2133.21.

***INSTITUTION OF HIGHER EDUCATION.*** Means any of the following:

(a) A state university or college as defined in R.C. § 3345.12(A)(1), community college, state community college, university branch, or technical college;

(b) A private, nonprofit college, university or other post-secondary institution located in this state that possesses a certificate of authorization issued by the Ohio Board of Regents pursuant to R.C. Chapter 1713;

(c) A post-secondary institution with a certificate of registration issued by the State Board of Career Colleges and Schools pursuant to R.C. Chapter 3332.

***SCHOOL.*** Means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a violation of this section is committed.

***WEAPON OF MASS DESTRUCTION.*** Means any of the following:

(a) Any weapon that is designed or intended to cause death or serious physical harm through the release, dissemination, or impact of toxic or poisonous chemicals, or other precursors;

(b) Any weapon involving a disease organism or biological agent;

(c) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life;

(d) Any of the following, except to the extent that the item or device in question is expressly excepted from the definition of "destructive device" pursuant to 18 U.S.C. § 921(a)(4) and regulations issued under that section:

1. Any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device;

2. Any combination of parts either designed or intended for use in converting any item or device into any item or device described in division (d)1. of this definition and from which an item or device described in that division may be readily assembled.
(R.C. § 2917.31)

## § 132.09 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 the 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. Except as otherwise provided in this division, making false alarms is a misdemeanor of the first degree. If a violation of this section results in economic harm of $1,000 or more, making false alarms is a felony to be prosecuted under appropriate state law. If a violation of this section pertains to a purported, threatened, or actual use of a weapon of mass destruction, making false alarms is a felony to be prosecuted under appropriate state law.

(D) (1) It is not a defense to a charge under this section that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction.

(2) Any act that is a violation of this section and any other section of the Ohio Revised Code or this code may be prosecuted under this section, the other section, or both sections.

(E) As used in this section, ***ECONOMIC HARM*** and ***WEAPON OF MASS DESTRUCTION*** have the same meaning as in R.C. § 2917.31.
(R.C. § 2917.32)

## § 132.10 INCITING TO VIOLENCE.

(A) No person shall knowingly engage in conduct designed to urge or incite another to commit any offense of violence when either of the following apply:

(1) The conduct takes place under circumstances that create a clear and present danger that any offense of violence will be committed.

(2) The conduct proximately results in the commission of any offense of violence.

(B) Whoever violates this section is guilty of inciting to violence. If the offense of violence that the other person is being urged or incited to commit is a misdemeanor, inciting to violence is a misdemeanor of the first degree. If the offense of violence that the other person is being urged or incited to commit is a felony, inciting to violence is a felony to be prosecuted under appropriate state law.
(R.C. § 2917.01)

## § 132.11 UNLAWFUL DISPLAY OF LAW ENFORCEMENT EMBLEM.

(A) No person who is not entitled to do so shall knowingly display on a motor vehicle the emblem of a law enforcement agency or an organization of law enforcement officers.

(B) Whoever violates this section is guilty of the unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, a minor misdemeanor.
(R.C. § 2913.441)

## § 132.12 IMPERSONATING A PEACE OFFICER.

(A) As used in this section:

***FEDERAL LAW ENFORCEMENT OFFICER.*** Means an employee of the United States who serves in a position the duties of which are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses under the criminal laws of the United States.

***IMPERSONATE.*** Means to act the part of, assume the identity of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons.

***INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION.*** Has the same meaning as in R.C. § 2903.11.

***PEACE OFFICER.*** A Sheriff, deputy sheriff, Marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this state; a member of a police force employed by a metropolitan housing authority under R.C. § 3735.31(D); a member of a police force employed by a regional transit authority under R.C. § 306.35(Y); a state university law enforcement officer appointed under R.C. § 3345.04; a veterans' home police officer appointed under R.C. § 5907.02; a special police officer employed by a port authority under R.C. § 4582.04 or 4582.28; 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 limits of that statutory duty and authority; or a state highway patrol trooper whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

***PRIVATE POLICE OFFICER.*** Means any security guard, special police officer, private detective, or other person who is privately employed in a police capacity.

(B) No person shall impersonate a peace officer, private police officer, investigator of the Bureau of Criminal Identification and Investigation, or federal law enforcement officer.

(C) No person, by impersonating a peace officer, private police officer, investigator of the Bureau of Criminal Identification and Investigation, or federal law enforcement officer, shall arrest or detain any person, search any person, or search the property of any person.

(D) No person, with purpose to commit or facilitate the commission of an offense, shall impersonate a peace officer, private police officer, federal law enforcement officer, an officer, agent or employee of the municipality or the state, or investigator of the Bureau of Criminal Identification and Investigation.

(E) No person shall commit a felony while impersonating a peace officer, private police officer, federal law enforcement officer, an officer, agent or employee of the municipality or of the state, or investigator of the Bureau of Criminal Identification and Investigation.

(F) It is an affirmative defense to a charge under division (B) of this section that the impersonation of the peace officer, private police officer, federal law enforcement officer, an officer, agent or employee of the municipality or of the state, or investigator of the Bureau of Criminal Identification and Investigation was for a lawful purpose.

(G) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates division (C) or (D) of this section is guilty of a misdemeanor of the first degree. If the purpose of a violation of division (D) of this section is to commit or facilitate the commission of a felony, a violation of

division (D) is a felony to be prosecuted under appropriate state law. Whoever violates division (E) of this section is guilty of a felony to be prosecuted under appropriate state law.
(R.C. § 2921.51)
***Cross-reference:***
*Personating an officer (fraud offense), see § 131.28*

## § 132.13 SAFETY OF CROWDS ATTENDING LIVE ENTERTAINMENT PERFORMANCES.

(A) As used in this section:

***CONCERT.*** Means a musical performance of which the primary component is a presentation by persons singing or playing musical instruments, that is intended by its sponsors mainly, but not necessarily exclusively, for the listening enjoyment of the audience, and that is held in a facility. The term does not include any performance in which music is a part of the presentation and the primary component of which is acting, dancing, a motion picture, a demonstration of skills or talent other than singing or playing an instrument, an athletic event, an exhibition or a speech.

***FACILITY.*** Means any structure that has a roof or partial roof and that has walls that wholly surround the area on all sides, including but not limited to a stadium, hall, arena, armory, auditorium, ballroom, exhibition hall, convention center or music hall.

***LIVE ENTERTAINMENT PERFORMANCE.*** Means any live speech; any live musical performance, including a concert; any live dramatic performance; any live variety show; and any other live performance with respect to which the primary intent of the audience can be construed to be viewing the performers. The term does not include any form of entertainment with respect to which the person purchasing a ticket routinely participates in amusements as well as views performers.

***PERSON.*** Includes, in addition to an individual or entity specified in R.C. § 1.59(C), any governmental entity.

***RESTRICTED ENTERTAINMENT AREA.*** Means any wholly or partially enclosed area, whether indoors or outdoors, that has limited access through established entrances or established turnstiles or similar devices.

(B) (1) No person shall sell, offer to sell, or offer in return for a donation, any ticket that is not numbered and that does not correspond to a specific seat for admission to either of the following:

(a) A live entertainment performance that is not exempted under division (D) of this section, that is held in a restricted entertainment area, and for which more than 8,000 tickets are offered to the public;

(b) A concert that is not exempted under division (D) of this section and for which more than 3,000 tickets are offered to the public.

(2) No person shall advertise any live entertainment performance as described in division (B)(1)(a) of this section or any concert as described in division (B)(1)(b) of this section, unless the advertisement contains the words “Reserved Seats Only.”

(C) Unless exempted by division (D)(1) of this section, no person who owns or operates any restricted entertainment area shall fail to open, maintain and properly staff at least the number of entrances designated under division (E) of this section for a minimum of 90 minutes prior to the scheduled start of any live entertainment performance that is held in the restricted entertainment area and for which more than 3,000 tickets are sold, offered for sale or offered in return for a donation.

(D) (1) A live entertainment performance, other than a concert, is exempted from the provisions of divisions (B) and (C) of this section if both of the following apply:

(a) The restricted entertainment area in which the performance is held has at least eight entrances or, if both entrances and separate admission turnstiles or similar devices are used, has at least eight turnstiles or similar devices.

(b) The eight entrances or, if applicable, the eight turnstiles or similar devices, are opened, maintained and properly staffed at least one hour prior to the scheduled start of the performance.

(2) (a) The officer responsible for public safety in the municipality may, upon application of the sponsor of a concert covered by division (B) of this section, exempt the concert from the provisions of that division if such officer finds that the health, safety and welfare of the participants and spectators would not be substantially affected by failure to comply with the provisions of that division. In determining whether to grant an exemption, the officer shall consider the following factors: the size and design of the facility in which the concert is scheduled; the size, age and anticipated conduct of the crowd expected to attend the concert; and the ability of the sponsor to manage and control the expected crowd. If the sponsor of any concert desires to obtain an exemption under this division, the sponsor shall apply to the appropriate official on a form prescribed by that official. The official shall issue an order that grants or denies the exemption within five days after receipt of the application. The sponsor may appeal any order that denies an exemption to the Court of Common Pleas of the county in which the facility is located.

(b) If an official grants an exemption under division (D)(2)(a) of this section, the official shall designate an on-duty law enforcement officer to be present at the concert. The designated officer has authority to issue orders to all security personnel at the concert to protect the health, safety and welfare of the participants and spectators.

(3) Notwithstanding division (D)(2) of this section, in the case of a concert held in a facility located on the campus of an educational institution covered by R.C. § 3345.04, a state university law enforcement officer appointed pursuant to R.C. §§ 3345.04 and 3345.21 shall do both of the following:

(a) Exercise the authority to grant exemptions provided by division (D)(2)(a) of this section in lieu of an official designated in that division;

(b) If the officer grants an exemption under division (D)(3)(a) of this section, designate an on-duty state university law enforcement officer to be present at the concert. The designated officer has authority to issue orders to all security personnel at the concert to protect the health, safety and welfare of the participants and spectators.

(E) (1) Unless a live entertainment performance is exempted by division (D)(1) of this section, the officer responsible for public safety within the municipality shall designate, for purposes of division (C) of this section,

the minimum number of entrances required to be opened, maintained and staffed at each live entertainment performance so as to permit crowd control and reduce congestion at the entrances. The designation shall be based on such factors as the size and nature of the crowd expected to attend the live entertainment performance, the length of time prior to the live entertainment performance that crowds are expected to congregate at the entrances and the amount of security provided at the restricted entertainment area.

(2) Notwithstanding division (E)(1) of this section, a state university law enforcement officer appointed pursuant to R.C. §§ 3345.04 and 3345.21 shall designate the number of entrances required to be opened, maintained and staffed in the case of a live entertainment performance that is held at a restricted entertainment area located on the campus of an educational institution covered by R.C. § 3345.04.

(F) No person shall enter into any contract for a live entertainment performance that does not permit or require compliance with this section.

(G) (1) This section does not apply to a live entertainment performance held in a restricted entertainment area if one admission ticket entitles the holder to view or participate in three or more different games, rides, activities or live entertainment performances occurring simultaneously at different sites within the restricted entertainment area and if the initial admittance entrance to the restricted entertainment area, for which the ticket is required, is separate from the entrance to any specific live entertainment performance and an additional ticket is not required for admission to the particular live entertainment performance.

(2) This section does not apply to a symphony orchestra performance, a ballet performance, horse races, dances or fairs.

(H) This section does not prohibit the Legislative Authority from imposing additional requirements, not in conflict with the section, for the promotion or holding of live entertainment performances.

(I) Whoever violates division (B), (C) or (F) of this section is guilty of a misdemeanor of the first degree. If any individual suffers physical harm to the individual's person as a result of a violation of this section, the sentencing court shall consider this factor in favor of imposing a term of imprisonment upon the offender. (R.C. § 2917.40)

## § 132.14 MISCONDUCT INVOLVING A PUBLIC TRANSPORTATION SYSTEM.

(A) As used in this section, ***PUBLIC TRANSPORTATION SYSTEM*** means a county transit system operated in accordance with R.C. §§ 306.01 through 306.13, a regional transit authority operated in accordance with R.C. §§ 306.30 through 306.71, or a regional transit commission operated in accordance with R.C. §§ 306.80 through 306.90.

(B) No person shall evade the payment of the known fares of a public transportation system.

(C) No person shall alter any transfer, pass, ticket or token of a public transportation system with the purpose of evading the payment of fares or of defrauding the system.

(D) No person shall do any of the following while in any facility or on any vehicle of a public transportation system:

(1) Play sound equipment without the proper use of a private earphone;

(2) Smoke, eat or drink in any area where the activity is clearly marked as being prohibited; or

(3) Expectorate upon a person, facility or vehicle.

(E) No person shall write, deface, draw or otherwise mark on any facility or vehicle of a public transportation system.

(F) No person shall fail to comply with a lawful order of a public transportation system police officer, and no person shall resist, obstruct or abuse a public transportation police officer in the performance of the officer's duties.

(G) Whoever violates any of the provisions of this section is guilty of misconduct involving a public transportation system.

(1) A violation of division (B), (C), or (F) of this section is a misdemeanor of the fourth degree.

(2) A violation of division (D) of this section is a minor misdemeanor on a first offense. If a person previously has been convicted of or pleaded guilty to a violation of any division of this section or of a municipal ordinance that is substantially equivalent to any division of this section, a violation of division (D) of this section is a misdemeanor of the fourth degree.

(3) A violation of division (E) of this section is a misdemeanor of the third degree.

(H) Notwithstanding any other provision of law, 75% of each fine paid to satisfy a sentence imposed for a violation of any of the provisions of this section shall be deposited into the treasury of the County and 25% shall be deposited with the county transit board, regional transit authority or regional transit commission that operates the public transportation system involved in the violation, unless the Board of County Commissioners operates the public transportation system, in which case 100% of each fine shall be deposited into the treasury of the County.
(R.C. § 2917.41)

# CHAPTER 133: SEX OFFENSES

Section



***Statutory reference:***

*Assistance to victims of sexual assault, see R.C. §§ 2907.28 et seq.*
*Child victim, disposition of, see R.C. § 2945.481*
*Suppression of information at trial, see R.C. § 2907.11*
*Testing offenders for venereal disease and AIDS, see R.C. § 2907.27*

## § 133.01 DEFINITIONS.

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

***HARMFUL TO JUVENILES.*** That quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

***JUVENILE.*** Any unmarried person under 18 years of age.

***MATERIAL.*** Any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, video cassette, laser disc, phonograph record, cassette tape, compact disc, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

***MENTAL HEALTH CLIENT OR PATIENT.*** Has the same meaning as in R.C. § 2305.51.

***MENTAL HEALTH PROFESSIONAL.*** Has the same meaning as in R.C. § 2305.115.

***MINOR.*** A person under the age of 18.

***NUDITY.*** The showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

***OBSCENE.*** When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest.

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite.

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality.

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose.

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

***PERFORMANCE.*** Any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

***PROSTITUTE.*** A male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

***SADO-MASOCHISTIC ABUSE.*** Flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

***SEXUAL ACTIVITY.*** Sexual conduct or sexual contact, or both.

***SEXUAL CONDUCT.*** Vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

***SEXUAL CONTACT.*** Any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

***SEXUAL EXCITEMENT.*** The condition of human male or female genitals when in a state of sexual stimulation or arousal.

***SPOUSE.*** A person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement pursuant to R.C. § 3103.06.

(2) When an action is pending between the parties for annulment, divorce, dissolution of marriage, or legal separation.

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.
(R.C. § 2907.01)

## § 133.02 UNLAWFUL SEXUAL CONDUCT WITH A MINOR.

(A) No person who is 18 years of age or older shall engage in sexual conduct with another who is not the spouse of the offender, when the offender knows the other person is 13 years of age or older but less than 16 years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in division (B)(2), unlawful sexual conduct with a minor is a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in division (B)(3) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) If the offender previously has been convicted of or pleaded guilty to a violation of R.C. § 2907.02, 2907.03 or 2907.04, or any substantially equivalent municipal ordinance, or a violation of former R.C. § 2907.12, or any substantially equivalent municipal ordinance, unlawful sexual conduct with a minor is a felony to be prosecuted under appropriate state law.
(R.C. § 2907.04)

## § 133.03 SEXUAL IMPOSITION.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the person, and the offender is at least 18 years of age and four or more years older than the other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender has been convicted previously of a violation of this section, R.C. § 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, former R.C. § 2907.12, or a substantially equivalent state law or municipal ordinance, a violation of this section is a misdemeanor of the first degree.
(R.C. § 2907.06)

***Statutory reference:***

*Gross sexual imposition, felony, see R.C. § 2907.05*
*Notice to licensing board or agency upon indictment, conviction or guilty plea of mental health professional, see R.C. §§ 2907.17 and 2907.18*

## § 133.04 PUBLIC INDECENCY.

(A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:

(1) Expose the persons's private parts.

(2) Engage in sexual conduct or masturbation.

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:

(1) Engage in masturbation.

(2) Engage in sexual conduct.

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C) (1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (C)(3), (C)(4), and (C)(5) of this section.

(2) Except as otherwise provided in this division (C)(2), a violation of division (A)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony to be prosecuted under appropriate state law.

(3) Except as otherwise provided in this division (C)(3), a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender

previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony to be prosecuted under appropriate state law.

(4) Except as otherwise provided in this division (C)(4), a violation of division (B)(1), (B)(2), or (B)(3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(1), (B)(2), or (B)(3) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(1), (B)(2), or (B)(3) of this section is a felony to be prosecuted under appropriate state law.

(5) Except as otherwise provided in this division (C)(5), a violation of division (B)(4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(4) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2907.09)

(D) A mother is entitled to breast-feed her baby in any location of a place of public accommodation, as defined in R.C. § 4112.01, wherein the mother otherwise is permitted.
(R.C. § 3781.55)

***Statutory reference:***

*Bail considerations for persons charged, see R.C. § 2907.41*

## § 133.05 VOYEURISM.

(A) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(B) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity.

(C) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person in a state of nudity if the other person is a minor.

(D) No person shall secretly or surreptitiously videotape, film, photograph, or otherwise record another person under or through the clothing being worn by that person for the purpose of viewing the body of, or the undergarments worn by, that other person.

(E) Whoever violates this section is guilty of voyeurism.

(1) A violation of division (A) of this section is a misdemeanor of the third degree.

(2) A violation of division (B) of this section is a misdemeanor of the second degree.

(3) A violation of division (D) of this section is a misdemeanor of the first degree.

(4) A violation of division (C) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2907.08)

## § 133.06 POLYGRAPH EXAMINATIONS FOR VICTIMS: RESTRICTIONS ON USE.

(A) (1) A peace officer, prosecutor, or other public official shall not ask or require a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation of the alleged sex offense.

(2) The refusal of the victim of an alleged sex offense to submit to a polygraph examination shall not prevent the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense, or the prosecution of the alleged perpetrator of the alleged sex offense.

(B) As used in this section:

***PEACE OFFICER.*** Has the same meaning as in R.C. § 2921.51.

***POLYGRAPH EXAMINATION.*** Means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question an individual for the purpose of determining the individual's truthfulness.

***PROSECUTION.*** Means the prosecution of criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.

***PROSECUTOR.*** Has the same meaning as in R.C. § 2935.01.

***PUBLIC OFFICIAL.*** Has the same meaning as in R.C. § 117.01.

***SEX OFFENSE.*** Means a violation of any provision of §§ 133.02 to 133.05 or R.C. §§ 2907.02 to 2907.09.
(R.C. § 2907.10)

## § 133.07 PROCURING.

(A) No person, knowingly and for gain, shall do either of the following:

(1) Entice or solicit another to patronize a prostitute or brothel;

(2) Procure a prostitute for another to patronize, or take or direct another at the other's request to any place for the purpose of patronizing a prostitute.

(B) No person, having authority or responsibility over the use of premises, shall knowingly permit the premises to be used for the purpose of engaging in sexual activity for hire.

(C) Whoever violates this section is guilty of procuring. Except as otherwise provided in this division, procuring is a misdemeanor of the first degree. If the prostitute who is procured, patronized, or otherwise involved in a violation of division (A)(2) of this section is under 18 years of age at the time of the violation, regardless of whether the offender who violates division (A)(2) of this section knows the prostitute's age, or if a prostitute who engages in sexual activity for hire in premises used in violation of division (B) of this section is under 18 years of age at the time of the violation, regardless of whether the offender who violates division (B) of this section knows the prostitute's age, procuring is a felony to be prosecuted under appropriate state law. (R.C. § 2907.23)

## § 133.08 SOLICITING; LOITERING TO ENGAGE IN.

(A) (1) No person shall solicit another who is 18 years of age or older to engage with the other person in sexual activity for hire.

(2) No person shall solicit another to engage with such other person in sexual activity for hire if the other person is 16 or 17 years of age and the offender knows that the other person is 16 or 17 years of age or is reckless in that regard.

(3) No person shall solicit another to engage with such other person in sexual activity for hire if either of the following applies:

(a) The other person is less than 16 years of age, whether or not the offender knows the age of the other person.

(b) The other person is a person with a developmental disability and the offender knows or has reasonable cause to believe the other person is a person with a developmental disability.

(B) (1) Whoever violates division (A) of this section is guilty of soliciting. A violation of division (A)(1) of this section is a misdemeanor of the third degree. A violation of division (A)(2) or (A)(3) of this section is a felony to be prosecuted under appropriate state law.

(2) If a person is convicted of or pleads guilty to a violation of division (A) of this section or an attempt to commit a violation of division (A) of this section and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6). In lieu of imposing upon the offender the class six suspension, the court instead may require the offender to perform community service for a number of hours determined by the court.

(C) As used in division (A) of this section:

***PERSON WITH A DEVELOPMENTAL DISABILITY.*** Has the same meaning as in R.C. § 2905.32.

***SEXUAL ACTIVITY FOR HIRE.*** Means an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person.
(R.C. § 2907.24(A), (C)(1), (D), (E))

(D) No person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, shall do any of the following:

(1) Beckon to, stop or attempt to stop another;

(2) Engage or attempt to engage another in conversation;

(3) Stop or attempt to stop the operator of a vehicle or approach a stationary vehicle;

(4) If the offender is the operator of or a passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon to, or entice another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger;

(5) Interfere with the free passage of another.

(E) As used in division (D) of this section:

***PUBLIC PLACE.*** Means any of the following:

(a) A street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot or transportation facility.

(b) A doorway or entrance way to a building that fronts on a place described in division (a) of this definition.

(c) A place not described in division (a) or (b) of this definition that is open to the public.

***VEHICLE.*** Has the same meaning as in R.C. § 4501.01.

(F) Whoever violates division (D) of this section is guilty of loitering to engage in solicitation, a misdemeanor of the third degree.
(R.C. § 2907.241)
***Statutory reference:***
*Offenders with knowledge that they test HIV positive, felony, see R.C. §§ 2907.24(B) and 2907.241(B)*
*Testing offenders for venereal disease and AIDS, see R.C. § 2907.27*

## § 133.09 PROSTITUTION.

(A) No person shall engage in sexual activity for hire.

(B) Whoever violates this section is guilty of prostitution, a misdemeanor of the third degree. (R.C. § 2907.25)

***Statutory reference:***

*Offenders with knowledge that they test HIV positive, felony, see R.C. § 2907.25(B)*
*Testing offenders for venereal disease and AIDS, see R.C. § 2907.27*

## § 133.10 DISSEMINATING MATTER HARMFUL TO JUVENILES.

(A) No person, with knowledge of its character or content, shall recklessly do any of following:

(1) Directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(2) Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(3) While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

(B) The following are affirmative defenses to a charge under this section that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by his or her parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or his or her agent or employee a draft card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that the juvenile was 18 years of age or over or married, and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of 18 and unmarried.

(C) (1) It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergy, prosecutor, judge, or other proper person.

(2) Except as provided in division (B)(3) of this section, mistake of age is not a defense to a charge under this section.

(D) (1) A person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present material or a performance to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the group of persons receiving the information are juveniles.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present or directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present the material or performance in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section if either of the following applies:

(a) The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

(b) The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

(E) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, violation of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2907.31)

(F) Presumptions, notice and defense.

(1) An owner or manager, or agent or employee of an owner or manager, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling material or exhibiting performances, who, in the course of business does any of the acts prohibited by this section is presumed to have knowledge of the character of the material or performance involved if the owner, manager, or agent or employee of the owner or manager has actual notice of the nature of such material or performance, whether or not the owner, manager, or agent or employee of the owner or manager has precise knowledge of its contents.

(2) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the municipality. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(3) This § 133.10 does not apply to a motion picture operator or projectionist acting within the scope of employment as an employee of the owner or manager of the theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in the operator's or projectionist's place of employment, other than wages.

(4) (a) The provisions of §§ 133.10, 133.11 and 133.12(A) do not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection.

(b) Division (E)(4)(a) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of § 133.10, 133.11, or 133.12 or who knowingly advertises the availability of material of that nature.

(c) Division (E)(4)(a) of this section does not apply to a person who provides access or connection to an electronic method of remotely transferring information that is engaged in the violation of § 133.10, 133.11, or 133.12 and that contain content that person has selected and introduced into the electronic method of remotely transferring information or content over which that person exercises editorial control.

(5) An employer is not guilty of a violation of § 133.10, 133.11, or 133.12 based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of the employee's or agent's employment or agency, and the employer does either of the following:

(a) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

(b) The employer recklessly disregards the employee's or agent's conduct.

(6) It is an affirmative defense to a charge under § 133.10 or 133.11 as the section applies to an image transmitted through the internet or other electronic method of remotely transmitting information that the person charged with violating the section has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.
(R.C. § 2907.35)

## § 133.11 DISPLAYING MATTER HARMFUL TO JUVENILES.

(A) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

(B) It is not a violation of division (A) of this section if the material in question is displayed by placing it behind "blinder racks" or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.

(C) Whoever violates this section is guilty of displaying matter harmful to juveniles, a misdemeanor of the first degree. Each day during which the offender is in violation of this section constitutes a separate offense. (R.C. § 2907.311)

***Cross-reference:***

*Presumptions, notice and defense, see § 133.10(F)*

## § 133.12 DECEPTION TO OBTAIN MATTER HARMFUL TO JUVENILES.

(A) No person, for the purpose of enabling a juvenile to obtain any material or gain admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he or she is the parent, guardian, or spouse of the juvenile.

(2) Furnish the juvenile with any identification or document purporting to show that the juvenile is 18 years of age or over or married.

(B) No juvenile, for the purpose of obtaining any material or gaining admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he or she is 18 years of age or over or married.

(2) Exhibit any identification or document purporting to show that he or she is 18 years of age or over or married.

(C) Whoever violates this section is guilty of deception to obtain matter harmful to juveniles, a misdemeanor of the second degree. A juvenile who violates division (B) of this section shall be adjudged an unruly child, with the disposition of the case as may be appropriate under R.C. Chapter 2151. (R.C. § 2907.33)

***Cross-reference:***

*Presumptions, notice and defense, see § 133.10(F)*

***Statutory reference:***

*Juvenile Court, see R.C. Chapter 2151*

## § 133.13 RULES OF EVIDENCE.

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such place and as to the reputation of the persons who inhabit or frequent it is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of §§ 133.07 through 133.09, proof of a prior conviction of the accused of any such offense or substantially equivalent offense is admissible in support of the charge.

(D) The prohibition contained in R.C. § 2317.02(D) against testimony by a husband or wife concerning communications between them does not apply, and the accused's spouse may testify concerning any such communication in any of the following cases:

(1) When the husband or wife is charged with a violation of § 133.07 and the spouse testifying was the prostitute involved in the offense or the person who used the offender's premises to engage in sexual activity for hire;

(2) When the husband or wife is charged with a violation of § 133.08(A) or § 133.09.
(R.C. § 2907.26)

## § 133.14 DECLARATORY JUDGMENT.

(A) Without limitation on the persons otherwise entitled to bring an action for a declaratory judgment pursuant to R.C. Chapter 2721, involving the same issue, the following persons have standing to bring a declaratory judgment action to determine whether particular materials or performances are obscene or harmful to juveniles:

(1) The chief legal officer of the municipality if and when there is reasonable cause to believe that R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, is being or is about to be violated;

(2) Any person who, pursuant to R.C. § 2907.35(B) or a substantially equivalent municipal ordinance, has received notice in writing from the chief legal officer stating that particular materials or performances are obscene or harmful to juveniles.

(B) Any party to an action for a declaratory judgment pursuant to division (A) of this section is entitled, upon the party's request, to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(C) An action for a declaratory judgement pursuant to division (A) of this section shall not be brought during the pendency of any civil action or criminal prosecution when the character of the particular materials or performances involved is at issue in the pending case, and either of the following applies:

(1) Either of the parties to the action for a declaratory judgment is a party to the pending case;

(2) A judgment in the pending case will necessarily constitute res judicata as to the character of the materials or performances involved.

(D) A civil action or criminal prosecution in which the character of particular materials or performances is at issue, brought during the pendency of an action for a declaratory judgment involving the same issue, shall be stayed during the pendency of the action for a declaratory judgment.

(E) The fact that a violation of R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, occurs prior to a judicial determination of the character of the material or performance involved in the violation does not relieve the offender of criminal liability for the violation, even though prosecution may be stayed pending the judicial determination.
(R.C. § 2907.36)

## § 133.15 INJUNCTION; ABATEMENT OF NUISANCE.

(A) Where it appears that R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, is being or is about to be violated, the chief legal officer of the municipality may bring an action to enjoin the violation. The defendant, upon his or her request, is entitled to trial on the merits within five days after the joinder of the issues, and the court shall render judgment within five days after the trial is concluded.

(B) Premises used or occupied for repeated violations of R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, constitute a nuisance subject to abatement pursuant to R.C. Chapter 3767.
(R.C. § 2907.37)
***Statutory reference:***
*Disseminating matter harmful to juveniles, felony, see R.C. § 2907.31*
*Pandering obscenity, felony, see R.C. § 2907.32*

## § 133.16 UNLAWFUL OPERATION OF VIEWING BOOTHS DEPICTING SEXUAL CONDUCT.

(A) As used in this section:

***COMMERCIAL ESTABLISHMENT.*** Means an entity that is open to the public and to which either of the following applies:

(a) It has a substantial or significant portion of its stock in trade of the sale, rental, or viewing of visual materials or performances depicting sexual conduct.

(b) It has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct.

***VISUAL MATERIALS OR PERFORMANCES.*** Means films, videos, CD-ROM discs, streaming video, or other motion pictures.

(B) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character of the visual material or performance involved, shall knowingly permit the use of, or offer the use of, viewing booths, stalls, or partitioned portions of a room located in the commercial establishment for the purpose of viewing visual materials or performances depicting sexual conduct unless both of the following apply:

(1) The inside of each booth, stall, or partitioned room is visible from, and at least one side of each booth, stall, or partitioned room is open to, a continuous and contiguous main aisle or hallway that is open to the public areas of the commercial establishment and is not obscured by any curtain, door, or other covering or enclosure.

(2) No booth, stall, or partitioned room is designed, constructed, pandered, or allowed to be used for the purpose of encouraging or facilitating nudity or sexual activity on the part of or between patrons or members of the public, and no booth, stall, or partitioned room has any aperture, hole, or opening for the purpose of encouraging or facilitating nudity or sexual activity.

(C) It is an affirmative defense to a charge under this section that either of the following applies to the involved visual materials or performances:

(1) The visual materials or performances depicting sexual conduct are disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose and by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the visual materials or performances.

(2) The visual materials or performances depicting sexual conduct, taken as a whole, would be found by a reasonable person to have serious literary, artistic, political, or scientific value or are presented or disseminated in good faith for a serious literary, artistic, political, or scientific purpose and are not pandered for their prurient appeal.

(D) Whoever violates this section is guilty of permitting unlawful operation of viewing booths depicting sexual conduct, a misdemeanor of the first degree.
(R.C. § 2907.38)

## § 133.17 JUVENILES ON THE PREMISES OF ADULT ENTERTAINMENT ESTABLISHMENTS PROHIBITED.

(A) As used in this section:

***ADULT ARCADE.*** Means any place to which the public is permitted or invited in which coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and in which the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.

***ADULT BOOKSTORE, ADULT NOVELTY STORE,*** or ***ADULT VIDEO STORE.***

(a) Means a commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental of any of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas;

2. Instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of self or others.

(b) Includes a commercial establishment as defined in R.C. § 2907.38. An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store, or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas.

***ADULT CABARET.*** Means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

(a) Persons who appear in a state of nudity or seminudity;

(b) Live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities;

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

***ADULT ENTERTAINMENT.*** Means the sale, rental, or exhibition, for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances that are characterized by an emphasis on the exposure or display of specified anatomical areas or specified sexual activity.

***ADULT ENTERTAINMENT ESTABLISHMENT.*** Means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment. An establishment in which a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including but not limited to massage therapy, as regulated pursuant to R.C. § 4731.15, is not an "adult entertainment establishment".

***ADULT MOTION PICTURE THEATER.*** Means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

***ADULT THEATER.*** Means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

***DISTINGUISHED OR CHARACTERIZED BY THEIR EMPHASIS UPON.*** Means the dominant or principal character and theme of the object described by this phrase. For instance, when the phrase refers to films "that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas", the films so described are those whose dominant or principal character and theme are the exhibition or description of specified sexual activities or specified anatomical areas.

***NUDE OR SEMINUDE MODEL STUDIO.*** Means any place where a person, who regularly appears in a state of nudity or seminudity, is provided for money or any other form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. A modeling class or studio is not a nude or seminude model studio and is not subject to this chapter if it is operated in any of the following ways:

(a) By a college or university supported entirely or partly by taxation;

(b) By a private college or university that maintains and operates educational programs, the credits for which are transferable to a college or university supported entirely or partly by taxation;

(c) In a structure that has no sign visible from the exterior of the structure and no other advertising indicating that a person appearing in a state of nudity or seminudity is available for viewing, if in order to participate in a class in the structure, a student must enroll at least three days in advance of the class and if not more than one nude or seminude model is on the premises at any one time.

***NUDITY, NUDE,*** or ***STATE OF NUDITY.*** Means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering; or the showing of the female breasts with less than a fully opaque covering of any part of the nipple.

***REGULARLY FEATURES*** or ***REGULARLY SHOWN.*** Means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult entertainment establishment.

***SEMINUDE*** or ***STATE OF SEMINUDITY.*** Means a state of dress in which opaque clothing covers not more than the genitals, pubic region, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

***SEXUAL ENCOUNTER ESTABLISHMENT.***

(a) Means a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur:

1. Two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities.

2. Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form.

(b) An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including but

not limited to massage therapy, as regulated pursuant to R.C. § 4731.15, is not a "sexual encounter establishment".

***SPECIFIED ANATOMICAL AREAS.*** Means the cleft of the buttocks, anus, male or female genitals, or the female breast.

***SPECIFIED SEXUAL ACTIVITY.*** Means any of the following:

(a) Sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;

(b) Excretory functions as a part of or in connection with any of the activities described in division (a) of this definition.

(B) No person knowingly shall allow an individual, including but not limited to a patron, customer, or employee, who is under 18 years of age on the premises of an adult entertainment establishment.

(C) No individual who is under 18 years of age knowingly shall show or give false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment.

(D) A person shall not be found guilty of a violation of division (B) of this section if the person raises as an affirmative defense and if the jury or, in a nonjury trial, the court finds the person has established by a preponderance of the evidence, all of the following:

(1) The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent, or independent contractor of the adult entertainment establishment a driver's or commercial driver's license or an identification card issued under R.C. §§ 4507.50 and 4507.52 showing that the individual was then at least 18 years of age.

(2) The operator, employee, agent, or independent contractor made a bona fide effort to ascertain the true age of the individual gaining entrance to the adult entertainment establishment by checking the identification presented, at the time of entrance, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way.

(3) The operator, employee, agent, or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least 18 years of age.

(E) In any criminal action in which the affirmative defense described in division (D) of this section is raised, the Registrar of Motor Vehicles or the deputy registrar who issued a driver's or commercial driver's license or an identification card under R.C. §§ 4507.50 and 4507.52 shall be permitted to submit certified copies of the records, in the Registrar's or deputy registrar's possession, of the issuance of the license or identification card in question, in lieu of the testimony of the personnel of the Bureau of Motor Vehicles in the action.

(F) (1) Whoever violates division (B) of this section is guilty of permitting a juvenile on the premises of an adult entertainment establishment, a misdemeanor of the first degree. Each day a person violates this division constitutes a separate offense.

(2) Whoever violates division (C) of this section is guilty of use by a juvenile of false information to enter an adult entertainment establishment, a delinquent act that would be a misdemeanor of the fourth degree if committed by an adult.
(R.C. § 2907.39)

## § 133.18 SEXUALLY ORIENTED BUSINESSES; ILLEGAL OPERATION AND ACTIVITY.

(A) As used in this section:

***ADULT BOOKSTORE*** or ***ADULT VIDEO STORE.*** Means a commercial establishment that has as a significant or substantial portion of its stock in trade or inventory in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

***ADULT CABARET.*** Has the same meaning as in R.C. § 2907.39.

***ADULT MOTION PICTURE THEATER.*** Means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions that are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five individuals for any form of consideration.

***CHARACTERIZED BY.*** Describing the essential character or quality of an item.

***EMPLOYEE.*** Means any individual who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

***NUDE.*** Has the same meaning as in R.C. § 2907.39.

***NUDITY.*** Has the same meaning as in R.C. § 2907.39.

***OPERATOR.*** Means any individual on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises.

***PATRON***. Means any individual on the premises of a sexually oriented business except for any of the following:

(a) An operator or an employee of the sexually oriented business;

(b) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;

(c) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee's or volunteer's duties as a public employee or volunteer.

***PREMISES.*** Means the real property on which the sexually oriented business is located and all appurtenances to the real property, including, but not limited, to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the sexually oriented business.

***REGULARLY.*** Means consistently or repeatedly.

***SEMINUDE.*** Has the same meaning as in R.C. § 2907.39.

***SEXUAL DEVICE.*** Means any three-dimensional object designed and marketed for stimulation of the male or female human genitals or anus or female breasts or for sadomasochistic use or abuse of oneself or others, including but not limited to dildos, vibrators, penis pumps, and physical representations of the human genital organs, but not including devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

***SEXUAL DEVICE SHOP.*** Means a commercial establishment that regularly features sexual devices, but not including any pharmacy, drug store, medical clinic, or establishment primarily dedicated to providing medical or healthcare products or services, and not including any commercial establishment that does not restrict access to its premises by reason of age.

***SEXUAL ENCOUNTER CENTER.*** Means a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between individuals of the opposite sex when one or more of the individuals is nude or seminude.

***SEXUALLY ORIENTED BUSINESS.*** Means an adult bookstore, adult video store, adult cabaret, adult motion picture theater, sexual device shop, or sexual encounter center, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.

***SPECIFIED ANATOMICAL AREAS***. Includes human genitals, pubic region, and buttocks and the human female breast below a point immediately above the top of the areola.

***SPECIFIED SEXUAL ACTIVITY.*** Means sexual intercourse, oral copulation, masturbation, or sodomy, or excretory functions as a part of or in connection with any of these activities.

***STATE OF NUDITY.*** Has the same meaning as in R.C. § 2907.39.

***STATE OF SEMINUDITY.*** Has the same meaning as in R.C. § 2907.39.

(B) No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business that holds a liquor permit pursuant to R.C. Chapter 4303 may remain open until the hour specified in that permit if it does not conduct, offer, or allow sexually oriented entertainment activity in which the performers appear nude.

(C) (1) No patron who is not a member of the employee's immediate family shall knowingly touch any employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or seminude.

(2) No employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.

(D) Whoever violates division (B) of this section is guilty of illegally operating a sexually oriented business, a misdemeanor of the first degree.

(E) Whoever violates division (C) of this section is guilty of illegal sexually oriented activity in a sexually oriented business. If the offender touches a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the first degree. If the offender does not touch a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the fourth degree.
(R.C. § 2907.40)
***Statutory reference:***
*State indemnification for certain municipal liability stemming from local adult business regulations, see R.C. § 715.55*

## § 133.99 SENTENCING FOR SEXUALLY ORIENTED OFFENSES; SEXUAL PREDATORS; REGISTRATION.

(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in R.C. § 2901.07(D)(1) to (D)(3), the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of R.C. § 2950.03, and shall require the offender to submit to a DNA specimen collection procedure pursuant to R.C. § 2901.07.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under R.C. §§ 2950.04, 2950.041, 2950.05, and 2950.06, and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under R.C. § 2950.03(A)(2), the judge shall perform the duties specified in that section or, if required under R.C. § 2950.03(A)(6), the judge shall perform the duties specified in that division.
(R.C. § 2929.23)
***Cross-reference:***
*Sentencing generally, see Chapter 130*

# CHAPTER 134: GAMBLING OFFENSES

Section



***Statutory reference:***

*Conducting an illegal bingo game, felony, see R.C. § 2915.07*
*Licensing bingo games by Attorney General, see R.C. § 2915.08*
*Licensing distributors of bingo supplies by Attorney General, see R.C. § 2915.081*
*Licensing manufacturers of bingo supplies by Attorney General, see R.C. § 2915.082*

## § 134.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BET.*** The hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.

***BINGO.*** Either of the following:

(1) A game with all of the following characteristics:

(a) The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into 25 spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space;

(b) The participants cover the spaces on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator;

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains 75 objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the 75 possible combinations of a letter and a number that can appear on the bingo cards or sheets;

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers, as described in division (1)(c) of this definition, that a predetermined and pre-announced pattern of spaces has been covered on a bingo card or sheet being used by the participant.

(2) Instant bingo, punch boards, and raffles.

***BINGO GAME OPERATOR.*** Any person, except security personnel, who performs work or labor at the site of bingo including but not limited to collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages.

***BINGO SESSION.*** A period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in division (1) of the definition of "bingo" in this section, instant bingo, and seal cards;

(2) A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours after the period described in division (1) of this definition.

***BINGO SUPPLIES.*** Bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; raffle tickets; punch boards; seal cards; instant bingo ticket dispensers; and devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets. Items that are "bingo supplies" are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter or R.C. Chapter 2915. For purposes of this chapter, "bingo supplies" are not to be considered equipment used to conduct a bingo game.

***BOOKMAKING.*** The business of receiving or paying off bets.

***CHAMBER OF COMMERCE.*** Any organization of individuals, professionals, and businesses that has the purpose to advance the commercial, financial, industrial, and civic interests of the community and that is, and has received from the Internal Revenue Service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(6).

***CHARITABLE BINGO GAME.*** Any bingo game described in divisions (1) or (2) of the definition of "bingo" in this section that is conducted by a charitable organization that has obtained a license pursuant to R.C. § 2915.08 and the proceeds of which are used for a charitable purpose.

***CHARITABLE INSTANT BINGO ORGANIZATION.*** An organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3) and is a charitable organization as defined in this section. The term does not include a charitable organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3) and that is created by a veteran's organization, a fraternal organization, or a sporting organization in regards to bingo conducted or assisted by a veteran's organization, a fraternal organization, or a sporting organization pursuant to R.C. § 2915.13, or any substantially equivalent municipal ordinance.

***CHARITABLE ORGANIZATION.***

(1) Except as otherwise provided in this chapter, "charitable organization" means either of the following:

(a) An organization that is and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3);

(b) A volunteer rescue service organization, volunteer firefighter's organization, veteran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under IRC §§ 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10) or 501(c)(19).

(2) To qualify as a charitable organization, an organization shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under R.C. § 2915.08 or the conducting of any game of chance as provided in R.C. § 2915.02(D), or a substantially equivalent municipal ordinance.

***CHARITABLE PURPOSE.*** Means that the net profit of bingo, other than instant bingo, is used by, or is given, donated, or otherwise transferred to, any of the following:

(1) Any organization that is described in IRC §§ 509(a)(1), 509(a)(2), or 509(a)(3) and is either a governmental unit or an organization that is tax exempt under IRC § 501(a) and described in IRC § 501(c)(3);

(2) A veteran's organization that is a post, chapter, or organization of veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least 75% of the members of which are veterans and substantially all of the other members of which are individuals who are spouses, widows, or widowers of veterans, or such individuals, provided that no part of the net earnings of such post, chapter, or organization inures to the benefit of any private shareholder or individual, and further provided that the net profit is used by the post, chapter, or organization for the charitable purposes set forth in R.C. § 5739.02(B)(12), is used for awarding scholarships to or for attendance at an institution mentioned in that division of the Ohio Revised Code, is donated to a governmental agency, or is used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups, or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief;

(3) A fraternal organization that has been in continuous existence in this state for 15 years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if contributions for such use would qualify as a deductible charitable contribution under IRC § 170;

(4) A volunteer firefighter's organization that uses the net profit for the purposes set forth in the definition of "volunteer firefighter's organization" in this section.

***COMMUNITY ACTION AGENCY.*** Has the same meaning as in R.C. § 122.66.

***CONDUCT.*** To back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance, a scheme of chance, or a sweepstakes.

***DEAL OF INSTANT BINGO TICKETS.*** A single game of instant bingo tickets all with the same serial number.

***DISTRIBUTOR.*** Any person who purchases or obtains bingo supplies and who does either of the following:

(1) Sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this state;

(2) Modifies, converts, adds to, or removes parts from the bingo supplies to further their promotion or sale for use in this state.

***ELECTRONIC BINGO AID.***

(1) An electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:

(a) It provides a means for a participant to input numbers and letters announced by a bingo caller.

(b) It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device.

(c) It identifies a winning bingo pattern.

(2) The term does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.

***EXPENSES.*** The reasonable amount of gross profit actually expended for all of the following:

(1) The purchase or lease of bingo supplies;

(2) The annual license fee required under R.C. § 2915.08;

(3) Bank fees and service charges for a bingo session or game account described in R.C. § 2915.10;

(4) Audits and accounting services;

(5) Safes;

(6) Cash registers;

(7) Hiring security personnel;

(8) Advertising bingo;

(9) Renting premises in which to conduct a bingo session;

(10) Tables and chairs;

(11) Expenses for maintaining and operating a charitable organization's facilities, including but not limited to a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen;

(12) Payment of real property taxes and assessments that are levied on a premises on which bingo is conducted;

(13) Any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the Attorney General under R.C. § 2915.08(B)(1).

***FRATERNAL ORGANIZATION.*** Any society, order, state headquarters, or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members.

***GAMBLING DEVICE.*** Any of the following:

(1) A book, totalizer, or other equipment used for recording bets;

(2) A ticket, token, or other device representing a chance, share, or interest in a scheme of chance or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus, or paraphernalia specially designed for gambling purposes;

(5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter or R.C. Chapter 2915.

***GAMBLING OFFENSE.*** Any of the following:

(1) A violation of R.C. § 2915.02, 2915.03, 2915.04, 2915.05, 2915.06, 2915.07, 2915.08, 2915.081, 2915.082, 2915.09, 2915.091, 2915.092, 2915.10, or 2915.11;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or of the United States substantially equivalent to any section listed in division (1) of this definition or a violation of R.C. § 2915.06 as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or of the United States, of which gambling is an element;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (1), (2), or (3) of this definition.

***GAME FLARE.*** The board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information for the game:

(1) The name of the game;

(2) The manufacturer's name or distinctive logo;

(3) The form number;

(4) The ticket count;

(5) The prize structure, including the number of winning instant bingo tickets by denomination and the respective winning symbol or number combinations for the winning instant bingo tickets;

(6) The cost per play;

(7) The serial number of the game.

***GAME OF CHANCE.*** Poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

***GAME OF CHANCE CONDUCTED FOR PROFIT.*** Any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

***GROSS ANNUAL REVENUES.*** The annual gross receipts derived from the conduct of bingo described in division (1) of the definition of "bingo" in this section plus the annual net profit derived from the conduct of bingo described in division (2) of the definition of "bingo" in this section.

***GROSS PROFIT.*** Gross receipts minus the amount actually expended for the payment of prize awards.

***GROSS RECEIPTS.*** All money or assets, including admission fees, that a person receives from bingo without the deduction of any amounts for prizes paid out or for the expenses of conducting bingo. The term does not include any money directly taken in from the sale of food or beverages by a charitable organization conducting bingo, or by a bona fide auxiliary unit or society of a charitable organization conducting bingo, provided all of
the following apply:

(1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to conducting bingo.

(2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage.

(3) The food and beverages are sold at customary and reasonable prices.

***HISTORIC RAILROAD***. All or a portion of the tracks and right-of-way of a railroad that was owned and operated by a for profit common carrier in this state at any time prior to January 1, 1950.

***INSTANT BINGO.*** A form of bingo that shall use folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners, and may also include games in which some winners are determined by the random selection of one or more bingo numbers by the use of a seal card or bingo blower. In all "instant bingo" the prize amount and structure shall be predetermined. The term does not include any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations.

***INSTANT BINGO TICKET DISPENSER.*** A mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed and that has the following characteristics:

(1) It is activated upon the insertion of United States currency.

(2) It performs no gaming functions.

(3) It does not contain a video display monitor or generate noise.

(4) It is not capable of displaying any numbers, letters, symbols, or characters in winning or losing combinations.

(5) It does not simulate or display rolling or spinning reels.

(6) It is incapable of determining whether a dispensed bingo ticket or card is a winning or non-winning ticket or card and requires a winning ticket or card to be paid by a bingo game operator.

(7) It may provide accounting and security features to aid in accounting for the instant bingo tickets or cards it dispenses.

(8) It is not part of an electronic network and is not interactive.

***INTERNAL REVENUE CODE (IRC).*** The Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. §§ 1 et seq., as now or hereafter amended.

***MANUFACTURER.*** Any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale.

***MERCHANDISE PRIZE.*** Any item of value, but shall not include any of the following:

(1) Cash, gift cards, or any equivalent thereof;

(2) Plays on games of chance, state lottery tickets, bingo, or instant bingo;

(3) Firearms, tobacco, or alcoholic beverages; or

(4) A redeemable voucher that is redeemable for any of the items listed in division (1), (2), or (3) of this definition.

***NET PROFIT.*** Gross profit minus expenses.

***NET PROFIT FROM THE PROCEEDS OF THE SALE OF INSTANT BINGO.*** Gross profit minus the ordinary, necessary, and reasonable expense expended for the purchase of instant bingo supplies, and, in the case of instant bingo conducted by a veteran's, fraternal, or sporting organization, minus the payment by that organization of real property taxes and assessments levied on a premises on which instant bingo is conducted.

***PARTICIPANT.*** Any person who plays bingo.

***PERSON.*** Has the same meaning as in R.C. § 1.59 and includes any firm or any other legal entity, however organized.

***POOL NOT CONDUCTED FOR PROFIT.*** A scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants.

***PUNCH BOARD.*** A board containing a number of holes or receptacles of uniform size in which are placed, mechanically and randomly, serially numbered slips of paper that may be punched or drawn from the hole or receptacle when used in conjunction with instant bingo. A player may punch or draw the numbered slips of paper from the holes or receptacles and obtain the prize established for the game if the number drawn corresponds to a winning number or, if the punch board includes the use of a seal card, a potential winning number.

***RAFFLE.*** A form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle. The term does not include the drawing of a ticket stub or other detachable section of a ticket purchased to attend a professional sporting event if both of the following apply:

(1) The ticket stub or other detachable section is used to select the winner of a free prize given away at the professional sporting event; and

(2) The cost of the ticket is the same as the cost of a ticket to the professional sporting event on days when no free prize is given away.

***REDEEMABLE VOUCHER.*** Any ticket, token, coupon, receipt, or other noncash representation of value.

***RELIGIOUS ORGANIZATION.*** Any church, body of communicants, or group that is not organized or operated for profit and that gathers in common membership for regular worship and religious observances.

***REVOKE.*** To void permanently all rights and privileges of the holder of a license issued under R.C. § 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

***SCHEME OF CHANCE***.

(1) A slot machine unless authorized under R.C. Chapter 3772, lottery unless authorized under R.C. Chapter 3770, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. "Scheme of chance" includes the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize. Valuable consideration is deemed to be paid for a chance to win a prize in the following instances:

(a) Less than 50% of the goods or services sold by a scheme of chance operator in exchange for game entries are used or redeemed by participants at any one location;

(b) Less than 50% of participants who purchase goods or services at any one location do not accept, use, or redeem the goods or services sold or purportedly sold;

(c) More than 50% of prizes at any one location are revealed to participants through an electronic device simulating a game of chance or a "casino game" as defined in R.C. § 3772.01;

(d) The good or service sold by a scheme of chance operator in exchange for a game entry cannot be used or redeemed in the manner advertised;

(e) A participant pays more than fair market value for goods or services offered by a scheme of chance operator in order to receive one or more game entries;

(f) A participant may use the electronic device to purchase additional game entries;

(g) A participant may purchase additional game entries by using points or credits won as prizes while using the electronic device;

(h) A scheme of chance operator pays out in prize money more than 20% of the gross revenue received at one location; or

(i) A participant makes a purchase or exchange in order to obtain any good or service that may be used to facilitate play on the electronic device.

(2) As used in this division, "electronic device" means a mechanical, video, digital, or electronic machine or device that is capable of displaying information on a screen or other mechanism and that is owned, leased, or otherwise possessed by any person conducting a scheme of chance, or by that person's partners, affiliates, subsidiaries, or contractors.

***SEAL CARD.*** A form of instant bingo that uses instant bingo tickets in conjunction with a board or placard that contains one or more seals that, when removed or opened, reveal predesignated winning numbers, letters, or symbols.

***SECURITY PERSONNEL.*** Includes any person who either is a Sheriff, deputy sheriff, Marshal, deputy marshal, township constable, or member of an organized police department of a municipal corporation or has successfully completed a peace officer's training course pursuant to R.C. §§ 109.71 through 109.79 and who is hired to provide security for the premises on which bingo is conducted.

***SKILL-BASED AMUSEMENT MACHINE.***

(1) (a) A mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

1. The wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed $10;

2. Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than $10;

3. Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than $10 times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and

4. Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

(b) A card for the purchase of gasoline is a redeemable voucher for purposes of division (1) of this definition even if the skill-based amusement machine for the play of which the card is awarded is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine.

(2) A device shall not be considered a skill-based amusement machine and shall be considered a slot machine if it pays cash or one or more of the following apply:

(a) The ability of a player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of players playing the game;

(b) Any reward of redeemable vouchers is not based solely on the player achieving the object of the game or the player's score;

(c) The outcome of the game, or the value of the redeemable voucher or merchandise prize awarded for winning the game, can be controlled by a source other than any player playing the game;

(d) The success of any player is or may be determined by a chance event that cannot be altered by player actions;

(e) The ability of any player to succeed at the game is determined by game features not visible or known to the player;

(f) The ability of the player to succeed at the game is impacted by the exercise of a skill that no reasonable player could exercise.

(3) All of the following apply to any machine that is operated as described in division (1) of this definition:

(a) As used in this definition of "skill-based amusement machine", ***GAME*** and ***PLAY*** mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single game, play, contest, competition, or tournament may be awarded redeemable vouchers or merchandise prizes based on the results of play.

(b) Advance play for a single game, play, contest, competition, or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single non-contest, competition, or tournament play.

(c) To the extent that the machine is used in a contest, competition, or tournament, that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of redeemable vouchers or merchandise prizes that are stated prior to the start of the contest, competition, or tournament.

(4) For purposes of division (1) of this definition, the mere presence of a device, such as a pin-setting, ball-releasing, or scoring mechanism, that does not contribute to or affect the outcome of the play of the game does not make the device a skill-based amusement machine.

***SLOT MACHINE.***

(1) Either of the following:

(a) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain;

(b) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.

(2) The term does not include a skill-based amusement machine or an instant bingo ticket dispenser.

***SPORTING ORGANIZATION.*** A hunting, fishing, or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including but not limited to the League of Ohio Sportsmen, and that has been in continuous existence in this state for a period of three years.

***SUSPEND.*** To interrupt temporarily all rights and privileges of the holder of a license issued under R.C. § 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

***SWEEPSTAKES.*** Any game, contest, advertising scheme or plan, or other promotion where consideration is not required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance. "Sweepstakes" does not include bingo as authorized under R.C. Chapter 2915, pari-mutuel wagering as authorized by R.C. Chapter 3769, lotteries conducted by the State Lottery Commission as authorized by R.C. Chapter 3770, and casino gaming as authorized by R.C. Chapter 3772.

***SWEEPSTAKES TERMINAL DEVICE.***

(1) A mechanical, video, digital, or electronic machine or device that is owned, leased, or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism. A device is a sweepstakes terminal device if any of the following apply:

(a) The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.

(b) The device utilizes software such that the simulated game influences or determines the winning of or value of the prize.

(c) The device selects prizes from a predetermined finite pool of entries.

(d) The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.

(e) The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.

(f) The device utilizes software to create a game result.

(g) The device reveals the prize incrementally, even though the device does not influence the awarding of the prize or the value of any prize awarded.

(h) The device determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) As used in this definition and in § 134.02:

***ENTER.*** The act by which a person becomes eligible to receive any prize offered in a sweepstakes.

***ENTRY.*** One event from the initial activation of the sweepstakes terminal device until all the sweepstakes prize results from that activation are revealed.

***PRIZE.*** Any gift, award, gratuity, good, service, credit, reward, or any other thing of value that may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

***SWEEPSTAKES TERMINAL DEVICE FACILITY.*** Any location in this state where a sweepstakes terminal device is provided to a sweepstakes participant, except as provided in § 134.02(G) and R.C. § 2915.02(G).

***VETERAN'S ORGANIZATION.*** Any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit is incorporated as a nonprofit corporation and either has received a letter from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association. As used in this definition, ***NATIONAL VETERAN'S ASSOCIATION*** means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States Congress or has a national dues-paying membership of at least 5,000 persons.

***VOLUNTEER FIREFIGHTER'S ORGANIZATION.*** Any organization of volunteer firefighters, as defined in R.C. § 146.01, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company and that is recognized or ratified by a county, municipal corporation, or township.

***VOLUNTEER RESCUE SERVICE ORGANIZATION.*** Any organization of volunteers organized to function as an emergency medical service organization, as defined in R.C. § 4765.01.

***YOUTH ATHLETIC ORGANIZATION.*** Any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 21 years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

***YOUTH ATHLETIC PARK ORGANIZATION.*** Any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates, and maintains playing fields that satisfy both of the following:

(a) The playing fields are used at least 100 days per year for athletic activities by one or more organizations, not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 18 years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

(b) The playing fields are not used for any profit-making activity at any time during the year.

(2) It uses the proceeds of bingo it conducts exclusively for the operation, maintenance, and improvement of its playing fields of the type described in division (1) of this definition.
(R.C. § 2915.01)

## § 134.02 PROHIBITIONS AGAINST GAMBLING; EXCEPTION.

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

(1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking.

(2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance.

(3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance.

(4) Engage in betting or in playing any scheme or game of chance as a substantial source of income or livelihood.

(5) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility and either:

(a) Give to another person any item described in R.C. § 2915.01(VV)(1), (VV)(2), (VV)(3), or (VV)(4) as a prize for playing or participating in a sweepstakes; or

(b) Give to another person any merchandise prize, or a redeemable voucher for a merchandise prize, the wholesale value of which is in excess of $10 and which is awarded as a single entry for playing or participating in a sweepstakes. Redeemable vouchers shall not be redeemable for a merchandise prize that has a wholesale value of more than $10.

(6) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility without first obtaining a current annual "certificate of registration" from the Attorney General as required by R.C. § 2915.02(F).

(7) With purpose to violate division (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), or (A)(6) of this section, acquire, possess, control, or operate any gambling device.

(B) For purposes of division (A)(1) of this section, a person facilitates bookmaking if the person in any way knowingly aids an illegal bookmaking operation, including, without limitation, placing a bet with a person engaged in or facilitating illegal bookmaking. For purposes of division (A)(2) of this section, a person facilitates a game of chance conducted for profit or a scheme of chance if the person in any way knowingly aids in the conduct or operation of any such game or scheme, including, without limitation, playing any such game or scheme.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(D) This section does not apply to any of the following:

(1) Games of chance, if all of the following apply:

(a) The games of chance are not craps for money or roulette for money.

(b) The games of chance are conducted by a charitable organization that is and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3).

(c) The games of chance are conducted at festivals of the charitable organization that are conducted not more than a total of five days a calendar year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance. A charitable organization shall not lease premises from a veteran's or fraternal organization to conduct a festival described in this division, if the veteran's or fraternal organization already has leased the premises 12 times during the preceding year to charitable organizations for that purpose. If a charitable organization leases premises from a veteran's or fraternal organization to conduct a festival described in this division, the charitable organization shall not pay a rental rate for the premises per day of the festival that exceeds the rental rate per bingo session that a charitable organization may pay under R.C. § 2915.09(B)(1) or a substantially equivalent municipal ordinance when it leases premises from another charitable organization to conduct bingo games.

(d) All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, given, donated or otherwise transferred to any organization that is described in IRC § 509(a)(1), (a)(2), or (a)(3) and is either a governmental unit or an organization that is tax exempt under IRC § 501(a) and described in IRC § 501(c)(3).

(e) The games of chance are not conducted during or within ten hours of a bingo game conducted for amusement purposes only pursuant to R.C. § 2915.12 or a substantially equivalent municipal ordinance. No person shall receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance.

(2) Any tag fishing tournament, as defined in R.C. § 1531.01, operated under a permit issued under R.C. § 1533.92.

(3) Bingo conducted by a charitable organization that holds a license issued under R.C. § 2915.08.

(E) Division (D) of this section shall not be construed to authorize the sale, lease, or other temporary or permanent transfer of the right to conduct games of chance, as granted by that division, by any charitable organization that is granted that right.

(F) Any person desiring to conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility shall first register with the Office of the Attorney General and obtain an annual certificate of registration by providing a filing fee of $200 and all information as required by rule adopted under R.C. § 2915.02(H). Not later than the tenth day of each month, each sweepstakes terminal device operator shall file a sweepstakes terminal device monthly report with the Attorney General and provide a filing fee of $50 and all information required by rule adopted under R.C. § 2915.02(H). All information provided to the Attorney General under this division shall be available to law enforcement upon request.

(G) (1) A person may apply to the Attorney General, on a form prescribed by the Attorney General, for a certificate of compliance that the person is not operating a sweepstakes terminal device facility. The form shall require the person to include the address of the business location where sweepstakes terminal devices will be used and to make the following certifications:

(a) That the person will not use more than two sweepstakes terminal devices at the business location;

(b) That the retail value of sweepstakes prizes to be awarded at the business location using sweepstakes terminal devices during a reporting period will be less than 3% of the gross revenue received at the business location during the reporting period;

(c) That no other form of gaming except lottery ticket sales as authorized under R.C. Chapter 3770 will be conducted at the business location or in an adjoining area of the business location;

(d) That any sweepstakes terminal device at the business location will not allow any deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of similar payment to be used, directly or indirectly, to participate in a sweepstakes;

(e) That notification of any prize will not take place on the same day as a participant's sweepstakes entry; and

(f) That the person consents to provide any other information to the Attorney General as required by rule adopted under R.C. § 2915.02(H).

(2) The filing fee for a certificate of compliance is $250. The Attorney General may charge up to an additional $250 for reasonable expenses resulting from any investigation related to an application for a certificate of compliance.

(3) A certificate of compliance is effective for one year. The certificate holder may reapply for a certificate of compliance. A person issued a certificate of compliance shall file semiannual reports with the Attorney General stating the number of sweepstakes terminal devices at the business location and that the retail value of prizes awarded at the business location using sweepstakes terminal devices is less than 3% of the gross revenue received at the business location.

(H) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of any gambling offense, gambling is a felony to be prosecuted under appropriate

state law. Notwithstanding this division, failing to file a sweepstakes terminal device monthly report as required by division (F) of this section or the semiannual report required by division (G) of this section is a misdemeanor of the first degree.
(R.C. § 2915.02(A) - (G), (K))

## § 134.03 OPERATING A GAMBLING HOUSE.

(A) No person, being the owner or lessee, or having custody, control, or supervision of premises, shall:

(1) Use or occupy the premises for gambling in violation of R.C. § 2915.02 or a substantially equivalent municipal ordinance.

(2) Recklessly permit the premises to be used or occupied for gambling in violation of R.C. § 2915.02 or a substantially equivalent municipal ordinance.

(B) Whoever violates division (A) of this section is guilty of operating a gambling house, a misdemeanor of the first degree. If the offender previously has been convicted of a gambling offense, operating a gambling house is a felony to be prosecuted under appropriate state law.

(C) Premises used or occupied in violation of this section constitute a nuisance subject to abatement under R.C. Chapter 3767.
(R.C. § 2915.03)

## § 134.04 PUBLIC GAMING.

(A) No person, while at a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall make a bet or play any game of chance or scheme of chance.

(B) No person, being the owner or lessee, or having custody, control, or supervision of a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall recklessly permit those premises to be used or occupied in violation of division (A) of this section.

(C) Divisions (A) and (B) of this section do not prohibit conduct in connection with gambling expressly permitted by law.

(D) Whoever violates this section is guilty of public gaming. Except as otherwise provided in this division, public gaming is a minor misdemeanor. If the offender previously has been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree.

(E) Premises used or occupied in violation of division (B) of this section constitute a nuisance subject to abatement under R.C. Chapter 3767.
(R.C. § 2915.04)

## § 134.05 CHEATING.

(A) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall engage in conduct designed to corrupt the outcome of any of the following:

(1) The subject of a bet.

(2) A contest of knowledge, skill, or endurance that is not an athletic or sporting event.

(3) A scheme or game of chance.

(4) Bingo.

(B) No person shall knowingly do any of the following:

(1) Offer, give, solicit, or accept anything of value to corrupt the outcome of an athletic or sporting event.

(2) Engage in conduct designed to corrupt the outcome of an athletic or sporting event.

(C) (1) Whoever violates division (A) of this section is guilty of cheating. Except as otherwise provided in this division, cheating is a misdemeanor of the first degree. If the potential gain from the cheating is $1,000 or more or if the offender previously has been convicted of any gambling offense or of any theft offense as defined in R.C. § 2913.01, cheating is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of corrupting sports. Corrupting sports is a felony to be prosecuted under appropriate state law.
(R.C. § 2915.05)

## § 134.06 REGULATIONS CONCERNING OPERATION OF LICENSED BINGO GAME.

(A) No charitable organization that conducts bingo shall fail to do any of the following:

(1) Own all of the equipment used to conduct bingo or lease that equipment from a charitable organization that is licensed to conduct bingo, or from the landlord of a premises where bingo is conducted, for a rental rate that is not more than is customary and reasonable for that equipment;

(2) Except as otherwise provided in division (A)(3) of this section, use all of the gross receipts from bingo for paying prizes, for reimbursement of expenses for or for renting premises in which to conduct bingo, for reimbursement of expenses for or for purchasing or leasing bingo supplies used in conducting bingo, for reimbursement of expenses for or for hiring security personnel, for reimbursement of expenses for or for advertising bingo, or for reimbursement of other expenses or for other expenses listed in the definition for "expenses" in R.C. § 2915.01, provided that the amount of the receipts so spent is not more than is customary and reasonable for a similar purchase, lease, hiring, advertising, or expense. If the building in which bingo is conducted is owned by the charitable organization conducting bingo and the bingo conducted includes a form of

bingo described in division (1) of the definition of "bingo" in R.C. § 2915.01, the charitable organization may deduct from the total amount of the gross receipts from each session a sum equal to the lesser of $600 or 45% of the gross receipts from the bingo described in that division as consideration for the use of the premises;

(3) Use, or give, donate, or otherwise transfer, all of the net profit derived from bingo, other than instant bingo, for a charitable purpose listed in its license application and described in the definition for "charitable purpose" in R.C. § 2915.01, or distribute all of the net profit from the proceeds of the sale of instant bingo as stated in its license application and in accordance with R.C. § 2915.101.

(B) No charitable organization that conducts a bingo game described in division (1) of the definition of "bingo" in R.C. § 2915.01 shall fail to do any of the following:

(1) Conduct the bingo game on premises that are owned by the charitable organization, on premises that are owned by another charitable organization and leased from that charitable organization for a rental rate not in excess of the lesser of $650 per bingo session or 45% of the gross receipts of the bingo session, on premises that are leased from a person other than a charitable organization for a rental rate that is not more than is customary and reasonable for premises that are similar in location, size, and quality but not in excess of $450 per bingo session, or on premises that are owned by a person other than a charitable organization, that are leased from that person by another charitable organization, and that are subleased from that other charitable organization by the charitable organization for a rental rate not in excess of $450 per bingo session. No charitable organization is required to pay property taxes or assessments on premises that the charitable organization leases from another person to conduct bingo sessions. If the charitable organization leases from a person other than a charitable organization the premises on which it conducts bingo sessions, the lessor of the premises shall provide only the premises to the organization and shall not provide the organization with bingo game operators, security personnel, concessions or concession operators, bingo supplies, or any other type of service. A charitable organization shall not lease or sublease premises that it owns or leases to more than three other charitable organizations per calendar week for conducting bingo sessions on the premises. A person that is not a charitable organization shall not lease premises that it owns, leases, or otherwise is empowered to lease to more than three charitable organizations per calendar week for conducting bingo sessions on the premises. In no case shall more than nine bingo sessions be conducted on any premises in any calendar week;

(2) Display its license conspicuously at the premises where the bingo session is conducted;

(3) Conduct the bingo session in accordance with division (1) of the definition of "bingo" in R.C. § 2915.01.

(C) No charitable organization that conducts a bingo game described in division (1) of the definition of "bingo" in R.C. § 2915.01 shall do any of the following:

(1) Pay any compensation to a bingo game operator for operating a bingo session that is conducted by the charitable organization or for preparing, selling, or serving food or beverages at the site of the bingo session, permit any auxiliary unit or society of the charitable organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at a bingo session conducted by the charitable organization, or permit any auxiliary unit or society of the charitable organization to prepare, sell, or serve food or beverages at a bingo session conducted by the charitable organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(2) Pay consulting fees to any person for any services performed in relation to the bingo session;

(3) Pay concession fees to any person who provides refreshments to the participants in the bingo session;

(4) Except as otherwise provided in division (C)(4) of this section, conduct more than three bingo sessions in any seven-day period. A volunteer firefighter's organization or a volunteer rescue service organization that conducts not more than five bingo sessions in a calendar year may conduct more than three bingo sessions in a seven-day period after notifying the Attorney General when it will conduct the sessions;

(5) Pay out more than $6,000 in prizes for bingo games described in R.C. § 2915.01(S)(1) during any bingo session that is conducted by the charitable organization. "Prizes" does not include awards from the conduct of instant bingo.

(6) Conduct a bingo session at any time during the eight-hour period between 2:00 a.m. and 10:00 a.m., at any time during, or within ten hours of, a bingo game conducted for amusement only pursuant to R.C. § 2915.12 or any substantially equivalent municipal ordinance, at any premises not specified on its license, or on any day of the week or during any time period not specified on its license. This division does not prohibit the sale of instant bingo tickets beginning at 9:00 a.m. for a bingo session that begins at 10:00 a.m. If circumstances make it impractical for the charitable organization to conduct a bingo session at the premises, or on the day of the week or at the time specified on its license or if a charitable organization wants to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license, the charitable organization may apply in writing to the Attorney General for an amended license pursuant to R.C. § 2915.08(F). A charitable organization may apply twice in each calendar year for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license. If the amended license is granted, the organization may conduct bingo sessions at the premises, on the day of the week, and at the time specified on its amended license;

(7) Permit any person whom the charitable organization knows, or should have known, is under the age of 18 to work as a bingo game operator;

(8) Permit any person whom the charitable organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator;

(9) Permit the lessor of the premises on which the bingo session is conducted, if the lessor is not a charitable organization, to provide the charitable organization with bingo game operators, security personnel, concessions, bingo supplies, or any other type of service;

(10) Purchase or lease bingo supplies from any person except a distributor issued a license under R.C. § 2915.081;

(11) (a) Use or permit the use of electronic bingo aids except under the following circumstances:

1. For any single participant, not more than 90 bingo faces can be played using an electronic bingo aid or aids.

2. The charitable organization shall provide a participant using an electronic bingo aid with corresponding paper bingo cards or sheets.

3. The total price of bingo faces played with an electronic bingo aid shall be equal to the total price of the same number of bingo faces played with a paper bingo card or sheet sold at the same bingo session but without an electronic bingo aid.

4. An electronic bingo aid cannot be part of an electronic network other than a network that includes only bingo aids and devices that are located on the premises at which the bingo is being conducted or be interactive with any device not located on the premises at which the bingo is being conducted.

5. An electronic bingo aid cannot be used to participate in bingo that is conducted at a location other than the location at which the bingo session is conducted and at which the electronic bingo aid is used.

6. An electronic bingo aid cannot be used to provide for the input of numbers and letters announced by a bingo caller other than the bingo caller who physically calls the numbers and letters at the location at which the bingo session is conducted and at which the electronic bingo aid is used.

(b) The Attorney General may adopt rules in accordance with R.C. Chapter 119 that govern the use of electronic bingo aids. The rules may include a requirement that an electronic bingo aid be capable of being audited by the Attorney General to verify the number of bingo cards or sheets played during each bingo session.

(12) Permit any person the charitable organization knows, or should have known, to be under 18 years of age to play bingo described in division (1) of the definition of "bingo" in R.C. § 2915.01.

(D) (1) Except as otherwise provided in division (D)(3) of this section, no charitable organization shall provide to a bingo game operator, and no bingo game operator shall receive or accept, any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo during a bingo session.

(2) Except as otherwise provided in division (D)(3) of this section, no charitable organization shall provide to a bingo game operator any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly regardless of the source, for conducting instant bingo other than at a bingo session at the site of instant bingo other than at a bingo session.

(3) Nothing in this division (D) of this section prohibits an employee of a fraternal organization, veteran's organization, or sporting organization from selling instant bingo tickets or cards to the organization's members or invited guests, as long as no portion of the employee's compensation is paid from any receipts of bingo.

(E) Notwithstanding division (B)(1) of this section, a charitable organization that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to another charitable organization or other charitable organizations for the conducting of bingo sessions so that more than two bingo sessions are conducted per calendar week on the premises, and a person that is not a charitable organization and that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to charitable

organizations for the conducting of more than two bingo sessions per calendar week on the premises, may continue to lease the premises to those charitable organizations, provided that no more than four sessions are conducted per calendar week, that the lessor organization or person has notified the Attorney General in writing of the organizations that will conduct the sessions and the days of the week and the times of the day on which the sessions will be conducted, that the initial lease entered into with each organization that will conduct the sessions was filed with the Attorney General prior to December 6, 1977, and that each organization that will conduct the sessions was issued a license to conduct bingo games by the Attorney General prior to December 6, 1977.

(F) This section does not prohibit a bingo licensed charitable organization or a game operator from giving any person an instant bingo ticket as a prize.

(G) Whoever violates division (A)(2) of this section is guilty of illegally conducting a bingo game, a felony to be prosecuted under appropriate state law. Except as otherwise provided in this division, whoever violates division (A)(1), (A)(3), (B)(1), (B)(2), (B)(3), (C)(1) through (C)(11), or (D) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of a violation of division (A)(1), (A)(3), (B)(1), (B)(2), (B)(3), (C)(1) through (C)(11), or (D) of this section, a violation of division (A)(1), (A)(3), (B)(1), (B)(2), (B)(3), (C)(1) through (C)(11), or (D) of this section is a misdemeanor of the first degree. Whoever violates division (C)(12) of this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (C)(12) of this section, a violation of division (C)(12) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2915.09)

## § 134.07 RECORDS TO BE KEPT.

(A) No charitable organization that conducts bingo or a game of chance pursuant to R.C. § 2915.02(D), or any substantially equivalent municipal ordinance, shall fail to maintain the following records for at least three years from the date on which the bingo or game of chance is conducted:

(1) An itemized list of the gross receipts of each bingo session, each game of instant bingo by serial number, each raffle, each punch board game, and each game of chance, and an itemized list of the gross profits of each game of instant bingo by serial number;

(2) An itemized list of all expenses, other than prizes, that are incurred in conducting bingo or instant bingo, the name of each person to whom the expenses are paid, and a receipt for all of the expenses;

(3) A list of all prizes awarded during each bingo session, each raffle, each punch board game, and each game of chance conducted by the charitable organization, the total prizes awarded from each game of instant bingo by serial number, and the name, address, and social security number of all persons who are winners of prizes of $600 or more in value;

(4) An itemized list of the recipients of the net profit of bingo or game of chance, including the name and address of each recipient to whom the money is distributed, and if the organization uses the net profit of bingo, or the money or assets received from a game of chance, for any charitable or other purpose set forth in R.C. § 2915.01(V), R.C. § 2915.02(D), or R.C. § 2915.101, a list of each purpose and an itemized list of each expenditure for each purpose;

(5) The number of persons who participate in any bingo session or game of chance that is conducted by the charitable organization;

(6) A list of receipts from the sale of food and beverages by the charitable organization or one of its auxiliary units or societies, if the receipts were excluded from "gross receipts" under R.C. § 2915.01(T);

(7) An itemized list of all expenses incurred at each bingo session, each raffle, each punch board game, or each game of instant bingo conducted by the charitable organization in the sale of food and beverages by the charitable organization or by an auxiliary unit or society of the charitable organization, the name of each person to whom the expenses are paid, and a receipt for all of the expenses.

(B) A charitable organization shall keep the records that it is required to maintain pursuant to division (A) of this section at its principal place of business in this state or at its headquarters in this state and shall notify the Attorney General of the location at which those records are kept.

(C) The gross profit from each bingo session or game described in division (1) or (2) of the definition of "bingo" in R.C. § 2915.01 shall be deposited into a checking account devoted exclusively to the bingo session or game. Payments for allowable expenses incurred in conducting the bingo session or game and payments to recipients of some or all of the net profit of the bingo session or game shall be made only by checks or electronic fund transfers drawn on the bingo session or game account.

(D) Each charitable organization shall conduct and record an inventory of all of its bingo supplies as of the first day of November of each year.

(E) The Attorney General may adopt rules in accordance with R.C. Chapter 119 that establish standards of accounting, record keeping, and reporting to ensure that gross receipts from bingo or games of chance are properly accounted for.

(F) A distributor shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing to another person bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name of the manufacturer from which the distributor purchased the bingo supplies and the date of the purchase;

(2) The name and address of the charitable organization or other distributor to which the bingo supplies were sold or otherwise provided;

(3) A description that clearly identifies the bingo supplies;

(4) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each charitable organization.

(G) A manufacturer shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name and address of the distributor to whom the bingo supplies were sold or otherwise provided;

(2) A description that clearly identifies the bingo supplies, including serial numbers;

(3) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each distributor.

(H) (1) The Attorney General or any law enforcement agency may do all of the following:

(a) Investigate any charitable organization or any officer, agent, trustee, member, or employee of the organization;

(b) Examine the accounts and records of the organization;

(c) Conduct inspections, audits, and observations of bingo or games of chance;

(d) Conduct inspections of the premises where bingo or games of chance are conducted;

(e) Take any other necessary and reasonable action to determine if a violation of any provision of this chapter or R.C. Chapter 2915 has occurred and to determine whether R.C. § 2915.11, or any substantially equivalent municipal ordinance, has been complied with.

(2) If any law enforcement agency has reasonable grounds to believe that a charitable organization or an officer, agent, trustee, member, or employee of the organization has violated any provision of this chapter or R.C. Chapter 2915, the law enforcement agency may proceed by action in the proper court to enforce this chapter or R.C. Chapter 2915, provided that the law enforcement agency shall give written notice to the Attorney General when commencing an action as described in this division.

(I) No person shall destroy, alter, conceal, withhold, or deny access to any accounts or records of a charitable organization that have been requested for examination, or obstruct, impede, or interfere with any inspection, audit, or observation of bingo or a game of chance or premises where bingo or a game of chance is conducted, or refuse to comply with any reasonable request of, or obstruct, impede, or interfere with any other reasonable action undertaken by, the Attorney General or a law enforcement agency pursuant to division (H) of this section.

(J) Whoever violates division (A) or (I) of this section is guilty of a misdemeanor of the first degree. (R.C. § 2915.10)

## § 134.08 REQUIREMENTS FOR BINGO GAME OPERATORS.

(A) No person shall be a bingo game operator unless the person is 18 years of age or older.

(B) No person who has been convicted of a felony or a gambling offense in any jurisdiction shall be a bingo game operator.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the third degree. Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 2915.11)

## § 134.09 BINGO GAMES FOR AMUSEMENT ONLY.

(A) Sections 134.06 through 134.13 do not apply to bingo games that are conducted for the purpose of amusement only. A bingo game is conducted for the purpose of amusement only if it complies with all of the requirements specified in either division (A)(1) or (A)(2) of this section.

(1) (a) The participants do not pay any money or any other thing of value, including an admission fee or any fee, for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo, for the privilege of participating in the bingo game, or to defray any costs of the game, or pay tips or make donations during or immediately before or after the bingo game.

(b) All prizes awarded during the course of the game are non-monetary, and in the form of merchandise, goods, or entitlement to goods or services only, and the total value of all prizes awarded during the game is less than $100.

(c) No commission, wages, salary, reward, tip, donation, gratuity, or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

(d) The bingo game is not conducted either during or within ten hours of any of the following:

1. A bingo session during which a charitable bingo game is conducted pursuant to R.C. §§ 2915.07 through 2915.11 or any substantially equivalent municipal ordinance.

2. A scheme or game of chance, or bingo described in R.C. § 2915.01(O)(2).

(e) The number of players participating in the bingo game does not exceed 50.

(2) (a) The participants do not pay money or any other thing of value as an admission fee, and no participant is charged more than $0.25 to purchase a bingo card or sheet, objects to cover the spaces, or other devices used in playing bingo.

(b) The total amount of money paid by all of the participants for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo does not exceed $100.

(c) All of the money paid for bingo cards or sheets, objects to cover spaces, or other devices used in playing bingo is used only to pay winners monetary and nonmonetary prizes and to provide refreshments.

(d) The total value of all prizes awarded during the game does not exceed $100.

(e) No commission, wages, salary, reward, tip, donation, gratuity, or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

(f) The bingo game is not conducted during or within ten hours of either of the following:

1. A bingo session during which a charitable bingo game is conducted pursuant to R.C. §§ 2915.07 through 2915.11 or any substantially equivalent municipal ordinance;

2. A scheme of chance or a game of chance, or bingo described in R.C. § 2915.01(O)(2).

(g) All of the participants reside at the premises where the bingo game is conducted.

(h) The bingo games are conducted on different days of the week and not more than twice in a calendar week.

(B) The Attorney General or any local law enforcement agency may investigate the conduct of a bingo game that purportedly is conducted for purposes of amusement only if there is reason to believe that the purported amusement bingo game does not comply with the requirements of either division (A)(1) or (A)(2) of this section. A local law enforcement agency may proceed by action in the proper court to enforce this section if the local law enforcement agency gives written notice to the Attorney General when commencing the action. (R.C. § 2915.12)

## § 134.10 PROHIBITIONS WHERE INSTANT BINGO GAME IS CONDUCTED.

(A) No charitable organization that conducts instant bingo shall do any of the following:

(1) Fail to comply with the requirements of R.C. § 2915.09(A)(1), (A)(2), and (A)(3), or any substantially equivalent municipal ordinance;

(2) Conduct instant bingo unless either of the following applies:

(a) That organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under IRC § 501(a), is described in IRC § 501(c)(3), is a charitable organization as defined in R.C. § 2915.01, is in good standing in the state pursuant to R.C. § 2915.08, and is in compliance with R.C. Chapter 1716;

(b) That organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under IRC § 501(a), is described in IRC § 501(c)(7), (c)(8), (c)(10), or (c)(19) or is a veteran's organization described in IRC § 501(c)(4), and conducts instant bingo under R.C. § 2915.13.

(3) Conduct instant bingo on any day, at any time, or at any premises not specified on the organization's license issued pursuant to R.C. § 2915.08;

(4) Permit any person whom the organization knows or should have known has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator in the conduct of instant bingo;

(5) Purchase or lease supplies used to conduct instant bingo or punch board games from any person except a distributor licensed under R.C. § 2915.081;

(6) Sell or provide any instant bingo ticket or card for a price different from the price printed on it by the manufacturer on either the instant bingo ticket or card or on the game flare;

(7) Sell an instant bingo ticket or card to a person under 18 years of age;

(8) Fail to keep unsold instant bingo tickets or cards for less than three years;

(9) Pay any compensation to a bingo game operator for conducting instant bingo that is conducted by the organization or for preparing, selling, or serving food or beverages at the site of the instant bingo game, permit any auxiliary unit or society of the organization to pay compensation to any bingo game operator who prepares, sells, or serves food or beverages at an instant bingo game conducted by the organization, or permit any auxiliary unit or society of the organization to prepare, sell, or serve food or beverages at an instant bingo game conducted by the organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell, or serve the food or beverages;

(10) Pay fees to any person for any services performed in relation to an instant bingo game, except as provided in R.C. § 2915.093(D);

(11) Pay fees to any person who provides refreshments to the participants in an instant bingo game;

(12) (a) Allow instant bingo tickets or cards to be sold to bingo game operators at a premises at which the organization sells instant bingo tickets or cards or to be sold to employees of a D permit holder who are working at a premises at which instant bingo tickets or cards are sold;

(b) Division (A)(12)(a) of this section does not prohibit a licensed charitable organization or a bingo game operator from giving any person an instant bingo ticket as a prize in place of a cash prize won by a participant in an instant bingo game. In no case shall an instant bingo ticket or card be sold or provided for a price different from the price printed on it by the manufacturer on either the instant bingo ticket or card or on the game flare.

(13) Fail to display its bingo license, and the serial numbers of the deal of instant bingo tickets or cards to be sold, conspicuously at each premises at which it sells instant bingo tickets or cards;

(14) Possess a deal of instant bingo tickets or cards that was not purchased from a distributor licensed under R.C. § 2915.081 as reflected on an invoice issued by the distributor that contains all of the information required by R.C. § 2915.10(E);

(15) Fail, once it opens a deal of instant bingo tickets or cards, to continue to sell the tickets or cards in that deal until the tickets or cards with the top two highest tiers of prizes in that deal are sold;

(16) Possess bingo supplies that were not obtained in accordance with R.C. Chapter 2915.

(B) A charitable organization may purchase, lease, or use instant bingo ticket dispensers to sell instant bingo tickets or cards.

(C) Pursuant to R.C. § 2915.091(C), the Attorney General may adopt rules in accordance with R.C. Chapter 119 that govern the conduct of instant bingo by charitable organizations.

(D) Whoever violates division (A) of this section or a rule adopted under division (C) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (A) of this section or of such a rule adopted under division (C) of this section, illegal instant bingo conduct is a felony to be prosecuted under appropriate state law.
(R.C. § 2915.091)

## § 134.11 RAFFLE DRAWINGS.

(A) (1) Subject to division (A)(2) of this section, a charitable organization, a public school, a chartered nonpublic school, a community school, or a veteran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under IRC § 501(a) and is described in IRC §§ 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) may conduct a raffle to raise money for the organization or school and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.

(2) If a charitable organization that is described in division (A)(1) of this section, but that is not also described in IRC § 501(c)(3), conducts a raffle, the charitable organization shall distribute at least 50% of the net profit from the raffle to a charitable purpose described in R.C. § 2915.01(V) or to a department or agency of the federal government, the state, or any political subdivision.

(B) A chamber of commerce may conduct not more than one raffle per year to raise money for the chamber of commerce.

(C) Except as provided in division (A) or (B) of this section, no person shall conduct a raffle drawing that is for profit or a raffle drawing that is not for profit.

(D) Whoever violates division (C) of this section is guilty of illegal conduct of a raffle. Except as otherwise provided in this division, illegal conduct of a raffle is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (C) of this section, illegal conduct of a raffle is a felony to be prosecuted under appropriate state law.
(R.C. § 2915.092)

## § 134.12 INSTANT BINGO OTHER THAN AT BINGO SESSIONS.

(A) As used in this section, ***RETAIL INCOME FROM ALL COMMERCIAL ACTIVITY*** means the income that a person receives from the provision of goods, services, or activities that are provided at the location where

instant bingo other than at a bingo session is conducted, including the sale of instant bingo tickets. A religious organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), at not more than one location at which it conducts its charitable programs, may include donations from its members and guests as retail income.

(B) (1) If a charitable instant bingo organization conducts instant bingo other than at a bingo session, the charitable instant bingo organization shall enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted to allow the owner or lessor to assist in the conduct of instant bingo other than at a bingo session, identify each location where the instant bingo other than at a bingo session is being conducted, and identify the owner or lessor of each location.

(2) A charitable instant bingo organization that conducts instant bingo other than at a bingo session is not required to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted provided that the owner or lessor is not assisting in the conduct of the instant bingo other than at a bingo session and provided that the conduct of the instant bingo other than at a bingo session at that location is not more than five days per calendar year and not more than ten hours per day.

(C) Except as provided in division (F) of this section, no charitable instant bingo organization shall conduct instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets.

(D) (1) The owner or lessor of a location that enters into a contract pursuant to division (B) of this section shall pay the full gross profit to the charitable instant bingo organization, in return for the deal of instant bingo tickets. The owner or lessor may retain the money that the owner or lessor receives for selling the instant bingo tickets, provided, however, that after the deal has been sold, the owner or lessor shall pay to the charitable instant bingo organization the value of any unredeemed instant bingo prizes remaining in the deal of instant bingo tickets.

(2) The charitable instant bingo organization shall pay 6% of the total gross receipts of any deal of instant bingo tickets for the purpose of reimbursing the owner or lessor for expenses described in this division.

(3) As used in this division, ***EXPENSES*** means those items provided for in R.C. § 2915.01(GG)(4), (GG)(5), (GG)(6), (GG)(7), (GG)(8), (GG)(12), and (GG)(13) and that percentage of the owner's or lessor's rent for the location where instant bingo is conducted. Expenses, in the aggregate, shall not exceed 6% of the total gross receipts of any deal of instant bingo tickets.

(4) As used in this division, ***FULL GROSS PROFIT*** means the amount by which the total receipts of all instant bingo tickets, if the deal has been sold in full, exceeds the amount that would be paid out if all prizes were redeemed.

(E) A charitable instant bingo organization shall provide the Attorney General with all of the following information:

(1) That the charitable instant bingo organization has terminated a contract entered into pursuant to division (B) of this section with an owner or lessor of a location;

(2) That the charitable instant bingo organization has entered into a written contract pursuant to division (B) of this section with a new owner or lessor of a location;

(3) That the charitable instant bingo organization is aware of conduct by the owner or lessor of a location at which instant bingo is conducted that is in violation of R.C. Chapter 2915.

(F) Division (C) of this section does not apply to a volunteer firefighter's organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), that conducts instant bingo other than at a bingo session on the premises where the organization conducts firefighter training, that has conducted instant bingo continuously for at least five years prior to July 1, 2003, and that, during each of those five years, had gross receipts of at least $1,500,000.
(R.C. § 2915.093)

(G) (1) A veteran's organization, a fraternal organization, or a sporting organization authorized to conduct a bingo session pursuant to R.C. Chapter 2915 may conduct instant bingo other than at a bingo session if all of the following apply:

(a) The veteran's organization, fraternal organization, or sporting organization limits the sale of instant bingo to 12 hours during any day, provided that the sale does not begin earlier than 10:00 a.m. and ends not later than 2:00 a.m.

(b) The veteran's organization, fraternal organization, or sporting organization limits the sale of instant bingo to its own premises and to its own members and invited guests.

(c) The veteran's organization, fraternal organization, or sporting organization is raising money for an organization that is described in IRC § 509(a)(1), (a)(2), or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), and that is in good standing in this state and executes a written contract with that organization as required in division (G)(2) of this section.

(2) If a veteran's organization, fraternal organization, or sporting organization authorized to conduct instant bingo pursuant to division (G)(1) of this section is raising money for another organization that is described in IRC § 509(a)(1), (a)(2), or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c), and that is in good standing in this state, the veteran's organization, fraternal organization, or sporting organization shall execute a written contract with the organization that is described in IRC § 509(a)(1), (a)(2), or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c), and that is in good standing in this state in order to conduct instant bingo. That contract shall include a statement of the percentage of the net proceeds that the veteran's, fraternal, or sporting organization will be distributing to the organization that is described in IRC § 509(a)(1), (a)(2), or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), and that is in good standing in this state.

(3) (a) If a veteran's organization, fraternal organization, or sporting organization authorized to conduct instant bingo pursuant to division (G)(1) of this section has been issued a liquor permit under R.C. Chapter 4303, that permit may be subject to suspension, revocation, or cancellation if the veteran's organization, fraternal organization, or sporting organization violates a provision of this chapter or R.C. Chapter 2915.

(b) No veteran's organization, fraternal organization, or sporting organization that enters into a written contract pursuant to division (G)(2) of this section shall violate any provision of this chapter or R.C. Chapter 2915, or permit, aid, or abet any other person in violating any provision of this chapter or R.C. Chapter 2915.

(4) A veteran's organization, fraternal organization, or sporting organization shall give all required proceeds earned from the conduct of instant bingo to the organization with which the veteran's organization, fraternal organization, or sporting organization has entered into a written contract.

(5) Whoever violates division (G) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (G) of this section, illegal instant bingo conduct is a felony to be prosecuted under appropriate state law.
(R.C. § 2915.13)

## § 134.13 RESTRICTIONS ON OWNER OR LESSOR OF LOCATION AT INSTANT BINGO.

(A) No owner or lessor of a location shall assist a charitable instant bingo organization in the conduct of instant bingo other than at a bingo session at that location unless the owner or lessor has entered into a written contract, as described in R.C. § 2915.093, with the charitable instant bingo organization to assist in the conduct of instant bingo other than at a bingo session.

(B) The location of the lessor or owner shall be designated as a location where the charitable instant bingo organization conducts instant bingo other than at a bingo session.

(C) No owner or lessor of a location that enters into a written contract as prescribed in division (A) of this section shall violate any provision of this chapter or R.C. Chapter 2915, or permit, aid, or abet any other person in violating any provision of this chapter or R.C. Chapter 2915.

(D) No owner or lessor of a location that enters into a written contract as prescribed in division (A) of this section shall violate the terms of the contract.

(E) (1) Whoever violates division (C) or (D) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (C) or (D) of this section, illegal instant bingo conduct is a felony to be prosecuted under appropriate state law.

(2) If an owner or lessor of a location knowingly, intentionally, or recklessly violates division (C) or (D) of this section, any license that the owner or lessor holds for the retail sale of any goods on the owner's or

lessor's premises that is issued by the state or a political subdivision is subject to suspension, revocation, or payment of a monetary penalty at the request of the Attorney General.
(R.C. § 2915.094)

## § 134.14 SKILL-BASED AMUSEMENT MACHINES; PROHIBITED CONDUCT.

(A) No person shall give to another person any item described in division (1), (2), (3), or (4) of the definition for "merchandise prize" in § 134.01 in exchange for a noncash prize, toy, or novelty received as a reward for playing or operating a skill-based amusement machine or for a free or reduced-price game won on a skill-based amusement machine.

(B) Whoever violates division (A) of this section is guilty of skill-based amusement machine prohibited conduct. A violation of division (A) of this section is a misdemeanor of the first degree for each redemption of a prize that is involved in the violation. If the offender previously has been convicted of a violation of division (A) of this section, a violation of that division is a felony to be prosecuted under appropriate state law.
(R.C. § 2915.06)

# CHAPTER 135: OFFENSES AGAINST PERSONS

Section



***Statutory reference:***

*Child care, misrepresentations by providers and failure to disclose death or serious injuries, misdemeanors, see R.C. §§ 2919.223 et seq.*
*Extortionate extension of credit, see R.C. §§ 2905.21 through 2905.24*
*Failure to send child to school, see R.C. § 3321.38*
*Permitting child abuse, felony offense, see R.C. § 2903.15*
*Reckless homicide, felony offense, see R.C. § 2903.041*
*Rights of victims of crimes, see R.C. Chapter 2930*

## § 135.01 DEFINITIONS.

(A) For the purpose of §§ 135.01 through 135.06, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ANOTHER'S UNBORN*** or ***OTHER PERSON'S UNBORN.*** A member of the species *Homo sapiens* who is or was carried in the womb of another during a period that begins with fertilization and that continues unless and until live birth occurs.

***UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY.*** Causing the death of an unborn member of the species *Homo sapiens* who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs.

(B) Notwithstanding division (A) of this section, in no case shall the definitions of the terms "another's unborn", "other person's unborn" and "unlawful termination of another's pregnancy" that are set forth in division (A) of this section be applied or construed in any of the following manners:

(1) Except as otherwise provided in division (B)(1) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as any violation of R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21 or 2903.22, or a substantially equivalent municipal ordinance, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence but that does violate R.C. § 2919.12, 2919.13(B), 2919.151, 2919.17 or 2919.18, or a substantially equivalent municipal ordinance, may be punished as a violation of such section, as applicable.

(2) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

(a) Her delivery of a stillborn baby.

(b) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying.

(c) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human.

(d) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human.

(e) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other psychological illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.
(R.C. § 2903.09)

## § 135.02 NEGLIGENT HOMICIDE.

(A) No person shall negligently cause the death of another or the unlawful termination of another's pregnancy by means of a deadly weapon or dangerous ordnance, as defined in R.C. § 2923.11.

(B) Whoever violates this section is guilty of negligent homicide, a misdemeanor of the first degree. (R.C. § 2903.05)

***Statutory reference:***

*Reckless homicide, felony offense, see R.C. § 2903.041*

## § 135.03 VEHICULAR HOMICIDE; VEHICULAR MANSLAUGHTER.

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways:

(1) (a) As the proximate result of committing a violation of R.C. § 4511.19(A) or of a substantially equivalent municipal ordinance;

(b) As the proximate result of committing a violation of R.C. § 1547.11(A), or of a substantially equivalent municipal ordinance;

(c) As the proximate result of committing a violation of R.C. § 4561.15(A)(3), or of a substantially equivalent municipal ordinance.

(2) In one of the following ways:

(a) Recklessly;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (D) of this section.

(3) In one of the following ways:

(a) Negligently;

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (D) of this section.

(4) As the proximate result of committing a violation of any provision of any section contained in R.C. Title 45 that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in R.C. Title 45 that is a minor misdemeanor.

(B) (1) Whoever violates division (A)(1) or (A)(2) of this section is guilty of aggravated vehicular homicide, a felony to be prosecuted under appropriate state law.

(2) (a) Whoever violates division (A)(3) of this section is guilty of vehicular homicide. Except as otherwise provided in this division, vehicular homicide is a misdemeanor of the first degree. Vehicular homicide committed in violation of division (A)(3) of this section is a felony to be prosecuted under appropriate state law if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under R.C. Chapter 4510 or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under R.C. § 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory jail term on the offender when required by division (C) of this section.

(b) In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(4) or, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(3), or, if the offender previously had been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in R.C. § 4510.02(A)(2).

(3) (a) Whoever violates division (A)(4) of this section is guilty of vehicular manslaughter. Except as otherwise provided in this division, vehicular manslaughter is a misdemeanor of the second degree. Vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under R.C. Chapter 4510 or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under R.C. § 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

(b) In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6) or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or a traffic-related murder, felonious

assault, or attempted murder offense, a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(4).

(C) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a felony violation of this section, as provided in R.C. § 2903.06(E). The court shall impose a mandatory jail term of at least 15 days on an offender who is convicted of or pleads guilty to a misdemeanor violation of division (A)(3)(b) of this section and may impose upon the offender a longer jail term as authorized pursuant to R.C. § 2929.24.

(D) Divisions (A)(2)(b) and (A)(3)(b) of this section do not apply in a particular construction zone unless signs of the type described in R.C. § 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the Director of Transportation under R.C. § 5501.27. The failure to erect signs of the type described in R.C. § 2903.081 in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of division (A)(1), (A)(2)(a), (A)(3)(a), or (A)(4) of this section in that construction zone or the prosecution of any person who violates any of those divisions in that construction zone.

(E) (1) As used in this section:

***CONSTRUCTION ZONE.*** Has the same meaning as in R.C. § 5501.27.

***MANDATORY JAIL TERM.*** Has the same meaning as in R.C. § 2929.01.

***MANDATORY PRISON TERM.*** Has the same meaning as in R.C. § 2929.01.

***MOTOR VEHICLE.*** Has the same meaning as in R.C. § 4501.01.

***RECKLESS OPERATION OFFENSE.*** Means a violation of R.C. § 4511.20 or a municipal ordinance substantially equivalent to R.C. § 4511.20.

***SPEEDING OFFENSE.*** Means a violation of R.C. § 4511.21 or a municipal ordinance pertaining to speed.

***TRAFFIC-RELATED HOMICIDE, MANSLAUGHTER, OR ASSAULT OFFENSE.*** Means a violation of R.C. § 2903.04 in circumstances in which division (D) of that section applies, a violation of R.C. § 2903.06 or 2903.08, or a violation of R.C. § 2903.06, 2903.07, or 2903.08 as they existed prior to March 23, 2000.

***TRAFFIC-RELATED MURDER, FELONIOUS ASSAULT, OR ATTEMPTED MURDER OFFENSE.*** Means a violation of R.C. § 2903.01 or R.C. § 2903.02 in circumstances in which the offender used a motor vehicle as the means to commit the violation, a violation of R.C. § 2903.11(A)(2) in circumstances in which the deadly weapon used in the commission of the violation is a motor vehicle, or an attempt to commit aggravated murder or murder in violation of R.C. § 2923.02 in circumstances in which the offender used a motor vehicle as the means to attempt to commit the aggravated murder or murder.

(2) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of this or another state or the United States.
(R.C. § 2903.06)

***Statutory reference:***

*Aggravated vehicular assault, felony, see R.C. § 2903.08*
*Trial court to suspend driver's license, see R.C. § 4510.05*

## § 135.04 ASSAULT; NEGLIGENT ASSAULT.

(A) *Assault.*

(1) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

(2) No person shall recklessly cause serious physical harm to another or to another's unborn.

(3) Whoever violates division (A)(1) or (A)(2) of this section is guilty of assault. Except as provided in R.C. § 2903.13(C), assault is a misdemeanor of the first degree.

(4) If an offender who is convicted of or pleads guilty to assault when it is a misdemeanor also is convicted of or pleads guilty to a specification as described in R.C. § 2941.1423 (victim of the offense was a woman whom the defendant knew was pregnant at the time of the offense) that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory jail term as provided in R.C. § 2929.24(G).
(R.C. § 2903.13)

(B) *Negligent assault.*

(1) No person shall negligently, by means of a deadly weapon or dangerous ordnance as defined in R.C. § 2923.11, cause physical harm to another or to another's unborn.

(2) Whoever violates division (B)(1) of this section is guilty of negligent assault, a misdemeanor of the third degree.
(R.C. § 2903.14)

***Cross-reference:***

*Jurisdictional limitation on Mayor regarding violations of division (A) of this section, see § 33.01(E)*

***Statutory reference:***

*Aggravated and felonious assault, see R.C. §§ 2903.11 and 2903.12*
*Aggravated vehicular assault, felony, see R.C. § 2903.08*
*Felony offenses: assaulting functionally impaired person, peace officer, investigator of the Bureau of Criminal Identification and Investigation, firefighter, person performing emergency medical service, officer or employee of a public children services agency or private child placing agency; assault at a correctional institution; assault on school officials and school bus drivers; health care professional, worker or security guard at a hospital under certain circumstances; judge, magistrate, prosecutor or court official or employee under certain circumstances, see R.C. § 2903.13(C)*

*Permitting child abuse, felony offense, see R.C. § 2903.15*
*Persons who may seek relief under anti-stalking protection order; ex parte orders, see R.C. § 2903.214*
*Protection order as pretrial condition of release, see R.C. § 2903.213*

## § 135.05 INJURY TO PERSONS BY HUNTERS.

(A) No person in the act of hunting, pursuing, taking, or killing a wild animal shall act in a negligent, careless, or reckless manner so as to injure persons.
(R.C. § 1533.171(A))

(B) Whoever violates this section shall be guilty of a misdemeanor of the first degree.
(R.C. § 1533.99(C))

***Statutory Reference:***

*Violation, license revocation, see R.C. § 1533.171(B) through (E)*

## § 135.06 MENACING; AGGRAVATED MENACING; MENACING BY STALKING.

(A) *Menacing.*

(1) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(2) Whoever violates division (A)(1) of this section is guilty of menacing. Except as otherwise provided in this division (A)(2), menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony to be prosecuted under appropriate state law.

(3) As used in this division (A), ***ORGANIZATION*** includes an entity that is a governmental employer.
(R.C. § 2903.22)

(B) *Aggravated menacing.*

(1) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, such other person's unborn, or a member of such other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause

serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(2) Whoever violates division (B)(1) of this section is guilty of aggravated menacing. Except as otherwise provided in this division (B)(2), aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony to be prosecuted under appropriate state law or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony to be prosecuted under appropriate state law.

(3) As used in this division (B), ***ORGANIZATION*** includes an entity that is a governmental employer.
(R.C. § 2903.21)

(C) *Menacing by stalking.*

(1) (a) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(b) No person, through the use of any form of written communication or any electronic method of remotely transferring information, including but not limited to any computer, computer network, computer program, computer system, or telecommunication device, shall post a message or use any intentionally written or verbal graphic gesture with purpose to do either of the following:

1. Violate division (C)(1)(a) of this section;

2. Urge or incite another to commit a violation of division (C)(1)(a) of this section.

(c) No person, with a sexual motivation, shall violate division (C)(1)(a) or (C)(1)(b) of this section.

(2) Whoever violates division (C)(1) of this section is guilty of menacing by stalking.

(a) Except as otherwise provided in division (C)(2)(b) of this section, menacing by stalking is a misdemeanor of the first degree.

(b) Menacing by stalking is a felony, to be prosecuted under appropriate state law, if any of the following applies:

1. The offender previously has been convicted of or pleaded guilty to a violation of R.C. § 2903.211 or a violation of R.C. § 2911.211, or a substantially equivalent municipal ordinance to either of these offenses.

2. In committing the offense under division (C)(1)(a), (C)(1)(b) or (C)(1)(c) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (C)(1)(b) or (C)(1)(c) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

3. In committing the offense under division (C)(1)(a), (C)(1)(b) or (C)(1)(c) of this section, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, or as a result of an offense committed under division (C)(1)(b) or (C)(1)(c) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school.

4. The victim of the offense is a minor.

5. The offender has a history of violence towards the victim or any other person or a history of other violent acts towards the victim or any other person.

6. While committing the offense under division (C)(1)(a) of this section or a violation of division (C)(1)(c) of this section based on conduct in violation of division (C)(1)(a) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (C)(2)(b)6. of this section does not apply in determining the penalty for a violation of division (C)(1)(b) of this section or a violation of division (C)(1)(c) of this section based on conduct in violation of division (C)(1)(b) of this section.

7. At the time of the commission of the offense, the offender was the subject of a protection order issued under R.C. § 2903.213 or R.C. § 2903.214, regardless of whether or not the person to be protected under the order is the victim of the offense or another person.

8. In committing the offense under division (C)(1)(a), (C)(1)(b) or (C)(1)(c) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under division (C)(1)(b) of this section or an offense committed under division (C)(1)(c) of this section based on a violation of division (C)(1)(b) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises.

9. Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious harm, or other evidence of then-present dangerousness.

10. The victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties.

11. The offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties.

(3) R.C. § 2919.271 applies in relation to a defendant charged with a violation of this section.

(4) As used in division (C) of this section:

***COMPUTER.*** Has the same meaning as in R.C. § 2913.01.

***COMPUTER NETWORK.*** Has the same meaning as in R.C. § 2913.01.

***COMPUTER PROGRAM.*** Has the same meaning as in R.C. § 2913.01.

***COMPUTER SYSTEM.*** Has the same meaning as in R.C. § 2913.01.

***EMERGENCY FACILITY PERSON.*** Is the singular of "emergency facility personnel" as defined in R.C. § 2909.04.

***EMERGENCY MEDICAL SERVICES PERSON.*** Is the singular of "emergency medical services personnel" as defined in R.C. § 2133.21.

***FAMILY OR HOUSEHOLD MEMBER.*** Means any of the following:

1. Any of the following who is residing or has resided with the person against whom the act prohibited in division (C)(1)(a) of this section is committed:

a. A spouse, a person living as a spouse, or a former spouse of the person;

b. A parent, a foster parent, or a child of the person, or another person related by consanguinity or affinity to the person;

c. A parent or a child of a spouse, person living as a spouse, or former spouse of the person, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person.

2. The natural parent of any child of whom the person against whom the act prohibited in division (C)(1)(a) of this section is committed is the other natural parent or is the putative other natural parent.

***MENTAL DISTRESS.*** Means any of the following:

1. Any mental illness or condition that involves some temporary substantial incapacity;

2. Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

***ORGANIZATION.*** Includes an entity that is a governmental employer.

***PATTERN OF CONDUCT.*** Means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring information, including but not limited to a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

***PERSON LIVING AS A SPOUSE.*** Means a person who is living or has lived with the person against whom the act prohibited in division (C)(1)(a) of this section is committed in a common law marital relationship, who otherwise is cohabiting with that person, or who otherwise has cohabited with the person within five years prior to the date of the alleged commission of the act in question.

***POST A MESSAGE.*** Means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

***PUBLIC OFFICIAL.*** Has the same meaning as in R.C. § 2921.01.

***SEXUAL MOTIVATION.*** Has the same meaning as in R.C. § 2971.01.

***TELECOMMUNICATIONS DEVICE.*** Has the same meaning as in R.C. § 2913.01.

***THIRD PERSON.*** Means, in relation to conduct as described in division (C)(1)(b) of this section, an individual who is neither the offender nor the victim of the conduct.

(5) The prosecution does not need to prove in a prosecution under division (C) of this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (2) of the definition for "mental distress" in this section.

(6) (a) Division (C) of this section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's

control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is or will be sent in violation of division (C) of this section.

(b) Division (C)(6)(a) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is or will be sent in violation of division (C) of this section except as otherwise provided by law.

(c) Division (C)(6)(a) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of division (C) of this section or who knowingly advertises the availability of material of that nature.
(R.C. § 2903.211)

***Cross-reference:***

*Jurisdictional limitation on Mayor regarding violations of division (C) of this section, see § 33.01(E)*
*Violation of protection orders, see § 135.23*

***Statutory reference:***

*Authority of corporations to seek protection orders in certain circumstances, see R.C. § 2903.215*
*Conditions of bail for violators, see R.C. § 2903.212*
*Persons who may seek relief under anti-stalking protection order; ex parte orders, see R.C. § 2903.214*
*Protection order as pretrial condition of release, see R.C. § 2903.213*

## § 135.07 UNLAWFUL RESTRAINT.

(A) No person, without privilege to do so, shall knowingly restrain another of the other person's liberty.

(B) No person, without privilege to do so and with a sexual motivation, shall knowingly restrain another of the other person's liberty.

(C) Whoever violates this section is guilty of unlawful restraint, a misdemeanor of the third degree.

(D) As used in this section, ***SEXUAL MOTIVATION*** has the same meaning as in R.C. § 2971.01.
(R.C. § 2905.03)

## § 135.08 CRIMINAL CHILD ENTICEMENT.

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure any child under 14 years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of, any board of education, or the actor is any such person, but at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) No person, for any unlawful purpose other than, or in addition to, that proscribed by division (A) of this section, shall engage in any activity described in division (A) of this section.

(D) It is an affirmative defense to a charge under division (A) of this section that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(E) Whoever violates division (A), (B) or (C) of this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, a substantially equivalent state law or municipal ordinance, R.C. § 2907.02 or 2907.03 or former R.C. § 2907.12, or R.C. § 2905.01 or 2907.05 when the victim of that prior offense was under 17 years of age at the time of the offense, criminal child enticement is a felony to be prosecuted under appropriate state law.

(F) As used in this section:

***SEXUAL MOTIVATION.*** Has the same meaning as in R.C. § 2971.01.

***VEHICLE.*** Has the same meaning as in R.C. § 4501.01.

***VESSEL.*** Has the same meaning as in R.C. § 1546.01.
(R.C. § 2905.05)

## § 135.09 COERCION.

(A) No person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following:

(1) Threaten to commit any offense.

(2) Utter or threaten any slander against any person.

(3) Expose or threaten to expose any matter tending to subject any person to hatred, contempt, or ridicule, or to damage any person's personal or business repute, or to impair any person's credit.

(4) Institute or threaten criminal proceedings against any person.

(5) Take or withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld.

(B) Divisions (A)(4) and (A)(5) of this section shall not be construed to prohibit a prosecutor or court from doing any of the following in good faith and in the interests of justice:

(1) Offering or agreeing to grant, or granting immunity from prosecution pursuant to R.C. § 2945.44.

(2) In return for a plea of guilty to one or more offenses charged or to one or more other or lesser offenses, or in return for the testimony of the accused in a case to which the accused is not a party, offering or agreeing to dismiss, or dismissing one or more charges pending against an accused, or offering or agreeing to impose, or imposing a certain sentence or modification of sentence.

(3) Imposing a community control sanction on certain conditions, including without limitation requiring the offender to make restitution or redress to the victim of the offense.

(C) It is an affirmative defense to a charge under division (A)(3), (A)(4), or (A)(5) of this section that the actor's conduct was a reasonable response to the circumstances which occasioned it, and that the actor's purpose was limited to any of the following:

(1) Compelling another to refrain from misconduct or to desist from further misconduct.

(2) Preventing or redressing a wrong or injustice.

(3) Preventing another from taking action for which the actor reasonably believed the other person to be disqualified.

(4) Compelling another to take action which the actor reasonably believed the other person to be under a duty to take.

(D) Whoever violates this section is guilty of coercion, a misdemeanor of the second degree.

(E) As used in this section:

***COMMUNITY CONTROL SANCTION*** has the same meaning as in R.C. § 2929.01.

***THREAT*** includes a direct threat and a threat by innuendo.
(R.C. § 2905.12)

## § 135.10 BIGAMY.

(A) No married person shall marry another or continue to cohabit with such other person in this municipality.

(B) It is an affirmative defense to a charge under this section that the actor's spouse was continuously absent for five years immediately preceding the purported subsequent marriage, and was not known by the actor to be alive within that time.

(C) Whoever violates this section is guilty of bigamy, a misdemeanor of the first degree.
(R.C. § 2919.01)

## § 135.11 UNLAWFUL ABORTION; FAILURE TO PERFORM VIABILITY TESTING.

(A) As used in this section:

***ABORTION.*** Means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo.
(R.C. § 2919.11)

***EMANCIPATED.*** A minor shall be considered emancipated if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian or custodian.

***UNEMANCIPATED.*** Means a woman who is unmarried and under 18 years of age who has not entered the armed services of the United States, has not become employed and self-subsisting, or has not otherwise become independent from the care and control of her parent, guardian, or custodian.

(B) No person shall perform or induce an abortion without the informed consent of the pregnant woman.

(C) No person shall knowingly perform or induce an abortion upon a pregnant minor unless one of the following is the case:

(1) The attending physician has secured the informed written consent of the minor and one parent, guardian or custodian;

(2) The minor is emancipated and the attending physician has received her informed written consent;

(3) The minor has been authorized to consent to the abortion by a court order issued pursuant to R.C. § 2919.121(C) and the attending physician has received her informed written consent; or

(4) The court has given its consent in accordance with R.C. § 2919.121(C) and the minor is having the abortion willingly.

(D) No person shall knowingly perform or induce an abortion upon a woman who is pregnant, unmarried, under 18 years of age, and unemancipated unless at least one of the circumstances enumerated in R.C. § 2919.12(B) applies.

(E) (1) It is an affirmative defense to a charge under division (D) of this section that the pregnant woman provided the person who performed or induced the abortion with false, misleading, or incorrect information about her age, marital status, or emancipation, about the age of the brother or sister to whom she requested notice to be given as a specified relative instead of one of her parents, her guardian, or her custodian, or about the last known address of either of her parents, her guardian, her custodian, or a specified brother, sister, stepparent, or grandparent to whom she requested notice be given and the person who performed or induced the abortion did

not otherwise have reasonable cause to believe the pregnant woman was under 18 years of age, unmarried, or unemancipated, to believe that the age of the brother or sister to whom she requested notice be given as a specified relative instead of one of her parents, her guardian, or her custodian was not 21 years of age, or to believe that the last known address of either of her parents, her guardian, her custodian, or a specified brother, sister, stepparent, or grandparent to whom she requested notice be given was incorrect.

(2) It is an affirmative defense to a charge under this section that compliance with the requirements of this section was not possible because an immediate threat of serious risk to the life or physical health of the pregnant woman or pregnant minor from the continuation of her pregnancy created an emergency necessitating the immediate performance or inducement of an abortion.

(F) Whoever violates this section is guilty of unlawful abortion. A violation of division (B), (C) or (D) of this section is a misdemeanor of the first degree on the first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.

(G) Whoever violates this section is liable to the pregnant woman or pregnant minor, and her parents, guardian, or custodian for civil, compensatory and exemplary damages.
(R.C. §§ 2919.12, 2919.121)

(H) (1) Division (C) of this section applies in lieu of division (D) of this section whenever its operation is not enjoined. If division (C) of this section is enjoined, division (D) of this section applies.

(2) If a person complies with the requirements of division (D) of this section under the good faith belief that the application or enforcement of division (C) of this section is subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any civil, criminal or professional disciplinary action brought under division (C) of this section or R.C. § 2919.121.

(3) If a person complies with the requirements of division (C) of this section under the good faith belief that it is not subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any civil, criminal or professional disciplinary action for failure to comply with the requirements of division (D) of this section.
(R.C. § 2919.122)

(I) Failure to perform viability testing.

(1) Except in a medical emergency that prevents compliance with this division, no physician shall perform or induce or attempt to perform or induce an abortion on a pregnant woman after the beginning of the twentieth week of gestation unless, prior to the performance or inducement of the abortion or the attempt to perform or induce the abortion, the physician determines, in the physician's good faith medical judgment, that the unborn child is not viable, and the physician makes that determination after performing a medical examination of the pregnant woman and after performing or causing to be performed those tests for assessing gestational age, weight, lung maturity, or other tests that the physician, in that physician's good faith medical judgment, believes are necessary to determine whether an unborn child is viable.

(2) Except in a medical emergency that prevents compliance with this division, no physician shall perform or induce or attempt to perform or induce an abortion on a pregnant woman after the beginning of the twentieth week of gestation without first entering the determination made in division (I)(1) of this section and the associated findings of the medical examination and tests in the medical record of the pregnant woman.

(3) Whoever violates this division (I) is guilty of failure to perform viability testing, a misdemeanor of the fourth degree.

(4) The State Medical Board shall suspend a physician's license to practice medicine in this state for a period of not less than six months if the physician violates this section.
(R.C. § 2919.18)

***Statutory reference:***

*Judicial bypass, see R.C. § 2151.85*
*Judicial consent and the right of a minor to consent, see R.C. § 2919.121(C)*
*Notice or consent requirements for unmarried minors, see R.C. § 2919.12(B)*

## § 135.12 ABORTION TRAFFICKING.

(A) No person shall experiment upon or sell the product of human conception which is aborted. Experiment does not include autopsies pursuant to R.C. §§ 313.13 and 2108.50.

(B) Whoever violates this section is guilty of abortion trafficking, a misdemeanor of the first degree. (R.C. § 2919.14)

## § 135.13 NONSUPPORT OF DEPENDENTS.

(A) No person shall abandon, or fail to provide adequate support to:

(1) His or her spouse, as required by law;

(2) His or her legitimate or illegitimate child who is under age 18, or mentally or physically disabled child who is under age 21;

(3) His or her aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for his or her own support.

(B) No person shall abandon or fail to provide support as established by court order to another person whom, by court order or decree, the person is legally obligated to support.

(C) No person shall aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming a dependent child, as defined in R.C. § 2151.04, or a neglected child, as defined in R.C. § 2151.03.

(D) It is an affirmative defense to a charge of failure to provide adequate support under division (A) of this section or a charge of failure to provide support established by a court order under division (B) of this section that the accused was unable to provide adequate support or the established support, but did provide the support that was within his or her ability and means.

(E) It is an affirmative defense to a charge under division (A)(3) of this section that the parent abandoned the accused, or failed to support the accused as required by law, while the accused was under age 18, or was mentally or physically disabled and under age 21.

(F) It is not a defense to a charge under division (B) of this section that the person whom a court has ordered the accused to support is being adequately supported by someone other than the accused.

(G) (1) Except as otherwise provided in this division, whoever violates division (A) or (B) of this section is guilty of nonsupport of dependents, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) or (B) of this section or a substantially equivalent state law or municipal ordinance, or if the offender has failed to provide support under division (A)(2) or (B) of this section for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of division (A)(2) or (B) of this section is a felony to be prosecuted under appropriate state law. If the offender previously has been convicted of or pleaded guilty to a felony violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (B) of this section is a felony to be prosecuted under appropriate state law.

(2) If the offender is guilty of nonsupport of dependents by reason of failing to provide support to his or her child as required by a child support order issued on or after April 15, 1985, pursuant to R.C. § 2151.23,

2151.231, 2151.232, 2151.33, 3105.21, 3109.05, 3111.13, 3113.04, 3113.31, 3115.401, or former R.C. § 3115.31, the court, in addition to any other sentence imposed, shall assess all court costs arising out of the charge against the person and require the person to pay any reasonable attorney's fees of any adverse party other than the state, as determined by the court, that arose in relation to the charge.

(3) Whoever violates division (C) of this section is guilty of contributing to the nonsupport of dependents, a misdemeanor of the first degree. Each day of a violation of division (C) of this section is a separate offense.
(R.C. § 2919.21)

## § 135.14 ENDANGERING CHILDREN.

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under 18 years of age or a mentally or physically disabled child under 21 years of age, shall create a substantial risk to the health or safety of the child by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or disability of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under 18 years of age or a mentally or physically disabled child under 21 years of age:

(1) Abuse the child.

(2) Torture or cruelly abuse the child.

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child.

(4) Repeatedly administer unwarranted disciplinary measures to a child when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development.

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allow the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, any act in violation of R.C. § 2925.04 or 2925.041 when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of R.C. § 2925.04 or 2925.041 that is the basis of the violation of this division.

(C) (1) No person shall operate a vehicle, as defined by R.C. § 4511.01, within the municipality and in violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, when one or more children

under 18 years of age are in the vehicle. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that constitutes the basis of the charge of the violation of this division. For purposes of R.C. §§ 4511.191 through 4511.197 and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in division (C)(1) of this section:

***CONTROLLED SUBSTANCE.*** Has the same meaning as in R.C. § 3719.01.

***VEHICLE.*** Has the same meaning as in R.C. § 4511.01.

(D) (1) Division (B)(5) of this section does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursing bona fide studies for research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

(3) In a prosecution under division (B)(5) of this section, the trier of fact may infer that an actor, model, or participant in the material or performance involved is a juvenile if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the actor, model, or participant as a juvenile.

(4) As used in this division and division (B)(5) of this section:

***MATERIAL.*** Has the same meaning as in R.C. § 2907.01.

***NUDITY-ORIENTED MATTER*** means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to the prurient interest.

***OBSCENE.*** Has the same meaning as in R.C. § 2907.01.

***PERFORMANCE.*** Has the same meaning as in R.C. § 2907.01.

***SEXUAL ACTIVITY.*** Has the same meaning as in R.C. § 2907.01.

***SEXUALLY ORIENTED MATTER.*** Means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

(E) Whoever violates this section is guilty of endangering children.

(1) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following:

(a) Except as otherwise provided in division (E)(1)(b), (E)(1)(c) or (E)(1)(d), a misdemeanor of the first degree.

(b) If the offender previously has been convicted of an offense under this section or a substantially equivalent state law or municipal ordinance, or of any offense involving neglect, abandonment, or contributing to the delinquency of or physical abuse of a child, except as otherwise provided in division (E)(1)(c) or (E)(1)(d) of this section, endangering children is a felony to be prosecuted under appropriate state law.

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, endangering children is a felony to be prosecuted under appropriate state law.

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, endangering children is a felony to be prosecuted under appropriate state law.

(2) If the offender violates division (B)(2), (B)(3), (B)(4), (B)(5) or (B)(6) of this section, endangering children is a felony to be prosecuted under appropriate state law.

(3) If the offender violates division (C) of this section, the offender shall be punished as follows:

(a) Except as provided in (E)(3)(b) or (E)(3)(c), endangering children in violation of division (C) of this section is a misdemeanor of the first degree.

(b) If the violation results in serious physical harm to the child or if the offender previously has been convicted of a violation of this section or a substantially equivalent state law or municipal ordinance, or of any offense involving neglect, abandonment, or contributing to the delinquency of or physical abuse of a child, except as otherwise provided in division (E)(3)(c) of this section, endangering children in violation of division (C) of this section is a felony to be prosecuted under appropriate state law.

(c) If the violation results in serious physical harm to the child and if the offender previously has been convicted of a violation of this section, R.C. § 2903.06, 2903.08, 2919.22(C) or former R.C. § 2903.07 as it existed prior to March 23, 2000, or R.C. § 2903.04, in a case in which the offender was subject to the sanctions described in division (D) of that section, endangering children in violation of division (C) of this section is a felony to be prosecuted under appropriate state law.

(d) In addition to any term of imprisonment, fine, or other sentence, penalty or sanction it imposes upon the offender pursuant to divisions (E)(3)(a), (E)(3)(b) or (E)(3)(c) of this section or pursuant to any other provision of law, and in addition to any suspension of the offender's driver's license or commercial driver's license or permit or nonresident operating privilege under R.C. Chapter 4506, 4509, 4510, or 4511, or any other provision of law, the court also may impose upon the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7).

(e) In addition to any term of imprisonment, fine, or other sentence, penalty or sanction imposed upon the offender pursuant to division (E)(3)(a), (E)(3)(b), (E)(3)(c) or (E)(3)(d) of this section or pursuant to any other provision of law for the violation of division (C) of this section, if as a part of the same trial or proceeding the offender also is convicted of or pleads guilty to a separate charge charging the violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that was the basis of the charge of the violation of division (C) of this section, the offender also shall be sentenced in accordance with R.C. § 4511.19, or a substantially equivalent municipal ordinance, for that violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance.

(F) (1) If a person violates division (C) of this section and if, at the time of the violation, there were two or more children under 18 years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of division (C) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2) (a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the person is not also convicted of and does not also plead guilty to a separate charge of violating R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that was the basis of the charge of the violation of division (C) of this section, both the following apply:

1. For purposes of the provisions of R.C. § 4511.19, or a substantially equivalent municipal ordinance, that set forth the penalties and sanctions for a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance.

2. For purposes of the provisions of law that refers to a conviction of or plea of guilty to a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, and that is not described in division (F)(2)(a)1. of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction or plea of guilty to a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this section and the person also is convicted of or pleads guilty to a separate charge of violating R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for the purposes of any provision of law that refers to a conviction of or a plea of guilty to a violation of R.C. § 4511.19(A) or a substantially equivalent municipal ordinance, a conviction of or a plea of guilty to a violation of R.C. § 4511.19(A) or a substantially equivalent municipal ordinance.
(R.C. § 2919.22(A) - (E), (H))

***Statutory reference:***

*Community service, requirements, see R.C. § 2919.22(F)*
*License suspension, requirements, see R.C. § 2919.22(G)*
*Permitting child abuse, felony offense, see R.C. § 2903.15*

## § 135.15 INTERFERENCE WITH CUSTODY; INTERFERENCE WITH SUPPORT ORDERS.

(A) *Interference with custody.*

(1) No person, knowing that he or she is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor a person identified in division (A)(1)(a), (A)(1)(b) or (A)(1)(c) of this section from the parent, guardian, or custodian of the person identified in division (A)(1)(a), (A)(1)(b) or (A)(1)(c) of this section:

(a) A child under the age of 18, or a mentally or physically disabled child under the age of 21;

(b) A person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children;

(c) A person committed by law to an institution for the mentally ill or an institution for persons with intellectual disabilities.

(2) No person shall aid, abet, induce, cause, or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.

(3) It is an affirmative defense to a charge of enticing or taking under division (A)(1)(a) of this section that the actor reasonably believed that his or her conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A)(1) of this section that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under his or her shelter, protection, or influence.

(4) Whoever violates this section is guilty of interference with custody.

(a) Except as otherwise provided in this subdivision, a violation of division (A)(1)(a) above is a misdemeanor of the first degree. If the child who is the subject of a violation of division (A)(1)(a) is removed from the state or if the offender previously has been convicted of an offense under this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1)(a) of this section is a felony to be prosecuted under appropriate state law. If the child who is the subject of a violation of division (A)(1)(a) suffers physical harm as a result of the violation, a violation of division (A)(1)(a) of this section is a felony to be prosecuted under appropriate state law.

(b) A violation of division (A)(1)(b) or (A)(1)(c) of this section is a misdemeanor of the third degree.

(c) A violation of division (A)(2) of this section is a misdemeanor of the first degree. Each day of a violation of division (A)(2) is a separate offense.
(R.C. § 2919.23)

(B) *Interference with support orders.*

(1) No person, by using physical harassment or threats of violence against another person, shall interfere with the other person's initiation or continuance of, or attempt to prevent the other person from initiating or continuing, an action to issue or modify a support order under R.C. Chapter 3115, or under R.C. § 2151.23, 2151.231, 2151.232, 2151.33, 2151.36, 2151.361, 2151.49, 3105.18, 3105.21, 3109.05, 3109.19, 3111.13, 3113.04, 3113.07, or 3113.31.

(2) Whoever violates this division (B) is guilty of interfering with an action to issue or modify a support order, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of this division (B) or a substantially equivalent state law or municipal ordinance, or R.C. § 3111.19, interfering with an action to issue or modify a support order is a felony to be prosecuted under appropriate state law.
(R.C. § 2919.231)

## § 135.16 DOMESTIC VIOLENCE.

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D) (1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (D)(5) of this section.

(2) Except as otherwise provided in division (D)(3), (D)(4) or (D)(5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to domestic violence, a violation of R.C. § 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) is a felony to be prosecuted under appropriate state law, and a violation of division (C) is a misdemeanor of the second degree.

(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of division (A) or (B) of this section is a felony to be prosecuted under appropriate state law, and a violation of division (C) of this section is a misdemeanor of the first degree.

(5) Except as otherwise provided in division (D)(3) or (D)(4) of this section, if the offender knew that the victim of the violation was pregnant at the time of the violation, a violation of division (A) or (B) of this section is a felony to be prosecuted under appropriate state law, and a violation of division (C) of this section is a misdemeanor of the third degree.

(E) Notwithstanding any provision of law to the contrary, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of charges against a person alleging that the person violated this section or a municipal ordinance substantially equivalent to this section or in connection with the prosecution of any charges so filed.

(F) As used in this section:

***FAMILY OR HOUSEHOLD MEMBER.*** Means any of the following:

(a) Any of the following who is residing or has resided with the offender:

1. A spouse, a person living as a spouse as defined below, or a former spouse of the offender;

2. A parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender;

3. A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

***PERSON LIVING AS A SPOUSE.*** Means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.
(R.C. § 2919.25)

***Cross-reference:***

*Violation of protection orders, see § 135.23*

***Statutory reference:***

*Temporary protection orders, see R.C. § 2919.26*
*Violation of protection order or consent agreement, factors to consider, bail, see R.C. § 2919.251*

## § 135.17 HAZING PROHIBITED.

(A) As used in this section, ***HAZING*** means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.

(B) (1) No person shall recklessly participate in the hazing of another.

(2) No administrator, employee, or faculty member of any primary, secondary, or post-secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person.

(C) Whoever violates this section is guilty of hazing, a misdemeanor of the fourth degree.
(R.C. § 2903.31)
***Statutory reference:***
*Civil liability for hazing, see R.C. § 2307.44*

## § 135.18 CONTRIBUTING TO UNRULINESS OR DELINQUENCY OF A CHILD.

(A) As used in this section:

***DELINQUENT CHILD.*** Has the same meaning as in R.C. § 2152.02.

***UNRULY CHILD.*** Has the same meaning as in R.C. § 2151.022.

(B) No person, including a parent, guardian, or other custodian of a child, shall do any of the following:

(1) Aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child or a delinquent child;

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child or a delinquent child;

(3) Act in a way that contributes to an adjudication of the child as a delinquent child based on the child's violation of a court order adjudicating the child an unruly child for being an habitual truant;

(4) If the person is the parent, guardian, or custodian of a child who has the duties under R.C. Chapters 2152 and 2950 to register, register a new residence address, and periodically verify a residence address, and, if applicable, to send a notice of intent to reside, and if the child is not emancipated, as defined in R.C. § 2919.121, fail to ensure that the child complies with those duties under R.C. Chapters 2152 and 2950.

(C) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of violation of this section is a separate offense.
(R.C. § 2919.24)
***Statutory reference:***
*Failure to send child to school, see R.C. § 3321.38*

## § 135.19 FAILURE TO PROVIDE FOR FUNCTIONALLY IMPAIRED PERSON.

(A) No caretaker shall knowingly fail to provide a functionally impaired person under his or her care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally

impaired person when this failure results in physical harm or serious physical harm to the functionally impaired person.

(B) No caretaker shall recklessly fail to provide a functionally impaired person under his or her care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person.

(C) (1) Whoever violates division (A) of this section is guilty of knowingly failing to provide for a functionally impaired person, a misdemeanor of the first degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of recklessly failing to provide for a functionally impaired person, a misdemeanor of the second degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (B) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2903.16)

(D) As used in this section:

***CARETAKER.*** Means a person who assumes the duty to provide for the care and protection of a functionally impaired person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. The term does not include a person who owns, operates, or administers, or who is an agent or employee of, a care facility, as defined in R.C. § 2903.33.

***FUNCTIONALLY IMPAIRED PERSON.*** Means any person who has a physical or mental impairment that prevents the person from providing for his or her own care or protection or whose infirmities caused by aging prevent the person from providing for his or her own care or protection.
(R.C. § 2903.10)

## § 135.20 PATIENT ABUSE OR NEGLECT; PATIENT ENDANGERMENT; EXCEPTIONS; FALSE STATEMENTS; RETALIATION.

(A) *Definitions.* As used in this section:

***ABUSE.*** Means knowingly causing physical harm or recklessly causing serious physical harm to a person by physical contact with the person or by the inappropriate use of a physical or chemical restraint, medication or isolation on the person.

***CARE FACILITY.*** Means any of the following:

(a) Any "home" as defined in R.C. § 3721.10.

(b) Any "residential facility" as defined in R.C. § 5119.34 or 5123.19.

(c) Any institution or facility operated or provided by the Department of Mental Health and Addiction Services or by the Department of Developmental Disabilities pursuant to R.C. §§ 5119.14 and 5123.03.

(d) Any unit of any hospital, as defined in R.C. § 3701.01, that provided the same services as a nursing home, as defined in R.C. § 3721.01.

(e) Any institution, residence or facility that provides, for a period of more than 24 hours, whether for consideration or not, accommodations to one individual or two unrelated individuals who are dependent upon the services of others.

***GROSS NEGLECT.*** Means knowingly failing to provide a person with any treatment, care, goods or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

***INAPPROPRIATE USE OF A PHYSICAL OR CHEMICAL RESTRAINT, MEDICATION OR ISOLATION.*** Means the use of physical or chemical restraint, medication or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in quantities that preclude habilitation and treatment.

***NEGLECT.*** Means recklessly failing to provide a person with any treatment, care, goods or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.
(R.C. § 2903.33)

(B) *Patient abuse or neglect; spiritual treatment; defense.*

(1) No person who owns, operates, or administers, or who is an agent or employee of a care facility shall do any of the following:

(a) Commit abuse against a resident or patient of the facility.

(b) Commit gross neglect against a resident or patient of the facility.

(c) Commit neglect against a resident or patient of the facility.

(2) (a) A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered neglectful under division (B)(1)(c) of this section for that reason alone.

(b) It is an affirmative defense to a charge of gross neglect or neglect under this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person with supervisory authority over the actor.

(3) (a) Whoever violates division (B)(1)(a) is guilty of patient abuse, a felony to be prosecuted under appropriate state law.

(b) Whoever violates division (B)(1)(b) is guilty of gross patient neglect, a misdemeanor of the first degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section

or a substantially equivalent state law or municipal ordinance, gross patient neglect is a felony to be prosecuted under appropriate state law.

(c) Whoever violates division (B)(1)(c) is guilty of patient neglect, a misdemeanor of the second degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section or a substantially equivalent state law or municipal ordinance, gross patient neglect is a felony to be prosecuted under appropriate state law.
(R.C. § 2903.34)

(C) *Patient endangerment; spiritual treatment; defense.*

(1) As used in this section:

***DEVELOPMENTAL DISABILITIES CARETAKER.*** Means any developmental disabilities employee or any person who assumes the duty to provide for the care and protection of a person with a developmental disability on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. The phrase includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. The phrase does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to a person with a developmental disability.

***DEVELOPMENTAL DISABILITIES EMPLOYEE.*** Has the same meaning as in R.C. § 5123.50.

***DEVELOPMENTAL DISABILITY.*** Has the same meaning as in R.C. § 5123.01.

(2) No developmental disabilities caretaker shall create a substantial risk to the health or safety of a person with a developmental disability. A developmental disabilities caretaker does not create a substantial risk to the health or safety of a person with a developmental disability under this division when the developmental disabilities caretaker treats a physical or mental illness or defect of the person with a developmental disability by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(3) No person who owns, operates, or administers a care facility or who is an agent of a care facility shall condone, or knowingly permit, any conduct by a developmental disabilities caretaker who is employed by or under the control of the owner, operator, administrator, or agent that is in violation of division (C)(2) of this section and that involves a person with a developmental disability who is under the care of the owner, operator, administrator, or agent. A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered endangered under this division for that reason alone.

(4) (a) It is an affirmative defense to a charge of a violation of division (C)(2) or (C)(3) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:

1. The person has supervisory authority over the actor.

2. The person has authority over the actor's conduct pursuant to a contract for the provision of services.

(b) It is an affirmative defense to a charge of a violation of division (C)(3) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved person with a developmental disability or that the admission, discharge, and transfer rule set forth in the Ohio Administrative Code is being followed.

(c) It is an affirmative defense to a charge of a violation of division (C)(3) of this section that the actor did not have readily available a means to prevent either the harm to the person with a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.

(5) (a) Except as provided in division (C)(5)(b) or (C)(5)(c) of this section, whoever violates division (C)(2) or (C)(3) of this section is guilty of patient endangerment, a misdemeanor of the first degree.

(b) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section, patient endangerment is a felony to be prosecuted under appropriate state law.

(c) If the violation results in serious physical harm to the person with a developmental disability, patient endangerment is a felony to be prosecuted under appropriate state law.
(R.C. § 2903.341)

(D) *False statements.*

(1) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, alleging a violation of division (B) of this section when the statement is made with purpose to incriminate another.

(2) Whoever violates this division (D) is guilty of filing a false patient abuse or neglect complaint, a misdemeanor of the first degree.
(R.C. § 2903.35)

(E) *Retaliation against person reporting patient abuse or neglect.* No care facility shall discharge or in any manner discriminate or retaliate against any person solely because such person, in good faith, filed a complaint, affidavit, or other document alleging a violation of division (B) of this section or a violation of R.C. § 2903.34.
(R.C. § 2903.36)

***Statutory reference:***

*License revocation for felony violations, see R.C. § 2903.37*

## § 135.21 INTERFERENCE WITH RIGHT OF PERSON TO ENGAGE IN HOUSING TRANSACTIONS BECAUSE OF RACE, RELIGION, OR THE LIKE.

(A) No person, whether or not acting under color of law, shall by force or threat of force willfully injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with any of the following:

(1) Any person because of race, color, religion, sex, familial status, as defined in R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry and because that person is or has been selling, purchasing, renting, financing, occupying, contracting, or negotiating

for the sale, purchase, rental, financing, or occupation of any housing accommodations, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations.

(2) Any person because that person is or has been doing, or in order to intimidate that person or any other person or any class of persons from doing either of the following:

(a) Participating, without discrimination on account of race, color, religion, sex, familial status, as defined in R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry, in any of the activities, services, organizations, or facilities described in division (A)(1) of this section;

(b) Affording another person or class of persons opportunity or protection so to participate.

(3) Any person because that person is or has been, or in order to discourage that person or any other person from, lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, familial status as defined in R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry, in any of the activities, services, organizations, or facilities described in division (A)(1) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 2927.03)

## § 135.22 ETHNIC INTIMIDATION.

(A) No person shall violate R.C. § 2903.21, 2903.22, 2909.06, or 2909.07, or R.C. § 2917.21(A)(3), (A)(4), or (A)(5), by reason of the race, color, religion, or national origin of another person or group of persons.

(B) Whoever violates this section is guilty of ethnic intimidation. Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation. In the case of an offense that is a misdemeanor of the first degree, ethnic intimidation is a felony to be prosecuted under appropriate state law.
(R.C. § 2927.12)

## § 135.23 VIOLATING A PROTECTION ORDER, CONSENT AGREEMENT, ANTI-STALKING PROTECTION ORDER OR ORDER ISSUED BY A COURT OF ANOTHER STATE.

(A) No person shall recklessly violate the terms of any of the following:

(1) A protection order issued or consent agreement approved pursuant to R.C. § 2919.26 or R.C. § 3113.31;

(2) A protection order issued pursuant to R.C. § 2151.34, 2903.213 or 2903.214;

(3) A protection order issued by a court of another state.

(B) (1) Whoever violates this section is guilty of violating a protection order.

(2) Except as otherwise provided in division (B)(3) or (B)(4) of this section, violating a protection order is a misdemeanor of the first degree.

(3) Violating a protection order is a felony to be prosecuted under appropriate state law if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for any of the following:

(a) A violation of a protection order issued or consent agreement approved pursuant to R.C. § 2151.34, 2903.213, 2903.214, 2919.26, or 3113.31, or any substantially equivalent state law or municipal ordinance;

(b) Two or more violations of R.C. § 2903.21, 2903.211, 2903.22, or 2911.211, or any substantially equivalent state law or municipal ordinance, or any combination of those offenses, that involved the same person who is the subject of the protection order or consent agreement;

(c) One or more violations of this section, or any substantially equivalent state law or municipal ordinance.

(4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony to be prosecuted under appropriate state law.

(5) If the protection order violated by the offender was an order issued pursuant to R.C. § 2151.34 or 2903.214 that required electronic monitoring of the offender pursuant to that section, the court may require in addition to any other sentence imposed upon the offender that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court. If the court requires under this division that the offender be electronically monitored, unless the court determines that the offender is indigent, the court shall order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device. If the court determines that the offender is indigent and subject to the maximum amount allowable and the rules promulgated by the Attorney General under R.C. § 2903.214, the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device may be paid out of funds from the Reparations Fund created pursuant to R.C. § 2743.191. The total amount paid from the Reparations Fund created pursuant to R.C. § 2743.191 for electronic monitoring under R.C. §§ 2151.34, 2903.214 and 2919.27 shall not exceed $300,000 per year.

(C) It is an affirmative defense to a charge under division (A)(3) of this section that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. § 2265(b) for a protection order that must be accorded full faith and credit by a court of this state or that it is not entitled to full faith and credit under 18 U.S.C. § 2265(c).

(D) In a prosecution for a violation of this section, it is not necessary for the prosecution to prove that the protection order or consent agreement was served on the defendant if the prosecution proves that the defendant was shown the protection order or consent agreement or a copy of either or a judge, magistrate, or law

enforcement officer informed the defendant that a protection order or consent agreement had been issued, and proves that the defendant recklessly violated the terms of the order or agreement.

(E) As used in this section, ***PROTECTION ORDER ISSUED BY A COURT OF ANOTHER STATE*** means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a *pendente lite* order in a proceeding for other relief, if the court issued it in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. The term does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.
(R.C. § 2919.27)

## § 135.24 ADULTERATION OF FOOD.

(A) No person shall do either of the following, knowing or having reasonable cause to believe that any person may suffer physical harm or be seriously inconvenienced or annoyed thereby:

(1) Place a pin, razor blade, glass, laxative, drug of abuse, or other harmful or hazardous object or substance in any food or confection.

(2) Furnish to any person any food or confection which has been adulterated in violation of division (A)(1) of this section.
(R.C. § 3716.11)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 3716.99(C))
***Statutory reference:***
*Adulteration of food generally, see R.C. § 3715.59*

## § 135.25 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; TRANSACTION SCANS.

(A) *Illegal distribution of cigarettes, other tobacco products, or alternative nicotine products.*

(1) As used in this section:

***AGE VERIFICATION***. A service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is 18 years of age or older.

***ALTERNATIVE NICOTINE PRODUCT.***

1. Subject to division 2. of this definition, an electronic cigarette or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling.

2. The phrase does not include any of the following:

a. Any cigarette or other tobacco product;

b. Any product that is a "drug" as that term is defined in 21 U.S.C. § 321(g)(1);

c. Any product that is a "device" as that term is defined in 21 U.S.C. § 321(h);

d. Any product that is a "combination product" as described in 21 U.S.C. § 353(g).

***CHILD.*** Has the same meaning as in R.C. § 2151.011.

***CIGARETTE.*** Includes clove cigarettes and hand-rolled cigarettes.

***DISTRIBUTE.*** Means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

***ELECTRONIC CIGARETTE***.

1. Subject to division 2. of this definition, any electronic product or device that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device to simulate smoking and that is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.

2. The phrase does not include any item, product, or device described in division 2. of the definition for "alternative nicotine product" in this section.

***PROOF OF AGE.*** Means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under R.C. §§ 4507.50 to 4507.52 that shows that a person is 18 years of age or older.

***TOBACCO PRODUCT.*** Means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff.

***VENDING MACHINE.*** Has the same meaning as "coin machine" in R.C. § 2913.01.

(2) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, and no other person shall do any of the following:

(a) Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any child;

(b) Give away, sell, or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under 18 years of age is prohibited by law;

(c) Knowingly furnish any false information regarding the name, age, or other identification of any child with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that child;

(d) Manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;

(e) Sell cigarettes or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;

(f) Give, sell, or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification.

(3) No person shall sell or offer to sell cigarettes, other tobacco products, or alternative nicotine products by or from a vending machine, except in the following locations:

(a) An area within a factory, business, office, or other place not open to the general public;

(b) An area to which children are not generally permitted access;

(c) Any other place not identified in division (A)(3)(a) or (A)(3)(b) of this section, upon all of the following conditions:

1. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes, other tobacco product, and alternative nicotine product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

2. The vending machine is inaccessible to the public when the place is closed.

(4) The following are affirmative defenses to a charge under division (A)(2)(a) of this section:

(a) The child was accompanied by a parent, spouse who is 18 years of age or older, or legal guardian of the child.

(b) The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a child under division (A)(2)(a) of this section is a parent, spouse who is 18 years of age or older, or legal guardian of the child.

(5) It is not a violation of division (A)(2)(a) or (A)(2)(b) of this section for a person to give or otherwise distribute to a child cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the child is participating in a research protocol if all of the following apply:

(a) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.

(b) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.

(c) The child is participating in the research protocol at the facility or location specified in the research protocol.

(6) (a) Whoever violates division (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e), or (A)(2)(f) or (A)(3) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e), or (A)(2)(f) or (A)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(b) Whoever violates division (A)(2)(c) of this section is guilty of permitting children to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this division, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(c) of this section or a substantially equivalent state law or municipal ordinance, permitting children to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(7) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a child in violation of this section and that are used, possessed, purchased, or received by a child in violation of R.C. § 2151.87 are subject to seizure and forfeiture as contraband under R.C. Chapter 2981.
(R.C. § 2927.02)

(B) *Transaction scan.*

(1) As used in this division and division (C) of this section:

***CARD HOLDER.*** Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes, other tobacco products, or alternative nicotine products from a seller, agent, or employee.

***IDENTIFICATION CARD.*** Means an identification card issued under R.C. §§ 4507.50 through 4507.52.

***SELLER.*** Means a seller of cigarettes, other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes, other tobacco products, or alternative nicotine products is subject to the prohibitions of division (A) of this section.

***TRANSACTION SCAN.*** Means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes, other tobacco products, or alternative nicotine products.

***TRANSACTION SCAN DEVICE.*** Means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes, other tobacco products, or alternative nicotine products.

(b) If the information deciphered by the transaction scan performed under division (B)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes, other tobacco products, or alternative nicotine products to the card holder.

(c) Division (B)(2)(a) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes, other tobacco products, or alternative nicotine products to the person presenting the document.

(3) Rules adopted by the Registrar of Motor Vehicles under R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (B) and division (C) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by the card holder;

2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (B)(4)(a) of this section, except for purposes of division (C) of this section.

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by division (C) of this section or another section of this code or the Ohio Revised Code.

(5) Nothing in this division (B) or division (C) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale, giving away, or other distribution of cigarettes, other tobacco products, or alternative nicotine products.

(6) Whoever violates division (B)(2)(b) or (B)(4) of this section is guilty of engaging in an illegal tobacco product or alternative nicotine product transaction scan, and the court may impose upon the offender a civil penalty of up to $1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.
(R.C. § 2927.021)

(C) *Affirmative defenses.*

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (A) of this section in which the age of the purchaser or other recipient of cigarettes, other tobacco products, or alternative nicotine products is an element of the alleged violation, if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive cigarettes, other tobacco products, or alternative nicotine products presented a driver's or commercial driver's license or an identification card.

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(c) The cigarettes, other tobacco products, or alternative nicotine products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (C)(1) of this section, the trier of fact in the action for the alleged violation of division (A) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (A) of this section. For purposes of division (C)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to

determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes cigarettes, other tobacco products, or alternative nicotine products is 18 years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (C)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.
(R.C. § 2927.022)

(D) *Shipment of tobacco products.*

(1) As used in this division (D):

***AUTHORIZED RECIPIENT OF TOBACCO PRODUCTS*** means a person who is:

1. Licensed as a cigarette wholesale dealer under R.C. § 5743.15;

2. Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;

3. An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;

4. An operator of a customs bonded warehouse under 19 U.S.C. § 1311 or 19 U.S.C. § 1555;

5. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;

6. A department, agency, instrumentality, or political subdivision of the federal government or of this state;

7. A person having a consent for consumer shipment issued by the Tax Commissioner under R.C. § 5743.71.

***MOTOR CARRIER.*** Has the same meaning as in R.C. § 4923.01.

(2) The purpose of this division (D) is to prevent the sale of cigarettes to minors and to ensure compliance with the Master Settlement Agreement, as defined in R.C. § 1346.01.

(3) (a) No person shall cause to be shipped any cigarettes to any person in this municipality other than an authorized recipient of tobacco products.

(b) No motor carrier or other person shall knowingly transport cigarettes to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes are transported to a home or residence, it shall be presumed that the motor carrier or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient of tobacco products.

(4) No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this municipality in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes".

(5) A court shall impose a fine of up to $1,000 for each violation of division (D)(3)(a), (D)(3)(b) or (D)(4) of this section.
(R.C. § 2927.023)

## § 135.26 NONSMOKING AREAS IN PLACES OF PUBLIC ASSEMBLY.

(A) As used in this section, ***PLACE OF PUBLIC ASSEMBLY*** means:

(1) Enclosed theaters, except the lobby; opera houses; auditoriums; classrooms; elevators; rooms in which persons are confined as a matter of health care, including but not limited to a hospital room and a room in a residential care facility serving as the residence of a person living in such residential care facility.

(2) All buildings and other enclosed structures owned by the state, its agencies, or political subdivisions, including but not limited to hospitals and state institutions for the mentally ill and persons with intellectual disabilities; university and college buildings, except rooms within those buildings used primarily as the residences of students or other persons affiliated with the university or college; office buildings; libraries; museums; and vehicles used in public transportation. That portion of a building or other enclosed structure that is owned by the state, a state agency, or a political subdivision, and that is used primarily as a food service establishment, is not a place of public assembly.

(3) Each portion of a building or enclosed structure that is not included in division (A)(1) or (A)(2) of this section is a place of public assembly if it has a seating capacity of 50 or more persons and is available to the public. Restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, as well as bowling alleys and places licensed by the Ohio Division of Liquor Control to sell intoxicating beverages for consumption on the premises, are not places of public assembly.

(B) For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of persons not smoking, in every place of public assembly there shall be an area where smoking is not permitted, which shall be designated a no smoking area, provided that not more than one-half of the rooms in any health care facility in which persons are confined as a matter of health care may be designated as smoking areas in their entirety. The designation shall be made before the place of public assembly is made available to the public. In places included in division (A)(1) of this section, the local fire authority having jurisdiction shall

designate the no smoking area. In places included in division (A)(2) of this section that are owned by the state or its agencies, the Ohio Director of Administrative Services shall designate the area, and if the place is owned by a political subdivision, its Legislative Authority shall designate an officer who shall designate the area. In places included in division (A)(3) of this section, the person having control of the operations of the place of public assembly shall designate the no smoking area. In places included in division (A)(2) of this section which are also included in division (A)(1) of this section, the officer who has authority to designate the area in places in division (A)(2) of this section shall designate the no smoking area. A no smoking area may include the entire place of public assembly. Designations shall be made by the placement of signs that are clearly visible and that state "no smoking." No person shall remove signs from areas designated as no smoking areas.

(C) This section does not affect or modify the prohibition contained in R.C. § 3313.751(B).

(D) No person shall smoke in any area designated as a no smoking area in accordance with division (B) of this section.

(E) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 3791.031)

## § 135.27 SPREADING CONTAGION.

(A) No person, knowing or having reasonable cause to believe that he or she is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself or herself to other persons, except when seeking medical aid.

(B) No person, having charge or care of a person whom he or she knows or has reasonable cause to believe is suffering from a dangerous, contagious disease, shall recklessly fail to take reasonable measures to protect others from exposure to the contagion, and to inform health authorities of the existence of the contagion.

(C) No person, having charge of a public conveyance or place of public accommodation, amusement, resort, or trade, and knowing or having reasonable cause to believe that persons using such conveyance or place have been or are being exposed to a dangerous, contagious disease, shall negligently fail to take reasonable measures to protect the public from exposure to the contagion, and to inform health authorities of the existence of the contagion.
(R.C. § 3701.81)

(D) Whoever violates this section is guilty of a misdemeanor of the second degree.
(R.C. § 3701.99(C))
***Statutory reference:***
*Contagion and quarantine, see R.C. §§ 3707.04 et seq.*
*Power to prevent contagious diseases, see R.C. § 715.37*

## § 135.28 ABUSE OF A CORPSE.

(A) No person, except as authorized by law, shall treat a human corpse in a way that he or she knows would outrage reasonable family sensibilities.

(B) No person, except as authorized by law, shall treat a human corpse in a way that would outrage reasonable community sensibilities.

(C) Whoever violates division (A) of this section is guilty of abuse of a corpse, a misdemeanor of the second degree. Whoever violates division (B) of this section is guilty of gross abuse of a corpse, a felony to be prosecuted under appropriate state law.
(R.C. § 2927.01)

## § 135.29 UNLAWFUL COLLECTION OF BODILY SUBSTANCES.

(A) No person shall knowingly collect any blood, urine, tissue, or other bodily substance of another person without privilege or consent to do so.

(B) (1) Division (A) of this section does not apply to any of the following:

(a) The collection of any bodily substance of a person by a law enforcement officer, or by another person pursuant to the direction or advice of a law enforcement officer, for purposes of a chemical test or tests of the substance under R.C. § 1547.111(A)(1) or R.C. § 4511.191(A)(2) to determine the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the bodily substance;

(b) The collection of any bodily substance of a person by a peace officer, or by another person pursuant to the direction or advice of a peace officer, for purposes of a test or tests of the substance as provided in R.C. § 4506.17(A) to determine the person's alcohol concentration or the presence of any controlled substance or metabolite of a controlled substance.

(2) Division (B)(1) of this section shall not be construed as implying that the persons identified in divisions (B)(1)(a) and (b) of this section do not have privilege to collect the bodily substance of another person as described in those divisions or as limiting the definition of "privilege" set forth in R.C. § 2901.01.

(C) Whoever violates division (A) of this section is guilty of unlawful collection of a bodily substance. Except as otherwise provided in this division, unlawful collection of a bodily substance is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section or a substantially equivalent state law or municipal ordinance, unlawful collection of a bodily substance is a felony to be prosecuted under appropriate state law.
(R.C. § 2927.15)

# CHAPTER 136: OFFENSES AGAINST JUSTICE AND ADMINISTRATION

Section



***Cross-reference:***

*Failure to comply with order or signal of a police officer, see § 70.02*

***Statutory reference:***

*Escape from detention, see R.C. § 2921.34*

*Harassment by inmates by causing or attempting to cause contact with blood, semen, urine, feces or other bodily substance; knowledge of AIDS, hepatitis or tuberculosis infection; felony offenses, see R.C. § 2921.38*

## § 136.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***CAMPAIGN COMMITTEE.*** Has the same meaning as in R.C. § 3517.01.

***CONTRIBUTION.*** Has the same meaning as in R.C. § 3517.01.

***DETENTION.*** Arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of R.C. § 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401 or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this division, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under R.C. § 311.29(E) or R.C. § 5149.03(B). For a person confined in a county jail who participates in a county jail industry program pursuant to R.C. § 5147.30, the term includes time spent at an assigned work site and going to and from the work site.

***DETENTION FACILITY.*** Any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or an unruly child in this state or another state or under the laws of the United States.

***LEGISLATIVE CAMPAIGN FUND.*** Has the same meaning as in R.C. § 3517.01.

***OFFICIAL PROCEEDING.*** 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.

***PARTY OFFICIAL.*** 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 or she directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

***POLITICAL ACTION COMMITTEE.*** Has the same meaning as in R.C. § 3517.01.

***POLITICAL CONTRIBUTING ENTITY.*** Has the same meaning as in R.C. § 3517.01.

***POLITICAL PARTY.*** Has the same meaning as in R.C. § 3517.01.

***PROVIDER AGREEMENT.*** Has the same meaning as in R.C. § 5164.01.

***PUBLIC OFFICIAL.*** Any elected or appointed officer, employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and includes but is not limited to legislators, judges, and law enforcement officers. The term does not include an employee, officer, or governor-appointed member of the board of directors of the nonprofit corporation formed under R.C. § 187.01.

***PUBLIC SERVANT.***

(1) Any of the following:

(a) Any public official.

(b) Any person performing ad hoc a governmental function, including but not limited to a juror, member of a temporary commission, master, arbitrator, advisor, or consultant.

(c) A person who is a candidate for public office, whether or not he or she is elected or appointed to the office for which he or she is a candidate. A person is a candidate for purposes of this division if he or she has been nominated according to law for election or appointment to public office, or if he or she has filed a petition or petitions as required by law to have his or her name placed on the ballot in a primary, general, or special election, or if he or she campaigns as a write-in candidate in any primary, general, or special election.

(2) The term does not include an employee, officer, or governor-appointed member of the board of directors of the nonprofit corporation formed under R.C. § 187.01.

***VALUABLE THING*** or ***VALUABLE BENEFIT.*** Includes but is not limited to a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.
(R.C. § 2921.01)

## § 136.02 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 or her official function.

(4) The statement is made with purpose to secure the payment of unemployment compensation; Ohio Works First; prevention, retention and contingency benefits and services; disability financial assistance; retirement benefits or health care coverage from a state retirement system; economic development assistance as defined in R.C. § 9.66; 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, release, or provider agreement.

(6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths.

(7) The statement is in writing on or in connection with a report or return that 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 the statement is directed relies upon it to his or her detriment.

(9) The statement is made with purpose to commit or facilitate the commission of a theft offense.

(10) The statement is knowingly made to a probate court in connection with any action, proceeding, or other matter within its jurisdiction, either orally or in a written document, including but not limited to an application, petition, complaint, or other pleading, or an inventory, account, or report.

(11) The statement is made on an account, form, record, stamp, label or other writing that is required by law.

(12) The statement is made in connection with the purchase of a firearm, as defined in R.C. § 2923.11, and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(13) The statement is made in a document or instrument of writing that purports to be a judgment, lien, or claim of indebtedness and is filed or recorded with the Secretary of State, a county recorder, or the clerk of a court of record.

(14) The statement is made in an application filed with a county sheriff pursuant to R.C. § 2923.125 in order to obtain or renew a concealed handgun license or is made in an affidavit submitted to a county sheriff to obtain a concealed handgun license on a temporary emergency basis under R.C. § 2923.1213.

(15) The statement is required under R.C. § 5743.71 in connection with the person's purchase of cigarettes or tobacco products in a delivery sale.

(B) No person, in connection with the purchase of a firearm as defined in R.C. § 2923.11, shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) No person, in an attempt to obtain a concealed handgun license under R.C. § 2923.125, shall knowingly present to a sheriff a fictitious or altered document that purports to be certification of the person's competence in handling a handgun as described in division (B)(3) of that section.

(D) It is no defense to a charge under division (A)(6) of this section that the oath or affirmation was administered or taken in an irregular manner.

(E) If 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.

(F) (1) Whoever violates division (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), (A)(6), (A)(7), (A)(8), (A)(10), (A)(11), (A)(13) or (A)(15) of this section is guilty of falsification. Except as otherwise provided in this division, falsification is a misdemeanor of the first degree.

(2) Whoever violates division (A)(9) of this section is guilty of falsification in a theft offense. Except as otherwise provided in this division, falsification in a theft offense is a misdemeanor of the first degree. If the value of the property or services stolen is $1,000 or more, falsification in a theft offense is a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (A)(12) or (B) of this section is guilty of falsification to purchase a firearm, a felony to be prosecuted under appropriate state law.

(4) Whoever violates division (A)(14) or (C) of this section is guilty of falsification to obtain a concealed handgun license, a felony to be prosecuted under appropriate state law.

(5) Whoever violates division (A) of this section in removal proceedings under R.C. § 319.26, 321.37, 507.13 or 733.78 is guilty of falsification regarding a removal proceeding, a felony to be prosecuted under appropriate state law.
(R.C. § 2921.13)

(G) (1) No person who has knowingly failed to maintain proof of financial responsibility in accordance with R.C. § 4509.101 shall produce any document or present to a peace officer an electronic wireless communications device that is displaying any text or images with the purpose to mislead a peace officer upon the request of a peace officer for proof of financial responsibility made in accordance with R.C. § 4509.101(D)(2).

(2) Whoever violates this division (G) is guilty of falsification, a misdemeanor of the first degree.
(R.C. § 4509.102)

***Statutory reference:***

*Civil liability for violations of this section, see R.C. § 2921.13(G)*

## § 136.03 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 R.C. § 2913.02, 2913.11, 2913.21(B)(2), or 2913.47, or a substantially equivalent municipal ordinance, 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 that the actor reasonably believed due him or her as restitution for the loss caused him or her by the offense.

(C) When a prosecuting witness abandons or agrees to abandon a prosecution under division (B) of this section, the abandonment or agreement in no way binds the state to abandoning the prosecution.

(D) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree. (R.C. § 2921.21)

## § 136.04 FAILURE TO REPORT A CRIME.

(A) (1) Except as provided in division (A)(2) of this section, no person, knowing that a felony has been or is being committed, shall knowingly fail to report the information to law enforcement authorities.

(2) No person, knowing that a violation of R.C. § 2913.04(B) has been or is being committed or that the person has received information derived from such a violation, shall knowingly fail to report the violation to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no 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 the person, or any serious physical harm to persons that the person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers the body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician or advanced practice registered nurse whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, an ambulance service, an emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained. For purposes of this division, "advanced practice registered nurse" does not include a certified registered nurse anesthetist.

(D) No person shall fail to provide upon request of the person to whom a report required by division (C) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within his or her knowledge that may have a bearing on the investigation of the death.

(E) (1) As used in this section, ***BURN INJURY*** means any of the following:

(a) Second or third degree burns;

(b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air;

(c) Any burn injury or wound that may result in death.

(2) No physician, nurse, physician assistant, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious, or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious, or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or (E)(3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the State Fire Marshal. The report shall be made on a form provided by the State Fire Marshal.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding R.C. § 4731.22, the physician-patient relationship or advanced practice registered nurse-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted under division (E) of this section.

(F) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, nurse, psychologist, social worker, independent social worker, social work assistant, licensed professional clinical counselor, licensed professional counselor, independent marriage and family therapist, or marriage and family therapist who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in R.C. § 3113.31, shall note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding R.C. § 4731.22, the physician-patient privilege or advanced practice registered nurse-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted under division (F)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.

(G) Division (A) or (D) of this section 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; physician and patient; advanced practice registered nurse and patient; licensed psychologist or licensed school psychologist and client; licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

(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 R.C. § 2739.04 or 2739.12.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to him or her in his or her capacity as such by a person seeking his or her aid or counsel.

(5) Disclosure would amount to revealing information acquired by the actor in the course of his or her 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 community addiction services provider whose alcohol and drug addiction services are certified pursuant to R.C. § 5119.36.

(6) Disclosure would amount to revealing information acquired by the actor in the course of his or her duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of R.C. § 2907.02 or 2907.05, or to victims of felonious sexual penetration in violation of former R.C. § 2907.12. As used in this division, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide such services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A)(1) of this section is a misdemeanor of the fourth degree. Violation of division (A)(2) or (B) of this section is a misdemeanor of the second degree.

(J) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(K) (1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree.

(L) As used in this section, ***NURSE*** includes an advanced practice registered nurse, registered nurse, and licensed practical nurse.
(R.C. § 2921.22)

## § 136.05 FAILURE TO AID A LAW ENFORCEMENT OFFICER.

(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 the aid can be given without a substantial risk of physical harm to the person giving it.

(B) Whoever violates this section is guilty of failure to aid a law enforcement officer, a minor misdemeanor.
(R.C. § 2921.23)

## § 136.06 OBSTRUCTING OFFICIAL BUSINESS.

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

(B) Whoever violates this section is guilty of obstructing official business. Except as otherwise provided in this division, obstructing official business is a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, obstructing official business is a felony to be prosecuted under appropriate state law.
(R.C. § 2921.31)

## § 136.07 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, and no person, with purpose to hinder the discovery, apprehension, prosecution, adjudication as a delinquent child, or disposition of a child for an act that if committed by an adult would be a crime or to assist a child to benefit from the commission of an act that if committed by an adult would be a crime, shall do any of the following:

(1) Harbor or conceal the other person or child.

(2) Provide the other person or child with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension.

(3) Warn the other person or child of impending discovery or apprehension.

(4) Destroy or conceal physical evidence of the crime or act, or induce any person to withhold testimony or information or to elude legal process summoning him or her to testify or supply evidence.

(5) Communicate false information to any person.

(6) Prevent or obstruct any person, by means of force, intimidation, or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child.

(B) A person may be prosecuted for, and may be convicted of or adjudicated a delinquent child for committing, a violation of division (A) of this section regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed. The crime or act the person or child aided committed shall be used under division (C) of this section in determining the penalty for violation of division (A) of this section, regardless of whether the person or child aided ultimately is apprehended for, is charge with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed.

(C) Whoever violates this section is guilty of obstructing justice.

(1) If the crime committed by the person aided is a misdemeanor or if the act committed by the child aided would be a misdemeanor if committed by an adult, obstructing justice is a misdemeanor of the same degree as the crime committed by the person aided or a misdemeanor of the same degree that the act committed by the child aided would be if committed by an adult.

(2) If the crime committed by the person aided is a felony or if the act committed by the child aided would be a felony if committed by an adult, or if the crime or act committed by the person or child aided is an act of terrorism, obstructing justice is a felony to be prosecuted under appropriate state law.

(D) As used in this section:

***ACT OF TERRORISM.*** Has the same meaning as in R.C. § 2909.21.

***ADULT.*** Has the same meaning as in R.C. § 2151.011.

***CHILD.*** Has the same meaning as in R.C. § 2151.011.

***DELINQUENT CHILD.*** Has the same meaning as in R.C. § 2152.02.
(R.C. § 2921.32)

## § 136.08 RESISTING ARREST.

(A) No person, recklessly or by force, shall resist or interfere with a lawful arrest of himself, herself or another.

(B) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, cause physical harm to a law enforcement officer.

(C) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person if either of the following applies:

(1) The offender, during the course of or as a result of the resistance or interference, recklessly causes physical harm to a law enforcement officer by means of a deadly weapon; or

(2) The offender, during the course of the resistance or interference, brandishes a deadly weapon.

(D) Whoever violates this section is guilty of resisting arrest. A violation of division (A) of this section is a misdemeanor of the second degree. A violation of division (B) of this section is a misdemeanor of the first degree. A violation of division (C) of this section is a felony to be prosecuted under appropriate state law.

(E) As used in this section, ***DEADLY WEAPON*** has the same meaning as in R.C. § 2923.11.
(R.C. § 2921.33)
***Statutory reference:***
*Unlawful taking of deadly weapon from a law enforcement officer, felony offense, see R.C. § 2911.01*

## § 136.09 HAVING AN UNLAWFUL INTEREST IN A PUBLIC CONTRACT.

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

(1) Authorize or employ the authority of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

(2) Authorize or employ the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security with respect to which the public official, a member of the public official's family, or any of the public official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees.

(3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected.

(5) Have an interest in the profits or benefits of a public contract that is not let by competitive bidding when required by law, and that involves more than $150.

(B) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family, or any of a public official's business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:

(1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested.

(2) The shares owned or controlled by that person do not exceed 5% of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed 5% of the total indebtedness of the corporation or other organization.

(3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving that person's exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's 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 political subdivision or governmental agency or instrumentality involved.

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved.

(3) The treatment accorded the political subdivision or governmental agency or instrumentality 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 political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Division (A)(4) of this section does not prohibit participation by a public employee in any housing program funded by public monies if the public employee otherwise qualifies for the program and does not use the authority or influence of the public employee's office or employment to secure benefits from the program and if the monies are to be used on the primary residence of the public employee. Such participation does not constitute an unlawful interest in a public contract in violation of this section.

(E) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (A)(2) of this section is a felony to be prosecuted under appropriate state law. Violation of division (A)(3), (A)(4), or (A)(5) of this section is a misdemeanor of the first degree.

(F) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with R.C. §§ 309.06 and 2921.421, or for a chief legal officer of a municipality or an official designated as prosecutor in a municipality to appoint assistants and employees in accordance with R.C. §§ 733.621 and 2921.421, or for a township law director appointed under R.C. § 504.15 to appoint assistants and employees in accordance with R.C. §§ 504.151 and 2921.421.

(G) Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable. Any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination or servicing fees and that was entered into in violation of this section is void and unenforceable.

(H) As used in this section:

***CHIEF LEGAL OFFICER.*** Has the same meaning as in R.C. § 733.621.

***PUBLIC CONTRACT.*** Means any of the following:

(a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either.

(b) A contract for the design, construction, alteration, repair, or maintenance of any public property.

(R.C. § 2921.42)

***Statutory reference:***

*Assistants and employees of Prosecutors, Law Directors, and Solicitors, see R.C. § 2921.421*

## § 136.10 SOLICITING OR RECEIVING IMPROPER COMPENSATION.

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by R.C. § 102.03(G), (H), (I), or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation.

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(B) No public servant for the public servant's own personal or business use and no person for the person's own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency.

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency.

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) 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 this state for a period of seven years from the date of conviction.

(F) Divisions (A), (B), and (C) of this section do not prohibit any person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity or prohibit a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity from accepting voluntary contributions.
(R.C. § 2921.43)

## § 136.11 DERELICTION OF DUTY.

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

(1) Fail to serve 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 the law enforcement officer's 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 shall recklessly create a deficiency, incur a liability, or expend a greater sum than is appropriated by the Legislative Authority for the use in any one year of the department, agency, or institution with which the public official is connected.

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

(F) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.

(G) Except as otherwise provided by law, a public servant who is a county treasurer; county auditor; township fiscal officer; city auditor; city treasurer; village fiscal officer; village clerk-treasurer; village clerk; in the case of a municipal corporation having a charter that designates an officer who, by virtue of the charter, has duties and functions similar to those of the city or village officers referred to in this section, the officer so designated by the charter; school district treasurer; fiscal officer of a community school established under R.C. Chapter 3314; treasurer of a science, technology, engineering, and mathematics school established under R.C. Chapter 3326; or fiscal officer of a college-preparatory boarding school established under R.C. Chapter 3328 and is convicted of or pleads guilty to dereliction of duty is disqualified from holding any public office, employment, or position of trust in this state for four years following the date of conviction or of entry of the plea, and is not entitled to hold any public office until any repayment or restitution required by the court is satisfied.

(H) As used in this section, ***PUBLIC SERVANT*** includes the following:

(1) An officer or employee of a contractor as defined in R.C. § 9.08;

(2) A fiscal officer employed by the operator of a community school established under R.C. Chapter 3314 or by the operator of a college-preparatory boarding school established under R.C. Chapter 3328.
(R.C. § 2921.44)

## § 136.12 INTERFERING WITH CIVIL RIGHTS.

(A) No public servant, under color of his or her office, employment, or authority, shall knowingly deprive, conspire or attempt to deprive any person of a constitutional or statutory right.

(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.
(R.C. § 2921.45)

## § 136.13 ILLEGAL CONVEYANCE OF PROHIBITED ITEMS ONTO GROUNDS OF A DETENTION FACILITY OR OTHER SPECIFIED GOVERNMENTAL FACILITY.

(A) No person shall knowingly convey, or attempt to convey, onto the grounds of a detention facility or of an institution, office building, or other place that is under the control of the Department of Mental Health and Addiction Services, the Department of Developmental Disabilities, the Department of Youth Services, or the Department of Rehabilitation and Correction, any of the following items:

(1) Any deadly weapon or dangerous ordnance, as defined in R.C. § 2923.11, or any part of or ammunition for use in such deadly weapon or dangerous ordnance.

(2) Any drug of abuse, as defined in R.C. § 3719.011.

(3) Any intoxicating liquor, as defined in R.C. § 4301.01.

(B) Division (A) of this section does not apply to any person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution, office building, or other place under the control of the Department of Mental Health and Addiction Services, the Department of Developmental Disabilities, the Department of Youth Services, or the Department of Rehabilitation and Correction, with written authorization of the person in charge of the detention facility or the institution, office building, or other place and in accordance with the written rules of the detention facility or the institution, office building, or other place.

(C) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, to a prisoner who is temporarily released from confinement for a work assignment, or to any patient in an institution under the control of the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities, any item listed in division (A).

(D) No person shall knowingly deliver or attempt to deliver cash to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment.

(E) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment a cellular telephone, two-way radio, or other electronic communications device.

(F) (1) It is an affirmative defense to a charge under division (A)(1) of this section that the weapon or dangerous ordnance in question was being transported in a motor vehicle for any lawful purpose, that it was not on the actor's person, and if the weapon or dangerous ordnance was a firearm, that it was unloaded and was being carried in a closed package, box or case or in a compartment that can be reached only by leaving the vehicle.

(2) It is an affirmative defense to a charge under division (C) of this section that the actor was not otherwise prohibited by law from delivering the item to the confined person, the child, the prisoner, or the patient and that either of the following applies:

(a) The actor was permitted by the written rules of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(b) The actor was given written authorization by the person in charge of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(G) (1) Whoever violates division (A)(1) of this section or commits a violation of division (C) of this section involving any item listed in division (A)(1) of this section is guilty of illegal conveyance of weapons onto the grounds of a specified governmental facility, a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (A)(2) of this section or commits a violation of division (C) of this section involving any drug of abuse is guilty of illegal conveyance of drugs of abuse onto the grounds of a specified governmental facility, a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (A)(3) of this section or commits a violation of division (C) of this section involving any intoxicating liquor is guilty of illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility, a misdemeanor of the second degree.

(4) Whoever violates division (D) of this section is guilty of illegal conveyance of cash onto the grounds of a detention facility, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (D) of this section or a substantially equivalent state law or municipal ordinance, illegal conveyance of cash onto the grounds of a detention facility is a felony to be prosecuted under appropriate state law.

(5) Whoever violates division (E) of this section is guilty of illegal conveyance of a communications device onto the grounds of a specified governmental facility, a misdemeanor of the first degree. If the offender previously has been convicted or pleaded guilty to a violation of division (E) of this section or a substantially equivalent state law or municipal ordinance, illegal conveyance of a communications device onto the grounds of a detention facility is a felony to be prosecuted under appropriate state law.
(R.C. § 2921.36)

(H) The person in charge of a detention facility shall, on the grounds of the detention facility, have the same power as a peace officer, as defined in R.C. § 2935.01, to arrest a person who violates this section. (R.C. § 2921.37)

***Cross-reference:***

*Possession of an object indistinguishable from a firearm in a school safety zone, see § 137.11*
*Possession of deadly weapon while under detention, see § 137.12*

***Statutory reference:***

*Conveyance or possession of deadly weapons or dangerous ordnance on school premises, felony offense, see R.C. § 2923.122*
*Conveyance, possession, or control of deadly weapon or dangerous ordinance in a courthouse, felony offense, see R.C. § 2923.123*
*Possession of deadly weapon while under detention, felony offense, see R.C. § 2923.131*

## § 136.14 FALSE REPORT OF CHILD ABUSE OR NEGLECT.

(A) No person shall knowingly make or cause another person to make a false report under R.C. § 2151.421(B) alleging that any person has committed an act or omission that resulted in a child being an abused child as defined in R.C. § 2151.031 or a neglected child as defined in R.C. § 2151.03.

(B) Whoever violates this section is guilty of making or causing a false report of child abuse or child neglect, a misdemeanor of the first degree. (R.C. § 2921.14)

## § 136.15 ASSAULTING POLICE DOG OR HORSE, OR ASSISTANCE DOG.

(A) No person shall knowingly cause, or attempt to cause, physical harm to a police dog or horse in either of the following circumstances:

(1) The police dog or horse is assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted.

(2) The police dog or horse is not assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog or horse is a police dog or horse.

(B) No person shall recklessly do any of the following:

(1) Taunt, torment, or strike a police dog or horse;

(2) Throw an object or substance at a police dog or horse;

(3) Interfere with or obstruct a police dog or horse, or interfere with or obstruct a law enforcement officer who is being assisted by a police dog or horse, in a manner that does any of the following:

(a) Inhibits or restricts the law enforcement officer's control of the police dog or horse;

(b) Deprives the law enforcement officer of control of the police dog or horse;

(c) Releases the police dog or horse from its area of control;

(d) Enters the area of control of the police dog or horse without the consent of the law enforcement officer, including placing food or any other object or substance into that area;

(e) Inhibits or restricts the ability of the police dog or horse to assist a law enforcement officer;

(4) Engage in any conduct that is likely to cause serious physical injury or death to a police dog or horse;

(5) If the person is the owner, keeper, or harborer of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger a police dog or horse that at the time of the conduct is assisting a law enforcement officer in the performance of the officer's duties or that the person knows is a police dog or horse.

(C) No person shall knowingly cause, or attempt to cause, physical harm to an assistance dog in either of the following circumstances:

(1) The dog is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted.

(2) The dog is not assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog is an assistance dog.

(D) No person shall recklessly do any of the following:

(1) Taunt, torment, or strike an assistance dog;

(2) Throw an object or substance at an assistance dog;

(3) Interfere with or obstruct an assistance dog, or interfere with or obstruct a blind, deaf or hearing impaired, or mobility impaired person who is being assisted or served by an assistance dog, in a manner that does any of the following:

(a) Inhibits or restricts the assisted or served person's control of the dog;

(b) Deprives the assisted or served person of control of the dog;

(c) Releases the dog from its area of control;

(d) Enters the area of control of the dog without the consent of the assisted or served person, including placing food or any other object or substance into that area;

(e) Inhibits or restricts the ability of the dog to assist the assisted or served person;

(4) Engage in any conduct that is likely to cause serious physical injury or death to an assistance dog;

(5) If the person is the owner, keeper, or harborer of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger an assistance dog that at the time of the conduct is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person or that the person knows is an assistance dog.

(E) (1) Whoever violates division (A) of this section is guilty of assaulting a police dog or horse. Except as otherwise provided in this division, assaulting a police dog or horse is a misdemeanor of the second degree. If the violation results in physical harm to the police dog or horse other than death or serious physical harm, assaulting a police dog or horse is a misdemeanor of the first degree. If the violation results in serious physical harm to the police dog or horse or results in its death, assaulting a police dog or horse is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of harassing a police dog or horse. Except as otherwise provided this division, harassing a police dog or horse is a misdemeanor of the second degree. If the violation results in physical harm to the police dog or horse but does not result in its death or in serious physical harm to it, harassing a police dog or horse is a misdemeanor of the first degree. If the violation results in serous physical harm to the police dog or horse or results in its death, harassing a police dog or horse is a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (C) of this section is guilty of assaulting an assistance dog. Except as otherwise provided in this division, assaulting an assistance dog is a misdemeanor of the second degree. If the violation results in physical harm to the assistance dog other than death or serious physical harm, assaulting an assistance dog is a misdemeanor of the first degree. If the violation results in serious physical harm to the assistance dog or results in its death, assaulting an assistance dog is a felony to be prosecuted under appropriate state law.

(4) Whoever violates division (D) of this section is guilty of harassing an assistance dog. Except as otherwise provided in this division, harassing an assistance dog is a misdemeanor of the second degree. If the violation results in physical harm to the assistance dog but does not result in the death or in serious physical harm to it, harassing an assistance dog is a misdemeanor of the first degree. If the violation results in serious physical harm to the assistance dog or results in its death, harassing an assistance dog is a felony to be prosecuted under appropriate state law.

(5) In addition to any other sanctions or penalty imposed for the offense under this section, R.C. Chapter 2929 or any other provision of the Ohio Revised Code or this code, whoever violates division (A), (B), (C), or (D) of this section is responsible for the payment of all of the following:

(a) Any veterinary bill or bill for medication incurred as a result of the violation by the Police Department regarding a violation of division (A) or (B) of this section or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog regarding a violation of division (C) or (D) of this section;

(b) The cost of any damaged equipment that results from the violation;

(c) If the violation did not result in the death of the police dog or horse or the assistance dog that was the subject of the violation and if, as a result of that dog or horse being the subject of the violation, the dog or horse needs further training or retraining to be able to continue in the capacity of a police dog or horse or an assistance dog, the cost of any further training or retraining of that dog or horse by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog;

(d) If the violation resulted in the death of the assistance dog that was the subject of the violation or resulted in serious physical harm to the police dog or horse or the assistance dog that was the subject of the violation to the extent that the dog or horse needs to be replaced on either a temporary or a permanent basis, the cost of replacing that dog or horse and of any further training of a new police dog or horse or a new assistance dog by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog, which replacement or training is required because of the death of or the serious physical harm to the dog or horse that was the subject of the violation.

(F) This section does not apply to a licensed veterinarian whose conduct is in accordance with R.C. Chapter 4741.

(G) This section only applies to an offender who knows or should know at the time of the violation that the police dog or horse or assistance dog that is the subject of a violation under this section is a police dog or horse or an assistance dog.

(H) As used in this section:

***ASSISTANCE DOG.*** Has the same meaning as in R.C. § 955.011.

***BLIND.*** Has the same meaning as in R.C. § 955.011.

***MOBILITY IMPAIRED PERSON.*** Has the same meaning as in R.C. § 955.011.

***PHYSICAL HARM.*** Means any injury, illness, or other psychological impairment, regardless of its gravity or duration.

***POLICE DOG OR HORSE.*** Means a dog or horse that has been trained and may be used to assist law enforcement officers in the performance of their official duties.

***SERIOUS PHYSICAL HARM.*** Means any of the following:

(a) Any physical harm that carries a substantial risk of death.

(b) Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming.

(c) Any physical harm that causes acute pain of a duration that results in substantial suffering. (R.C. § 2921.321)

## § 136.16 DISCLOSURE OF CONFIDENTIAL PEACE OFFICER INFORMATION.

(A) No officer or employee of a law enforcement agency or court, or of the clerk's office of any court, shall disclose during the pendency of any criminal case the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in the case.

(B) Division (A) of this section does not prohibit a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee from disclosing the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's own home address, and does not apply to any person who discloses the home address of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee pursuant to a court-ordered disclosure under division (C) of this section.

(C) The court in which any criminal case is pending may order the disclosure of the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in the case, if the court determines after a written request
for the disclosure that good cause exists for disclosing the home address of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee.

(D) Whoever violates division (A) of this section is guilty of disclosure of confidential information, a misdemeanor of the fourth degree.
(R.C. § 2921.24)

(E) No judge of a court of record, or Mayor presiding over a Mayor's Court, shall order a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness in a criminal case, to disclose the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's home address during the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's examination in the case unless the judge or Mayor determines that the defendant has a right to the disclosure.

(F) As used in this section:

***PEACE OFFICER.*** Has the same meaning as in R.C. § 2935.01.

***CORRECTIONAL EMPLOYEE.*** Has the same meaning as in R.C. § 149.43.

***YOUTH SERVICES EMPLOYEE.*** Has the same meaning as in R.C. § 149.43.
(R.C. § 2921.25)

## § 136.17 INTIMIDATION OF CRIME VICTIM OR WITNESS.

(A) No person shall knowingly attempt to intimidate or hinder the victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding, and no person shall knowingly attempt to intimidate a witness to a criminal or delinquent act by reason of the person being a witness to that act.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property or by unlawful threat to commit any offense or calumny against any person, shall attempt to influence, intimidate, or hinder any of the following persons:

(1) The victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding;

(2) A witness to a criminal or delinquent act by reason of the person being a witness to that act;

(3) An attorney by reason of the attorney's involvement in any criminal or delinquent child action or proceeding.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information by participating in the arbitration, mediation, compromise, settlement or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or conciliation of a dispute of that nature that is conferred by any of the following:

(1) A section of the Ohio Revised Code.

(2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the Ohio Supreme Court in accordance with Ohio Constitution, Article IV, Section 5.

(3) A local rule of court, including but not limited to a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement or other conciliation programs.

(4) The order of a judge of a municipal court, county court, or court of common pleas.

(D) Whoever violates this section is guilty of intimidation of an attorney, victim or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(E) As used in this section, ***WITNESS*** means any person who has or claims to have knowledge concerning a fact or facts concerning a criminal or delinquent act, whether or not criminal or delinquent child charges are actually filed.
(R.C. § 2921.04)
***Statutory reference:***
*Retaliation, felony offense, see R.C. § 2921.05*

## § 136.18 USING SHAM LEGAL PROCESS.

(A) As used in this section:

***LAWFULLY ISSUED.*** Means adopted, issued, or rendered in accordance with the United States Constitution, the Constitution of a state, and the applicable statutes, rules, regulations and ordinances of the United States, a state, and the political subdivisions of a state.

***POLITICAL SUBDIVISIONS.*** Means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic that are organized under state law and are responsible for governmental activities only in geographical areas smaller than that of a state.

***SHAM LEGAL PROCESS.*** Means an instrument that meets all of the following conditions:

(a) It is not lawfully issued.

(b) It purports to do any of the following:

1. To be a summons, subpoena, judgment, or order of a court, a law enforcement officer, or a legislative, executive or administrative body.

2. To assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of any person or property.

3. To require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property.

(c) It is designed to make another person believe that it is lawfully issued.

***STATE.*** Means a state of the United States, including without limitation the state legislature, the highest court of the state that has statewide jurisdiction, the offices of all elected state officers, and all departments,
boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. The term does not include the political subdivisions of the state.

(B) No person shall, knowing the sham legal process to be a sham legal process, do any of the following:

(1) Knowingly issue, display, deliver, distribute, or otherwise use sham legal process.

(2) Knowingly use sham legal process to arrest, detain, search or seize any person or the property of another person.

(3) Knowingly commit or facilitate the commission of an offense using sham legal process.

(4) Knowingly commit a felony by using sham legal process.

(C) It is an affirmative defense to a charge under division (B)(1) or (B)(2) of this section that the use of sham legal process was for a lawful purpose.

(D) Whoever violates this section is guilty of using sham legal process. A violation of division (B)(1) of this section is a misdemeanor of the fourth degree. A violation of division (B)(2) or (B)(3) of this section is a

misdemeanor of the first degree, except that if the purpose of a violation of division (B)(3) of this section is to commit or facilitate the commission of a felony, a violation of division (B)(3) of this section is a felony to be prosecuted under appropriate state law. A violation of division (B)(4) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2921.52(A) - (D))
***Statutory reference:***
*Civil liability, see R.C. § 2921.52(E)*

## § 136.19 MAKING FALSE ALLEGATION OF PEACE OFFICER MISCONDUCT.

(A) As used in this section, ***PEACE OFFICER*** has the same meaning as in R.C. § 2935.01.

(B) No person shall knowingly file a complaint against a peace officer that alleges that the peace officer engaged in misconduct in the performance of the officer's duties if the person knows that the allegation is false.

(C) Whoever violates division (B) of this section is guilty of making a false allegation of peace officer misconduct, a misdemeanor of the first degree.
(R.C. § 2921.15)

## § 136.20 MISUSE OF 9-1-1 SYSTEM.

(A) As used in this section, ***9-1-1 SYSTEM*** means a system through which individuals can request emergency service using the telephone number 9-1-1.
(R.C. § 128.01(A))

(B) No person shall knowingly use the telephone number of a 9-1-1 system established under R.C. Chapter 128 to report an emergency if the person knows that no emergency exists.

(C) No person shall knowingly use a 9-1-1 system for a purpose other than obtaining emergency service.

(D) No person shall disclose or use any information concerning telephone numbers, addresses, or names obtained from the database that serves the public safety answering point of a 9-1-1 system established under R.C. Chapter 128, except for any of the following purposes or under any of the following circumstances:

(1) For the purpose of the 9-1-1 system;

(2) For the purpose of responding to an emergency call to an emergency service provider;

(3) In the circumstance of the inadvertent disclosure of such information due solely to technology of the wireless telephone network portion of the 9-1-1 system not allowing access to the database to be restricted to 9-1-1 specific answering lines at a public safety answering point;

(4) In the circumstance of access to a database being given by a telephone company that is a wireless service provider to a public utility or municipal utility in handling customer calls in times of public emergency

or service outages. The charge, terms, and conditions for the disclosure or use of such information for the purpose of such access to a database shall be subject to the jurisdiction of the Steering Committee;

(5) In the circumstance of access to a database given by a telephone company that is a wireline service provider to a state and local government in warning of a public emergency, as determined by the Steering Committee. The charge, terms and conditions for the disclosure or use of that information for the purpose of access to a database is subject to the jurisdiction of the Steering Committee.
(R.C. § 128.32(E) - (G))

(E) (1) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates division (C) or (D) of this section is guilty of a misdemeanor of the fourth degree on a first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.
(R.C. § 128.99(A), (B))

## § 136.21 FAILURE TO DISCLOSE PERSONAL INFORMATION.

(A) No person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects either of the following:

(1) The person is committing, has committed, or is about to commit a criminal offense.

(2) The person witnessed any of the following:

(a) An offense of violence that would constitute a felony under the laws of this state;

(b) A felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or property;

(c) Any attempt or conspiracy to commit, or complicity in committing, any offenses identified in division (A)(2)(a) or (A)(2)(b) of this section;

(d) Any conduct reasonably indicating that any offense identified in division (A)(2)(a) or (A)(2)(b) of this section or any attempt, conspiracy, or complicity described in division (A)(2)(c) of this section has been, is being, or is about to be committed.

(B) Whoever violates division (A) of this section is guilty of failure to disclose one's personal information, a misdemeanor of the fourth degree.

(C) Nothing in division (A) of this section requires a person to answer any questions beyond that person's name, address, or date of birth. Nothing in division (A) of this section authorizes a law enforcement officer to arrest a person for not providing any information beyond the person's name, address, or date of birth or for refusing to describe the offense observed.

(D) It is not a violation of division (A) of this section to refuse to answer a question that would reveal a person's age or date of birth if age is an element of the crime that the person is suspected of committing.
(R.C. § 2921.29)

(E) No person entering an airport, train station, port, or other similar critical transportation infrastructure site shall refuse to show identification when requested by a law enforcement officer when there is a threat to security and the law enforcement officer is requiring identification of all persons entering the site.

(F) A law enforcement officer may prevent any person who refuses to show identification when asked under the circumstances described in division (E) of this section from entering the critical transportation infrastructure site.
(R.C. § 2909.31)

# CHAPTER 137: WEAPONS CONTROL

Section



***Local Regulations***



***Cross-reference:***

*Conveyance into certain facilities, see § 136.13*
*Injury to persons by hunters, see § 135.05*
*Injury to property by hunters, see § 131.24*
*Using weapons to endanger or damage aircraft or airport operations, see § 131.05*

***Statutory reference:***

*Return of surrendered firearms by law enforcement, see R.C. § 2923.163*

## § 137.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACTIVE DUTY.*** Has the same meaning as defined in 10 U.S.C. § 101.

***ALIEN REGISTRATION NUMBER.*** The number issued by the United States Citizenship and Immigration Services Agency that is located on the alien's permanent resident card and may also be commonly referred to as the "USCIS number" or the "alien number".

***AUTOMATIC FIREARM.*** Any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger.

***BALLISTIC KNIFE.*** A knife with a detachable blade that is propelled by a spring-operated mechanism.

***CONCEALED HANDGUN LICENSE*** or ***LICENSE TO CARRY A CONCEALED HANDGUN***.

(1) Means, subject to division (2) of this definition, a license or temporary emergency license to carry a concealed handgun issued under R.C. § 2923.125 or R.C. § 2923.1213 or a license to carry a concealed handgun issued by another state with which the Attorney General has entered into a reciprocity agreement under R.C. § 109.69.

(2) A reference in any provision of this Code to a concealed handgun license issued under R.C. § 2923.125 or a license to carry a concealed handgun issued under R.C. § 2923.125 means only a license of the type that is specified in that section. A reference in any provision of this Code to a concealed handgun license issued under R.C. § 2923.1213, a license to carry a concealed handgun issued under R.C. § 2923.1213, or a license to carry a concealed handgun on a temporary emergency basis means only a license of the type that is specified in R.C. § 2923.1213. A reference in any provision of this Code to a concealed handgun license issued by another state or a license to carry a concealed handgun issued by another state means only a license issued by another state with which the Attorney General has entered into a reciprocity agreement under R.C. § 109.69.

***DANGEROUS ORDNANCE.***

(1) Any of the following, except as provided in division (2) of this definition:

(a) Any automatic or sawed-off firearm, zip-gun, or ballistic knife.

(b) Any explosive device or incendiary device.

(c) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions.

(d) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon.

(e) Any firearm muffler or suppressor.

(f) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

(2) The term does not include any of the following:

(a) Any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder.

(b) Any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm.

(c) Any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder.

(d) Black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in division (2)(c) of this definition during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition.

(e) Dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece.

(f) Any device that is expressly excepted from the definition of a destructive device pursuant to the Gun Control Act of 1968, 18 U.S.C. § 921(a)(4), as amended, and regulations issued under that act.

***DEADLY WEAPON.*** Any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

***EXPLOSIVE.*** Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes all materials that have been classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States Department of Transportation in its regulations and includes but is not limited to dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. The term does not include "fireworks," as defined in R.C. § 3743.01, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored, or used in any activity described in R.C. § 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including but not limited to the provisions of R.C. § 3743.80 and the rules of the Fire Marshal adopted pursuant to R.C. § 3737.82.

***EXPLOSIVE DEVICE.*** Any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. The term includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.

***FIREARM.***

(1) Any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. The term includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.

(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including but not limited to the representations and actions of the individual exercising control over the firearm.

***HANDGUN.*** Any of the following:

(1) Any firearm that has a short stock and is designed to be held and fired by the use of a single hand;

(2) Any combination of parts from which a firearm of a type described in division (1) of this definition can be assembled.

***INCENDIARY DEVICE.*** Any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agent and a means to ignite it.

***MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR.*** The phrase does not include any of the following:

(1) Any federal or state offense pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices;

(2) Any misdemeanor offense punishable by a term of imprisonment of two years or less.

***SAWED-OFF FIREARM.*** A shotgun with a barrel less than 18 inches long, or a rifle with a barrel less than 16 inches long, or a shotgun or rifle less than 26 inches long overall.

***SEMI-AUTOMATIC FIREARM.*** Any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

***VALID CONCEALED HANDGUN LICENSE*** or ***VALID LICENSE TO CARRY A CONCEALED HANDGUN.*** A concealed handgun license that is currently valid, that is not under a suspension under R.C. § 2923.128(A)(1), under R.C. § 2923.1213, or under a suspension provision of the state other than this state in which the license was issued, and that has not been revoked under R.C. § 2923.128(B)(1), under R.C. § 2923.1213, or under a revocation provision of the state other than this state in which the license was issued.

***ZIP-GUN.*** Any of the following:

(1) Any firearm of crude and extemporized manufacture.

(2) Any device, including without limitation a starter's pistol, not designed as a firearm, but that is specially adapted for use as a firearm.

(3) Any industrial tool, signaling device, or safety device, not designed as a firearm, but that as designed is capable of use as such, when possessed, carried, or used as a firearm.
(R.C. § 2923.11)

## § 137.02 CARRYING CONCEALED WEAPONS.

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

(1) A deadly weapon other than a handgun;

(2) A handgun other than a dangerous ordnance;

(3) A dangerous ordnance.

(B) No person who has been issued a concealed handgun license shall do any of the following:

(1) If the person is stopped for a law enforcement purpose, and is carrying a concealed handgun, fail to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a concealed handgun license and that the person then is carrying a concealed handgun;

(2) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(3) If the person is stopped for a law enforcement purpose, if the person is carrying a concealed handgun, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster, pocket, or other place in which the person is carrying it, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer;

(4) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the person is stopped, including but not limited to a specific order to the person to keep the person's hands in plain sight.

(C) (1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or to a law enforcement officer, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns and is acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns, and who is subject to and in compliance with the requirements of R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (C)(1)(b) does not apply to the person;

(c) A person's transportation or storage of a firearm, other than a firearm described in R.C. § 2923.11(G) to (M), in a motor vehicle for any lawful purpose if the firearm is not on the actor's person;

(d) A person's storage or possession of a firearm, other than a firearm described in R.C. § 2923.11(G) to (M), in the actor's own home for any lawful purpose.

(2) Division (A)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, either is carrying a valid concealed handgun license or is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1), unless the person knowingly is in a place described in R.C. § 2923.126(B).

(D) It is an affirmative defense to a charge under division (A)(1) of this section of carrying or having control of a weapon other than a handgun and other than a dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following applies:

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of a character or was necessarily carried on in a manner or at a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor, a member of the actor's family, or the actor's home, such as would justify a prudent person in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.

(E) No person who is charged with a violation of this section shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(F) (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this division or divisions (F)(2), (F)(6), and (F)(7) of this section, carrying concealed weapons in violation of division (A) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division or divisions (F)(2), (F)(6), and (F)(7) of this section, if the offender previously has been convicted of a violation of this section or any substantially equivalent state law or municipal ordinance or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of division (A) of this section is a felony to be prosecuted under appropriate state law. Except as otherwise provided in divisions (F)(2), (F)(6), and (F)(7) of this section, if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons in violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) Except as provided in division (F)(6) of this section, if a person being arrested for a violation of division (A)(2) of this section promptly produces a valid concealed handgun license, and if at the time of the violation the person was not knowingly in a place described in R.C. § 2923.126(B), the officer shall not arrest

the person for a violation of that division. If the person is not able to promptly produce any concealed handgun license and if the person is not in a place described in that section, the officer may arrest the person for a violation of that division, and the offender shall be punished as follows:

(a) The offender shall be guilty of a minor misdemeanor if both of the following apply:

1. Within 10 days after the arrest, the offender presents a concealed handgun license, which license was valid at the time of the arrest to the law enforcement agency that employs the arresting officer.

2. At the time of the arrest, the offender was not knowingly in a place described in R.C. § 2923.126(B).

(b) The offender shall be guilty of a misdemeanor and shall be fined $500 if all of the following apply:

1. The offender previously had been issued a concealed handgun license, and that license expired within the two years immediately preceding the arrest.

2. Within 45 days after the arrest, the offender presents a concealed handgun license to the law enforcement agency that employed the arresting officer, and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in R.C. § 2945.71.

3. At the time of the commission of the offense, the offender was not knowingly in a place described in R.C. § 2923.126(B).

(c) If divisions (F)(2)(a) and (F)(2)(b) and (F)(6) of this section do not apply, the offender shall be punished under division (F)(1) or (F)(7) of this section.

(3) Except as otherwise provided in this division, carrying concealed weapons in violation of division (B)(1) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for a violation of division (B)(1) of this section, the offender's concealed handgun license shall be suspended pursuant to R.C. § 2923.128(A)(2). If, at the time of the stop of the offender for a law enforcement purpose that was the basis of the violation, any law enforcement officer involved with the stop had actual knowledge that the offender has been issued a concealed handgun license, carrying concealed weapons in violation of division (B)(1) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to R.C. § 2923.128(A)(2).

(4) Carrying concealed weapons in violation of division (B)(2) or (B)(4) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(2) or (B)(4) of this section or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (B)(2) or (B)(4) of this section, the offender's concealed handgun license shall be suspended pursuant to R.C. § 2923.128(A)(2).

(5) Carrying concealed weapons in violation of division (B)(3) of this section is a felony to be prosecuted under appropriate state law.

(6) If a person being arrested for a violation of division (A)(2) of this section is an active duty m ember of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1), and if at the time of the violation the person was not knowingly in a place described in R.C. 2923.126(B), the officer shall not arrest the person for a violation of that division. If the person is not able to promptly produce a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1) and if the person is not in a place described in R.C. § 2923.126(B), the officer shall issue a citation and the offender shall be assessed a civil penalty of not more than $500. The citation shall be automatically dismissed and the civil penalty shall not be assessed if both of the following apply:

(a) Within ten days after the issuance of the citation, the offender presents a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1), which were both valid at the time of the issuance of the citation to the law enforcement agency that employs the citing officer.

(b) At the time of the citation, the offender was not knowingly in a place described in R.C. § 2923.126(B).

(7) If a person being arrested for a violation of division (A)(2) of this section is knowingly in a place described in R.C. § 2923.126(B)(5) and is not authorized to carry a handgun or have a handgun concealed on the person's person or concealed ready at hand under that division, the penalty shall be as follows:

(a) Except as otherwise provided in this division, if the person produces a valid concealed handgun license within ten days after the arrest and has not previously been convicted or pleaded guilty to a violation of division (A)(2) of this section or any substantially equivalent state law or municipal ordinance, the person is guilty of a minor misdemeanor;

(b) Except as otherwise provided in this division, if the person has previously been convicted of or pleaded guilty to a violation of division (A)(2) of this section or any substantially equivalent state law or municipal ordinance, the person is guilty of a misdemeanor of the fourth degree;

(c) Except as otherwise provided in this division, if the person has previously been convicted of or pleaded guilty to two violations of division (A)(2) of this section or any substantially equivalent state law or municipal ordinance, the person is guilty of a misdemeanor of the third degree;

(d) Except as otherwise provided in this division, if the person has previously been convicted of or pleaded guilty to three or more violations of division (A)(2) of this section or any substantially equivalent state law or municipal ordinance, or convicted of or pleaded guilty to any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is a dangerous ordnance, the person is guilty of a misdemeanor of the second degree.

(G) If a law enforcement officer stops a person to question the person regarding a possible violation of this section, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited

by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, R.C. § 2923.163(B) applies.
(R.C. § 2923.12)

***Statutory reference:***

*Carrying concealed handguns, licensing through county sheriff, see R.C. §§ 2923.124 et seq.*
*Conveyance or possession of deadly weapons or dangerous ordnance on school premises, felony offense, see R.C. § 2923.122*
*Conveyance, possession, or control of deadly weapon or dangerous ordinance in a courthouse, felony offense, see R.C. § 2923.123*
*Possession of deadly weapon while under detention, felony offense, see R.C. § 2923.131*
*Possession of firearm in liquor permit premises, felony offense, see R.C. § 2923.121*

## § 137.03 USING WEAPONS WHILE INTOXICATED.

(A) No person, while under the influence of alcohol or any drug of abuse, shall carry or use any firearm or dangerous ordnance.

(B) Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree.
(R.C. § 2923.15)

## § 137.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.

(A) No person shall knowingly discharge a firearm while in or on a motor vehicle.

(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.

(C) No person shall knowingly transport or have a firearm in a motor vehicle, unless the person may lawfully possess that firearm under applicable law of this state or the United States, the firearm is unloaded, and the firearm is carried in one of the following ways:

(1) In a closed package, box, or case.

(2) In a compartment that can be reached only by leaving the vehicle.

(3) In plain sight and secured in a rack or holder made for the purpose.

(4) If the firearm is at least 24 inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least 18 inches in length, either in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

(D) No person shall knowingly transport or have a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies:

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol, a listed controlled substance, or a listed metabolite of a controlled substance prohibited for persons operating a vehicle, as specified in R.C. § 4511.19(A), regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.

(E) No person who has been issued a concealed handgun license or who is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1), who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in R.C. § 5503.34, and who is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, shall do any of the following:

(1) Fail to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a concealed handgun license or is authorized to carry a concealed handgun as an active duty member of the armed forces of the United States and that the person then possesses or has a loaded handgun in the motor vehicle;

(2) Fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a concealed handgun license or is authorized to carry a concealed handgun as an active duty member of the armed forces of the United States and that the person then possesses or has a loaded handgun in the commercial motor vehicle;

(3) Knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(4) Knowingly have contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer.

(5) Knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, including but not limited to a specific order to the person to keep the person's hands in plain sight.

(F) (1) Divisions (A), (B), (C), and (E) of this section do not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the requirements of R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (F)(1)(b) does not apply to the person.

(2) Division (A) of this section does not apply to a person if all of the following circumstances apply:

(a) The person discharges a firearm from a motor vehicle at a coyote or groundhog, the discharge is not during the deer gun hunting season as set by the Chief of the Division of Wildlife of the Department of Natural Resources, and the discharge at the coyote or groundhog, but for the operation of this section, is lawful.

(b) The motor vehicle from which the person discharges the firearm is on real property that is located in an unincorporated area of a township and that is either zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(2)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person does not discharge the firearm in any of the following manners:

1. While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

2. In the direction of a street, highway or other public or private property used by the public for vehicular traffic or parking;

3. At or into an occupied structure that is a permanent or temporary habitation;

4. In the commission of any violation of law, including but not limited to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(3) Division (A) of this section does not apply to a person if all of the following apply:

(a) The person possesses a valid electric-powered all-purpose vehicle permit issued under R.C. § 1533.103 by the Chief of the Division of Wildlife.

(b) The person discharges a firearm at a wild quadruped or game bird as defined in R.C. § 1531.01 during the open hunting season for the applicable wild quadruped or game bird.

(c) The person discharges a firearm from a stationary electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife, provided that the road is identified by an electric-powered all-purpose vehicle sign.

(d) The person does not discharge the firearm in any of the following manners:

1. While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

2. In the direction of a street, a highway, or other public or private property that is used by the public for vehicular traffic or parking;

3. At or into an occupied structure that is a permanent or temporary habitation;

4. In the commission of any violation of law, including but not limited to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(4) Divisions (B) and (C) of this section do not apply to a person if all of the following circumstances apply:

(a) At the time of the alleged violation of either of those divisions, the person is the operator of or a passenger in a motor vehicle.

(b) The motor vehicle is on real property that is located in an unincorporated area of a township and that is either zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(4)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person, prior to arriving at the real property described in division (F)(4)(b) of this section, did not transport or possess a firearm in the motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway or other public or private property used by the public for vehicular traffic or parking.

(5) Divisions (B) and (C) of this section do not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, both of the following apply:

(a) The person transporting or possessing the handgun is either carrying a valid concealed handgun license or is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1).

(b) The person transporting or possessing the handgun is not knowingly in a place described in R.C. § 2923.126(B).

(6) Divisions (B) and (C) of this section do not apply to a person if all of the following apply:

(a) The person possesses a valid electric-powered all-purpose vehicle permit issued under R.C. § 1533.103 by the Chief of the Division of Wildlife.

(b) The person is on or in an electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle during the open hunting season for a wild quadruped or game bird.

(c) The person is on or in an electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife, provided that the road is identified by an electric-powered all-purpose vehicle sign.

(G) (1) The affirmative defenses authorized in R.C. § 2923.12(D)(1) and (D)(2) are affirmative defenses to a charge under division (B) or (C) of this section that involves a firearm other than a handgun.

(2) It is an affirmative defense to a charge under division (B) or (C) of this section of improperly handling firearms in a motor vehicle that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on the actor's own property, provided that this affirmative defense is not available unless the person, immediately prior to arriving at the actor's own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(H) (1) No person who is charged with a violation of division (B), (C), or (D) of this section shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(2) (a) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (E) of this section as it existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of division (E) of this section on or after September 30, 2011, the person may file an application under R.C. § 2953.37 requesting the expungement of the record of conviction.

(b) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B) or (C) of this section as the division existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of division (B) or (C) of this section on or after September 30, 2011, due to the application of division (F)(5) of this section as it exists on and after September 30, 2011, the person may file an application under R.C. § 2953.37 requesting the expungement of the record of conviction.

(I) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. Violation of division (A) of this section is a felony to be prosecuted under appropriate state law. Violation of division (C) of this section is a misdemeanor of the fourth degree. A violation of division (D) of this section is a felony to be prosecuted under appropriate state law and, if the loaded handgun is concealed on the person's person, it is also a felony to be prosecuted under appropriate state law. Except as otherwise provided in this division, a violation of division (E)(1) or (E)(2) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for the violation, the offender's concealed handgun license shall be suspended pursuant to R.C. § 2923.128(A)(2). If at the time of the stop of the offender for a traffic stop, for another law enforcement purpose, or for a purpose defined in R.C. § 5503.34 that was the basis of the violation any law enforcement officer involved with the stop or the employee of the motor carrier enforcement unit who made the stop had actual knowledge of the offender's status as a licensee, a violation of division (E)(1) or (E)(2) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to R.C. § 2923.128(A)(2). A violation of division (E)(4) of this section is a felony to be prosecuted under

appropriate state law. A violation of division (E)(3) or (E)(5) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (E)(3) or (E)(5) of this section or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (E)(3) or (E)(5) of this section, the offender's concealed handgun license shall be suspended pursuant to R.C. § 2923.128(A)(2). A violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(J) If a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the motor vehicle surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, R.C. § 2923.163(B) applies.

(K) As used in this section:

***AGRICULTURE.*** Has the same meaning as in R.C. § 519.01.

***COMMERCIAL MOTOR VEHICLE.*** Has the same meaning as in R.C. § 4506.25(A).

***HIGHWAY.*** Has the same meaning as in R.C. § 4511.01.

***MOTOR CARRIER ENFORCEMENT UNIT.*** Means the Motor Carrier Enforcement Unit in the Department of Public Safety, Division of State Highway Patrol, that is created by R.C. § 5503.34.

***MOTOR VEHICLE.*** Has the same meaning as in R.C. § 4511.01.

***OCCUPIED STRUCTURE.*** Has the same meaning as in R.C. § 2909.01.

***STREET.*** Has the same meaning as in R.C. § 4511.01.

***TENANT.*** Has the same meaning as in R.C. § 1531.01.

***UNLOADED.***

(a) With respect to a firearm other than a firearm described in division (d) of this definition, means that no ammunition is in the firearm in question, no magazine or speed loader containing ammunition is inserted into the firearm, and one of the following applies:

1. There is no ammunition in a magazine or speed loader that is in the vehicle in question and that may be used with the firearm in question.

2. Any magazine or speed loader that contains ammunition and that may be used with the firearm in question is stored in a compartment within the vehicle in question that cannot be accessed without leaving the vehicle or is stored in a container that provides complete and separate enclosure.

(b) For the purposes of division (a)2. of this definition, a "container that provides complete and separate enclosure" includes, but is not limited to, any of the following:

1. A package, box, or case with multiple compartments, as long as the loaded magazine or speed loader and the firearm in question either are in separate compartments within the package, box, or case, or, if they are in the same compartment, the magazine or speed loader is contained within a separate enclosure in that compartment that does not contain the firearm and that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents or the firearm is contained within a separate enclosure of that nature in that compartment that does not contain the magazine or speed loader;

2. A pocket or other enclosure on the person of the person in question that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents.

(c) For the purposes of divisions (a) and (b) of this definition, ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

(d) "Unloaded" means, with respect to a firearm employing a percussion cap, flintlock, or other obsolete ignition system, when the weapon is uncapped or when the priming charge is removed from the pan.

(L) Divisions (a) and (b) of the definition of "unloaded" in division (K) of this section do not affect the authority of a person who is carrying a valid concealed handgun license to have one or more magazines or speed loaders containing ammunition anywhere in a vehicle, without being transported as described in those divisions, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any other provision of this chapter. A person who is carrying a valid concealed handgun license may have one or more magazines or speed loaders containing ammunition anywhere in a vehicle without further restriction, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any provision of this chapter.
(R.C. § 2923.16)

***Statutory reference:***

*Return of surrendered firearms by law enforcement, see R.C. § 2923.163*

## § 137.05 POSSESSING CRIMINAL TOOLS.

(A) No person shall possess or have under his or her control any substance, device, instrument, or article, with purpose to use it criminally.

(B) Each of the following constitutes prima facie evidence of criminal purpose:

(1) Possession or control of any dangerous ordnance, or the materials or parts for making a dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials or parts are intended for a legitimate use.

(2) Possession or control of any substance, device, instrument, or article designed or specially adapted for criminal use.

(3) Possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use.

(C) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division, possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony to be prosecuted under appropriate state law.
(R.C. § 2923.24)

## § 137.06 FAILURE TO SECURE DANGEROUS ORDNANCE.

(A) No person, in acquiring, possessing, carrying, or using any dangerous ordnance, shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person.

(2) To insure the safety of persons and property.

(B) Whoever violates this section is guilty of failure to a secure dangerous ordnance, a misdemeanor of the second degree.
(R.C. § 2923.19)

## § 137.07 UNLAWFUL TRANSACTIONS IN WEAPONS.

(A) No person shall:

(1) Recklessly sell, lend, give or furnish any firearm to any person prohibited by R.C. § 2923.13 or 2923.15, or a substantially equivalent municipal ordinance, from acquiring or using any firearm, or recklessly sell, lend, give or furnish any dangerous ordnance to any person prohibited by R.C. § 2923.13, 2923.15 or 2923.17, or a substantially equivalent municipal ordinance, from acquiring or using any dangerous ordnance;

(2) Possess any firearm or dangerous ordnance with purpose to dispose of it in violation of division (A)(1) of this section;

(3) Manufacture, possess for sale, sell, or furnish to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife, or similar weapon;

(4) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him or her to be authorized to acquire dangerous ordnance pursuant to R.C. § 2923.17, or negligently fail to take a complete record of the transaction and forthwith forward a copy of the record to the sheriff of the county or Safety Director or Police Chief of the municipality where the transaction takes place;

(5) Knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession and under his or her control.

(B) Whoever violates this section is guilty of unlawful transactions in weapons. A violation of division (A)(1) or (A)(2) of this section is a felony to be prosecuted under appropriate state law. A violation of division (A)(3) or (A)(4) of this section is a misdemeanor of the second degree. A violation of division (A)(5) of this section is a misdemeanor of the fourth degree.
(R.C. § 2923.20)

## § 137.08 UNDERAGE PURCHASE OF FIREARM OR HANDGUN.

(A) No person under 18 years of age shall purchase or attempt to purchase a firearm.

(B) No person under 21 years of age shall purchase or attempt to purchase a handgun; provided, that this division does not apply to the purchase or attempted purchase of a handgun by a person 18 years of age or older and under 21 years of age if either of the following applies:

(1) The person is a law enforcement officer and has received firearms training approved by the Ohio Peace Officer Training Council or equivalent firearms training.

(2) The person is an active or reserve member of the armed services of the United States or the Ohio National Guard, or was honorably discharged from military service in the active or reserve armed services of the United States or the Ohio National Guard, and the person has received firearms training from the armed services or the national guard or equivalent firearms training.

(C) Whoever violates division (A) of this section is guilty of underage purchase of a firearm, a delinquent act that would be a felony to be prosecuted under appropriate state law if it could be committed by an adult. Whoever violates division (B) of this section is guilty of underage purchase of a handgun, a misdemeanor of the second degree.
(R.C. § 2923.211)
***Statutory reference:***
*Improperly furnishing firearms to a minor, felony, see R.C. § 2923.21*

## § 137.09 POINTING AND DISCHARGING FIREARMS AND OTHER WEAPONS.

(A) *Discharge of firearms on or near prohibited premises.* No person shall do any of the following:

(1) Without permission from the proper officials and subject to division (B)(1) of this section, discharge a firearm upon or over a cemetery or within 100 yards of a cemetery;

(2) Subject to division (B)(2) of this section, discharge of a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution;

(3) Discharge a firearm upon or over a public road or highway.

(B) *Application of division (A).*

(1) Division (A)(1) of this section does not apply to a person who while on the person's own land, discharges a firearm.

(2) Division (A)(2) of this section does not apply to a person who owns any type of property described in that division and who, while on the person's own enclosure, discharges a firearm.

(C) *Penalty for violation of division (A).* Whoever violates division (A) of this section is guilty of discharge of a firearm on or near prohibited premises. A violation of division (A)(1) or (A)(2) of this section is a misdemeanor of the fourth degree. A violation of division (A)(3) shall be punished as follows:

(1) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(3) of this section is a misdemeanor of the first degree.

(2) If the violation created a substantial risk of physical harm to any person, caused serious physical harm to property, caused physical harm to any person, or caused serious physical harm to any person, a violation of division (A)(3) is a felony to be prosecuted under appropriate state law.
(R.C. § 2923.162)

(D) *Hunting near township park.*

(1) No person shall hunt, shoot, or kill game within one-half mile of a township park unless the Board of Township Park Commissioners has granted permission to kill game not desired within the limits prohibited by this division.
(R.C. § 3773.06)

(2) Whoever violates division (D)(1) of this section is guilty of a misdemeanor of the fourth degree.
(R.C. § 3773.99(A))

(E) *Unlawful discharge.* No person shall discharge any BB gun, air gun, or firearm, or make use of any sling, bow and arrow, or crossbow, within the corporate limits of the municipality.

(F) *Unlawful pointing or aiming.* No person shall, intentionally and without malice, point or aim any BB gun, air gun, or firearm, or any sling, bow and arrow, or crossbow at or toward another.

(G) *Penalty for violations of division (E) or (F).* Whoever violates division (E) or (F) of this section is guilty of a misdemeanor of the fourth degree.

(H) *Exceptions.* This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation's armed forces acting under military authority, and shall not apply to law enforcement officials or other government officials in the proper enforcement of the law, or to any person in the proper exercise of the right of self defense, or to any person otherwise lawfully permitted by proper federal, state or local authorities to discharge a BB gun, air gun, or firearm, or to use a sling, bow and arrow, or crossbow in a manner contrary to the provisions of this section. Division (E) of this section does not extend to cases in which BB guns, air guns, or firearms, or slings, bows and arrows, or crossbows are used in the confines of structures or used

within the confines of a person's own property, provided such use is under adult supervision and is approved by the municipality.

***Statutory reference:***

*Improperly discharging firearm at or into habitation or school safety zone, felony offense, see R.C. § 2923.161*

## § 137.10 LICENSE OR PERMIT TO POSSESS DANGEROUS ORDNANCE.

(A) Upon application to the sheriff of the county or Safety Director or Police Chief of the municipality where the applicant resides or has his or her principal place of business, and upon payment of the fee specified in division (B) of this section, a license or temporary permit shall be issued to qualified applicants to acquire, possess, carry or use a dangerous ordnance for the following purposes:

(1) Contractors, wreckers, quarry workers, mine operators and other persons regularly employing explosives in the course of a legitimate business, with respect to explosives and explosive devices acquired, possessed, carried or used in the course of such business.

(2) Farmers, with respect to explosives and explosive devices acquired, possessed, carried or used for agricultural purposes on lands farmed by them.

(3) Scientists, engineers, and instructors, with respect to a dangerous ordnance acquired, possessed, carried or used in the course of bona fide research or instruction.

(4) Financial institutions and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried or used by any such person while acting within the scope of his or her duties.

(5) In the discretion of the issuing authority, any responsible person, with respect to a dangerous ordnance lawfully acquired, possessed, carried or used for a legitimate research, scientific, educational, industrial or other proper purpose.

(B) Application for a license or temporary permit under this section shall be in writing under oath to the sheriff of the county or Safety Director or Police Chief of the municipality where the applicant resides or has his or her principal place of business. The application shall be accompanied by an application fee of $50 when the application is for a license, and an application fee of $5 when the application is for a temporary permit. The fees shall be paid into the General Revenue Fund of the county or municipality. The application shall contain the following information:

(1) The name, age, address, occupation and business address of the applicant, if he or she is a natural person, or the name, address, and principal place of business of the applicant if the applicant is a corporation.

(2) A description of the dangerous ordnance for which a permit is requested.

(3) A description of the places where and the manner in which the dangerous ordnance is to be kept, carried, and used.

(4) A statement of the purposes for which the dangerous ordnance is to be acquired, possessed, carried or used.

(5) Such other information as the issuing authority may require in giving effect to this section.

(C) Upon investigation, the issuing authority shall issue a license or temporary permit only if all of the following apply:

(1) The applicant is not otherwise prohibited by law from acquiring, having, carrying or using a dangerous ordnance.

(2) The applicant is 21 years of age or over, if the applicant is a natural person.

(3) It appears that the applicant has sufficient competence to safely acquire, possess, carry or use the dangerous ordnance, and that proper precautions will be taken to protect the security of the dangerous ordnance and ensure the safety of persons and property.

(4) It appears that the dangerous ordnance will be lawfully acquired, possessed, carried and used by the applicant for a legitimate purpose.

(D) The license or temporary permit shall identify the person to whom it is issued, identify the dangerous ordnance involved and state the purposes for which the license or temporary permit is issued, state the expiration date, if any, and list such restrictions on the acquisition, possession, carriage, or use of the dangerous ordnance as the issuing authority considers advisable to protect the security of the dangerous ordnance and ensure the safety of persons and property.

(E) A temporary permit shall be issued for the casual use of explosives and explosive devices, and other consumable dangerous ordnance, and shall expire within 30 days of its issuance. A license shall be issued for the regular use of a consumable dangerous ordnance, which license need not specify an expiration date, but the issuing authority may specify such expiration date, not earlier than one year from the date of issuance, as it considers advisable in view of the nature of the dangerous ordnance and the purposes for which the license is issued.

(F) The dangerous ordnance specified in a license or temporary permit may be obtained by the holder anywhere in the state. Pursuant to R.C. § 2923.18(F), the holder of a license may use such dangerous ordnance anywhere in the state. The holder of a temporary permit may use such dangerous ordnance only within the territorial jurisdiction of the issuing authority.

(G) The issuing authority shall forward to the State Fire Marshal a copy of each license or temporary permit issued pursuant to this section, and a copy of each record of a transaction in a dangerous ordnance and of each report of a lost or stolen dangerous ordnance, given to the local law enforcement authority as required by R.C. § 2923.20(A)(4) and (A)(5) or a substantially equivalent municipal ordinance. The State Fire Marshal will keep a permanent file of all licenses and temporary permits issued pursuant to this section, and of all records of transactions in, and losses or thefts of a dangerous ordnance forwarded by local law enforcement authorities pursuant to this section.
(R.C. § 2923.18)

## § 137.11 POSSESSION OF AN OBJECT INDISTINGUISHABLE FROM A FIREARM IN A SCHOOL SAFETY ZONE.

(A) No person shall knowingly possess an object in a school safety zone if both of the following apply:

(1) The object is indistinguishable from a firearm, whether or not the object is capable of being fired.

(2) The person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm.

(B) (1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a law enforcement officer who is authorized to carry deadly weapons or dangerous ordnance, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;

(b) Any person who is employed in this state, who is authorized to carry deadly weapons or dangerous ordnance, and who is subject to and in compliance with the requirements of R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (B)(1)(b) does not apply to the person.

(2) This section does not apply to premises upon which home schooling is conducted. This section also does not apply to a school administrator, teacher or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an object that is indistinguishable from a firearm under the direction of a school administrator, teacher or employee, or any other person who, with the express prior approval of a school administrator, possesses an object that is indistinguishable from a firearm for a legitimate purpose, including the use of the object in a ceremonial activity, a play, re-enactment or other dramatic presentation, school safety training, or a ROTC activity or another similar use of the object.

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity.

(b) The person is carrying a valid concealed handgun license or the person is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1).

(c) The person is in the school safety zone in accordance with 18 U.S.C. § 922(q)(2)(B).

(d) The person is not knowingly in a place described in R.C. § 2923.126(B)(1) or (B)(3) through (B)(8).

(4) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if at the time of that conveyance, attempted conveyance, or possession of the handgun all of the following apply:

(a) The person is carrying a valid concealed handgun license or the person is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1).

(b) The person leaves the handgun in a motor vehicle.

(c) The handgun does not leave the motor vehicle.

(d) If the person exits the motor vehicle, the person locks the motor vehicle.

(C) Whoever violates this section is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this division, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony to be prosecuted under appropriate state law.

(D) (1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section, and subject to division (D)(2) of this section, if the offender has not attained 19 years of age, regardless of whether the offender is attending or is enrolled in a school operated by a board of education or for which the State Board of Education prescribes minimum standards under R.C. § 3301.07, the court shall impose upon the offender a class four suspension of the offender's probationary driver's license, restricted license, driver's license, commercial driver's license, temporary instruction permit, or probationary commercial driver's license that then is in effect from the range specified in R.C. § 4510.02(A)(4) and shall deny the offender the issuance of any permit or license of that type during the period of the suspension. If the offender is not a resident of this state, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in R.C. § 4510.02(A)(4).

(2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits or privileges specified in division (D)(1) of this section or deny the issuance of one of the temporary instruction permits specified in division (D)(1) of this section, the court in its discretion may choose not to impose the suspension, revocation or denial required in division (D)(1) of this section, but the court, in its discretion, instead may require the offender to perform community service for a number of hours determined by the court.

(E) As used in this section, ***OBJECT THAT IS INDISTINGUISHABLE FROM A FIREARM*** means an object made, constructed or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.
(R.C. § 2923.122(C) - (G))
***Statutory reference:***
*Conveyance or possession of deadly weapons or dangerous ordnance in a school safety zone, felony offense, see R.C. § 2923.122(A) and (B)*

## § 137.12 POSSESSION OF DEADLY WEAPON WHILE UNDER DETENTION.

(A) As used in this section, ***DETENTION*** and ***DETENTION FACILITY*** have the same meanings as in R.C. § 2921.01.

(B) No person under detention at a detention facility shall possess a deadly weapon.

(C) Whoever violates this section is guilty of possession of a deadly weapon while under detention.

(1) Except as otherwise provided in division (C)(2) of this section, possession of a deadly weapon while under detention is a felony to be prosecuted under state law.

(2) If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if at the time the offender commits the act for which the offender was under detention it would not be a felony if committed by an adult, possession of a deadly weapon while under detention is a misdemeanor of the first degree.
(R.C. § 2923.131)
***Statutory reference:***
*Possession of deadly weapon while under detention, felony offenses, see R.C. § 2923.131*

## § 137.13 CONCEALED HANDGUN LICENSES: POSSESSION OF A REVOKED OR SUSPENDED LICENSE; ADDITIONAL RESTRICTIONS; POSTING OF SIGNS PROHIBITING POSSESSION.

(A) *Possession of a revoked or suspended concealed handgun license.*

(1) No person, except in the performance of official duties, shall possess a concealed handgun license that was issued and that has been revoked or suspended.

(2) Whoever violates this division (A) is guilty of possessing a revoked or suspended concealed handgun license, a misdemeanor of the third degree.
(R.C. § 2923.1211(B), (C))

(B) *Additional restrictions.* Pursuant to R.C. § 2923.126:

(1) (a) A concealed handgun license that is issued under R.C. § 2923.125 shall expire five years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of 30 days after the licensee's license expires during which the licensee's license remains valid. Except as

provided in divisions (B)(2) and (B)(3) of this section, a licensee who has been issued a concealed handgun license under R.C. § 2923.125 or 2923.1213 may carry a concealed handgun anywhere in this state if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within 45 days after that change.

(b) If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee shall promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee has been issued a concealed handgun license and that the licensee currently possesses or has a loaded handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the motor vehicle is stopped, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of R.C. § 2923.16(E), after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. Additionally, if a licensee is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in R.C. § 5503.34 and if the licensee is transporting or has a loaded handgun in the commercial motor vehicle at that time, the licensee shall promptly inform the employee of the unit who approaches the vehicle while stopped that the licensee has been issued a concealed handgun license and that the licensee currently possesses or has a loaded handgun.

(c) If a licensee is stopped for a law enforcement purpose and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee shall promptly inform any law enforcement officer who approaches the licensee while stopped that the licensee has been issued a concealed handgun license and that the licensee currently is carrying a concealed handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the licensee is stopped or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of R.C. § 2923.12(B), after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves.

(2) A valid concealed handgun license does not authorize the licensee to carry a concealed handgun in any manner prohibited under R.C. § 2923.12(B) or in any manner prohibited under R.C. § 2923.16. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(a) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation; a state correctional institution, jail, workhouse, or other detention facility; any area of an airport passenger terminal that is beyond a passenger or property screening checkpoint or to which access is restricted through security measures by the airport authority or a public agency; or an institution that is maintained, operated, managed, and governed pursuant to R.C. § 5119.14(A) or R.C. § 5123.03(A)(1);

(b) A school safety zone if the licensee's carrying the concealed handgun is in violation of R.C. § 2923.122;

(c) A courthouse or another building or structure in which a courtroom is located, in violation of R.C. § 2923.123;

(d) Any premises or open air arena for which a D permit has been issued under R.C. Chapter 4303 if the licensee's carrying the concealed handgun is in violation of R.C. § 2923.121;

(e) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle or unless the licensee is carrying the concealed handgun pursuant to a written policy, rule, or other authorization that is adopted by the institution's board of trustees or other governing body and that authorizes specific individuals or classes of individuals to carry a concealed handgun on the premises;

(f) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(g) Any building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(2)(c) of this section, unless the governing body with authority over the building has enacted a statute, ordinance, or policy that permits a licensee to carry a concealed handgun into the building;

(h) A place in which federal law prohibits the carrying of handguns.

(3) (a) Nothing in this division (B) shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. Nothing in this division (B) shall require a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer.

(b) 1. A private employer shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer.

2. A political subdivision shall be immune from liability in a civil action, to the extent and in the manner provided in R.C. Chapter 2744, for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises or property owned, leased, or otherwise under the control of the political subdivision. As used in this division, ***POLITICAL SUBDIVISION*** has the same meaning as in R.C. § 2744.01.

3. An institution of higher education shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises of the institution, including motor vehicles owned by the institution, unless the institution acted with malicious purpose. An institution of higher education is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the institution's decision to permit a licensee or class of licensees to bring a handgun onto the premises of the institution.

(c) 1. a. Except as provided in division (B)(3)(c)2. of this section, the owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. Except as otherwise provided in this division, a person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of R.C. § 2911.21(A)(4) and is guilty of a misdemeanor of the fourth degree. If a person knowingly violates a posted prohibition of that nature and the posted land or premises primarily was a parking lot or other parking facility, the person is not guilty of criminal trespass under R.C. § 2911.21 or under any other criminal law of this state or criminal law, ordinance, or resolution of a political subdivision of this state, and instead is subject only to a civil cause of action for trespass based on the violation.

b. If a person knowingly violates a posted prohibition of the nature described in this division and the posted land or premises is a child day-care center, type A family day-care home, or type B family day-care home, unless the person is a licensee who resides in a type A family day-care home or type B family day-care home, the person is guilty of aggravated trespass in violation of R.C. § 2911.211. Except as otherwise provided in this division, the offender is guilty of a misdemeanor of the first degree. If the person previously has been convicted of a violation of this division or any substantially equivalent state law or municipal ordinance, or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, the offender is guilty of a felony to be prosecuted under appropriate state law.

2. A landlord may not prohibit or restrict a tenant who is a licensee and who on or after September 9, 2008 enters into a rental agreement with the landlord for the use of residential premises, and the tenant's guest while the tenant is present, from lawfully carrying or possessing a handgun on those residential premises.

3. As used in division (B)(3)(c) of this section:

***LANDLORD.*** Has the same meaning as in R.C. § 5321.01.

***RENTAL AGREEMENT.*** Has the same meaning as in R.C. § 5321.01.

***RESIDENTIAL PREMISES.*** Has the same meaning as in R.C. § 5321.01, except the term does not include a dwelling unit that is owned or operated by a college or university.

***TENANT.*** Has the same meaning as in R.C. § 5321.01.

(4) A person who holds a valid concealed handgun license issued by another state that is recognized by the Attorney General pursuant to a reciprocity agreement entered into pursuant to R.C. § 109.69 or a person who holds a valid concealed handgun license under the circumstances described in R.C. § 109.69(B) has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under R.C. § 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that section.

(5) (a) A peace officer has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under R.C. § 2923.125. For purposes of reciprocity with other states, a peace officer shall be considered to be a licensee in this state.

(b) An active duty member of the armed forces of the United States who is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in R.C. § 2923.125(G)(1) has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under R.C. § 2923.125 and is subject to the same restrictions as specified in this division (B).

(6) (a) A qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (B)(6)(b) of this section and a valid firearms requalification certification issued pursuant to division (B)(6)(c) of this section has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under R.C. § 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that section. For purposes of reciprocity with other states, a qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (B)(6)(b) of this section and a valid firearms requalification certification issued pursuant to division (B)(6)(c) of this section shall be considered to be a licensee in this state.

(b) 1. Each public agency of this state or of a political subdivision of this state that is served by one or more peace officers shall issue a retired peace officer identification card to any person who retired from service as a peace officer with that agency, if the issuance is in accordance with the agency's policies and procedures and if the person, with respect to the person's service with that agency, satisfies all of the following:

a. The person retired in good standing from service as a peace officer with the public agency, and the retirement was not for reasons of mental instability.

b. Before retiring from service as a peace officer with that agency, the person was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and the person had statutory powers of arrest.

c. At the time of the person's retirement as a peace officer with that agency, the person was trained and qualified to carry firearms in the performance of the peace officer's duties.

d. Before retiring from service as a peace officer with that agency, the person was regularly employed as a peace officer for an aggregate of 15 years or more, or, in the alternative, the person retired from service as a peace officer with that agency, after completing any applicable probationary period of that service, due to a service-connected disability, as determined by the agency.

2. A retired peace officer identification card issued to a person under division (B)(6)(b)1. of this section shall identify the person by name, contain a photograph of the person, identify the public agency of this state or of the political subdivision of this state from which the person retired as a peace officer and that is issuing the identification card, and specify that the person retired in good standing from service as a peace officer with the issuing public agency and satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(B)1.d. of this section. In addition to the required content specified in this division, a retired peace officer identification card issued to a person under division (B)(6)(b)1. of this section may include the firearms requalification certification described in division (B)(6)(c) of this section, and if the identification card includes that certification, the identification card shall serve as the firearms requalification certification for the retired peace officer. If the issuing public agency issues credentials to active law enforcement officers who serve the agency, the agency may comply with division (B)(6)(b)1. of this section by issuing the same credentials to persons who retired from service as a peace officer with the agency and who satisfy the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section, provided that the credentials so issued to retired peace officers are stamped with the word "RETIRED".

3. A public agency of this state or of a political subdivision of this state may charge persons who retired from service as a peace officer with the agency a reasonable fee for issuing to the person a retired peace officer identification card pursuant to division (B)(6)(b)1. of this section.

(c) 1. If a person retired from service as a peace officer with a public agency of this state or of a political subdivision of this state and the person satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section, the public agency may provide the retired peace officer with the opportunity to attend a firearms requalification program that is approved for purposes of firearms requalification required under R.C. § 109.801. The retired peace officer may be required to pay the cost of the course.

2. If a retired peace officer who satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section attends a firearms requalification program that is approved for purposes of firearms requalification required under R.C. § 109.801, the retired peace officer's successful completion of the firearms requalification program requalifies the retired peace officer for purposes of division (B)(6) of this section for five years from the date on which the program was successfully completed, and the requalification is valid during that five-year period. If a retired peace officer who satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section satisfactorily completes such a firearms requalification program, the retired peace officer shall be issued a firearms requalification certification that identifies the retired peace officer by name, identifies the entity that taught the program, specifies that the retired peace officer successfully completed the program, specifies the date on which the course was successfully completed, and specifies that the requalification is valid for five years from that date of successful completion. The firearms requalification certification for a retired peace officer may be included in the retired peace officer identification card issued to the retired peace officer under division (B)(6)(b) of this section.

3. A retired peace officer who attends a firearms requalification program that is approved for purposes of firearms requalification required under R.C. § 109.801 may be required to pay the cost of the program.

(7) As used in division (B) of this section:

***GOVERNING BODY.*** Has the same meaning as in R.C. § 154.01.

***GOVERNMENT FACILITY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.*** Means any of the following:

1. A building or part of a building that is owned or leased by the government of this state or a political subdivision of this state and where employees of the government of this state or the political subdivision regularly are present for the purpose of performing their official duties as employees of the state or political subdivision;

2. The office of a deputy registrar serving pursuant to R.C. Chapter 4503 that is used to perform deputy registrar functions.

***QUALIFIED RETIRED PEACE OFFICER.*** Means a person who satisfies all of the following:

1. The person satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section.

2. The person is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

3. The person is not prohibited by federal law from receiving firearms.

***RETIRED PEACE OFFICER IDENTIFICATION CARD.*** Means an identification card that is issued pursuant to division (B)(6)(b) of this section to a person who is a retired peace officer.
(R.C. § 2923.126)

(C) *Posting of signs prohibiting possession.* Pursuant to R.C. § 2923.1212:

(1) The following persons, boards, and entities, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises."

(a) The Director of Public Safety or the person or board charged with the erection, maintenance, or repair of police stations, municipal jails, and the municipal courthouse and courtrooms in a conspicuous location at all police stations, municipal jails, and municipal courthouses and courtrooms;

(b) The Sheriff or Sheriff's designee who has charge of the Sheriff's office in a conspicuous location in that office;

(c) The Superintendent of the State Highway Patrol or the Superintendent's designee in a conspicuous location at all state highway patrol stations;

(d) Each sheriff, chief of police, or person in charge of every county, multi-county, municipal, municipal-county, or multi-county/municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or other local or state correctional institution or detention facility within the state, or that person's designee, in a conspicuous location at that facility under that person's charge;

(e) The board of trustees of a regional airport authority, chief administrative officer of an airport facility, or other person in charge of an airport facility in a conspicuous location at each airport facility under that person's control;

(f) The officer or officer's designee who has charge of a courthouse or the building or structure in which a courtroom is located in a conspicuous location in that building or structure;

(g) The Superintendent of the Bureau of Criminal Identification and Investigation or the Superintendent's designee in a conspicuous location in all premises controlled by that Bureau;

(h) The owner, administrator, or operator of a child day-care center, a type A family day-care home, or a type B family day-care home;

(i) The officer of this state or of a political subdivision of this state, or the officer's designee, who has charge of a building that is a government facility of this state or the political subdivision of this state, as defined in R.C. § 2923.126, and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to R.C. § 2923.126(B)(3).

(2) The following boards, bodies, and persons, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to R.C. § 2923.122, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance into a school safety zone."

(a) A board of education of a city, local, exempted village, or joint vocational school district or that board's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the board;

(b) A governing body of a school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07 or that body's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the school;

(c) The principal or chief administrative officer of a nonpublic school in a conspicuous location on property owned or controlled by that nonpublic school.
(R.C. § 2923.1212)

## § 137.14 DEFACED FIREARMS.

(A) No person shall do either of the following:

(1) Change, alter, remove, or obliterate the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on a firearm.

(2) Possess a firearm knowing or having reasonable cause to believe that the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on the firearm has been changed, altered, removed, or obliterated.

(B) (1) Whoever violates division (A)(1) of this section is guilty of defacing identification marks of a firearm. Except as otherwise provided in this division, defacing identification marks of a firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(1) of this section, defacing identification marks of a firearm is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (A)(2) of this section is guilty of possessing a defaced firearm. Except as otherwise provided in this division, possessing a defaced firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) of this section, possessing a defaced firearm is a felony to be prosecuted under appropriate state law.

(C) Division (A) of this section does not apply to any firearm on which no manufacturer's serial number was inscribed at the time of its manufacture.
(R.C. § 2923.201)

## *LOCAL REGULATIONS*

### § 137.25 DISCHARGING OF PELLETS AND MISSILES.

(A) It shall be unlawful to discharge an arrow, crossbow, slingshot, air-gun or other contrivance or mechanical device for ejecting, discharging or otherwise throwing or shooting any missile, pellet, stone, bolt, metal or other substance capable of causing injury to anyone or damage to property of any kind whatsoever within the municipality.

(B) This section does not prohibit or render it unlawful to possess an arrow, crossbow, slingshot, air-gun or other contrivance or mechanical device nor does it prohibit their use in competitive, instructional or educational programs, marksmanship, and the proper handling, use and care of such devices provided the program has been approved by the Director of Safety. A permit shall be issued on the prior approval of the program and no fee shall be charged for the permit.

(C) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. CM-566, passed 2-3-1981) Penalty, see § 130.99

# CHAPTER 138: DRUG OFFENSES

Section



***Statutory reference:***

*Controlled substances, regulation of pharmacists and other professionals, see R.C. Chapters 3719 and 4729*
*Conviction of professionally licensed persons to be reported to licensing board, see R.C. § 2925.38*
*Criminal and civil forfeiture of property for felony drug abuse offenses, see R.C. Chapter 2981*
*Destruction of chemicals used to produce methamphetamine; preservation of samples, see R.C. § 2925.52*
*Driver's license suspension after certain drug convictions, see R.C. § 4510.07*
*Tampering with drugs, felony offense, see R.C. § 2925.24*

## § 138.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words, terms and phrases and their derivatives used in this chapter which are not defined in this section shall have the meanings given to them in the Ohio Revised Code.

***ADMINISTER.*** The direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.

***ADULTERATE.*** To cause a drug to be adulterated as described in R.C. § 3715.63.

***BENZODIAZEPINE.*** A controlled substance that has United States Food and Drug Administration approved labeling indicating that it is a benzodiazepine, benzodiazepine derivative, triazolobenzodiazepine, or triazolobenzodiazepine derivative, including the following drugs and their varying salt forms or chemical congeners: alprazolam, chlordiazepoxide hydrochloride, clobazam, clonazepam, clorazepate, diazepam, estazolam, flurazepam hydrochloride, lorazepam, midazolam, oxazepam, quazepam, temazepam, and triazolam.

***BULK AMOUNT.*** Of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II or Schedule III, with the exception of controlled substance analogs, marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (2) or (5) of this definition, whichever of the following is applicable:

(a) An amount equal to or exceeding ten grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative;

(b) An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding 30 grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a Schedule I stimulant or depressant;

(d) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative;

(e) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq., as amended) and the federal drug abuse control laws, as defined in this section, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq., as amended) and the federal drug abuse control laws;

(2) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

(3) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III opiate or opium derivative;

(4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance.

(5) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

***CERTIFIED GRIEVANCE COMMITTEE.*** A duly constituted and organized committee of the Ohio State Bar Association or of one or more local bar associations of the state that complies with the criteria set forth in Rule V, Section 6 of the Rules for the Government of the Bar of Ohio.

***COCAINE.*** Any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine.

(2) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine.

(3) A salt, compound, derivative, or preparation of a substance identified in division (1) or (2) of this definition that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

***COMMITTED IN THE VICINITY OF A JUVENILE.*** An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

***COMMITTED IN THE VICINITY OF A SCHOOL.*** An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

***CONTROLLED SUBSTANCE.*** A drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of R.C. § 3719.41.

***CONTROLLED SUBSTANCE ANALOG.***

(1) The phrase means, except as provided in division (2) of this definition, a substance to which both of the following apply:

(a) The chemical structure of the substance is substantially similar to the structure of a controlled substance in Schedule I or II.

(b) One of the following applies regarding the substance:

1. The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

2. With respect to a particular person, that person represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(2) The phrase does not include any of the following:

(a) A controlled substance;

(b) Any substance for which there is an approved new drug application;

(c) With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent that conduct with respect to that substance is pursuant to that exemption;

(d) Any substance to the extent it is not intended for human consumption before the exemption described in division (2)(c) of this definition takes effect with respect to that substance.

(3) Except as otherwise provided in R.C. § 2925.03 or R.C. § 2925.11, a controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of this Code or the Ohio Revised Code as a controlled substance in Schedule I.

***COUNTERFEIT CONTROLLED SUBSTANCE.*** Any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to the trademark, trade name, or identifying mark.

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it.

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance.

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

***CULTIVATE.*** Includes planting, watering, fertilizing or tilling.

***DANGEROUS DRUG.*** Any of the following:

(1) Any drug to which either of the following applies:

(a) Under the Federal Food, Drug, and Cosmetic Act, is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without a prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or may be dispensed only upon a prescription.

(b) Under R.C. Chapter 3715 or 3719, may be dispensed only upon a prescription.

(2) Any drug that contains a Schedule V controlled substance and that is exempt from R.C. Chapter 3719 or to which that chapter does not apply.

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

(4) Any drug that is a biological product, as defined in R.C. § 3715.01

***DECEPTION.*** Has the same meaning as in R.C. § 2913.01.

***DISCIPLINARY COUNSEL.*** The disciplinary counsel appointed by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court under the Rules for the Government of the Bar of Ohio.

***DISPENSE.*** Means to sell, leave with, give away, dispose of, or deliver.

***DISTRIBUTE.*** Means to deal in, ship, transport or deliver, but does not include administering or dispensing a drug.

***DRUG.*** Any of the following:

(1) Any article recognized in the official United States pharmacopeia, national formulary, or any supplement intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or other animals.

(4) Any article intended for use as a component of any article specified in division (1), (2), or (3) above; but does not include devices or their components, parts, or accessories.

***DRUG ABUSE OFFENSE.*** Any of the following:

(1) A violation of R.C. § 2913.02(A) that constitutes theft of drugs, or any violation of R.C. § 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36, or 2925.37.

(2) A violation of an existing or former law of a municipality, state or any other state or of the United States, that is substantially equivalent to any section listed in division (1) of this definition.

(3) An offense under an existing or former law of a municipality, state or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element.

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit, any offense under division (1), (2), or (3) of this definition.

***DRUG DEPENDENT PERSON.*** Any person who, by reason of the use of any drug of abuse, is physically and/or psychologically dependent upon the use of such drug to the detriment of the person's health or welfare.

***DRUG OF ABUSE.*** Any controlled substance, any harmful intoxicant, and any dangerous drug, as defined in this section.

***EMERGENCY FACILITY.*** A hospital emergency department or any other facility that provides emergency care.

***FEDERAL DRUG ABUSE CONTROL LAWS.*** The "Comprehensive Drug Abuse Prevention and Control Act of 1970," 21 U.S.C. §§ 801 et seq., as amended.

***FELONY DRUG ABUSE OFFENSE.*** Any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States.

***HARMFUL INTOXICANT.*** Does not include beer or intoxicating liquor, but means any of the following:

(1) Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes but is not limited to any of the following:

(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent.

(b) Any aerosol propellant.

(c) Any fluorocarbon refrigerant.

(d) Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol.

***HASHISH.*** The resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

***HYPODERMIC.*** A hypodermic syringe or needle, or other instrument or device for the injection of medication.

***JUVENILE.*** A person under 18 years of age.

***LABORATORY.*** A laboratory approved by the State Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.

***LAWFUL PRESCRIPTION.*** A prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

***LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS*** or ***PRESCRIBER.*** An individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following:

(1) A dentist licensed under R.C. Chapter 4715.

(2) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a current, valid license to practice nursing as an advanced practice registered nurse issued under R.C. Chapter 4723;

(3) An optometrist licensed under R.C. Chapter 4725 to practice optometry under a therapeutic pharmaceutical agent's certificate.

(4) A physician authorized under R.C. Chapter 4731 to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

(5) A physician assistant who holds a license to practice as a physician assistant issued under R.C. Chapter 4730, holds a valid prescriber number issued by the Ohio Medical Board, and has been granted physician-delegated prescriptive authority.

(6) A veterinarian licensed under R.C. Chapter 4741.

***L.S.D.*** Lysergic acid diethylamide.

***MAJOR DRUG OFFENDER.*** Has the same meaning as in R.C. § 2929.01.

***MANDATORY PRISON TERM.*** Has the same meaning as in R.C. § 2929.01.

***MANUFACTURE.*** To plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

***MANUFACTURER.*** A person who manufactures a controlled substance, as "manufacture" is defined by this section.

***MARIHUANA.*** All parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination. The term does not include hashish.

***METHAMPHETAMINE.*** Methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine.

***MINOR DRUG POSSESSION OFFENSE.*** Either of the following:

(1) A violation of R.C. § 2925.11 as it existed prior to July 1, 1996, or a substantially equivalent municipal ordinance.

(2) A violation of R.C. § 2925.11 as it exists on and after July 1, 1996, or a substantially equivalent municipal ordinance, that is a misdemeanor or a felony of the fifth degree.

***OFFICIAL WRITTEN ORDER.*** An order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by federal law.

***OPIOID ANALGESIC.*** A controlled substance that has analgesic pharmacologic activity at the opioid receptors of the central nervous system, including the following drugs and their varying salt forms or chemical congeners: buprenorphine, butorphanol, codeine (including acetaminophen and other combination products), dihydrocodeine, fentanyl, hydrocodone (including acetaminophen combination products), hydromorphone, meperidine, methadone, morphine sulfate, oxycodone (including acetaminophen, aspirin, and other combination products), oxymorphone, tapentadol, and tramadol.

***PERSON.*** Means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

***PHARMACIST.*** A person licensed under R.C. Chapter 4729 to engage in the practice of pharmacy.

***PHARMACY.*** Except when used in a context that refers to the practice of pharmacy, means any area, room, rooms, place of business, department, or portion of any of the foregoing, where the practice of pharmacy is conducted.

***POSSESS*** or ***POSSESSION.*** Having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

***PRESCRIPTION.*** Means all of the following:

(1) A written, electronic or oral order for drugs or combination or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.

(2) For purposes of R.C. §§ 2925.61, 4723.488, 4729.44, 4730.431, and 4731.94, a written, electronic, or oral order for naloxone issued to and in the name of a family member, friend, or other individual in a position to assist an individual who there is reason to believe is at risk of experiencing an opioid-related overdose.

(3) For purposes of R.C. §§ 4723.4810, 4729.282, 4730.432, and 4731.93, a written, electronic, or oral order for a drug to treat chlamydia, gonorrhea, or trichomoniasis issued to and in the name of a patient who is not the intended user of the drug but is the sexual partner of the intended user.

(4) For purposes of R.C. §§ 3313.7110, 3313.7111, 3314.143, 3326.28, 3328.29, 4723.483, 4729.88, 4730.433, 4731.96, and 5101.76, a written, electronic, or oral order for an epinephrine autoinjector issued to and in the name of a school, school district, or camp.

(5) For purposes of R.C. Chapter 3728 and R.C. §§ 4723.483, 4729.88, 4730.433, and 4731.96, a written, electronic, or oral order for an epinephrine autoinjector issued to and in the name of a qualified entity, as defined in R.C. § 3728.01.

***PRESUMPTION FOR A PRISON TERM*** or ***PRESUMPTION THAT A PRISON TERM SHALL BE IMPOSED.*** A presumption as described in R.C. § 2929.13(D) that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under R.C. § 2929.11.

***PROFESSIONAL LICENSE.*** Any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in R.C. § 2925.01(W)(1) through (W)(36) and that qualifies a person as a professionally licensed person.

***PROFESSIONALLY LICENSED PERSON.*** Any of the following:

(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under R.C. Chapter 3719;

(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under R.C. Chapter 4701 and who holds an Ohio permit issued under that chapter;

(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under R.C. Chapter 4703;

(4) A person who is registered as a landscape architect under R.C. Chapter 4703 or who holds a permit as a landscape architect issued under that chapter;

(5) A person licensed under R.C. Chapter 4707;

(6) A person who has been issued a certificate of registration as a registered barber under R.C. Chapter 4709;

(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of R.C. Chapter 4710;

(8) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, advanced cosmetologist's license, advanced hair designer's license, advanced manicurist's license, advanced esthetician's license, advanced natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license, or tanning facility permit under R.C. Chapter 4713;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under R.C. Chapter 4715;

(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under R.C. Chapter 4717;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under R.C. Chapter 4723;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under R.C. Chapter 4725;

(13) A person licensed to act as a pawnbroker under R.C. Chapter 4727;

(14) A person licensed to act as a precious metals dealer under R.C. Chapter 4728;

(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under R.C. Chapter 4729;

(16) A person who is authorized to practice as a physician assistant under R.C. Chapter 4730;

(17) A person who has been issued a license to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under R.C. Chapter 4731 or has been issued a certificate to practice a limited branch of medicine under that chapter;

(18) A person licensed as a psychologist or school psychologist under R.C. Chapter 4732;

(19) A person registered to practice the profession of engineering or surveying under R.C. Chapter 4733;

(20) A person who has been issued a license to practice chiropractic under R.C. Chapter 4734;

(21) A person licensed to act as a real estate broker or real estate salesperson under R.C. Chapter 4735;

(22) A person registered as a registered sanitarian under R.C. Chapter 4736;

(23) A person licensed to operate or maintain a junkyard under R.C. Chapter 4737;

(24) A person who has been issued a motor vehicle salvage dealer's license under R.C. Chapter 4738;

(25) A person who has been licensed to act as a steam engineer under R.C. Chapter 4739;

(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under R.C. Chapter 4741;

(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under R.C. Chapter 4747;

(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under R.C. Chapter 4749;

(29) A person licensed and registered to practice as a nursing home administrator under R.C. Chapter 4751;

(30) A person licensed to practice as a speech-language pathologist or audiologist under R.C. Chapter 4753;

(31) A person issued a license as an occupational therapist or physical therapist under R.C. Chapter 4755;

(32) A person who is licensed as a licensed professional clinical counselor, licensed professional counselor, social worker, independent social worker, independent marriage and family therapist, or marriage and family therapist, or registered as a social work assistant under R.C. Chapter 4757;

(33) A person issued a license to practice dietetics under R.C. Chapter 4759;

(34) A person who has been issued a license or limited permit to practice respiratory therapy under R.C. Chapter 4761;

(35) A person who has been issued a real estate appraiser certificate under R.C. Chapter 4763;

(36) A person who has been admitted to the bar by order of the Ohio Supreme Court in compliance with its prescribed and published rules.

***PUBLIC PREMISES.*** Any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

***SALE.*** Includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant or employee.

***SAMPLE DRUG.*** A drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

***SCHEDULE I, II, III, IV OR V.*** Controlled substance Schedules I, II, III, IV, and V established pursuant to R.C. § 3719.41, as amended pursuant to R.C. § 3719.43 or 3719.44.

***SCHOOL.*** Any school operated by a board of education, any community school established under R.C. Chapter 3314, or any nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

***SCHOOL BUILDING.*** Any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

***SCHOOL PREMISES.*** Either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed.

(2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under R.C. Chapter 3314, or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

***STANDARD PHARMACEUTICAL REFERENCE MANUAL.*** The current edition, with cumulative changes if any, of references that are approved by the State Board of Pharmacy.

***THEFT OFFENSE.*** Has the same meaning as in R.C. § 2913.01.

***UNIT DOSE.*** An amount or unit or a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

***WHOLESALER.*** A person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced or prepared personally and includes ***WHOLESALE DISTRIBUTOR OF DANGEROUS DRUGS***, which means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of that person authorized by that person to engage in the sale of dangerous drugs at wholesale.
(R.C. §§ 2925.01, 3719.01, 3719.011, 3719.013, 4729.01)

## § 138.02 TRAFFICKING IN CONTROLLED SUBSTANCES; GIFT OF MARIHUANA.

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance or a controlled substance analog;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741.

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration.

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug and Cosmetic Act" (21 U.S.C. §§ 301 et seq., as amended), and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

(C) Whoever violates division (A) of this section is guilty of the following:

(1) Except as otherwise provided in division (C)(2) of this section, trafficking in controlled substances is a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in this division, if the offense involves a gift of 20 grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of 20 grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section may suspend the driver's or commercial driver's license or permit of the offender in accordance with R.C. § 2925.03(G). However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit in accordance with R.C. § 2925.03(G). If the offender is a professionally licensed person, the court immediately shall comply with R.C. § 2925.38.

(E) (1) Notwithstanding any contrary provision of R.C. § 3719.21 and except as provided in R.C. § 2925.03(H), the Clerk of the Court shall pay any mandatory fine imposed pursuant to this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to R.C. § 2929.18(A) or (B)(5) to the county, township, municipality, park district, as created pursuant to R.C. § 511.18 or 1545.04, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the Clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (E)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (E)(2) of this section.

(2) Prior to receiving any fine moneys under division (E)(1) of this section or R.C. § 2925.42(B), a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general type of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under R.C. § 149.43. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(3) As used in division (E) of this section:

***LAW ENFORCEMENT AGENCIES.*** Includes but is not limited to the State Board of Pharmacy and the office of a prosecutor.

***PROSECUTOR.*** Has the same meaning as in R.C. § 2935.01.

(F) As used in this section, ***DRUG*** includes any substance that is represented to be a drug.
(R.C. § 2925.03)
***Statutory reference:***
*Felony drug trafficking offenses, see R.C. § 2925.03(C)*

## § 138.03 DRUG POSSESSION OFFENSES.

(A) No person shall knowingly obtain, possess, or use a controlled substance or a controlled substance analog.

(B) (1) This section does not apply to any of the following:

(a) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741.

(b) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration.

(c) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug, and Cosmetic Act, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

(d) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) (a) As used in division (B)(2) of this section:

***COMMUNITY ADDICTION SERVICES PROVIDER.*** Has the same meaning as in R.C. § 5119.01.

***COMMUNITY CONTROL SANCTION.*** Has the same meanings as in R.C. § 2929.01

***DRUG TREATMENT PROGRAM.*** Has the same meanings as in R.C. § 2929.01.

***HEALTH CARE FACILITY.*** Has the same meaning as in R.C. § 2919.16.

***MINOR DRUG POSSESSION OFFENSE.*** A violation of this section or R.C. § 2925.11 that is a misdemeanor or a felony of the fifth degree.

***PEACE OFFICER.*** Has the same meaning as in R.C. § 2935.01.

***POST-RELEASE CONTROL SANCTION.*** Has the same meaning as in R.C. § 2967.28.

***PUBLIC AGENCY.*** Has the same meaning as in R.C. § 2930.01.

***QUALIFIED INDIVIDUAL.*** A person who is not on community control or post-release control and is a person acting in good faith who seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person who experiences a drug overdose and who seeks medical assistance for that overdose, or a person who is the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(b) of this section.

***SEEK OR OBTAIN MEDICAL ASSISTANCE.*** Includes, but is not limited to making a 9-1-1 call, contacting in person or by telephone call an on-duty peace officer, or transporting or presenting a person to a health care facility.

(b) Subject to division (B)(2)(f) of this section, a qualified individual shall not be arrested, charged, prosecuted, convicted, or penalized pursuant to this chapter for a minor drug possession offense if all of the following apply:

1. The evidence of the obtaining, possession, or use of the controlled substance or controlled substance analog that would be the basis of the offense was obtained as a result of the qualified individual seeking the medical assistance or experiencing an overdose and needing medical assistance.

2. Subject to division (B)(2)(g) of this section, within 30 days after seeking or obtaining the medical assistance, the qualified individual seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional.

3. Subject to division (B)(2)(g) of this section, the qualified individual who obtains a screening and receives a referral for treatment under division (B)(2)(b)2. of this section, upon the request of any prosecuting attorney, submits documentation to the prosecuting attorney that verifies that the qualified individual satisfied the requirements of that division. The documentation shall be limited to the date and time of the screening obtained and referral received.

(c) If a person is found to be in violation of any community control sanction and if the violation is a result of either of the following, the court shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty specified in R.C. § 2929.13, 2929.15, or 2929.25, or any substantially equivalent municipal ordinance, whichever is applicable, after which the court has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty with the mitigating factor specified in any of those applicable sections:

1. Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;

2. Experiencing a drug overdose and seeking medical assistance for that overdose or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(b) of this section.

(d) If a person is found to be in violation of any post-release control sanction and if the violation is a result of either of the following, the court or the parole board shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty specified in R.C. § 2929.141 or 2967.28, whichever is applicable, after which the court or the parole board has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty with the mitigating factor specified in either of those applicable sections:

1. Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;

2. Experiencing a drug overdose and seeking medical assistance for that emergency or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(b) of this section.

(e) Nothing in division (B)(2)(b) of this section shall be construed to do any of the following:

1. Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regards to a defendant who does not qualify for the protections of division (B)(2)(b) of this section or with regards to any crime other than a minor drug possession offense committed by a person who qualifies for protection pursuant to division (B)(2)(b) of this section for a minor drug possession offense;

2. Limit any seizure of evidence or contraband otherwise permitted by law;

3. Limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in that division;

4. Limit, modify, or remove any immunity from liability available pursuant to law in effect prior to September 13, 2016 to any public agency or to an employee of any public agency.

(f) Division (B)(2)(b) of this section does not apply to any person who twice previously has been granted an immunity under division (B)(2)(b) of this section. No person shall be granted an immunity under division (B)(2)(b) of this section more than two times.

(g) Nothing in this section shall compel any qualified individual to disclose protected health information in a way that conflicts with the requirements of the "Health Insurance Portability and Accountability Act of 1996," 104 Pub. L. No. 191, 110 Stat. 2021, 42 U.S.C. §§ 1320d et seq., as amended, and regulations promulgated by the United States Department of Health and Human Services to implement the act or the requirements of 42 C.F.R. Part 2.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) Except as otherwise provided in divisions (C)(2), (C)(3), (C)(4), and (C)(5), if the drug involved in the violation is a compound, mixture, preparation, or substance included in Schedule I or II of R.C. § 3719.41, or is cocaine, L.S.D., heroin, a controlled substance analog, or a compound, mixture or preparation containing such drugs, possession of drugs is a felony to be prosecuted under appropriate state law.

(2) If the drug involved is a compound, mixture, preparation, or substance included in Schedule III, IV, or V of R.C. § 3719.41, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, it is a felony to be prosecuted under appropriate state law.

(b) If the amount of the drug involved equals or exceeds the bulk amount, possession of drugs is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds 200 grams, possession of marihuana is a felony to be prosecuted under appropriate state law.

(4) If the drug involved in the violation is hashish or a compound, mixture, preparation or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams of hashish in a solid form or equals or exceeds two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony to be prosecuted under appropriate state law.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and R.C. §§ 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25, or any substantially equivalent municipal ordinance, and

in addition to any other sanction that is imposed for the offense under this section, R.C. §§ 2929.11 through 2929.18, or R.C. §§ 2929.21 through 2929.28, or any substantially equivalent municipal ordinance, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may suspend the offender's driver's or commercial driver's license or permit for not more than five years. However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If applicable, the court also shall do the following:

(1) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(F) (1) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

(2) Upon the filing of a motion under division (F) of this section, the sentencing court, in its discretion, may terminate the suspension.
(R.C. § 2925.11)

***Statutory reference:***

*Felony drug possession offenses, see R.C. § 2925.11(C)*

**§ 138.04 POSSESSING DRUG ABUSE INSTRUMENTS.**

(A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(B) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, violation of this section is a misdemeanor of the first degree.

(D) (1) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(2) (a) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

(b) Upon the filing of a motion under division (D)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.
(R.C. § 2925.12)

## § 138.05 PERMITTING DRUG ABUSE.

(A) No person who is the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other vehicle, as defined in R.C. § 4501.01, shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(B) No person, who is the owner, lessee, or occupant, or who has custody, control, or supervision of premises, or real estate, including vacant land, shall knowingly permit his or her premises, or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(C) Whoever violates this section is guilty of permitting drug abuse.

(1) Except as provided in division (C)(2) of this section, permitting drug abuse is a misdemeanor of the first degree.

(2) Permitting drug abuse is a felony to be prosecuted under appropriate state law if the felony drug abuse offense in question is a violation of R.C. § 2925.02 or 2925.03.

(D) (1) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14 and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 to 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in

addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(2) (a) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

(b) Upon the filing of a motion under division (D)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.

(E) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(F) Any premises or real estate that is permitted to be used in violation of division (B) of this section constitutes a nuisance subject to abatement pursuant to R.C. Chapter 3767.
(R.C. § 2925.13)

## § 138.06 ILLEGAL CULTIVATION OF MARIHUANA.

(A) No person shall knowingly cultivate marihuana.

(B) This section does not apply to any person listed in R.C. § 2925.03(B)(1), (B)(2) or (B)(3), or a substantially equivalent municipal ordinance, to the extent and under the circumstances described in that division.

(C) Whoever commits a violation of division (A) of this section is guilty of illegal cultivation of marihuana.

(1) Except as otherwise provided in the following divisions, illegal cultivation of marihuana is a minor misdemeanor or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.

(2) If the amount of marihuana involved equals or exceeds 100 grams but is less than 200 grams, illegal cultivation of marihuana is a misdemeanor of the fourth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree.

(3) If the amount of marihuana involved equals or exceeds 200 grams, illegal cultivation of marihuana is a felony to be prosecuted under appropriate state law.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section may suspend the offender's driver's or commercial driver's license or permit in accordance

with R.C. § 2925.03(G). However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit in accordance with R.C. § 2925.03(G). If the offender is a professionally licensed person, the court immediately shall comply with R.C. § 2925.38.

(E) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(F) (1) If the sentencing court suspends the offender's driver's or commercial driver's license or permit under this section in accordance with R.C. § 2925.03(G), the offender may request termination of, and the court may terminate, the suspension of the offender in accordance with that division.

(2) (a) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

(b) Upon the filing of a motion under this division (F)(2), the sentencing court, in its discretion, may terminate the suspension.
(R.C. § 2925.04)

***Statutory reference:***

*Illegal manufacturing of controlled substances, felony, see R.C. § 2925.04*
*Sale or use of drugs not approved by Food and Drug Administration, felony, see R.C. § 2925.09*

## § 138.07 ABUSING HARMFUL INTOXICANTS.

(A) Except for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant.

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the first degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a felony to be prosecuted under appropriate state law.

(C) (1) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(2) (a) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to the September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

(b) Upon the filing of a motion under division (C)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.
(R.C. § 2925.31)

## § 138.08 ILLEGAL DISPENSING OF DRUG SAMPLES.

(A) No person shall knowingly furnish a sample drug to another person.

(B) Division (A) of this section does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4725, 4729, 4730, 4731, and 4741.

(C) (1) Whoever violates this section is guilty of illegal dispensing of drug samples.

(2) If the drug involved in the offense is a compound, mixture, preparation, or substance included in Schedule I or II of R.C. § 3719.41 with the exception of marihuana, illegal dispensing of drug samples is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV or V of R.C. § 3719.41, or is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, illegal dispensing of drug samples is a misdemeanor of the second degree.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree.

(D) (1) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14 and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 to 2929.18, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(2) (a) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

(b) Upon the filing of a motion under division (D)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.

(E) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).
(R.C. § 2925.36)

***Statutory reference:***

*Felony offenses, see R.C. § 2925.36(C)(2)*

## § 138.09 FEDERAL PROSECUTION BAR TO MUNICIPAL PROSECUTION.

No person shall be prosecuted for a violation of this chapter if the person has been acquitted or convicted under the federal drug abuse control laws of the same act or omission which, it is alleged, constitutes a violation of this chapter.
(R.C. §§ 2925.50, 3719.19)

## § 138.10 NITROUS OXIDE: IMPROPER DISPENSING OR DISTRIBUTION; POSSESSION IN A MOTOR VEHICLE.

(A) *Improper dispensing or distribution.*

(1) No person who dispenses or distributes nitrous oxide in cartridges shall fail to comply with either of the following:

(a) The record-keeping requirements established under division (A)(3) of this section.

(b) The labeling and transaction identification requirements established under division (A)(4) of this section.

(2) Whoever violates division (A)(1)(a) or (A)(1)(b) of this section is guilty of improperly dispensing or distributing nitrous oxide, a misdemeanor of the fourth degree.

(3) Beginning July 1, 2001, a person who dispenses or distributes nitrous oxide shall record each transaction involving the dispensing or distribution of the nitrous oxide on a separate card. The person shall require the purchaser to sign the card and provide a complete residence address. The person dispensing or distributing the nitrous oxide shall sign and date the card. The person shall retain the card recording a transaction

for one year from the date of the transaction. The person shall maintain the cards at the person's business address and make them available during normal business hours for inspection and copying by officers or employees of the State Board of Pharmacy or of other law enforcement agencies that are authorized to investigate violations of this code, R.C. Chapters 2925, 3719, or 4729, or federal drug abuse control laws. The cards used to record each transaction shall inform the purchaser of the following:

(a) That nitrous oxide cartridges are to be used only for purposes of preparing food;

(b) That inhalation of nitrous oxide can have dangerous health effects; and

(c) That it is a violation of state law to distribute or dispense cartridges of nitrous oxide to any person under age 21, punishable as a felony of the fifth degree.

(4) (a) Each cartridge of nitrous oxide dispensed or distributed in this municipality shall bear the following printed warning: "Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under age 21. Do not inhale contents. Misuse can be dangerous to your health."

(b) Each time a person dispenses or distributes one or more cartridges of nitrous oxide, the person shall mark the packaging containing the cartridges with a label or other device that identifies the person who dispensed or distributed the nitrous oxide and the person's business address.
(R.C. § 2925.32(B)(4), (D)(2), (F), (G))

(B) *Possession in a motor vehicle.*

(1) As used in this section, ***MOTOR VEHICLE, STREET*** and ***HIGHWAY*** have the same meaning as in R.C. § 4511.01.

(2) Unless authorized by this code or by state law, no person shall possess an open cartridge of nitrous oxide in either of the following circumstances:

(a) While operating or being a passenger in or on a motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

(b) While being in or on a stationary motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

(3) Whoever violates this division (B) is guilty of possessing nitrous oxide in a motor vehicle, a misdemeanor of the fourth degree.

(4) In addition to any other sanction imposed upon an offender for possessing nitrous oxide in a motor vehicle, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit.
(R.C. § 2925.33)

***Statutory reference:***

*Trafficking in harmful intoxicants, see R.C. § 2925.32*

## § 138.11 LABORATORY REPORT REQUIRED.

(A) (1) In any criminal prosecution for a violation of this chapter or R.C. Chapters 2925 or 3719, a laboratory report from the Bureau of Criminal Identification and Investigation or a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the Association of American Universities or the North Central Association of Colleges and Secondary Schools, primarily for the purpose of providing scientific service to law enforcement agencies, and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima facie evidence of the content, identity, and weight or the existence and number of unit dosages of the substance. In any criminal prosecution for a violation of R.C. § 2925.041 or a violation of this chapter, R.C. Chapter 2925 or R.C. Chapter 3719 that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V, a laboratory report from the Bureau or from any laboratory that is operated or established as described in this division that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is prima facie evidence of the content, identity, and weight of the substances.

(2) Attached to that report shall be a copy of a notarized statement by the signer of the report giving the name of the signer and stating that the signer is an employee of the laboratory issuing the report and that performing the analysis is a part of the signer's regular duties, and giving an outline of the signer's education, training, and experience for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or grand jury proceeding where the report may be used without having been previously served upon the accused.

(C) The report shall not be prima facie evidence of the contents, identity, and weight or the existence and number of unit dosages of the substance if the accused or the accused's attorney demands the testimony of the person signing the report, by serving the demand upon the prosecuting attorney, within seven days from the accused or the accused's attorney's receipt of the report. The time may be extended by a trial judge in the interests of justice.

(D) Any report issued for use under this section shall contain notice of the right of the accused to demand, and the manner in which the accused shall demand, the testimony of the person signing the report.

(E) Any person who is accused of a violation of this chapter or R.C. Chapters 2925 or 3719 is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is, or of each of the substances that are, the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or, if the accused is indigent, by a qualified laboratory analyst appointed by the court. Such portion shall be a representative sample of the entire substance that is, or of each of the substances that are, the basis of the alleged violation and shall be of sufficient size, in the opinion

of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance or substances. The prosecuting attorney shall provide the accused's analyst with the sample portion at least 14 days prior to trial, unless the trial is to be held in a court not of record or unless the accused person is charged with a minor misdemeanor, in which case the prosecuting attorney shall provide the accused's analyst with the sample portion at least three days prior to trial. If the prosecuting attorney determines that such a sample portion cannot be preserved and given to the accused's analyst, the prosecuting attorney shall so inform the accused person, or the accused's attorney. In such a circumstance, the accused person is entitled, upon written request made to the prosecuting attorney, to have the accused's privately employed or court appointed analyst present at an analysis of the substance that is, or the substances that are, the basis of the alleged violation, and, upon further written request, to receive copies of all recorded scientific data that result from the analysis and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the identity of the substance or substances subject to the analysis.

(F) In addition to the rights provided under division (E) of this section, any person who is accused of a violation of this chapter or R.C. Chapters 2925 or 3719 that involves a bulk amount of a controlled substance, or any multiple thereof, or who is accused of a violation of R.C. § 2925.11 or a substantially equivalent municipal ordinance, other than a minor misdemeanor violation, that involves marihuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court, present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the weight, volume, or number of unit doses of the substance subject to the measurement or weighing.
(R.C. § 2925.51)

(G) In addition to the financial sanctions authorized or required under R.C. §§ 2929.18 and 2929.28 and to any costs otherwise authorized or required under any provision of law, the court imposing sentence upon an offender who is convicted of or pleads guilty to a drug abuse offense may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in having tests performed under this section or R.C. § 2925.51 or in any other manner on any substance that was the basis of, or involved in, the offense to determine whether the substance contained any amount of a controlled substance if the results of the tests indicate that the substance tested contained any controlled substance. No court shall order an offender under this section to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance. The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the sentencing hearing for the offender.
(R.C. § 2925.511)

## § 138.12 COUNTERFEIT CONTROLLED SUBSTANCES.

(A) No person shall knowingly possess any counterfeit controlled substance.

(B) Whoever violates division (A) of this section shall be guilty of possession of counterfeit controlled substances, a misdemeanor of the first degree.

(C) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F). (R.C. § 2925.37(A), (G), (M))

***Statutory reference:***

*Trafficking and other felony counterfeit controlled substance offenses, see R.C. § 2925.37(H) through (K)*

## § 138.13 USE, POSSESSION, OR SALE OF DRUG PARAPHERNALIA.

(A) As used in this section, ***DRUG PARAPHERNALIA*** means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. The term includes but is not limited to any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived.

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance.

(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine.

(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance.

(5) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance.

(6) A scale or balance for weighing or measuring a controlled substance.

(7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance.

(8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana.

(9) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance.

(10) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance.

(11) A container or device for storing or concealing a controlled substance.

(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body.

(13) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner or by anyone in control of the equipment, product, or material, concerning its use.

(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter or R.C. Chapter 2925.

(3) The proximity of the equipment, product, or material to any controlled substance.

(4) The existence of any residue of a controlled substance on the equipment, product, or material.

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or material, to deliver it to any person whom he or she knows intends to use the equipment, product, or material to facilitate a violation of any provision of this chapter or R.C. Chapter 2925. A finding that the owner or anyone in control of the equipment, product, or material is not guilty of a violation of any other provision of this chapter or R.C. Chapter 2925 does not prevent a finding that the equipment, product, or material was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use.

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use.

(8) National or local advertising concerning the use of the equipment, product, or material.

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale.

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise.

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community.

(12) Expert testimony concerning the use of the equipment, product, or material.

(C) (1) Subject to division (D)(2) of this section, no person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if he or she knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if he or she knows that the purpose of the advertisement is to promote the illegal sale in this municipality or in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) (1) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by R.C. § 3719.172.

(2) Division (C)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana.

(E) Notwithstanding R.C. Chapter 2981, any drug paraphernalia that was used, possessed, sold, or manufactured in violation of this section shall be seized, after a conviction for that violation, shall be forfeited, and upon forfeiture shall be disposed of pursuant to R.C. § 2981.12(B).

(F) (1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) (1) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(2) (a) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

(b) Upon the filing of a motion under division (G)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.
(R.C. § 2925.14)

(H) *Illegal use or possession of marihuana drug paraphernalia.*

(1) As used in this division (H), ***DRUG PARAPHERNALIA*** has the same meaning as in division (A) of this section.

(2) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, all factors identified in division (B) of this section.

(3) No person shall knowingly use, or possess with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana.

(4) This division (H) does not apply to any person identified in division (D)(1) of this section, and it shall not be construed to prohibit the possession or use of a hypodermic as authorized by R.C. § 3719.172.

(5) Division (E) of this section applies with respect to any drug paraphernalia that was used or possessed in violation of this section.

(6) Whoever violates division (H)(3) of this section is guilty of illegal use or possession of marihuana drug paraphernalia, a minor misdemeanor.

(7) (a) In addition to any other sanction imposed upon an offender for a violation division (H) of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of division (H) of this section, the court immediately shall comply with R.C. § 2925.38.

(b) 1. Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under division (H) of this section prior to September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded

guilty to or was convicted of a violation of R.C. § 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under division (H) of this section shall not file such a motion.

2. Upon the filing of a motion under division (H)(7)(b) of this section, the sentencing court, in its discretion, may terminate the suspension.
(R.C. § 2925.141)

## § 138.14 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.

(A) Whenever a manufacturer sells a controlled substance, and whenever a wholesaler, repackager, or outsourcing facility sells a controlled substance in a package the wholesaler, repackager, or outsourcing facility has prepared, the manufacturer or the wholesaler, repackager, or outsourcing facility, as the case may be, shall securely affix to each package in which the controlled substance is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of controlled substance contained therein. No person, except a pharmacist for the purpose of dispensing a controlled substance upon a prescription shall alter, deface, or remove any label so affixed. As used in this division, "repackager" and "outsourcing facility" have the same meanings as in R.C. § 4729.01.

(B) No person shall alter, deface or remove any label affixed pursuant to R.C. § 3719.08 as long as any of the original contents remain.
(R.C. § 3719.08(A), (E))

(C) Whoever violates this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, or R.C. § 3719.07 or 3719.08, or a drug abuse offense, a violation of this section is a felony to be prosecuted under appropriate state law. If the violation involves the sale, offer to sell, or possession of a Schedule I or II controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, then R.C. § 3719.99(D) applies.
(R.C. § 3719.99(C))

## § 138.15 POSSESSION, SALE AND DISPOSAL OF HYPODERMICS.

(A) Possession of a hypodermic is authorized for the following:

(1) A manufacturer or distributor of, or dealer in hypodermics, or medication packaged in hypodermics, and any authorized agent of employee of that manufacturer, distributor or dealer, in the regular course of business;

(2) A terminal distributor of dangerous drugs, in the regular course of business;

(3) A person authorized to administer injections, in the regular course of the person's profession or employment;

(4) A person, when the hypodermic in his possession was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed for the treatment of disease by a licensed health professional authorized to prescribe drugs;

(5) A person whose use of a hypodermic is for legal research, clinical, educational or medicinal purposes;

(6) A farmer, for the lawful administration of a drug to an animal;

(7) A person whose use of a hypodermic is for lawful professional, mechanical, trade or craft purposes.

(B) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no terminal distributor of dangerous drugs, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to division (A) of this section shall negligently fail to take reasonable precautions to prevent any hypodermic in the person's possession from theft or acquisition by any unauthorized person.
(R.C. § 3719.172(A), (B))

(C) Whoever violates division (B) of this section is guilty of a misdemeanor of the third degree. If the offender previously has been convicted of a violation of division (B) of this section, R.C. § 3719.05, 3719.06, 3719.13, 3719.172(B), or 3719.31, or a drug abuse offense, a violation of division (B) of this section is a misdemeanor of the first degree.
(R.C. § 3719.99(E))
***Statutory reference:***
*Felony offenses, see R.C. § 3719.172(C) and (D)*

## § 138.16 CONTROLLED SUBSTANCE SCHEDULES.

Controlled Substance Schedules I, II, III, IV, and V, as established in R.C. § 3719.41 and amended by R.C. §§ 3719.43 and 3719.44, are hereby adopted by reference, and shall be treated as if set forth in full herein.
***Statutory reference:***
*For comprehensive lists of drugs identified under each of the following Schedules, see R.C. § 3719.41, as amended by R.C. §§ 3719.43 and 3719.44:*

***Schedule I***

*(A) Narcotics - opiates*
*(B) Narcotics - opium derivatives*
*(C) Hallucinogens*
*(D) Depressants*
*(E) Stimulants*

***Schedule II***

*(A) Narcotics - opium and opium derivatives*
*(B) Narcotics - opiates*
*(C) Stimulants*
*(D) Depressants*
*(E) Hallucinogenic substances*
*(F) Immediate precursors*

***Schedule III***

*(A) Stimulants*
*(B) Depressants*
*(C) Narcotic antidotes*
*(D) Narcotics - narcotic preparations*
*(E) Anabolic steroids*
*(F) Hallucinogenic substances*

***Schedule IV***

*(A) Narcotic drugs*
*(B) Depressants*
*(C) Fenfluramine*
*(D) Stimulants*
*(E) Other substances*

***Schedule V***

*(A) Narcotic drugs*
*(B) Narcotics - narcotic preparations*
*(C) Stimulants*

## § 138.17 UNLAWFUL FURNISHING OF PRESCRIPTION TO ENABLE PERSONS TO BE ISSUED HANDICAPPED PARKING PLACARDS OR LICENSE PLATES.

(A) No physician or chiropractor shall do either of the following:

(1) Furnish a person with a prescription in order to enable the person to be issued a removable windshield placard, temporary removable windshield placard, or license plates under R.C. § 4503.44, knowing that the person does not meet any of the criteria contained in R.C. § 4503.44(A)(1).

(2) Furnish a person with a prescription described in division (A)(1) of this section and knowingly misstate on the prescription the length of time the physician or chiropractor expects the person to have the disability that limits or impairs the person's ability to walk in order to enable the person to retain a placard issued under R.C. § 4503.44 for a period of time longer than that which would be estimated by a similar practitioner under the same or similar circumstances.
(R.C. §§ 4731.481, 4734.161)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. §§ 4731.99(F), 4734.99(B))

***Cross-reference:***

*Parking privileges for persons with disabilities, see § 76.05*

## § 138.18 PSEUDOEPHEDRINE SALES.

(A) *Unlawful purchases.*

(1) As used in divisions (A), (B), (C) and (D) of this section:

***CONSUMER PRODUCT.*** Any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

***EPHEDRINE.*** Any material, compound, mixture, or preparation that contains any quantity of ephedrine, any of its salts, optical isomers, or salts of optical isomers.

***EPHEDRINE PRODUCT.*** A consumer product that contains ephedrine.

***PSEUDOEPHEDRINE.*** Any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.

***PSEUDOEPHEDRINE PRODUCT.*** A consumer product that contains pseudoephedrine.

***RETAILER.*** A place of business that offers consumer products for sale to the general public.

***SINGLE-INGREDIENT PREPARATION.*** A compound, mixture, preparation, or substance that contains a single active ingredient.

***TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS.*** Has the same meaning as in R.C. § 4729.01.

(2) (a) 1. No individual shall knowingly purchase, receive, or otherwise acquire an amount of pseudoephedrine product or ephedrine product that is greater than either of the following unless the pseudoephedrine product or ephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731, or 4741:

a. Three and six tenths grams within a period of a single day;

b. Nine grams within a period of 30 consecutive days.

2. The limits specified in divisions (A)(2)(a)1.a. and (A)(2)(a)1.b. of this section apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The limits do not apply to the product's overall weight.

(b) It is not a violation of division (B)(1) of this section for an individual to receive or accept more than an amount of pseudoephedrine product or ephedrine product specified in division (A)(2)(a)1.a. or (A)(2)(a)1.b. of this section if the individual is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(3) (a) No individual under 18 years of age shall knowingly purchase, receive, or otherwise acquire a pseudoephedrine product, or ephedrine product unless the pseudoephedrine product or ephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731, or 4741.

(b) Division (A)(3)(a) of this section does not apply to an individual under 18 years of age who purchases, receives, or otherwise acquires a pseudoephedrine product or ephedrine product from any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides the pseudoephedrine product or ephedrine product to that individual and whose conduct is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731, or 4741;

2. A parent or guardian of that individual who provides the pseudoephedrine product or ephedrine product to the individual;

3. A person, as authorized by that individual's parent or guardian, who dispenses, sells, or otherwise provides the pseudoephedrine product or ephedrine product to the individual;

4. A retailer or terminal distributor of dangerous drugs who provides the pseudoephedrine product or ephedrine product to that individual if the individual is an employee of the retailer or terminal distributor of dangerous drugs and the individual receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(4) No individual under 18 years of age shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise acquiring a pseudoephedrine product or ephedrine product.

(5) No individual shall knowingly fail to comply with the requirements of R.C. § 3715.051(B).

(6) Whoever violates division (A)(2)(a) of this section is guilty of unlawful purchase of a pseudoephedrine product or ephedrine product, a misdemeanor of the first degree.

(7) Whoever violates division (A)(3)(a) of this section is guilty of underage purchase of a pseudoephedrine product or ephedrine product, a delinquent act that would be a misdemeanor of the fourth degree if it could be committed by an adult.

(8) Whoever violates division (A)(4) of this section is guilty of using false information to purchase a pseudoephedrine product or ephedrine product, a delinquent act that would be a misdemeanor of the first degree if it could be committed by an adult.

(9) Whoever violates division (A)(5) of this section is guilty of improper purchase of a pseudoephedrine product or ephedrine product, a misdemeanor of the fourth degree.
(R.C. § 2925.55)

(B) *Unlawful retail sales.*

(1) (a) 1. Except as provided in division (B)(1)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, offer to sell, hold for sale, deliver, or otherwise provide to any individual an amount of pseudoephedrine product or ephedrine product that is greater than either of the following:

a. Three and six tenths grams within a period of a single day;

b. Nine grams within a period of 30 consecutive days.

2. The maximum amounts specified in divisions (B)(1)(a)1.a. and (B)(1)(a)1.b. of this section apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The maximum amounts do not apply to the product's overall weight.

(b) 1. Division (B)(1)(a) of this section does not apply to any quantity of pseudoephedrine product or ephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs if the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731, or 4741.

2. It is not a violation of division (B)(1)(a) of this section for a retailer, terminal distributor of dangerous drugs, or employee of either to provide to an individual more than an amount of pseudoephedrine product or ephedrine product specified in division (B)(1)(a)1.a. or (B)(1)(a)1.b. of this section under either of the following circumstances:

a. The individual is an employee of the retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer, terminal distributor of dangerous drugs, or employee the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product;

b. A stop-sale alert is generated after the submission of information to the national precursor log exchange under the conditions described in R.C. § 3715.052(A)(2).

(2) (a) Except as provided in division (B)(2)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall sell, offer to sell, hold for sale, deliver, or otherwise provide a pseudoephedrine product or ephedrine product to an individual who is under 18 years of age.

(b) Division (B)(2)(a) of this section does not apply to any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides a pseudoephedrine product or ephedrine product to an individual under 18 years of age and whose conduct is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731, or 4741;

2. A parent or guardian of an individual under 18 years of age who provides a pseudoephedrine product or ephedrine product to the individual;

3. A person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a pseudoephedrine product or ephedrine product to an individual under 18 years of age;

4. The provision by a retailer, terminal distributor of dangerous drugs, or employee of either of a pseudoephedrine product or ephedrine product in a sealed container to an employee of the retailer or terminal distributor of dangerous drugs who is under 18 years of age in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(3) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of R.C. § 3715.051(A) or R.C. § 3715.052(A)(2).

(4) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of R.C. § 3715.052(A)(1).

(5) Whoever violates division (B)(1)(a) of this section is guilty of unlawfully selling a pseudoephedrine product or ephedrine product, a misdemeanor of the first degree.

(6) Whoever violates division (B)(2)(a) of this section is guilty of unlawfully selling a pseudoephedrine product or ephedrine product to a minor, a misdemeanor of the fourth degree.

(7) Whoever violates division (B)(3) of this section is guilty of improper sale of a pseudoephedrine product or ephedrine product, a misdemeanor of the second degree.

(8) Whoever violates division (B)(4) of this section is guilty of failing to submit information to the national precursor log exchange, a misdemeanor for which the offender shall be fined not more than $1,000 per violation.
(R.C. § 2925.56)

(C) *Transaction scans.*

(1) As used in this division and division (D) of this section:

***CARD HOLDER.*** Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive any pseudoephedrine product or ephedrine product from the seller, agent, or employee.

***IDENTIFICATION CARD.*** Has the same meaning as in R.C. § 2927.021.

***SELLER.*** Means a retailer or terminal distributor of dangerous drugs.

***TRANSACTION SCAN.*** Means the process by which a seller or an agent or employee of a seller checks by means of a transaction scan device the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving any pseudoephedrine product or ephedrine product.

***TRANSACTION SCAN DEVICE***. Has the same meaning as in R.C. § 2927.021.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder a pseudoephedrine product or ephedrine product.

(b) If the information deciphered by the transaction scan performed under division (C)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any pseudoephedrine product or ephedrine product to the card holder.

(c) Division (C)(2)(a) of this section does not preclude a seller or an agent or employee of a seller as a condition for selling, giving away, or otherwise distributing a pseudoephedrine product or ephedrine product to the person presenting the document from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card if the document includes a bar code or magnetic strip that may be scanned by the device.

(3) Rules adopted by the Registrar of Motor Vehicles under R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (C) and division (D) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

1. The name, address, and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

2. The expiration date, identification number, and issuing agency of the driver's or commercial driver's license or identification card presented by a card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (C)(4)(a) of this section except for purposes of division (D) of this section, R.C. § 2925.58, or R.C. § 3715.052(A)(1).

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by division (D) of this section or any other section of the Ohio Revised Code.

(5) Nothing in this division (C) or division (D) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of pseudoephedrine products or ephedrine products.

(6) Whoever violates division (C)(2)(b) or (C)(4) of this section is guilty of engaging in an illegal pseudoephedrine product or ephedrine product transaction scan, and the court may impose upon the offender a civil penalty of up to $1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.
(R.C. § 2925.57)

(D) *Affirmative defenses.*

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (B) of this section in which the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive a pseudoephedrine product presented a driver's or commercial driver's license or an identification card.

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(c) The pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (D)(1) of this section, the trier of fact in the action for the alleged violation of division (B) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (B) of this section. For purposes of division (D)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is 18 years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (D)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.
(R.C. § 2925.58)

(E) *Retailer's duties.*

(1) As used in divisions (E) and (F) of this section:

***CONSUMER PRODUCT.*** Any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

***DRUG.*** Has the same meanings as in R.C. § 4729.01.

***EPHEDRINE.*** Any material, compound, mixture, or preparation that contains any quantity of ephedrine, any of its salts, optical isomers, or salts of optical isomers.

***EPHEDRINE PRODUCT.*** A consumer product that contains ephedrine.

***LAW ENFORCEMENT OFFICIAL.*** An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by the law to investigate or conduct an official inquiry into a potential violation of law or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

***LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS.*** Has the same meanings as in R.C. § 4729.01.

***NATIONAL PRECURSOR LOG EXCHANGE*** or ***EXCHANGE.*** The electronic system for tracking sales of pseudoephedrine products and ephedrine products on a national basis that is administered by the National Association of Drug Diversion Investigators or a successor organization.

***PHARMACIST.*** A person licensed under R.C. Chapter 4729 to engage in the practice of pharmacy.

***PHARMACY.*** Has the same meanings as in R.C. § 4729.01.

***PRESCRIBER.*** Has the same meanings as in R.C. § 4729.01.

***PRESCRIPTION.*** Has the same meanings as in R.C. § 4729.01.

***PROOF OF AGE.*** A driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under R.C. §§ 4507.50 to 4507.52 that shows a person is 18 years of age or older.

***PSEUDOEPHEDRINE.*** Any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.

***PSEUDOEPHEDRINE PRODUCT.*** A consumer product that contains pseudoephedrine.

***RETAILER.*** A place of business that offers consumer products for sale to the general public.

***SINGLE-INGREDIENT PREPARATION.*** A compound, mixture, preparation, or substance that contains a single active ingredient.

***STOP-SALE ALERT.*** A notification sent from the national precursor log exchange to a retailer or terminal distributor of dangerous drugs indicating that the completion of a sale of a pseudoephedrine product or ephedrine product would result in a violation of R.C. § 2925.56(A)(1) or federal law.

***TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS.*** Has the same meanings as in R.C. § 4729.01.

***WHOLESALER.*** Has the same meaning as in R.C. § 3719.01.

(2) A retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides a pseudoephedrine product or ephedrine product to the public shall do all of the following:

(a) Segregate pseudoephedrine products or ephedrine products from other merchandise so that no member of the public may procure or purchase such products without the direct assistance of a pharmacist or other authorized employee of the retailer or terminal distributor of dangerous drugs;

(b) With regard to each time a pseudoephedrine product or ephedrine product is sold or otherwise provided without a valid prescription:

1. Determine, by examination of a valid proof of age, that the purchaser or recipient is at least 18 years of age;

2. a. Using any information available, including information from the national precursor log exchange if the information is accessible, make a reasonable attempt to ensure that no individual purchases or receives an amount of pseudoephedrine product or ephedrine product that is greater than either of the following:

i. Three and six tenths grams within a period of a single day;

ii. Nine grams within a period of 30 consecutive days.

b. The maximum amounts specified in divisions (E)(2)(b)2.a.i. and (E)(2)(b)2.a.ii. of this section apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The maximum amounts do not apply to the product's overall weight.

(c) Maintain a log book of pseudoephedrine product or ephedrine product purchases, in accordance with R.C. § 3715.051;

(d) If required to comply with section R.C. § 3715.052, submit the information specified in divisions (A)(1)(a) to (A)(1)(d) of that section to the national precursor log exchange.

(3) Prescriptions, orders, and records maintained pursuant to this section and stocks of pseudoephedrine products and ephedrine products shall be open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks shall be open for inspection by the State Medical Board and its employees for purposes of enforcing R.C. Chapter 4731.
(R.C. § 3715.05)

(F) *Theft or loss; reporting requirements.*

(1) Each retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler that sells, offers to sell, holds for sale, delivers, or otherwise provides any pseudoephedrine product and that discovers the theft or loss of any pseudoephedrine product in an amount of more than nine grams per incident of theft or loss shall notify all of the following upon discovery of the theft or loss:

(a) The State Board of Pharmacy, by telephone immediately upon discovery of the theft or loss;

(b) Law enforcement authorities. If the incident is a theft and the theft constitutes a felony, the retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler shall report the theft to the law enforcement authorities in accordance with R.C. § 2921.22.

(2) Within 30 days after making a report by telephone to the State Board of Pharmacy pursuant to division (F)(1)(a) of this section, a retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler shall send a written report to the State Board of Pharmacy.

(3) The reports required under this section shall identify the product that was stolen or lost, the amount of the product stolen or lost, and the date and time of discovery of the theft or loss.
(R.C. § 3715.06)

# TITLE XV: LAND USAGE

Chapter

# CHAPTER 150: ZONING CODE

Section

### *R-4 Multi-Family Residential District*



### *B-1 Highway Business District*



### *B-2 Convenience Shopping District*

### *B-3 Neighborhood Business District*



### *B-4 Central Business District*



### *I-1 Industrial District*



### *I-2 Controlled Industrial District*

### *F-1 Flood Plain District*



### *A-1 Agricultural District*



### *Planned Development*



### *Community Reinvestment Areas*

### *General Regulations*



### *Board of Adjustment*



### *Amendment*

*Enforcement and Penalties*



## *GENERAL PROVISIONS*

### § 150.001 SHORT TITLE.

This chapter shall be known and may be cited as the "West Milton Zoning Code," and will be referred to herein as "this code."

### § 150.002 INTENT AND PURPOSE.

This code is based on a plan, the purpose of which is to lessen the congestion on the public streets, to reduce undue hazards due to flooding, and to promote the public health, safety and general welfare. This plan has been formulated with due consideration, among other things, to the character of each district of the municipality and its peculiar suitability for particular uses; to the conservation of property values; to the general trend and character of building and population development; to the prevention of undue concentration of population; to the advancement of social and economic stability; and to the facilitation of adequate provision of public transportation, streets, highways, sewers, water mains, schools, recreation areas and other public facilities. It is the further purpose of this code to safeguard the public health, safety and general welfare.

### § 150.003 INTERPRETATION AND CONFLICT.

In its interpretation and application, the provisions of this code shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety and welfare. Wherever the requirements of this code are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive, or that imposing the highest standards, shall govern.

### § 150.004 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ACCESSORY USE OR BUILDING.*** A use or building on the same lot with, and of a nature customarily incident and subordinate to, those of the main use or building.

***ADULT ENTERTAINMENT FACILITY.*** A facility having a significant portion of its function as adult entertainment, which includes the following listed categories:

(1) ***ADULT BOOK STORE.*** An establishment having as a substantial or significant portion of its stock in trade, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting or relating to specified sexual activities or specified anatomical areas as herein defined, or an establishment with a segment or section devoted to the sale or display of such material.

(2) ***ADULT MINI MOTION PICTURE THEATER.*** A facility with a capacity for less than 50 persons, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

(3) ***ADULT MOTION PICTURE THEATER.*** A facility with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

(4) ***ADULT ENTERTAINMENT BUSINESS.*** Any establishment involved in the sale or services or products characterized by the exposure or presentation of specified anatomical areas or physical contact of live males or females, and which is characterized by salacious conduct appealing to prurient interest for the observation or participation in by patrons. Services or products included within the scope of adult entertainment business are photography, dancing, reading, massage and similar functions which utilize activities as specified above.

(5) ***SPECIFIED SEXUAL ACTIVITIES.***

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Acts, real or simulated, of human masturbation, sexual intercourse, sodomy, cunnilingus or fellatio; and

(c) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

(6) ***SPECIFIED ANATOMICAL AREAS.***

(a) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

***AGRICULTURE.*** See ***FARM.***

***ALLEY.*** Any dedicated public way affording a secondary means of access to abutting property, and not intended for general traffic circulation.

***ALTERATIONS.*** Any change, addition, or modification in construction or type of occupancy, or any change in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to herein as "altered" or "reconstructed."

***APARTMENT.*** A suite of rooms or a room in a multi-family building arranged and intended for a place of residence of a single family or a group of individuals living together as a single housekeeping unit as herein defined.

***APARTMENT HOTEL.*** A building designed for or containing both dwelling units and individual guest rooms or suites of rooms, which building may include accessory uses such as a cigar store or coffee shop, when such uses are accessible only from the lobby.

***AUTO REPAIR STATION.*** A place where, along with the sale of engine fuels, the following services may be carried out: general repair; engine rebuilding; rebuilding or reconditioning of motor vehicles; collision service, such as body, frame or fender straightening and repair; and over-all painting and undercoating of automobiles.

***AUTO SERVICE STATION.*** A place where gasoline, or any other automobile engine fuel (stored only in underground tanks), kerosene or motor oil and lubricants or grease for operation of motor vehicles are retailed directly to the public on the premises; other activities include the sale of minor accessories and the servicing and minor repair of automobiles, but not the storage of inoperable vehicles.

***BASEMENT.*** That portion of a building which is partly or wholly below grade, but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a ***STORY***, except as provided herein.

***BLOCK.*** The property abutting one side of a street and lying between the two nearest intersecting streets, crossing or terminating or between the nearest such street and railroad right-of-way, unsubdivided acreage, river or live stream; or between any of the foregoing and any other barrier to the continuity of development, or corporate lines of the municipality.

***BOARD OF ADJUSTMENT.*** The Board of Adjustment of West Milton, Ohio.

***BOARDING HOUSE*** or ***ROOMING HOUSE.*** A building other than a hotel, where for compensation and by prearrangement for definite periods, meals or lodging and meals, are provided for three or more persons, but not exceeding ten sleeping rooms. A ***ROOMING HOUSE*** or a ***FURNISHED ROOM HOUSE*** shall be deemed a boarding house for the purpose of this chapter.

***BUILDING.*** Any structure, either temporary or permanent, having a roof supported by columns or walls, and intended for the shelter, or enclosure of persons, animals, chattels or property of any kind. See also ***STRUCTURE.***

***BUILDING HEIGHT.*** The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and ridge for gable, hip and gambrel roofs. Where a building is located on an average slope of more than 15%, the ground level of the grade at the building wall from which the height may be measured shall be defined by the Enforcing Officer.

***BUILDING LINE.*** A line formed by the face of the building; for the purposes of this code, a building line is the same as a front setback line.

***CARRY-OUT.*** A place of business where food and beverages are purchased for consumption on or off the premises.

***CLINIC.*** An establishment where human patients who are not lodged overnight are admitted for examination and treatment by a group of physicians, dentists or similar professionals.

***CLUB.*** An organization of persons for special purposes or for the promulgation of sports, the arts, the sciences, literature, politics or the like, but not operated for profit.

***CONDITIONAL USE.*** A use permitted only after review of an application by the Board of Adjustment, such review being required by this code because the provisions of this code covering conditions, precedent or subsequent, are not precise enough to all applications without interpretation. A ***CONDITIONAL USE*** does not require "undue hardship" in order to be allowable. The conditional uses that are found in this code appear as "special approval" on review by the Planning Board and Board of Adjustment. These land uses could not be logically allocated to one zone or another, or the effects of such uses could not be definitely foreseen as of a given time.

***CONDITIONAL USE PERMIT.*** A permit issued by the Board of Adjustment to allow certain specific developments that would not otherwise be allowed in the particular zoning district where the land is located. Such permit is issued only after the applicant has followed the procedures stated in this code. Development under a ***CONDITIONAL USE PERMIT*** differs from a zoning change in that the former is much more specific. The applicant submits plans, and if they are approved, he or she must follow those plans exactly or re-apply for a permit before deviating from that plan.

***CONDOMINIUM.*** An arrangement under which a tenant in an apartment building holds full title to a unit and joint ownership in the common grounds.

***CONVALESCENT OR NURSING HOME.*** An establishment which specializes in providing necessary services to those unable to care for themselves.

***COUNCIL.*** The Municipal Council of West Milton, Ohio.

***DISTRICT.*** A portion of the incorporated area of the municipality within which certain regulations and requirements or various combinations thereof apply under the provisions of this code.

***DRIVE-IN.*** A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle, or within a building or structure on the same premises and devoted to the same purpose as the drive-in service.

***DWELLING.*** Includes any residence.

***DWELLING UNIT.*** A building, or portion thereof, designed for occupancy of one family for residential purposes, and having cooking facilities.

***DWELLING, 1-FAMILY.*** A building designed exclusively for and occupied exclusively by one family.

***DWELLING, 2-FAMILY.*** A building designed exclusively for occupancy by two families living independently of each other.

***DWELLING, MULTIPLE-FAMILY.*** A building, or a portion thereof, designed exclusively for occupancy by three or more families living independently of each other.

***ERECTED.*** Built, constructed, altered, reconstructed, moved upon, including any physical operations on the premises which are required for the construction. Excavation, fill, drainage and the like, shall be considered a part of erection.

***ESSENTIAL SERVICES.*** The erection, construction, alteration or maintenance by public utilities or municipal departments of underground, surface or overhead gas, electrical, telephone, telegraph, steam, fuel or water transmission or distribution systems; collection, communication, supply or disposal systems, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories in connection therewith, but not including buildings which are necessary for the furnishing of adequate service by such utilities or municipal departments for the general health, safety or welfare.

***EXCAVATION.*** Any breaking of ground, except common household gardening and ground care.

***FAMILY.*** One or two persons or parents, with their direct lineal descendants and adopted children together with not more than two persons not so related, or a group of persons, who need not be related, living together as a single housekeeping unit in a dwelling unit.

***FARM.*** All of the contiguous neighboring or associated land operated as a single unit on which bona fide farming is carried on directly by the owner-operator, manager or tenant farmer, by his or her own labor or with the assistance of members of his or her household or hired employees; provided that such land shall include a continuous parcel of five acres or more in area. ***FARMS*** may be considered as including establishments operated as bona fide greenhouses, nurseries and orchards, but no ***FARMS*** shall be operated for the disposal of garbage, sewage, rubbish, offal or rendering plants, or for the slaughtering of animals.

***FENCE.*** Any structure other than part of a building, of sufficient strength and dimensions to prevent straying from within or intrusion from without.

***FILLING.*** The depositing or dumping of any matter onto, or into the ground, except common household gardening and ground care.

***FLOOR AREA.***

(1) For the purpose of computing the minimum allowable floor area in a residential dwelling unit, the sum of the horizontal areas of each story of the building shall be measured from the exterior faces of the exterior walls. The floor area measurement shall not include areas of basements, unfinished attics, attached garages, breezeways and enclosed and unenclosed porches, except basement areas designed and used for dwelling or business purposes.

(2) For the purpose of computing parking, that area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons, clients or customers. Such floor area which is used or intended to be used principally for the storage or processing of merchandise, such as hallways, stairways and elevator shafts, or for utilities or sanitary facilities, shall be excluded from this computation of ***FLOOR AREAS.*** Measurements of useable floor area shall be the sum of the horizontal areas of the several floors of the buildings, measured from the interior faces of the exterior walls.

***FLOOR AREA, GROSS.*** The sum of the gross horizontal areas of all the several floors of a building or buildings, including interior balconies and mezzanines. All horizontal measurements are to be made between the exterior faces of walls including the walls of roofed porches having more than one wall. The ***GROSS FLOOR AREA*** of a building shall include the floor area of accessory buildings, on the same lot, measured the same way.

***GARAGE, PARKING.*** A space or structure or series of structures for the temporary storage or parking of motor vehicles, not primarily of commercial vehicles or for dead storage of vehicles, having no public shop or service in connection therewith other than for the supplying of motor fuels and lubricants, air, water and other operating commodities wholly within the buildings to the patrons of the garage only, and not readily visible from or advertised for sale on the exterior of the building.

***GARAGE, PRIVATE.*** An enclosed or unenclosed accessory building or portion of a main building (including a carport) designed or used solely for the storage of motor-driven vehicles, boats and similar vehicles owned or used by the occupants of the building to which it is accessory.

***GARAGE, SERVICE.*** Any premises used for the storage or care of motor-driven vehicles, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

***GRADE*** or ***GROUND LEVEL.*** The average of the finished ground level at the center of all walls of a building. In case walls are parallel to and within five feet of a sidewalk, the aboveground level shall be measured at the sidewalk, unless otherwise defined herein.

***HOME OCCUPATION.*** Any occupation operated in its entirety within the principal dwelling, and only by the person or persons maintaining a dwelling therein; not having a separate entrance from outside the building; not involving alteration or construction not customarily found in dwellings; not utilizing more than 25% of the total actual floor area of any one story; not involving the sale of any commodities on the premises; not utilizing any equipment except that which is used normally for purely domestic or household purposes; not displaying or creating outside the structure any external evidence of the operation of the home occupation, except for one unanimated, nonilluminated nameplate having an area of not more than one square foot.

***HOSPITAL*** or ***SANITARIUM.*** A public or semi-public facility that provides accommodations and continuous service for the sick and injured including obstetrical, medical and surgical care.

***HOTEL.*** A building occupied as the more-or-less temporary abiding place of individuals who are lodged with or without meals in which there are ten or more sleeping rooms and no provision made for cooking in any individual room or apartment. A hotel may include a restaurant or cocktail lounge, public banquet halls, ballrooms or meeting rooms.

***JUNK YARD*** or ***SALVAGE YARD.*** An open area where waste, used or second hand materials are bought and sold, exchanged, stored, baled, packaged, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags, rubber tires and bottles. A ***JUNK YARD*** includes automobile wrecking yards and includes any area of more than 200 square feet used for storage, keeping, or abandonment of junk, but does not include uses established entirely within enclosed buildings. Two or more inoperative or unlicensed vehicles shall be construed to be a ***JUNK YARD***.

***KENNEL.*** Any lot or premises used for the sale, boarding or breeding of dogs, cats or other household pets.

***LANDSCAPING.*** The grading, planting of grass, shrubs and trees.

***LOADING SPACE.*** An off-street space on the same lot with a building, or group of buildings, for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

***LOT*** or ***PLOT.*** A parcel of land occupied, or to be occupied by a main building or a group of such buildings and accessory buildings, or utilized for the principal use and uses accessory thereto, together with such open spaces as are required under the provisions of this code. Every lot shall abut upon and have permanent access to a public street and have a minimum frontage of 40 feet thereon.

***LOT AREA.*** The total horizontal area within the lot lines of the lot.

***LOT, CORNER.*** A lot which has at least two contiguous sides, each abutting upon a street for its full length.

***LOT, INTERIOR.*** Any lot other than a corner lot.

***LOT, THROUGH.*** Any interior lot having frontages on two more-or-less parallel streets, as distinguished from a corner lot. In the case of a row of double frontage lots, all sides of such lots adjacent to streets shall be considered frontage, and front yards shall be provided as required.

***LOT COVERAGE.*** The part or percent of the lot occupied by buildings including accessory buildings.

***LOT LINES.*** The lines bounding a lot as defined below:

(1) ***FRONT LOT LINE.*** In the case of an interior lot, that line separating the lot from the street; in the case of a corner lot, or double frontage lot, that line separating the lot from either street.

(2) ***REAR LOT LINE.*** That lot line opposite the front lot line. In the case of a lot pointed at the rear, the rear lot line shall be an imaginary line parallel to the front lot line, not less than ten feet to the front lot line, not less than ten feet long, lying farthest from the front lot line and wholly within the lot. In the case of a corner lot, the ***REAR LOT LINE*** is opposite the front lot line of least dimension.

(3) ***SIDE LOT LINE.*** Any lot line other than the front lot line or rear lot line. A side lot line separating a lot from a street is a side street lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

***LOT OF RECORD.*** A parcel of land, the dimensions of which are shown on a document or map on file with the County Register of Deeds or in common use by municipal or county officials, and which actually exists as so shown, or any part of such parcel held in a record ownership separate from that of the remainder thereof.

***LOT WIDTH.*** The horizontal distance between the side lot lines, measured at the two points where the building line, or setback line intersects the side lot lines.

***MAIN BUILDING.*** A building in which is conducted the principal use of a lot upon which it is situated.

***MAIN USE.*** The principal use to which the premises are devoted and the principal purpose for which the premises exists.

***MAJOR THOROUGHFARE.*** An arterial street which is intended to serve as a large volume traffic-way for both the immediate corporate area and the region beyond, which may be designated as a major thoroughfare, parkway, freeway, expressway or equivalent term to identify those streets comprising the basic structure of the street plan. Any street with a width, existing or proposed, of 80 feet shall be considered a ***MAJOR THOROUGHFARE***.

***MAJOR THOROUGHFARE PLAN.*** The official plan, as adopted by the Planning Board, of the major highways and streets, on file in the office of the County Recorder, including all amendments and supplements subsequently adopted.

***MASTER PLAN.*** The comprehensive plan approved by the Planning Board, including graphic and written proposals indicating the general location for streets, parks, schools, public buildings and all physical development of the municipality including any unit or part of such plan, and any amendment to such plan or parts thereof.

***MEZZANINE.*** An intermediate floor in any story occupying not to exceed 2/3 of the floor area of the story.

***MOTEL.*** A series of attached, semi-detached or detached rental units containing a bedroom, bathroom and closet space with no provision made for cooking, in any individual rental unit. Units shall provide for overnight lodging and are offered to the public for compensation, and shall cater primarily to the public traveling by motor vehicle. ***MOTEL*** may include all facilities specified under the definition of ***HOTEL*** herein.

***NONCONFORMING BUILDING.*** A building or portion thereof, lawfully existing at the effective date of this code, or amendments thereto and that does not conform to the provisions of the code in the district in which it is located.

***NONCONFORMING USE.*** A use which lawfully occupied a building or land at the effective date of this code or amendments thereto and that does not conform to the use regulations of the district in which it is located.

***NURSERY.***

(1) ***PLANT MATERIAL.*** A space including accessory building or structure for the growing or storage of live trees, shrubs or plant materials not offered for retail sale on the premises, including products used for gardening or landscaping.

(2) ***RETAIL.*** A space including accessory building or structure, or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises, including products used for gardening or landscaping.

***OFF-STREET PARKING LOT.*** A facility providing vehicular parking spaces, along with adequate drives and aisles for maneuvering, so as to provide access for entrance and exit for the parking of more than two vehicles.

***OPEN SPACE.*** That part of a lot, including courts or yards, which is open and unobstructed from its lowest level to the sky, and accessible to all tenants upon the lot.

***OPEN SPACE, COMMON.*** That area either dedicated to the public or commonly owned or available to all the residents of a Planned Unit Development Area.

***PARKING SPACE.*** A minimum area of 200 square feet, which area shall be exclusive of drives, aisles or entrances giving access thereto, and shall be fully accessible for the storage or parking of permitted vehicles.

***PATIO*** or ***TERRACE.*** A relatively level paved or planted unenclosed recreation area that adjoins a dwelling.

***PLANNED DEVELOPMENT.*** Land under unified control, planned and developed as a whole according to comprehensive and detailed plans, which include streets, utilities, lots or building sites, site plans and design principles for all buildings as intended to be located, constructed, used and related to each other, and for other uses and improvements on the land as related to buildings. Development may be a single operation or a definitely programmed series of development operations including all lands and buildings, with a program for provision, operation and maintenance of such areas, improvements and facilities necessary for common use by the occupants of the development.

***PLANNING BOARD.*** The Planning Board of West Milton, Ohio.

***POOL, SWIMMING.*** A structure constructed or placed below ground or above ground, which contains water in excess of 24 inches of depth and is suitable or utilized for swimming or wading.

***PUBLIC UTILITY.*** Any person, firm or corporation, municipal department, board or commission duly authorized to furnish and furnishing under state or municipal regulations to the public gas, steam, electricity, sewage disposal, communication, telegraph, telephone, transportation or water.

***RESTAURANT.*** An establishment whose primary business is serving food and beverages to patrons for consumption inside the building.

***ROW HOUSE*** or ***TOWN HOUSE.*** A two-story row of three or more attached 1-family dwellings, each unit of which extends from the basement to the roof.

***SIGN.*** A name, identification, description display or illustration which is affixed to, or painted or represented, directly or indirectly, upon a building, structure, parcel or lot, and which directs attention to an object, product, place, activity, person, institution, organization or business.

(1) ***GROUND SIGN.*** A sign which is supported by one or more poles, uprights or braces in or upon the ground, which supports are not a part of the building.

(2) ***WALL SIGN.*** A sign which is attached directly to the wall of a building and which extends not more than 12 inches from the wall; includes window signs.

(3) ***OVERHANGING WALL SIGN.*** A sign which is attached at right angles to the wall of a building.

***STORY.*** That part of a building, except a mezzanine as defined herein, included between the surface of one floor and the surface of the next floor, or if there is no floor above, then the ceiling next above. If the floor level directly above a basement is more than six feet above grade, the basement shall be considered a story.

***STORY, HALF.*** An uppermost story lying under a sloping roof having an area of at least 190 square feet with a clear height of seven feet six inches. For the purposes of this code, the usable floor area is only that area having at least four feet clear height between floor and ceiling.

***STREET.*** A public thoroughfare which affords the principal means of access to abutting property.

***STRUCTURE.*** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

***TEMPORARY USE*** or ***BUILDING.*** A use or building, a permit for which may be issued by the Building Inspector during periods of construction of the main building or use, or for special events.

***TENT.*** Any structure used for living or sleeping purposes, or for sheltering a public gathering, constructed wholly or in part from canvas, tarpaulin or other similar materials, including shelter provided for circuses, carnivals, sideshows, revival meetings, camp meetings and all similar meetings or exhibitions in temporary structures.

***TRAILER.***

(1) ***MOBILE HOME*** or ***HOUSE TRAILER.*** Any self-propelled and nonself-propelled vehicle designed, constructed, reconstructed or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation when connected to indicated utilities, whether resting on wheels, jacks or other temporary foundation, and used or so constructed as to permit its being used as a conveyance upon the public streets or highways.

(2) ***TRAVEL TRAILER*** or ***RECREATION VEHICLE.*** A vehicular portable structure built on a chassis and not exceeding a gross weight of 4,500 pounds when factory-equipped for the road, or having an overall length of 30 feet and designed to be used as a temporary dwelling for travel, recreational and vacation uses.

(3) ***MODULAR HOME*** or ***UNIT.*** A structure on wheels so designed, constructed, reconstructed or added to by means of accessories in such a manner as will permit the use and occupancy thereof for human habitation when connected to indicated utilities, which is drawn by a vehicle to a site where it is to be connected to a like structure, by removing from one side a covering temporarily used during transit, bolting that side to the exposed side of a like structure, and making both units weathertight.

***TRAILER PARK*** or ***MOBILE HOME PARK.*** A mobile home park as provided for and required by ordinance of the Municipality of West Milton, Ohio.

***USE.*** The purpose for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied.

***USED*** or ***OCCUPIED.*** Includes any premises intended, designed or arranged to be used or occupied.

***VARIANCE.*** A modification of the literal provisions of this code, granted when strict enforcement thereof would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted. The crucial points of variances are undue hardship and unique circumstances applying to the property. A ***VARIANCE*** is not justified unless both elements are present in the case.

***YARDS.*** The open spaces on the same lot with a main building, unoccupied and unobstructed from the ground upward except as otherwise provided in this code, as defined below:

(1) ***FRONT YARD.*** An open space extending the full width of the lot the depth of which is the minimum horizontal distance between the front lot line and the nearest point of the main building.

(2) ***REAR YARD.*** An open space extending the full width of the lot the depth of which is the minimum horizontal distance between the rear lot line and the nearest point of the main building.

(3) ***SIDE YARD.*** An open space between a main building and the side lot line, extending from the front yard to the rear yard, the width of which is the horizontal distance from the nearest point of the side lot line to the nearest point of the main building.
(Am. Ord. CM-726, passed l-8-1985)

## § 150.005 ZONING DISTRICTS.

In order to carry out the intent and purpose of this code, the Municipality of West Milton is hereby divided into the following districts:

| | |
|---|---|
| R-1AA | One-Family Residential District |
| R-1A | One-Family Residential District |
| R-1B | One-Family Residential District |
| R-1C | One-Family Residential District |
| R-2 | Two-Family Residential District |
| R-3 | Multi-Family Residential District |
| R-4 | Multi-Family Residential District |
| B-1 | Highway Business District |
| B-2 | Convenience Shopping District |
| B-3 | Neighborhood Business District |

| | |
|---|---|
| B-4 | Central Business District |
| I-1 | Industrial District |
| I-2 | Controlled Industrial District |
| F-1 | Flood Plain District |
| A-1 | Agricultural District |

## § 150.006 DISTRICT BOUNDARIES.

(A) (1) The boundaries of the zoning districts listed above in § 150.005 are shown on the "Zoning Map of West Milton, Ohio."

(2) This map together with all explanatory data thereon including all changes thereof as hereinafter provided, shall be incorporated and made a part of this code.

(B) (1) The Official Zoning Map shall be identified by the signature of the Mayor and Clerk of West Milton and bear the seal of the municipality under the following words: "This is to certify that this is the Official Zoning Map referred to in § 150.006 of the Zoning Code of the Municipality of West Milton, Ohio (including date of adoption)."

(2) If, in accordance with the provisions of this code, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made on the Official Zoning Map within five normal working days after effective date of the amendment together with an entry on the Official Zoning Map as follows: "On (date), by official action of the Council, the following change(s) were made" (brief description with reference number to commission proceedings).

(C) The original and one copy of the official map are to be maintained and kept up to date, one copy on public display in the Municipal Building, and the original in the Clerk's office, and accessible to the public, and shall be final authority as to the current zoning status of lands, buildings and other structures in the municipality.

## § 150.007 UNCERTAINTY OF BOUNDARY LOCATION.

(A) Where uncertainty exists with respect to the boundaries of the various districts as shown on the Zoning Map, the following rules shall apply.

(1) Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed to follow the center lines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following the lot lines;

(3) Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;

(4) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;

(5) Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center line of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines;

(6) Boundaries indicated as parallel to or extensions of features indicated in (A)(1) through (5) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

(B) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by (A)(1) through (6) above, the Board of Appeals shall interpret the district boundaries.

## § 150.008 ZONING UPON ANNEXATION.

Whenever any area is annexed to the municipality, one of the following conditions will apply:

(A) Land that is zoned previous to annexation to the present corporation limits of the municipality shall be classified by one of the following two methods:

(1) Any area proposed for annexation may have been included in any one or more designated zoning districts by specific designation in the ordinance accepting the annexation, which specific designation shall remain the zoning district designation for the area after the annexation, and the map shall be amended in accordance with the designation.

(2) Any area proposed for annexation may be classified as being in whichever district of this code most closely conforms with the zoning that existed prior to annexation, the classification to be recommended for an interim period by the Planning Board to the Council, and the Council shall approve same after public hearing.

(B) Land that is not zoned prior to annexation to the present corporation limits of the municipality shall be classified by one of the following two methods:

(1) Any area proposed for annexation may have been included in any one or more designated zoning districts by specific designation in the ordinance accepting the annexation, which specific designation shall remain the zoning districts designation for the area after the annexation, and the map shall be amended in accordance with the designation.

(2) Any area proposed for annexation may be classified in the same manner into whichever district of this code most closely conforms with the existing use of the annexed area or in accordance with the master plan in the case of vacant land.

(C) In all cases, within three months after the effective date of annexation, if the land is not specifically zoned at the time of annexation, the Planning Board shall recommend the appropriate permanent zoning districts

for the area to the Council, and the map shall be amended according to the prescribed procedure set forth in §§ 150.315 through 150.318.

(D) In all cases, any subsequent change of such zoning districts shall be by the amendment procedure specified in §§ 150.315 through 150.318.

## *R-1 ONE-FAMILY RESIDENTIAL DISTRICT*

### § 150.020 INTENT.

These Districts are the most restrictive of the residential districts. The intent is to provide for an environment of predominantly low-density single unit dwellings, plus certain other facilities which serve the residents living in the district.

### § 150.021 PERMITTED PRINCIPAL USES.

(A) One-family dwellings, not including trailer or tent dwellings.

(B) Churches and similar places of worship, provided such use is adjacent to a school or commercial area, or access is by means of roads designated as primary or secondary thoroughfares by the Major Street Plan.

(C) Public community center buildings, parks, playgrounds and golf courses except miniature golf courses.

(D) Public and parochial elementary, junior and senior high schools.

(E) Parish houses and convents in conjunction with churches or schools.

(F) Mortuaries or funeral homes.

### § 150.022 ACCESSORY USES.

(A) Private garages for storage of vehicles of residents and employees.

(B) Home occupations.

(C) Swimming pools for use by residents and guests only, provided the pools are set back 15 feet from all lot lines and enclosed with a fence five feet high.

(D) The renting or leasing of rooms by a resident family, provided the number of roomers does not exceed two in any dwelling unit.

(E) Signs permitted as accessory uses. See § 150.288.

## § 150.023 CONDITIONAL USES.

The following uses are allowed in any R-1 Residential District, provided a conditional use permit is granted by the Board of Adjustment as provided in § 150.307, and further provided that all buildings allowed by the conditional use permit shall be set back from all lot lines a minimum of three feet for each one foot of building height.

(A) Recreation areas or buildings operated by membership clubs for the benefit of their members and not for gain, provided that any principal building, accessory building or out-of-doors swimming pool shall be located not nearer than 200 feet from any adjoining land zoned for a residential use.

(B) Publicly owned or leased buildings, public utility buildings, telephone exchanges and transformer stations and substations, except garages and maintenance buildings.

(C) Private schools, institutions of higher learning and libraries.

(D) Extensions of existing cemeteries.

(E) Day care centers, during the review process, the Board shall consider parking, traffic flow, fencing, noise and other items as deemed appropriate.
(Am. Ord. CM-896, passed 6-13-89)

## § 150.024 YARD REQUIREMENTS.

See § 150.073.

## § 150.025 BUILDING HEIGHT REGULATIONS.

In any R-1 Residential District, no building shall be erected in excess of 2-1/2 stories or 40 feet in height.

## § 150.026 ACCESSORY PARKING.

Two car spaces for each dwelling unit. For parking for other uses, see § 150.285.

## § 150.027 SIGNS.

See § 150.178.

## *R-2 TWO-FAMILY RESIDENTIAL DISTRICT*

### § 150.035 INTENT.

This District recognizes the existence of older residential areas of the municipality where larger houses have been or can be converted from single-family to two-family residences in order to extend the economic life of these structures and allow the owners to justify the expenditures for repairs and modernization. This district also allows the construction of new two-family residences where slightly greater densities are permitted.

### § 150.036 PERMITTED PRINCIPAL USES.

(A) Two-family dwellings.

(B) Those uses permitted in R-1 Districts.

(C) Nursery schools, provided that there is at least 200 square feet of outdoor play area for each child, such space having a minimum dimension of at least 20 feet and being enclosed by a fence or wall 36 to 42 inches high.

(D) Mortuaries or funeral homes.

### § 150.037 ACCESSORY USES.

Accessory buildings and accessory uses shall be those customarily incidental to the permitted principal uses in this District.

### § 150.038 CONDITIONAL USES.

(A) Those conditional uses permitted in R-1 Districts.

(B) Mobile home courts.

### § 150.039 YARD REQUIREMENTS.

See § 150.073.

### § 150.040 BUILDING HEIGHT REGULATIONS.

In any R-2 District, no building shall be erected in excess of 2-1/2 stories or 35 feet in height.

### § 150.041 ACCESSORY PARKING.

(A) There shall be provided three parking spaces for each two-family dwelling.

(B) There shall be provided two parking spaces for each 1-family dwelling.

(C) All other uses, see § 150.285.

### § 150.042 SIGNS.

See § 150.288.

## *R-3 MULTI-FAMILY RESIDENTIAL DISTRICT*

### § 150.050 INTENT.

The purpose of this District is to allow construction of apartment buildings and related uses.

### § 150.051 PERMITTED PRINCIPAL USES.

(A) Two-family dwellings.

(B) Multiple dwellings (3 to six units).

(C) Churches and similar places of worship.

(D) Parish houses and convents in conjunction with churches or schools.

(E) Public community center buildings, parks, playgrounds and golf courses.

(F) Public and parochial schools.

(G) Public libraries.

(H) Row houses.

(I) Town houses.

(J) Mortuaries or funeral homes.

(K) Condominiums.

## § 150.052 ACCESSORY USES.

(A) Garages shall be permitted for storage purposes only, with no repair facilities.

(B) Other accessory buildings and accessory uses shall be those customarily incidental to the permitted principal uses in this District.

## § 150.053 CONDITIONAL USES.

(A) Those conditional uses permitted in R-2 Districts.

(B) Convalescent or nursing home.

(C) Dormitories and group houses.

(D) Fraternities, sororities, clubs, lodges and social or recreational buildings or properties not-for-profit.

(E) Hospitals, clinics and sanitariums for human care.

(F) Mortuaries.

(G) Motels.

## § 150.054 YARD REQUIREMENTS.

See § 150.073.

## § 150.055 BUILDING HEIGHT REGULATIONS.

In any R-3 District, no building shall be erected in excess of two-1/2 stories or 35 feet in height.

## § 150.056 ACCESSORY PARKING.

(A) There shall be provided two parking spaces per dwelling unit.

(B) There shall be provided one parking space for each two roomers.

(C) For parking space required for other than residential uses, see § 150.285.

## § 150.057 SIGNS.

See § 150.288.

## *R-4 MULTI-FAMILY RESIDENTIAL DISTRICT*

### § 150.065 INTENT.

The purpose of this District is to allow construction of apartment buildings and related uses.

### § 150.066 PERMITTED PRINCIPAL USES.

(A) Two-family dwellings.

(B) Apartment houses and apartment hotels.

(C) Multiple dwellings.

(D) Boarding houses.

(E) Churches and similar places of worship.

(F) Parish houses and convents in conjunction with churches or schools.

(G) Public community center buildings, parks, playgrounds and golf courses.

(H) Public and parochial schools.

(I) Public libraries.

(J) Row houses.

(K) Town houses.

(L) Mortuaries or funeral homes.

(M) Condominiums.

### § 150.067 ACCESSORY USES.

(A) Garages shall be permitted for storage purposes only, with no repair facilities.

(B) Other accessory buildings and accessory uses shall be those customarily incidental to the permitted principal uses in this District.

### § 150.068 CONDITIONAL USES.

(A) Those conditional uses permitted in R-3 Districts.

(B) Offices of surgeons, physicians, dentists and other similar professional persons concerned with the community health and medical treatment of persons.

(C) Offices of architects, engineers, artists.

(D) Offices in which the personnel will be employed for work in executive, administrative, legal, writing, clerical, stenographic, accounting, insurance or similar enterprises.

## § 150.069 YARD REQUIREMENTS.

See § 150.073.

## § 150.070 BUILDING HEIGHT REGULATIONS.

In any R-4 District, no building shall be erected in excess of three stories or 40 feet in height.

## § 150.071 ACCESSORY PARKING.

(A) There shall be provided two parking spaces per dwelling unit.

(B) There shall be provided one parking space for each two roomers.

(C) For parking space required for other than residential uses, see § 150.285.

## § 150.072 SIGNS.

See § 150.288.

## § 150.073 SCHEDULE OF YARD, HEIGHT AND LOT REQUIREMENTS.

| | ***Min. Livable Floor Area for each Dwelling Unit (sq. ft.)*** | ***Min. Lot Area (sq. ft.)*** | ***Min. Lot Width*** | ***Min. Corner Lot*** | ***Min. Front Yard*** [4,6] | ***Min. Rear Yard*** [5] | ***Min. Side Yard*** [6] | ***Max. Bldg. Hgt.*** *(Stories/ft.)* |
|---|---|---|---|---|---|---|---|---|
| R-1AA | 1800 | 20,000 | 140 | 160 | 45 | 50 | 15 | 2.5/40 |
| R-1A | 1600 | 15,000 | 120 | 140 | 35 | 50 | 15 | 2.5/40 |
| R-1B | 1400 | 12,000 | 100 | 120 | 30 | 45 | 10 | 2.5/40 |
| R-1C | 1200 | 10,000 | 85 | 105 | 25 | 40 | 10 | 2.5/35 |
| R-2 | 1100 per unit [7] | 11,400 [1] | 100 | 120 | 25 | 40 | 15 | 2.5/35 |

| | *Min. Livable Floor Area for each Dwelling Unit (sq. ft.)* | *Min. Lot Area (sq. ft.)* | *Min. Lot Width* | *Min. Corner Lot* | *Min. Front Yard* [4,6] | *Min. Rear Yard* [5] | *Min. Side Yard* [6] | *Max. Bldg. Hgt. (Stories/ft.)* |
|---|---|---|---|---|---|---|---|---|
| R-3 | 700 one bedroom [7] | 12,060 [2] | 110 | 130 | 25 | 40 | 15 | 2.5/35 |
| R-4 | 700 one bedroom [7] | 20,000 [3] | 110 | 130 | 25 | 40 | 15 | 3.0/40 |
| B-1 [8] | | | 100 | 120 | 30 | 40 | 10 | 2.5/35 |
| B-2 [9] | | | 100 | 120 | 30 | 40 | 10 | 2.5/35 |
| B-3 [10] | | | 100 | 120 | 30 | 40 | 10 | 0.0/35 |
| B-4 [11] | | | 70 | 90 | 30 | 40 | 10 | 0.0/35 [12] |
| I-1 [13] | | | 150 | 170 | 25 | 15 | 15 | 3.0/40 [14] |
| I-2 | | | 150 | 170 | 25 | 15 | 15 | 2.0/35 [15] |
| A-1 [16] | | 5 acres | | | 35 | 40 | 15 | 2.5/35 |
| F-1 [17] | | | | | 30 | 30 | 30 | 2.5/35 |

[1] Minimum lot area for 1-family dwelling in this district shall be 8,000 square feet. For the additional dwelling unit there shall be an additional 3,000 square feet of lot area. (Thus the minimum lot area for a two-family dwelling structure shall be 11,400 square feet.)

[2] Minimum lot area for a two-family dwelling in this district shall be 9,000 square feet. For each additional dwelling unit there shall be an additional 2,000 square feet of lot area. At no time shall the lot area be less than 2,500 square feet per unit. (Thus the minimum lot area for a 3-family dwelling structure is 11,400 square feet.)

[3] Minimum lot area for a two-family dwelling in this district shall be 9,000 square feet. For each additional dwelling unit there shall be an additional 1,500 square feet of lot area. At no time shall the lot area be less than 2,000 square feet per unit. (Thus a 20-family structure shall have a minimum lot area of 40,000 square feet, not 9,000 + 1.5*19 or 37,500 square feet.)

[4] Whenever the frontage of one side of a block is more than 40% developed at the time of enactment of this code, the required setback for new construction or alteration shall be the average of the established setbacks; however, this regulation shall not be so interpreted as to require a front yard of more than 50 feet for a residential use.

[5] Minimum rear yard on corner lots may be reduced by 20%.

[6] Those lots that have an average slope of more than 15% shall meet the hillside regulations relative to minimum front yard and side yard requirements as set forth in §§ 150.020 through 150.027.

[7]The minimum livable floor area of a single-family house in the R-2 district shall be 1,200 square feet. A two-family unit shall have a minimum floor area of 1,100 square feet per unit for a total minimum floor area for the two-family structure of 2,200 square feet. The minimum livable floor area in the R-3 and R-4 districts shall be based upon the number of bedrooms. For one bedroom 700 square feet, two bedrooms 850 square feet, three bedrooms 1,000 square feet, four bedrooms 1,150 square feet, plus 150 square feet per bedroom above five bedrooms.

[8] See § 150.088 for additional yard requirements.

[9] See § 150.108 for additional yard requirements.

[10] See § 150.128 for additional yard requirements.

[11] See § 150.149 for additional yard requirements.

[12] See § 150.150 for additional building height requirements.

[13] See § 150.168 for additional yard requirements.

[14] See § 150.169 for additional building height requirements.

[15] See § 150.187 for additional building height requirements.

[16] See § 150.224 for additional yard requirements.

[17] See § 150.206 for additional yard requirements.

(Am. Ord. CM-658, passed 4-12-83; Am. Ord. CM-98-05, passed 6-9-98)

## *B-1 HIGHWAY BUSINESS DISTRICT*

### § 150.085 INTENT.

This District is designed to provide for highway-oriented uses and less intensive business types to serve the market of the urban area rather than the neighborhood; it is typically mapped along major traffic arteries or adjacent to the Central Business District.

### § 150.086 PERMITTED PRINCIPAL USES.

(A) Automobile service stations, whose activities include light repairs and accessory sales and installation.

(B) Automobile sales and service, new or used.

(C) Auto-wash facilities which are at least partially enclosed in a building.

(D) Bars and refreshment stands.

(E) Building services and supplies, including lumberyard.

(F) Carry-outs.

(G) Drive-in banks.

(H) Drive-in dry cleaning pickup stations.

(I) Drive-in restaurants.

(J) Farm implement sales.

(K) Fruit, florist and nursery stock and produce sales.

(L) Household appliances repair.

(M) Mortuary establishments. A caretaker's residence may be provided within the main building of a mortuary establishment.

(N) Motels.

(O) Open air commercial amusements.

(P) Plumbing and heating shops.

(Q) Restaurants.

(R) Utility trailer sales and rental.

## § 150.087 ACCESSORY USES.

Accessory uses shall be those uses customarily accessory to the uses set forth in § 150.086.

## § 150.088 YARD REQUIREMENTS.

In a B-1 Highway Business District, the following yard area shall be provided.

(A) *Front yards.* A 30-foot front yard shall be required; however, where the frontage on one side of the block is divided between B-1 Highway Business District and a residential district, the front yard of the residential district shall apply to the area in the B-1 Highway Business District.

(B) *Side yards.* Side yards shall generally not be required; however, a yard of not less than ten feet in width shall be provided where a side lot line of the B-1 Highway Business District abuts a residential district.

(C) *Rear yards.* Rear yards shall generally not be required; however, where a rear lot line of the B-1 Highway Business District abuts a residential district, a rear yard of 40 feet shall be provided.

### § 150.089 BUILDING HEIGHT REGULATIONS.

No building in the B-1 Highway Business District shall exceed 2-1/2 stories or 35 feet in height.

### § 150.090 ACCESSORY PARKING.

Spaces shall be provided in accordance with the provisions of § 150.285.

### § 150.091 OFF-STREET LOADING.

Spaces shall be provided in accordance with the provisions of § 150.284.

### § 150.092 SIGNS.

See § 150.288.

### § 150.093 SCREENING.

See § 150.286 for screening regulations for uses adjoining residential districts.

### § 150.094 CONDITIONAL USES.

Adult entertainment facility, subject to the terms and conditions of § 150.307.
(Ord. CM-726, passed l-8-85)

## *B-2 CONVENIENCE SHOPPING DISTRICT*

### § 150.105 INTENT.

This District is designed to provide for a limited range of convenience goods to supply the emergency needs to those living in the immediate vicinity. It will be approximately one acre in size, and will contain one to four uses to serve about 2,000 people.

### § 150.106 PERMITTED PRINCIPAL USES.

(A) Barber and beauty shops.

(B) Drug stores.

(C) Food stores.

(D) Laundry and dry cleaning pickup service, and coin-operated washing and dry cleaning facilities.

### § 150.107 ACCESSORY USES.

Accessory uses shall be those uses customarily accessory to the uses set forth in § 150.106.

### § 150.108 YARD REQUIREMENTS.

Yard requirements are listed in § 150.73.

### § 150.109 BUILDING HEIGHT REGULATIONS.

Maximum permitted height for buildings in this district shall be 2-1/2 stories or 35 feet.

### § 150.110 ACCESSORY PARKING.

Spaces shall be provided as required in § 150.285.

### § 150.111 OFF-STREET LOADING.

Spaces shall be provided as required in § 150.284.

### § 150.112 SIGNS.

See § 150.288.

### § 150.113 SCREENING.

See § 150.286 for screening regulations for uses adjoining residential districts.

### § 150.113 CONDITIONAL USES.

Apartment hotels or other dwelling units subordinate to and attached to the main building.

## *B-3 NEIGHBORHOOD BUSINESS DISTRICT*

### § 150.125 INTENT.

The purpose of this District is to provide an integrated collection of structures and uses designed to supply a majority of the daily needs of those living in the immediate vicinity. Ideally, these districts should be spaced no less than one mile apart.

### § 150.126 PERMITTED PRINCIPAL USES.

Permitted principal uses are as follows:

(A) Auto service stations, providing only the sale of gas, lubricants, coolants and accessories, and the performance of incidental services such as tire installation and automobile washing, cleaning and polishing, but not major overhaul, bumping or painting.

(B) Automobile sales and service, new or used.

(C) Bakeries in which the manufacture is limited to goods retailed only.

(D) Barber and beauty shops.

(E) Book and stationery stores.

(F) Bowling alleys.

(G) Candy or confectionery stores in which the manufacture is limited to goods retailed only.

(H) Carry-outs.

(I) Clothing stores.

(J) Dairy bars, soft ice cream parlors.

(K) Department stores.

(L) Drug stores.

(M) Dry cleaning, laundry pickup service and coin-operated washing and dry cleaning facilities, provided that the cleaning fluid used has a non-inflammable base.

(N) Dry goods and notions stores.

(O) Restaurants or other places serving food or beverages.

(P) Banks; finance and loan agencies.

(Q) Floral shops; fruit, nursery stock and produce sales.

(R) Food markets.

(S) Furniture and appliance stores, including rugs, floor coverings and draperies; sewing machine shops; used furniture stores; office equipment and supplies stores; and similar uses.

(T) Gift shops.

(U) Hardware and related stores, such as paint, wallpaper and similar stores.

(V) Household appliance repairs.

(W) Jewelry stores.

(X) Offices of doctors, dentists, lawyers, architects, insurance agents, realtors and unions.

(Y) Photographic studios.

(Z) Plumbing and heating shops.

(AA) Radio, TV and music stores.

(BB) Shoe stores.

(CC) Shoe shine and shoe repair shops.

(DD) Tailors and dress makers shops.

(EE) Travel agencies.

(FF) Variety stores.

(GG) Uses similar to the above uses.

## § 150.127 ACCESSORY USES.

Accessory uses shall be those uses customarily accessory to the uses set forth in § 150.126.

## § 150.128 YARD REQUIREMENTS.

In a Neighborhood Business District the following minimum yard areas shall be provided.

(A) *Front yards.* Generally, no front yard shall be required; however, when the frontage on one side of a block is divided between a Neighborhood Business District and a residential district, or is across the street from any residential district, the front yard requirement of the residential district shall apply to the area in the Neighborhood Business District.

(B) *Side yards.*

(1) Side yards shall not generally be required; however, a yard not less than ten feet in width shall be provided where a side lot line of a Neighborhood Business District abuts a residential district.

(2) In all other cases no side yard shall be required for a business, but if such a yard is voluntarily provided, it shall not be less than six feet in width.

(C) *Rear yards.*

(1) Rear yards shall not be required, except where a rear lot line of a Neighborhood Business District abuts a residential district. In such instance, there shall be a rear yard of 40 feet for a 1- or two-story building; such yard may be measured from the center line of an intervening alley. An additional one foot of rear yard shall be provided for each two feet of height over 40 feet.

(2) A wall or decorative fence at least five feet six inches high shall be placed along the boundary line of a rear yard abutting a residential district.

## § 150.129 BUILDING HEIGHT REGULATIONS.

Maximum permitted height for buildings in this district shall be 35 feet.

## § 150.130 ACCESSORY PARKING.

Parking spaces shall be provided as required in § 150.285.

## § 150.131 OFF-STREET LOADING.

Spaces shall be provided as required in § 150.284.

## § 150.132 SIGNS.

See § 150.288.

### § 150.133 SCREENING.

See § 150.286 for screening regulations for uses adjoining residential districts.

### § 150.134 CONDITIONAL USES.

Apartment hotels or other dwelling units subordinate to and attached to the main building.

## *B-4 CENTRAL BUSINESS DISTRICT*

### § 150.145 INTENT.

This District is designed to provide for a restricted variety of retail stores and related activities and for office buildings and service establishments which occupy the prime retail frontage in the Central Business District, and which serve the comparison, convenience and service needs of a consumer population well beyond the corporate boundaries of the municipality. The District regulations are also designed to provide for a centrally located major shopping complex which will be serviced with conveniently located off-street parking compounds and safe pedestrian movement, but to exclude nonretail uses which generate a large volume of truck traffic.

### § 150.146 PERMITTED PRINCIPAL USES.

(A) Any generally recognized retail businesses, service establishments or processing uses, as follows.

(1) Apparel shops, including specialty shops of all sorts, shoe stores and similar uses;

(2) Sale of new automobiles, provided service access is available from side street or alley;

(3) Shops selling automobile parts and accessories only;

(4) Banks, loan offices, stock exchange offices and other financial institutions;

(5) Commercial recreation facilities such as bowling alleys, movie theater;

(6) Department store;

(7) Drug stores;

(8) Restaurants or other places serving food or beverages;

(9) Food stores, including supermarkets, and all types of specialty food stores such as bakeries, candy stores and similar uses;

(10) Furniture and appliance stores, including rugs, floor coverings and draperies, sewing machine shops, used furniture stores, office equipment and supplies stores and similar uses;

(11) Gift shops, camera shops, record shops and similar uses;

(12) Hardware, paint and wallpaper stores and similar uses;

(13) Hotels and motels;

(14) Professional and other offices drawing a large number of clients or customers, such as, but not restricted to:

(a) Chamber of Commerce; automobile clubs;

(b) Doctors, dentists, lawyers and architects;

(c) Insurance, realtors and unions;

(d) Post offices; and

(e) Utility offices.

(15) Publishing and printing;

(16) Repair shops, such as shoe and watch repair;

(17) Service shops, such as barber, beauty, laundry or dry cleaning shops, and similar uses;

(18) Travel agencies; and

(19) Variety stores.

(B) Public and semi-public buildings, such as but not restricted to:

(1) Churches;

(2) Fraternal organizations;

(3) Libraries;

(4) Municipal offices; and

(5) Parking garages.

(C) Other uses which in the opinion of the Planning Board are similar to the above uses. The Planning Board may also consider essentially custom manufacturing activities which in its opinion:

(1) Benefit from a central location and are appropriate in the Central Business District;

(2) Do not create any significant objectionable influences; and

(3) Involve products characterized by a high ratio of value to bulk, so that truck traffic is kept to a minimum.

(D) Off-street parking facilities shall be provided according to the provisions of § 150.285.

## § 150.147 ACCESSORY USES.

Accessory structures and uses shall be those uses customarily incidental to the uses set forth in § 150.146.

## § 150.148 CONDITIONAL USES.

(A) Apartment hotels on floors above the ground floor.

(B) Residential inhabitation on ground floors.

(1) *Commercial business buildings.* Residential inhabitation on the first floor within this district may be allowed if all of the following restrictions are met:

(a) Up to a maximum of 50% of the ground floor area can be used as a living/apartment space.

(b) Each living/apartment unit floor area must be a minimum of 550 square feet.

(c) The commercial/business area must occupy the portion of the building/structure fronting on the street, so that the commercial/business front is maintained.

(2) *Residential buildings.* Residential buildings can be used as a business or residence, or used in combination when the combination meets all conditions described in division (B)(1) above.

(3) When a residence changes to a business/apartment or vice versa, all modifications to the building or its use shall be approved through the Board of Adjustment.

(4) Parking shall be provided on site for the living/apartment units which occupy the ground floor, if there is space to do so regardless of the type of structure. If no space is available, this requirement may be waived by the granting of a variance.

(5) The Board of Adjustment shall use their discretion/judgment to ensure that the essential character of the Central Business District is maintained to allow business and family-apartment units to coexist within this zoning district.
(Am. Ord. CM-843, passed 7-12-88)

## § 150.149 YARD REQUIREMENTS.

In a Central Business District, the following yard areas shall be provided.

(A) *Front yards.* Generally, no front yard shall be required; however, where the frontage on one side of a block is divided between a Central Business District and a residential district, or across the street from a residential district, the front yard requirement of the residential zone shall apply to the area in the Central Business District.

(B) *Side yards.* Side yards shall not generally be required; however, a yard not less than six feet in width shall be required where a side lot line of Central Business District abuts a residential district; an additional foot of yard space shall be added for each additional two feet of building height above 25 feet.

(C) *Rear yards.* Rear yards shall not generally be required; however, where a rear lot line of a Central Business District abuts a residential district, there shall be a rear yard of 40 feet for 1-or two-story buildings, and an additional one foot of rear yard shall be provided for each two feet of building height over 40 feet. Such yard may be measured from the center line of an intervening alley; where there is no alley, a wall or decorative fence at least five feet six inches high shall be placed along the boundary line of a rear yard abutting a residential district.

## § 150.150 BUILDING HEIGHT REGULATIONS.

There shall be no specific height limitation in a B-4 District; however, prior to the issuance of a zoning permit for any structure which is planned to exceed 35 feet in height, the Planning Board shall make a finding that any such excessive height will not be detrimental to the public safety, or to the light, air or privacy of any other structure or use currently existing or approved for construction.

## § 150.151 ACCESSORY PARKING.

Parking space as an accessory use shall not be required in the B-4 Central Business District except as noted in § 150.285.

## § 150.152 OFF-STREET LOADING.

Space shall be provided in accordance with the provisions of § 150.284.

## § 150.153 SIGNS.

See § 150.288.

## § 150.154 SCREENING.

See § 150.286 for screening regulations for uses adjoining residential districts.

## *I-1 INDUSTRIAL DISTRICT*

### § 150.165 INTENT.

The purpose of this District is to provide for industrial uses with limited objectionable external effects in areas that are suitable for industrial development by reason of location, topography, soil conditions and the availability of adequate utilities and transportation systems. The intent is to permit most manufacturing, wholesaling and warehousing activities that can be operated in a clean and quiet manner, subject only to those regulations necessary to prohibit congestion and for the protection of adjacent residential and business activities.

### § 150.166 PERMITTED PRINCIPAL USES.

(A) Assembly plants, except automobile assembly plants or plants of similar nature.

(B) Automobile repairs, but not commercial wrecking, dismantling or salvage yards.

(C) Auto service stations.

(D) Automobile, truck and boat sales.

(E) Bottling works.

(F) Builders' supply stores.

(G) Carpet cleaning, dry cleaning, dyeing and laundry establishments.

(H) Cold storage plants.

(I) Commercial greenhouses.

(J) Fabrication, processing, packaging or manufacture of food products and condiments, excluding fish products, slaughterhouses and rendering and refining of fats, oils, fish, vinegar, yeast and sauerkraut.

(K) Fabrication, processing, packaging or manufacture of cosmetics, drugs, perfumes, pharmaceuticals and toiletries.

(L) Fabrication, processing, packaging or manufacture of articles or merchandise from the following previously prepared materials: canvas, cellophane, cloth, cork, felt, fibre, leather, paint, paper, plastics, precious or semi-precious metals or stones, textiles, tobacco, wax, wood and yarn.

(M) Fabrication, processing, packaging or manufacturing of musical instruments, toys, novelties and rubber or metal stamps.

(N) Fabrication, processing packaging or manufacture of ice; cold storage plants; bottling plants.

(O) Foundry casting light weight nonferrous metals, or electric foundries, not causing noxious fumes or odors.

(P) Fuel or coal companies.

(Q) Furniture reupholstering and repair.

(R) Industrial research laboratories.

(S) Lumberyards, including incidental millwork, coal, brick and stone.

(T) Monument sales, including incidental mechanical operations.

(U) Motor freight depot or trucking terminals; provided that the truck entrances and exits are onto streets whose pavement width is at least 30 feet between curbs.

(V) Painting and varnishing shops.

(W) Plumbing supply and contracting shops, including storage yards.

(X) Public garages, motor vehicle and bicycle repair shops and auto paint and body shops.

(Y) Publishing and printing.

(Z) Repair, rental and servicing for appliances and equipment.

(AA) Sign contractors.

(BB) Stone grinding, dressing and cutting.

(CC) Storage yards for building supplies and equipment, contractor's equipment, wood fabrics, hardware and similar goods when located entirely within a building; however, the buildings shall not be used for wrecking or dismantling of motor vehicles.

(DD) Television and radio broadcasting towers, including station and facilities.

(EE) Tin and sheet metal shops.

(FF) Tool and die shops, wrought iron shops or blacksmith or machine shops, excluding drop hammers.

(GG) Trailer rental and sales.

(HH) Veterinary clinics or kennels, or animal hospitals, provided that all animals are housed in buildings or enclosures which are at least 100 feet from any residential district.

(II) Warehouses.

(JJ) Wholesale distributors.

(KK) Uses similar to the above uses, and any other manufacturing or industrial enterprise, operation or process whether making, assembling, repairing, buffing, finishing, plating, polishing, tempering, packing, shipping or storing; provided that any resulting cinders, dust, flashing, fumes, gas, noise, odor, refuse matter, smoke, vapor or vibration is no greater or more detrimental to the neighborhood than the specified uses, that no extra fire hazard is created, and the proposed use as determined by the Board of Adjustment is similar in character to one of the specific uses set forth in this section.
(Am. Ord. CM-925, passed 2-13-90)

## § 150.167 ACCESSORY USES.

Accessory uses shall be those uses customarily accessory to the uses set forth in § 150.166.

## § 150.168 YARD REQUIREMENTS.

In a Light Industrial District, the following yards shall be required.

(A) Front yards shall be not less than 25 feet in depth; however, where a Light Industrial District is adjacent or across a street from any residential district, the required front yard shall be not less than 50 feet.

(B) Side yards shall be not less than 15 feet in width on each side; however, where the side yard abuts a residential district, it shall be not less than 50 feet. Any portion of a side yard which is in excess of 15 feet from a side property line may be used for parking.

(C) Rear yards shall be not less than 15 feet in depth; however, where the rear yard abuts an alley, it shall be not less than 30 feet; where the rear yard abuts a residential district, it shall be not less than 50 feet.

## § 150.169 BUILDING HEIGHT REGULATIONS.

No building shall exceed three stories or 40 feet in height; however, an additional one foot of building height may be allowed for each foot the building or portion thereof is set back from the required yard lines.

## § 150.170 ACCESSORY PARKING.

Parking spaces shall be provided as required in § 150.285.

## § 150.171 OFF-STREET LOADING.

Space shall be provided in accordance with the provisions of § 150.284.

## § 150.172 SIGNS.

See § 150.288.

### § 150.173 SCREENING.

See § 150.286 for screening regulations for uses adjoining residential district.

## *I-2 CONTROLLED INDUSTRIAL DISTRICT*

### § 150.185 INTENT.

The regulations set forth in §§ 150.185 through 150.191, or set forth elsewhere in this zoning code, when referred to in these sections, are the regulations in the I-2 Controlled Industrial District. Such District shall be laid out and developed according to an approved plan as provided in these sections in order to accomplish its purpose to provide space in attractive and appropriate locations for certain types of business and manufacturing free from offense, in modern landscaped buildings, and to provide opportunities for employment closer to residences with a reduction in travel time from home to work.

### § 150.186 PERMITTED PRINCIPAL USES.

A building or premise shall be used only for the following purposes.

(A) Art needle work, hand weaving and tapestries;

(B) Books, hand binding and tooling;

(C) Compounding of cosmetics and pharmaceutical products;

(D) Jewelry manufacture from precious metals;

(E) Laboratories, research, experimental and testing;

(F) Manufacture of clay, leather, metal and glass products of a handicraft nature;

(G) Manufacture of medical, dental and drafting instruments;

(H) Manufacture of optical goods and equipment, watches, clocks and other similar precision instruments;

(I) Manufacture of small electrical or electronic apparatus, musical instruments, games and toys;

(J) Manufacture of small plastic items or parts of items;

(K) Motion picture production;

(L) Offices, business, professional and governmental;

(M) Radio and television broadcasting stations and studios, not including sending or receiving towers;

(N) Generally those office, laboratory, manufacturing or assembly operations related to those listed in this section which do not create any danger to health and safety in surrounding areas, and which do not create any offensive noise, vibrations, smoke, dust, odors, heat or glare, and which are specifically approved as to character, arrangement, design and method of operation in accordance with §§ 150.189 and 150.190;

(O) The design and manufacture of tools and small metal parts, provided that the fabrication processes involved shall not create unnecessary air, water or noise pollution;

(P) The design, manufacture and storage of concrete products, provided that the use shall not create unnecessary air, water or noise pollution, and shall comply with parking, screening and all other regulations in this code;

(Q) Lumberyards; and

(R) Any other industrial business related to the above or omitted from the above list, which will meet all the air, water, noise, parking, screening and other regulations in this code.
(Am. Ord. CM-99-07, passed 3-9-99)

## § 150.187 BUILDING HEIGHT REGULATIONS.

No building shall exceed a height of two stories or 35 feet; however, a building may be erected to a height of 60 feet when the distances from the street and any residential district boundary line required in this section are increased by one foot for each foot of building height above 35 feet.

## § 150.188 ACCESSORY PARKING AND LOADING.

Off-street parking and loading spaces shall be provided in accordance with the requirements for specific uses set forth in §§ 150.284 and 150.285.

## § 150.189 PLAN PROCEDURE.

The owners of a tract of land may submit to the Planning Board a plan for the use and development of the tract for the purposes of and meeting the requirements set forth in §§ 150.185 through 150.191. The plan shall be accompanied by information concerning the number of persons to be employed, and the effects on surrounding property and other physical conditions, including the effect of the project on adjacent streets or roads. The information shall include a site plan defining the area to be occupied by buildings; the areas to be used for parking; the location of roads, driveways and walks; the location and height of any walls; and the spaces for planting and other treatment for adjustment to surrounding property.

## § 150.190 PLAN REVIEW AND APPROVAL.

(A) The Planning Board shall hold a hearing on the specific plans submitted for their approval. It shall give at least ten days notice of the time and place of the hearing to the Enforcing Officer, and to the owners of record

of property within 300 feet of the premises in question. The notice shall be delivered personally or by mail addressed to the respective owners at the address given on the last assessment roll. Any party may appear at such hearing in person, by agent or by attorney. They may approve, modify or deny these plans in accordance with good zoning practice and the provisions of this code. The findings of the Planning Board shall be in writing stating the reasons for approval or denial, including a finding whether the proposed industrial development meets the following specific conditions.

(1) The proposed development is so related to streets and arteries that the traffic generated can be easily accommodated without causing objectionable volume of traffic on residential streets.

(2) The locations and arrangement of buildings, parking areas, roads, driveways and other features are adjusted to the surrounding land uses, and parts of the site not used for building, structures, parking or accessways are landscaped with grass, trees and shrubs, sufficient in character and extent to form an effective screen.

(3) No materials, products or equipment are to be stored in the open on the site.

(4) All roads, parking and loading areas and walks are suitably graded and drained and paved with hard surface material meeting applicable specifications of the municipality.

(B) Reasonable additional requirements as to landscaping, lighting, signs, advertising devices, screening, building setbacks and accessways may be imposed by the Municipal Planning Commission for the protection of adjoining residential property.

(C) Each application for a controlled industrial development plan shall be accompanied by a fee of $50. Application fees shall not be refunded in any case.
(Ord. CM-96-02, passed 2-13-96)

### § 150.191 DELAY IN CONSTRUCTION.

In the event that construction of the business or industry is not begun within two years of the date of approval by the Planning Board, permission for construction shall be considered to have expired, and approval for plans shall be re-obtained before construction shall begin.

## *F-1 FLOOD PLAIN DISTRICT*

### § 150.200 INTENT.

This District is composed of lands that are subject to periodic flooding. It is intended to preserve the existing “flood plains” so as to allow the waterways a place to overflow at high water levels and thus assist in protecting other areas not now subject to flooding. In this District, only those uses that are temporary, seasonal in nature, or would not be extensively damaged by flooding are permitted.

## § 150.201 PERMITTED PRINCIPAL USES.

(A) Agriculture and gardening.

(B) Parking lots.

(C) Public or private recreation facilities including parks, playgrounds, golf courses, boat docks, driving ranges.

(D) Temporary uses. See § 150.282.

(E) The following uses shall be permitted after review of plans and location by the Planning Board.

(1) Animal shelters.

(2) Kennels.

(3) Stables and riding academies.

(4) Storage yards for materials and equipment not subject to removal by flood waters.

(5) Swimming pools and customary accessory buildings.

(6) Customary accessory buildings for uses listed under (C) above.

## § 150.202 ACCESSORY USES.

Accessory uses shall be those uses customarily accessory or incidental to the uses set forth in § 150.201, except dwellings.

## § 150.203 PROHIBITED USES.

(A) Structures for human habitation.

(B) The filling of land.

## § 150.204 CONDITIONAL USES.

The following uses may be permitted by the Board of Adjustment upon application and approval of a conditional use permit under the provisions of § 150.307.

(A) Airport landing fields;

(B) Amusement parks;

(C) Extraction of minerals, soil, sand and gravel;

(D) Outdoor theaters;

(E) Reclamation of industrial wastes, but not within 1,000 feet of any residential district;

(F) Rifle or skeet shooting range, but not within 1,000 feet of any residential district;

(G) Sales lots for cars, trucks, farm and construction equipment, and mobile homes; and

(H) Uses similar in character to those permitted in this district.

## § 150.205 GENERAL FLOOD PLAIN PROVISIONS.

(A) Any structure, use, building, fence, development, obstruction, addition, subdivision or any other construction or alteration of or within the flood plain or floodway shall conform to and follow the requirements set forth in Chapter 156: Special Purpose Flood Damage Reduction.

(B) The municipality shall not incur any liability whatsoever by permitting certain uses within any Flood Plain District.
(Am. Ord. CM-98-10, passed 4-14-98)

## § 150.206 YARD REQUIREMENTS AND LOT COVERAGE.

(A) Minimum front, side and rear yards shall be 30 feet for each yard.

(B) Structures existing at the time of adoption of this code occupying 10% or more of the lot shall not be enlarged.

(C) Any new main structure together with its accessory buildings shall not occupy more than 10% of the lot.

## § 150.207 BUILDING HEIGHT REGULATIONS.

No building shall exceed 2-1/2 stories or 35 feet in height.

## § 150.208 ACCESSORY PARKING.

Parking spaces shall be provided as required in § 150.285.

## § 150.209 SIGNS.

See § 150.288.

### § 150.210 SCREENING.

See § 150.286 for screening regulations for uses adjoining residential district.

## *A-1 AGRICULTURAL DISTRICT*

### § 150.220 INTENT.

This District is composed of certain land used for agricultural activities, open recreational uses and other open land uses, and is primarily located near the periphery of the urban area. Submarginal lands having no principal use also are included in this District. It is the intent of this District to protect the open area from the encroachment of scattered urban-type uses until such time as the area is ready for more intense development.

### § 150.221 PERMITTED PRINCIPAL USES.

(A) Agriculture and gardening, including animal shelters.

(B) Home occupations. (See § 150.004.)

(C) One-family dwellings.

(D) Public or private recreation facilities, including parks, playgrounds, golf courses, boat docks, driving ranges, swimming pools and customary accessory buildings.

(E) Sale of produce and plants raised on the premises.

### § 150.222 ACCESSORY USES.

Accessory uses shall be those uses customarily accessory or incidental to the uses set forth in § 150.221.

### § 150.223 CONDITIONAL USES.

(A) Those uses listed as conditional uses in § 150.204 may be permitted by the Board of Adjustment upon application and approval of a conditional use permit under the provisions of § 150.307;

(B) Cemeteries;

(C) Disposal of refuse or garbage by the municipality; and

(D) Drive-in theaters.

## § 150.224 YARD AND LOT REQUIREMENTS.

(A) *Required yards.*

(1) Front yards shall be not less than 35 feet in depth.

(2) Side yards shall be not less than 15 feet on each side.

(3) Rear yards shall be not less than 40 feet in depth.

(B) *Minimum lot area.* The minimum lot area shall be not less than five acres.

## § 150.225 BUILDING HEIGHT REGULATIONS.

No structure shall exceed 2-1/2 stories or 35 feet in height.

## § 150.226 ACCESSORY PARKING.

Parking spaces shall be provided as required in § 150.285.

## § 150.227 SIGNS.

See § 150.288.

## *PLANNED DEVELOPMENT*

## § 150.235 INTENT.

(A) The purpose of §§ 150.235 through 150.247 is to permit creation of new Planned Development where maximum variations of design may be allowed, on application and approval of specific and detailed plans, where tracts suitable in location and character for the uses and structures proposed are adapted to unified planning and development as units, and when the plan for the project is such that the public health, safety and morals will not be jeopardized by a departure from the restrictions on corresponding uses in the standard zoning district.

(B) Planned unit development is land:

(1) Under unified control, planned and developed as a whole;

(2) In a single development operation or a definitely programmed series of development operations including all lands and buildings;

(3) Conforming to comprehensive and detailed plans, which include not only streets, utilities, lots or building sites, but also site plans and design principles for all buildings as intended to be located, constructed, used and related to each other; and including detailed plans for uses and improvements on the land as related to buildings;

(4) Having a program for the provision, operation and maintenance of such areas, improvements and facilities as are necessary for common use by some or all of the occupants of the development, but which will not be provided, operated or maintained at general public expense.

## § 150.236 TYPES OF PLANNED DEVELOPMENT.

(A) Types of planned unit developments include PD-1 (Planned Residential Development), PD-2 (Planned Business Development) and PD-3 (Planned Industrial Development).

(B) Any principal land use, either permitted or conditional, may become the basis for a Planned Development. However, after approval by the Planning Board, the Municipal Council may authorize that there be permitted in part of the area of a proposed Planned Development specified uses not permitted by the use regulations of the district in which the development is located, provided that it is found:

(1) That the uses permitted by such exception are necessary or desirable, and are appropriate with respect to the primary purpose of the Planned Development;

(2) That the uses permitted by such exception are not of such a nature or so located as to exercise a detrimental influence on the surrounding neighborhood.

## § 150.237 PURPOSES FOR PLANNED DEVELOPMENT.

(A) Planned Developments are of such substantially different character that specific and additional standards and exceptions are established herein to govern the actions of the Planning Board.

(B) Planned Development approval is a privilege to be earned and not a right which can be claimed simply upon complying with all the standards established in §§ 150.235 through 150.237. The Planning Board or Council may require any reasonable condition or design consideration which will promote proper development of benefit to the community. It is not intended that the Board or Council automatically grant the maximum use exceptions or density increase in the case of each Planned Development. The Board and Council shall grant only such increase or latitude which is consistent with the benefit accruing to the municipality as a result of the Planned Development. As a condition for approval, each Planned Development must be compatible with the character and objectives of the zoning district or districts within which it is located, and each planned development shall be consistent with the objectives of the Comprehensive Plan.

(C) Some specific purposes of the Planned Development procedure are:

(1) To take advantage of advances in technology, architectural design, and functional land use design;

(2) To recognize the problems of population density, distribution and circulation; and to allow a deviation from rigid established patterns of land uses which is controlled by defined policies and objectives;

(3) To produce a comprehensive development equal to or better than that resulting from traditional lot-by-lot land use development;

(4) To permit flexibility of design in the placement, height, and uses of buildings and open spaces, circulation facilities and off-street parking areas, and to more efficiently utilize potentials of site, topography, size or shape.

## § 150.238 GENERAL STANDARDS FOR PLANNED DEVELOPMENT.

The Planning Board shall not approve a request for a Planned Development unless it shall, in each specific case, make specific findings of facts directly based upon the particular evidence presented to it, which supports conclusions that:

(A) The proposed development is consistent in all respects with the purpose and intent of this zoning code.

(B) The proposed development does not have an adverse effect upon the general welfare of the community or the immediate vicinity.

(C) The Planned Unit Development can be substantially completed within the period of time specified in the schedule of development submitted by the developer.

(D) The site will be accessible from public thoroughfares that are adequate to carry the traffic that will be imposed upon them by the proposed development, and the streets and driveways on the site of the proposed development will be adequate to serve the residents or occupants of the proposed development.

(E) The development will not impose an undue burden on public services and facilities, such as fire and police protection.

(F) The Development Plan contains such proposed covenants, easements and other provisions relating to the proposed development standards, as are reasonably required for the public health, safety and welfare.

(G) The location and arrangement of structures, parking areas, walks, lighting and appurtenant facilities shall be compatible with the surrounding land uses, and any part of a Planned Development, not used for structures, parking and loading areas or accessways shall be landscaped or otherwise improved.

(H) Natural features such as watercourses, trees, and rock outcrops will be preserved, to the degree possible, so that they can be incorporated into the layout to enhance the overall design of the Planned Development.

(I) The layout must be designed to take advantage of the existing land contours in order to provide satisfactory road gradients and suitable building lots, and to facilitate the provision of proposed services.

(J) In any development which is primarily designed for or occupied by dwellings, all electric and telephone facilities, street light wiring and other wiring conduits and similar facilities shall be placed underground by the developer, unless waived by the Planning Board because of technical reasons.

***Cross-reference:***

*Specific standards for particular Planned Development District types, see §§ 150.245 through 150.247*

## § 150.239 SUBMISSION REQUIREMENTS FOR PLANNED DEVELOPMENT PROPOSALS.

Planned Development plans and supporting data shall include at least the following information.

(A) *Preliminary plan stage.*

(1) An application for preliminary approval of the plan for a Planned Development shall be filed by or on behalf of the land owner or other entity having cognizable interest in the land.

(2) The application shall be made to the Enforcing Officer in such form as required by this code; and shall be accompanied by a fee of $50.

(3) Material to be submitted with applications.

(a) Identification of all property owners within the proposed district, evidence of unified control of the entire area of the district, tentative agreement of all owners to proceed with development according to plans, timing schedule if the proposed application is passed, documents binding successors in title to abide by any final commitments made, and evidence of financial capability to complete the development according to plan or to provide adequate sureties for completion.

(b) A map or maps indicating the relation of the proposed district to the surrounding area. As appropriate to the development proposed, such map or maps shall demonstrate access to major streets, and show the approximate location and sizes of existing public sewers, water lines, storm drainage systems and other utilities systems and installations which will be expected to serve the development. In the case of Planned Developments to contain housing, location of schools and nearby commercial facilities shall be indicated.

(c) Topographic data map drawn to a scale of 100 feet to l inch by a registered surveyor or engineer showing:

1. Bearings and distances of boundary line;

2. Location, width and purpose of easements;

3. Wooded areas, streams, lakes, marshes and any other physical conditions affecting the site;

4. Ground elevations on the tract: for land that slopes less than 0.5%, showing 1-foot contours; for land that slopes more than 0.5%, showing two-foot contours;

5. If deemed necessary, subsurface conditions on the tract, including the location and results of tests made to ascertain the conditions of subsurface soil, rock and ground water and the existing depth of ground water.

(4) A preliminary development plan and report, with maps at a scale of 100 feet or less to the inch, including, as appropriate to the kind of Planned Development proposed, the following information, presented in generalized form.

(a) Proposed land uses and approximate height, bulk and location of principal structures sufficient to permit an understanding of the style of the development; (Proposals containing residential units shall specify the number of housing units by size and type proposed within the initial phase of the proposal, or within the overall development if the development is not to be staged.)

(b) Proposed automotive and pedestrian circulation patterns, including streets by type (major, collector or minor), width and public or private status and pedestrian ways; (Existing or plotted streets proposed to be vacated should also be indicated.)

(c) Major off-street parking areas;

(d) Proposed parks, playgrounds, school sites, pedestrian parkways and other major open spaces, as well as the general form of organization proposed to own and maintain any common open space;

(e) General location of utilities installations and easements;

(f) If development is to be in stages, an indication as to the order and timing of development, and demonstration that each stage, when completed, would complement any completed earlier, and would form a reasonably independent unit even though succeeding stages were delayed;

(g) Proposals for expediting provisions of public facilities, utilities or services where lacking or unlikely to be available when needed for the planned development; or for providing suitable private facilities, utilities or services; and (A report shall be provided, if appropriate in a particular development, containing proposals for improvement and continuing maintenance and management of any private streets.)

(h) The substance of covenants, grants, easements or other restrictions proposed to be imposed upon the use of the land, buildings and structures, including proposed easements or grants for public utilities.

(B) *Final plan stage.*

(1) Final development plans and reports shall include:

(a) 1. A map or maps in the form required by the Subdivision Regulations for final plats of subdivisions, with such modifications and additions as required concerning such items as building sites when used as a substitute for lots, common open space not dedicated for public use, and other matters as appropriate to Planned Developments generally or to the specific Planned Development.

2. Similar modifications of standards contained in the Subdivision Regulations or in other regulations or policies applying generally may be reflected in such maps and reports if the Planning Board shall

find and shall certify, after consultations with other agencies of government as appropriate in the specific case, that the public purposes of such regulations or policies are as well or better served by specific proposals of the formal plan and reports.

(b) A general site and land use plan for the Planned Development as a whole, indicating sub-areas for phased development if any; and showing location and use of structures and portions of structures in relation to building site lines, building sites reserved for future use and uses for which sites are reserved, automotive and pedestrian circulatory networks, principal parking areas, open space not in building sites and the use for which it is intended, and such other matters as are required to establish a clear pattern of the relationships to exist between structures, uses, circulation and land.

(2) Agreements, contracts, deed restrictions and sureties.

(a) Before any building permit may be issued in the Planned Development, all agreements, contracts and deed restrictions shall be submitted in a form acceptable to the municipality.

(b) The applicant shall guarantee the installation of the public improvements specified in the final development plan through one of the following methods.

1. Filing a performance and labor and material payment bond in the amount of 110% of the estimated construction cost as determined by the municipality.

2. Depositing or placing in escrow or certified check, cash or other acceptable pledge, in the amount of 110% of the construction cost as approved by the municipality.

(3) Detailed plans. Before any building permit may be issued in the Planned Development, detailed plans for individual buildings or groups of buildings shall be submitted to the Planning Board for approval. Such plans shall be in accord with the final development plan and report as approved by the Planning Board, and shall be in sufficient detail to permit determinations as to compliance with the requirements of this code with respect to the particular Planned Development District and uses involved. The plans shall include:

(a) Site plans for the building site or sites, indicating relationship to adjoining areas.

(b) Floor plans of the buildings involved, indicating horizontal dimensions, uses of space and floor area.

(c) Elevations of the buildings involved, indicating height, and, if required in determinations for the particular building or use, location and dimensions of all windows and other glassed areas.

## § 150.240 PROCEDURE FOR APPROVAL.

(A) *Preapplication conference.*

(1) Prior to filing a formal application for approval of a Planned Development, the developer shall request a preapplication conference with the Enforcing Officer. The purpose of the conference is to allow the

developer to present a general concept of his or her proposed development prior to the preparation of detailed plans. For this purpose the presentation shall include, but not be limited to the following.

(a) A written "letter of intent" from the developer establishing his intentions as to development of the land;

(b) A topographic survey and location map;

(c) Sketch plans and ideas regarding land use, dwelling type and density, street and lot arrangement and tentative lot sizes; and

(d) Tentative proposals regarding water supply, sewage disposal, surface drainage and street improvements.

(2) The Enforcing Officer shall advise the developer of the zoning requirements and municipal plans which might affect the proposed development, as well as the procedural steps for approval.

(B) *Preliminary plan.*

(1) The preliminary plan of the Planned Development shall be filed with the Enforcing Officer, who shall in turn forward copies to the Planning Board for consideration.

(2) The required procedure for consideration and approval of the preliminary plan shall be:

(a) Submission of the following:

1. A written application for approval of a Planned Development, to be made on forms and in the manner prescribed by the municipality;

2. A fee consistent with § 151.998; and

3. The preliminary plan and supporting data, to be in accordance with the provisions of § 150.239(A), and the municipal subdivision code, if applicable.

(b) The Planning Board shall study material received, and confer with other agencies of government as appropriate, to determine general acceptability of the proposal as submitted. In the course of such preliminary consideration, the Planning Board may request and the applicant shall supply additional material needed to make specific determinations.

(c) Following such study, the Planning Board or its staff shall hold a conference or conferences with the applicant to discuss desirable changes in the first or succeeding drafts of the preliminary development plan and report.

(d) Recommendations of the Planning Board to the applicant shall be in writing, and following any such conference, as described in division (B)(2)(c) above, agreements between the applicant and the Planning Board as to changes in the preliminary plan and report or other matters shall be recorded and acknowledged by the Planning Board and the applicant. On items on which no agreement is reached, or there is specific

disagreement, this fact shall be recorded, and the applicant may place in the record his reasons for any disagreement.

(e) When the preliminary development plan and report has been approved in principle (as a whole or with reservations specifically indicated), or when the applicant indicates in writing that no further negotiations with the Planning Board are desired before proceeding, the Planning Board shall schedule the proposed plan for a public hearing, following which it shall make its recommendations to Council. The recommendations shall indicate approval, approval with specific reservations, or disapproval with reason. With such recommendations, the Planning Board shall transmit within 60 days the latest draft of the preliminary plan and report submitted by the applicant, a record of agreements reached and matters on which there was no specific agreement, including any reasons recorded by the applicant for any such disagreement.

(f) Council shall schedule a public hearing for the preliminary plan and respective Planned Development Zone designation after receiving the proposal from the Planning Board. Within 60 days, the Council shall approve the proposal, approve subject to conditions or deny the proposal. If approved, the area of land marked shall be redesignated PD-1 (Planned Residential), PD-2 (Planned Business) or PD-3 (Planned Industrial), and shall be used only in accordance with the uses and densities shown on the Planned Development preliminary plan.

(C) *Final plan.*

(1) The final Planned Development plan shall conform substantially to the preliminary plan as approved, and shall be filed within six months after approval of the preliminary plan. If desired by the developer, it may be submitted in stages, with each stage reflecting a portion of the approved preliminary plan which is proposed to be recorded and developed; provided that such portion conforms to all requirements of these regulations.

(2) The required procedure for approval of a final plan shall be as follows:

(a) The final plan and supporting data shall be filed with the Enforcing Officer, who in turn shall forward copies to the Planning Board for certification that the final plan is in conformity with these regulations and in agreement with the approved preliminary plan.

(b) After review of the final plan and supporting data, the Planning Board shall approve or disapprove the plan within 60 days after submittal by the developer. Disapproval of the final plan shall include a clear statement of the reasons therefor.

(c) The Planning Board shall then forward the final plan together with its recommendations to the Council. The Council shall review the recommendations of the Planning Board at the next regular meeting of the Council, and shall approve, approve subject to conditions, or deny the final application.

(D) *Recording of final development plan.*

(1) No use shall be established or changed, and no structure shall be constructed in any portion of a Planned Development until the final development plan for that portion has been approved by the Council and recorded in compliance with the requirements of the subdivision code.

(2) After approval by the Council of the final plan, the Clerk of Council shall see that all requirements have been complied with before the final development plan is presented to the Miami County Recorder for recording.

(3) The purposes of such recording are to designate with particularity the land subdivided into conventional lots, as well as the dimension of other lands not so treated, and into common open areas and building areas; and to designate each building or structure, as well as the use of the land in general.

(4) No final development plan within the corporate limits of the municipality shall be so recorded unless it shall have the approval of Council inscribed thereon.

(E) *Building permit.*

(1) No building permit shall be issued by the Building Inspector until the final development plan has been approved and duly recorded, and the Planning Board has approved the detailed plans described in § 150.239(B)(3).

(2) The Building Official shall issue no certificate of occupancy until all utilities have been accepted by the municipality in accordance with the final development plan.

## § 150.241 CHANGES IN THE PLANNED DEVELOPMENT.

A Planned Development shall be developed only according to the approved and recorded final plan and all supporting data. The recorded final plan and supporting data, together with all recorded amendments, shall be binding on the applicants, their successors, grantees and assigns, and shall limit and control the use of premises (including the internal use of buildings and structures) and location of structures in the Planned Development as set forth therein.

(A) *Major changes.* Changes which alter the concept or intent of the Planned Development, including increases in the number of units per acre, changes in location or amount of nonresidential land uses, more than 15% modification in the proportion of housing types, reductions of proposed open space, or significant redesign of roadways, utilities or drainage, may be approved only by submission of a new preliminary plan and supporting data, and following the "preliminary approval" steps and subsequent amendment of the final Planned Development Plan.

(B) *Minor changes.* The Planning Board may approve minor changes in the Planned Development which do not change the concept or intent of the development, without going through the "preliminary approval" steps. A minor change is any change not defined as a major change.

## § 150.242 SCHEDULE OF CONSTRUCTION.

The Planning Board shall consider the Planned Development subject to revocation if construction falls more than one year behind the schedule filed with the final plan.

## § 150.243 EFFECT OF DENIAL OF A PLANNED DEVELOPMENT.

No application for a Planned Development, which has been denied wholly or in part by the Planning Board and Council, shall be re-submitted for a period of one year from the date of the order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the Planning Board and Council.

## § 150.244 REVOCATION.

In any case where a Planned Development has not been established (substantially under way) within one year from the date of granting thereof, then, without further action by the Planning Board, the Planned Development authorization thereof shall be null and void.

## § 150.245 PD-1 PLANNED RESIDENTIAL DEVELOPMENT.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***"0" LOT LINE.*** The location of a structure on a lot so that one or more sides rest directly on the boundary line of the lot. There is no setback of the structure.

***COMMON AREA.*** The land or improvements on the land designated for the common use and enjoyment of all occupants or owners. A portion of the premises over which no one occupant or owner has exclusive control.

***INTERIOR PROPERTY LINE.*** A "0" lot line.

***PATIO HOUSING.*** A house with a blind wall that serves as a side yard.

***TOWN HOUSE*** or ***ROW HOUSING.*** A one or two story row of three or more attached one-family dwellings, each unit of which extends from the basement to the roof.

(B) *Permitted uses.*

(1) Those uses included as permitted and accessory uses in R-1 through R-4 Residential Districts developed in a unified manner in accordance with the approved development plan.

(2) Convenience establishments as accessory uses which have been established as necessary for the proper development of the community, and which are so located, designated, and operated to serve primarily the needs of the persons within the planned development, if specifically approved as part of the planned development plan. The uses shall be generally limited to those uses permitted in the B-2 Business District, with no direct access or advertising signs for such uses to be visible from the exterior of the development.

(3) Such convenience establishments and their parking areas shall not occupy more than 5% of the total area of the development.

(4) No separate building or structure designed or intended to be used, in whole or part, for business purposes with a planned residential development shall be constructed prior to the construction of not less than 30% of the dwelling as proposed in the development plan.

(C) *Minimum project area.* The gross area of a tract of land to be developed in a planned residential development shall be a minimum of five acres.

(D) *Project ownership.* For the purposes of this section, ownership shall be construed to include the following:

(1) A person, partnership or corporation;

(2) An association of property owners, legally bound to one another, to carry out the provisions of this section for development and operation of a planned unit residential development project; or

(3) The owners association of a residential condominium project, established under the provisions of R.C. Ch. 5311 (condominium property).

(E) *Utility requirements.* Underground utilities, including telephone and electrical systems, are required within the limits of all planned unit residential developments. Appurtenances to these systems which can be effectively screened may be excepted from this requirement if the Planning Board finds such exemption shall not violate the intended character of the proposed planned unit residential development.

(F) *Minimum lot size and setbacks from property lines.*

(1) Common area per family unit shall be not less than 40% of the square footage requirements of the lot area of a single family dwelling in R-2 Zoning District as set forth in § 150.073.

(2) All setbacks listed below are exceptions to all interior property line requirements for conventional subdivisions by a planned unit development as defined in this code.

(a) *Conventional subdivisions.*

1. *Side yard.* Three feet, except there shall be at least ten feet between structures on adjoining lots.

2. *Rear yard.* A setback of 15 feet minimum required between the structure and the rear lot line.

3. Garage or carport attached to dwelling units may be located not less than five feet from a garage or carport on an adjoining lot.

4. A garage or carport detached from a dwelling unit may abut a detached garage or carport on an adjoining lot.

(b) *Patio housing.*

1. *Side yard.* Three feet with a minimum of six feet between structures of adjacent lots, except:

a. Where there are no openings on given side of a dwelling unit, that side may be placed on the property line and may abut a dwelling unit on an adjoining lot.

b. Structures which abut plazas, parks, malls or other permanent open green space may abut the common property line and have opening onto such appurtenances.

c. An attached or detached garage or carport may abut a side property line or another structure, provided no openings are located on the abutting surfaces.

2. *Rear yard.* A setback of 15 feet minimum required between the structure and the rear lot line, except, structures which abut plazas, parks, malls or other permanent open green space may abut the common property line and have opening onto such appurtenances.

3. *Easement.* Where structures abut the common property line, a minimum four foot permanent easement for maintenance purposes must be developed and made part of the plat plan.

(c) *Townhouse or row housing.*

1. Dwelling units which abut side lot lines and form what is, in effect, a townhouse or row housing are governed by the following:

a. A maximum of eight attached dwelling units per structure.

b. A minimum interior lot line setback (between townhouse or row housing structures) of 20 feet.

c. Structures which abut plazas, parks, malls or other permanent green space may abut the common property line and have opening onto such appurtenances.

d. Provide a minimum of two off-street parking spaces per dwelling unit.

2. *Rear yard.* A setback of 15 feet minimum between the structure and the rear lot line, except structures which abut plazas, parks, malls or other permanent open green space may abut the common property line and have opening onto such appurtenances.

(G) *Building height regulations.* The height of any residential structure within a planned unit residential development shall not exceed 35 feet, unless it can be demonstrated that an additional height is required with provision of suitable open space to protect adjacent structures from adverse reduction of light and air.

(H) *Parking.* Off-street parking, loading and service areas shall be provided in accordance with §§ 150.284 and 150.285.

(I) *Signs.* See § 150.288.

(J) *Site planning.*

(1) *Site design.*

(a) All housing shall be sited to preserve privacy and to assure natural light.

(b) Lot widths may be varied to permit a variety of structural designs, and it is recommended that setbacks be varied also.

(c) Every housing unit should be situated to abut on common open space or similar areas. A clustering of dwellings is encouraged.

(2) *Green space.*

(a) A minimum of 10% of the land in any planned unit residential development shall be reserved for permanent common green space area for the residents and users of the area being developed.

(b) Only areas having minimum dimensions of 50 feet by 100 feet shall qualify for computation of usable green space.

(K) *Setback and screening.* A setback of 20 feet shall be provided along the entire perimeter of the planned unit residential development and retain the natural woods, or be suitably landscaped with grass or ground cover, shrubs, and trees, but where the planned unit residential development adjoins a Business or Industrial District, the setback shall be 50 feet and screening facilities comprised of landscaping, walls, or both, which will provide suitable protection to the residential development as adjudged by the Planning Board and the Council. The screening facilities shall not obscure traffic visibility within 50 feet of an intersection.
(Am. Ord. CM-597, passed 10-13-81)

## § 150.246 PD-2 PLANNED BUSINESS DEVELOPMENT.

(A) *Permitted uses.* Permitted uses shall be those uses included as permitted and accessory uses in B-1, B-3, and B-4 Business Districts, developed in accordance with the approved development plan.

(B) *Area requirements*. The minimum land area for a Planned Business Development shall be two acres.

(C) *Arrangement of commercial uses.*

(1) Commercial buildings and establishments shall be planned as groups having common parking areas and common ingress and egress points in order to reduce the number of potential accident locations at intersections with thoroughfares.

(2) The plan of the project shall provide for the integrated and harmonious design of buildings, and for adequate and properly arranged facilities for internal traffic circulation, landscaping and such other features and facilities as may be necessary to make the project attractive and efficient from the standpoint of the adjoining and surrounding existing or potential developments.

(D) *Building regulations.* Building height regulations shall be determined by the Planning Board.

(E) *Accessory parking.* See § 150.285.

(F) *Signs.* See § 150.288.

(G) *Structure spacing.* A minimum of 20 feet shall be required between adjacent principal buildings.

(H) *Loading and unloading areas.* See § 150.284.

(I) *Setback and screening.*

(1) A setback of 50 feet shall be provided along the entire perimeter of the development, except where it adjoins a Business or Industrial District, in which case setback and screening requirements shall be at the discretion of the Planning Board. Where situated adjacent to a residentially zoned area, a minimum of 20 feet along the exterior property line shall be planted with an evergreen hedge or dense planting of evergreen shrubs not less than four feet in height at the time of planting. Screening facilities shall not obscure traffic visibility within 50 feet of an intersection.

(2) Vehicular access through such landscaped strip, when adjacent to residential areas, shall be permitted only for the convenience of residents of adjoining residential areas, or for access to dwelling units within the Planned Business District, and not for use by the general public.

## § 150.247 PD-3 PLANNED INDUSTRIAL DEVELOPMENT.

(A) *Permitted uses.* Permitted uses shall be those uses included as permitted and accessory uses in I-1 Industrial District, developed in accordance with the approved development plan.

(B) *Area requirements.* The minimum land area for a Planned Industrial Development shall be ten acres.

(C) *Arrangement of industrial uses.*

(1) A planned industrial area shall provide for the harmony of buildings, and a compact grouping in order to economize in the provision of such utility services as are required. Thoroughfares shall be kept to a minimum throughout a Planned Industrial Development in order to reduce through traffic.

(2) Industrial uses and parcels shall be developed to the degree possible utilizing landscaping and existing woodlands as buffers to screen lighting, parking areas, loading areas or docks or outdoor storage of raw materials or products.

(D) *Height regulations.* Business height regulations shall be those that apply in the zoning district in which the land is located, unless otherwise limited by the Planning Board.

(E) *Accessory parking.* See § 150.285.

(F) *Signs.* See § 150.288.

(G) *Structure spacing.* A minimum of 50 feet shall be required between adjacent buildings.

(H) *Loading and unloading areas.* See § 150.284.

(I) *Setback and screening.*

(1) A setback of 100 feet shall be provided along the entire perimeter of the development, except where it adjoins a Business or Industrial District, in which case setback and screening requirements shall be at the discretion of the Planning Board.

(2) Where situated adjacent to a residentially zoned area, a minimum of 30 feet along the exterior property line shall be retained in natural woods, or be suitably landscaped with a dense planting of evergreens not less than four feet in height at the time of planting. The landscaping shall be 50% opaque when viewed horizontally between two feet and eight feet above average ground level. A suitably designed fence or wall may be substituted for the screen plantings at the discretion of the Planning Board, if in certain cases natural plantings are deemed not feasible. Screening facilities shall not obscure traffic visibility within 50 feet of an intersection.

## *COMMUNITY REINVESTMENT AREAS*

### § 150.255 GENERAL PROVISIONS.

(A) For purposes of fulfilling the requirements set forth under R.C. §§ 3735.65 through 3735.70, inclusive, the Council establishes community reinvestment area A (the entire current corporate limits and any future amendments made in the future through annexation).

(B) Council hereby reaffirms by reference, for the purpose set forth in the Title and Preamble hereof, that certain document being marked, designated and known as "Statement of Findings of Community Reinvestment Area A," and in conjunction therewith and a part thereof that certain map, being marked designed and known as "Map of Boundaries of Community Reinvestment Area A," and certified by the Mayor and Clerk and identified thereon, and incorporates both statement and map as fully as if set forth at length herein, and from the date of which this resolution shall take effect, the provisions shall be controlling within the corporate limits of this municipality.

(C) Council also finds that the areas included within the foregoing description as community reinvestment area A is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged.

(D) A complete copy of the statement of findings of community reinvestment area A and the map of boundaries of community reinvestment area A, as adopted in division (A) above is on file with the Clerk of this Council, Municipal Building, West Milton, Ohio, for inspection by the public. The Clerk of this Council has copies of the statement and map available for distribution to the public at cost.
(Ord. CM-1056, passed 11-12-91)

### § 150.256 TAX EXEMPTIONS FOR IMPROVEMENTS.

Within community reinvestment area A, tax exemptions for improvements to real property as described in R.C. § 3735.67 will be granted for the following periods.

(A) Remodeling of every dwelling containing not more than two family units (R.C. § 3735.67(D)(1)):

| *Remodeling Costs* | *Abatement Length (Years)* |
|---|---|
| $2,500-3,499 | 2 |
| 3,500-4,499 | 3 |
| 4,500-5,499 | 4 |
| 5,500 and over | 5 |

(B) Remodeling of every dwelling containing more than two family units (R.C. § 3735.67(D)(2)):

| *Remodeling Costs* | *Abatement Length (Years)* |
|---|---|
| $5,000-8,999 | 2 |
| 9,000-12,999 | 3 |
| 13,000-16,999 | 4 |
| 17,000 and over | 5 |

(C) Remodeling of every commercial or industrial property (R.C. § 3735.67(D)(2)):

| *Remodeling Costs* | *Abatement Length (Years)* |
|---|---|
| $5,000-9,999 | 3 |
| 10,000-14,999 | 4 |
| 15,000-19,999 | 5 |
| 20,000-24,999 | 6 |
| 25,000-39,999 | 8 |
| 40,000-54,999 | 10 |
| 55,000 and over | 12 |

(D) Construction of every dwelling, commercial or industrial structures (R.C. § 3735.67(D)(3)):

| *Type of New Construction* | *Abatement Length (Years)* |
|---|---|
| Residential | 4 |
| Commercial | |
| $100,000-249,999 | 4 |
| $250,000-499,999 | 8 |
| $500,000-999,999 | 12 |
| $1,000,000 and over | 15 |

(Res. CM-1056, passed 11-12-91; Am. Res. CM-94-19, passed 6-14-94; Am. Ord. CM-06-21, passed 5-9-2006; Am. Ord. CM-18-01, passed 1-23-2018)

## § 150.257 HOUSING OFFICER.

The Municipal Manager shall appoint, with Council's approval, a Housing Officer to administer and implement the provision of §§ 150.255 through 150.258, as designated and described in R.C. §§ 3735.65 through 3735.66.
(Res. CM-1056, passed 11-12-91)

## § 150.258 RIGHT TO EVALUATE.

Council reserves the right to re-evaluate the designation of community reinvestment areas A and B after September 15, 1980, at which time Council may direct the Housing Officer not to accept any new applications for exemptions as described in R.C. § 3735.67.

## *GENERAL REGULATIONS*

## § 150.270 GENERAL REGULATIONS.

Except as herein provided, no building or structure shall be erected, converted, enlarged, reconstructed, moved or structurally altered, nor shall any building or land be used:

(A) Except for a purpose permitted in the district in which the building or land is located;

(B) Except in conformance to the height or bulk limits established herein for the district in which the building or use is located;

(C) Except in conformance to the yard and lot regulations of the district in which the building or use is located;

(D) Except in conformance to the off-street parking and off-street loading space regulations of the district in which the building or use is located;

(E) Unless the building or structure is located on a lot as herein defined, and in no case shall there be more than one main building on a lot except as specifically provided in this code.

(1) Where more than one main building is permitted, each building shall meet these setback, side yard requirements and other rules of the subdivision code as though actual subdivision were to take place.

(2) More than one building shall be permitted only in multi-family, business or industrial zones, and shall not apply in any case to single-family developments.

## § 150.271 YARDS REQUIRED FOR CORNER AND THROUGH LOTS.

(A) In any district, the side yard of a corner lot that abuts the side street shall have the same setback requirements as the front yard.

(B) A rear yard shall be provided parallel to and opposite from the front yard.

(C) On through lots, the front yard requirements shall apply to all street frontages.

## § 150.272 CORNER LOT ACCESSORY BUILDING.

When an accessory building is located on a corner lot, the side lot line of which is substantially a continuation of the front lot line of the lot to its rear, such building shall not project beyond the front yard line required on the lot to the rear of the corner lot.

## § 150.273 LOTS ADJOINING ALLEYS.

In calculating the area of a lot that adjoins an alley for the purpose of applying lot area requirements of this code, ½ the width of the alley abutting the lot shall be considered as part of the lot.

## § 150.274 ACCESSORY BUILDINGS.

Accessory buildings in any residential zone shall be subject to the following regulations.

(A) Where the accessory building is structurally attached to a main building, it shall be subject to, and must conform to, all regulations of this code applicable to main buildings.

(B) Accessory buildings shall not be erected in any required yard, except a rear yard.

(C) An accessory building not exceeding one story or 14 feet in height may occupy not more than 25% of a required rear yard, and 40% of any nonrequired rear yard, provided that in no instance shall the accessory building exceed the ground floor area of the main building.

(D) No detached accessory building shall be located closer than ten feet to any main building, nor shall it be located closer than five feet to a side or rear lot line. In those instances where the rear lot line is contiguous with an alley right-of-way, the feet to such rear lot line, when there is no direct vehicular access to the accessory building from the alley right-of-way shall not be closer than ten feet. When there is direct vehicular access to the accessory building from the alley right-of-way, the accessory building shall not be closer than 20 feet to such rear lot line. In no instance shall an accessory building be located within a dedicated easement right-of-way.

## § 150.275 HEIGHT OF FENCES.

(A) *Side and rear fences.* Fences constructed within a side or rear yard shall not be higher than six feet, except as provided herein.

(B) *Planting, fences and walls in front yard.* No solid fence, wall or hedge shall rise over two feet in height on any required front yard. No front yard fence, wall or hedge shall rise over four feet on any required front yard. No fence, wall or hedge shall be permitted which materially impedes the vision across any such yard between the height of two feet and four feet. The Enforcing Officer is empowered to cause all such obstructions to be removed in the interest of the public safety.

(C) *Corner clearance.* No solid fence, wall, shrubbery, sign or other obstruction to vision above a height of two feet from the established street grades shall be permitted within the triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between such right-of-way lines at a distance along each line to 25 feet from their point of intersection. No fence, wall or hedge shall be permitted in this same area which exceeds four feet in height. In addition, no such fence, wall or shrubbery shall be permitted which materially impedes the vision across such yard between the height of two feet and four feet.

## § 150.276 REMOVAL OF SOIL, SAND OR OTHER MATERIAL.

The use of land for the removal of topsoil, sand or other material from the land other than materials from basement excavations is not permitted in any zone, except under a temporary permit from the Board of Adjustment. This permit may be denied or issued in appropriate cases after the filing of an application accompanied by a suitable agreement or bond that such removal will not cause stagnant water to collect, or leave the surface of the land at the expiration of such permit in an unstable condition, or unfit for the growing of turf, or for other land uses permitted in the district in which such removal occurs.

## § 150.277 ESSENTIAL SERVICES.

Essential services shall be allowed in any district insofar as permitted, authorized or regulated by law. Buildings required in conjunction with an essential service may be permitted in any district when approved by the Planning Board. In granting such permission, the Planning Board shall take into consideration the location, size, use and effect such building will have on the adjacent land and buildings.

## § 150.278 EXTERNAL EFFECTS.

No land, building or structure in any district shall be used or occupied in any manner so as to create: any dangerous, injurious, noxious or otherwise objectionable fire, explosive, or other hazard; noise, brilliant light, or vibration; smoke, dust, fumes, odor or other form of air pollution; heat, cold, or dampness; electrical or electronic disturbances; nuclear radiation, or any other condition, substance, or element, as governed by applicable federal standards, to any person or property outside of the premises on which such building, structure, or use is located. Such uses when lawfully permitted under the provisions of this code shall be operated in a manner so as to insure that the property rights of all other parcels of land will not be adversely effected to the extent of reducing the enjoyment of property rights thereon.

## § 150.279 OUTDOOR STORAGE AND WASTE DISPOSAL.

Every use shall be operated in accord with the following provisions.

(A) No highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground, except in an industrial district; (Tanks or drums of fuel directly connected with heating devices or appliances located on the same lot as the tanks or drums of fuel are excluded from this provision.)

(B) All outdoor storage facilities for fuel, raw materials and products shall be enclosed by a fence, wall or planting to conceal such facilities from adjacent residential property;

(C) No materials or wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by wind, flood or natural causes or forces; and

(D) All materials or wastes which might cause fumes or dust, or which constitute a fire hazard, or which may be edible or attractive to rodents or insects, shall be stored outdoors only in closed containers constructed of impervious material.

## § 150.280 PROJECTIONS INTO REQUIRED YARDS.

(A) Chimneys, flues, sills, pilasters, cornices, eaves, gutters and other similar features may project into a required side yard a maximum of 18 inches.

(B) No structure may project into a required front yard; however, unroofed porches and steps may extend from the dwelling into the required front yard a maximum of ten feet.

(C) No structure may project into a required side yard; however, where a single lot under one ownership existed of record in a residential district at the time of adoption of this code, and such lot is of insufficient width to meet the side yard requirements of this code, the Board of Adjustment may grant a variance to permit the construction of a 1-family residence so as to allow a reasonable use of the lot. The granting of such a variance may be subject to appropriate conditions prescribed by the Board of Adjustment.

## § 150.281 EXCEPTIONS TO HEIGHT LIMITATIONS.

(A) Public, semi-public or public service buildings, hospitals, and institutions or schools, where permitted, may be erected to a height not exceeding 90 feet when the required side and rear yards are each increased by one foot for each foot of additional building height above the height regulations for the district in which the building is located; however, prior to the issuance of a zoning permit for any structure which is planned to exceed 35 feet in height, the Planning Board shall make a finding that any such excessive height will not be detrimental to the public safety, or to the light, air or privacy of any other structure or use currently existing or approved for construction.

(B) Chimneys, domes, spires and necessary mechanical appurtenances and radio and television towers may exceed district height limitations.

(1) Commercial radio and television towers shall be located centrally on a continuous parcel having a dimension at least equal to the height of the tower, measured from the center of the base of the tower to all

points on each property line.

(2) Radio towers for licensed amateur radio stations in the residentially zoned districts shall be limited in height from their base to the distance from the base to the nearest property line.

(3) Chimneys shall be constructed to a minimum height of three feet above the highest point of the roof to which the chimney is attached.

## § 150.282 TEMPORARY USES.

In any district, subject to the conditions stated below, the Enforcing Officer may issue a permit for the following temporary uses.

(A) (1) Temporary buildings or yards for construction offices, material or equipment, provided the use is adjacent to the construction site and removed when construction is completed. Each permit shall be valid for six months, may be renewed if construction is underway; the use shall be removed when construction is completed or discontinued for more than 30 days.

(2) Building and yard locations shall be subject to such conditions and safeguards as the Enforcing Officer may deem necessary to preserve the character of the surrounding area.

(B) Temporary offices incidental and necessary to real estate sales and rentals. Each permit shall be valid for one year, and may be renewed for one additional year if conditions warrant the renewal.

(C) Gatherings under canvas or in the open such as religious services, shows, meetings, exhibitions, bazaars, carnivals or circuses; however, if such uses are located within 400 feet of any residential area, no permit will be issued unless there is first filed with the Enforcing Officer the written consent of the owners of 60% of all residentially used property within 400 feet from the place of the meeting.

## § 150.283 MAJOR STREET SETBACKS.

Any building or structure shall be constructed in accordance with the required front yard setback in the district in which it is to be located, measured from the required right-of-way line on major streets and secondary streets designated as such on the major thoroughfare plan.
('80 Code, § 150.173)

## § 150.284 OFF-STREET LOADING REGULATIONS.

On the same premises with every building or structure or part thereof erected and occupied for commerce, industry, public assembly or other uses involving the receipt or distribution by vehicles of materials or merchandise, there shall be provided and permanently maintained adequate space for standing, loading and unloading services in order to avoid undue interference with public use of the streets or alleys, in conformance to the following.

(A) *General provisions.*

(1) *Screening.* Off-street loading spaces that adjoin or are across a street or alley from property zoned for any residential use shall have a dense evergreen planting, fence, masonry wall or such other screening as may be determined by the Planning Board. The Planning Board shall also determine the height, location and density of screening used to provide adequate protection to adjoining property.

(2) *Entrances and exits.* Off-street loading spaces shall be provided with entrances and exits not less than 12 feet in width, and so located as to minimize traffic congestion.

(3) *Dimensions.* Each off-street loading space shall be not less than ten feet in width, 25 feet in length, and 15 feet in height, exclusive of access drives.

(4) *Projection into yards.* Off-street loading space may occupy all or any part of any required rear yard space.

(B) *Amount of loading space required.* An adequate amount of off-street loading space shall be provided. An area adequate for maneuvering, ingress, and egress, shall be provided in addition to required loading space. The Enforcing Officer may refer to the table below but only as a guide for determining the minimum amounts of off-street loading that shall be provided.

| ***Square Feet of Gross Floor Area*** | ***Required No. of Spaces*** |
|---|---|
| (1) Up to 10,000 sq. ft. | 1 |
| (2) 10,001 to 20,000 sq. ft. | 2 |
| (3) 20,001 to 40,000 sq. ft. | 3 |
| (4) 40,001 to 75,000 sq. ft. | 4 |
| (5) 75,001 to 125,000 sq. ft. | 5 |
| (6) For each additional 50,000 sq. ft. | one additional loading space |

## § 150.285 OFF-STREET PARKING REGULATIONS.

No building shall be erected or altered, and no land used, unless there be provided adequate off-street parking space or spaces for the needs of tenants, personnel, and patrons, together with means of ingress or egress. The area indicated as the "Central Business District" on the Official Zoning Map is exempt from all off-street parking space requirements.

(A) *General provisions.*

(1) Residential off-street parking spaces shall consist of a parking strip, driveway, garage or some combination thereof, and shall be located on the premises they are intended to serve, and shall be subject to the provisions of §§ 150.272 and 150.274.

(2) Any area once designated as required off-street parking shall never be changed to any other use unless and until equal facilities are provided elsewhere.

(3) Off-street parking existing on March 12, 1976, in connection with the operation of an existing building or use shall not be reduced to an amount less than hereinafter required for a similar new building or new use.

(4) Two or more buildings or uses may collectively provide the required off-street parking, in which case the required number of parking spaces shall not be less than the sum of the requirements for the several individual uses computed separately.

(5) Dual function of off-street parking spaces. The Board of Adjustment may require, as a condition to the granting of such an exception, that such exception be effective only while the uses and operating hours of both buildings remain the same. In such a case, a change in use or hours would automatically invalidate the exception granted.

(6) The storage or sale of merchandise or the repair of vehicles is prohibited.

(7) For those uses not specifically mentioned, the requirements for off-street parking facilities shall be in accord with a use which the Board of Adjustment considers similar in type.

(8) A suitable means of ingress or egress for vehicles to premises used for parking shall be provided, and shall open directly from and to a public street, alley, or highway. The width of any exit or entrance adjoining property or opposite property zoned for residential uses shall be approved by the Traffic Engineer or Planning Board prior to obtaining any permit therefor. The Traffic Engineer or the Planning Board may require the owner to provide acceleration or deceleration lanes where traffic volumes indicate the need.

(9) Wheel stops shall be provided for all boundaries of the parking area, except at points of ingress and egress to prevent encroachment of vehicles.

(10) All parking lots shall be surfaced with a hard or semi-hard dust-free surface in conformance to the standards of the Service Department.

(11) If the parking lot is to be open for use after dark, it shall be provided with not less than two lumens of light per square foot of parking lot surface. Lights shall be shielded so as not to shine directly or in an offensive manner on the adjoining residential property.

(12) When a parking lot abuts a residential zone, there shall be permanently maintained along such boundary, screening as provided in § 150.286.

(13) Prior to constructing an accessory parking lot, the owner or person in charge of the land to be used for parking shall submit a plot plan to the Zoning Inspector or Clerk, who will submit the plan to the Planning Board, Traffic Engineer, and other agencies for their consideration and recommendations. Such plot plan shall show the boundaries of the property, location of adjacent houses, parking spaces, circulation patterns, drainage plan, construction plan for boundary walls and planting plan.

(14) The Board of Adjustment may permit accessory parking within an adjacent lot zoned for residential uses, provided that:

(a) The lot is necessary for the public convenience, and will not have an adverse effect on adjacent properties.

(b) A public hearing is held in accordance with the procedure given in § 150.307.

(c) All provisions of this section are complied with.

(d) No parking shall be permitted between the street line and the building line prevailing in the zone in which the proposed parking area is to be located. The resulting open area shall be planted in grass, or otherwise landscaped to create a permanent green area.

(e) A dense evergreen planting with a minimum height of four feet and a mature height of at least five feet, six inches, or solidly constructed decorative fence shall be permanently maintained along the mutual boundary of the restricted accessory parking area and adjacent land zoned for residential uses, except for the portion of the boundary located within a required front yard.

(f) Whenever a lot located in a residential zone is used for accessory parking purposes and is located across the street from land in a residential zone, that portion of the lot used for parking purposes shall be screened from the street by a dense evergreen planting or solidly constructed decorative fence with a maximum height of two feet permanently maintained along the setback line.

(g) Ingress and egress for vehicles to any premises used for parking under a conditional use permit by the Board of Adjustment shall be by means of streets or alleys through business or industrial areas, and not by means of streets or alleys through residential areas.

(B) *Amount of off-street parking space required.* The amount of off-street parking spaces for new uses or buildings, additions thereto, and additions to existing buildings, shall be determined in accordance with the following minimum parking provisions. However, no parking area shall project into a required front yard in any residential district or be permitted between the curb line and property line in any district, except as hereinafter noted.

(1) *Apartment hotels.* One parking space per apartment, plus one space for each employee.

(2) *Automobile sales and service garages.* One parking space for each 200 square feet of floor area in the main display room, plus one space for each employee.

(3) *Automobile service stations.* Six parking spaces per bay.

(4) *Banks, dry cleaners, laundries, and similar service businesses.* One parking space for each 250 square feet of floor area.

(5) *Barber shops and beauty parlors.* One parking space for each chair, plus one space for each employee.

(6) *Boarding houses.* One parking space for each sleeping room.

(7) *Bowling alleys.* Five parking spaces for each alley.

(8) *Churches.* One parking space for each three seats in the main auditorium.

(9) *Colleges and business universities.* One parking space for each two employees, plus one space for each three students.

(10) *Contractors or plant storage yard.* One parking space for each three employees.

(11) *Drive-in banks.* With inside customer service, five parking spaces for each teller window, plus one space for each employee; without inside customer service, one space for each employee.

(12) *Drive-in eating establishments.* One parking space for each 60 square feet of floor area, but not less than 20 spaces.

(13) *Elementary and junior high schools.* One parking space for each employee, plus one space for each 80 square feet in the main auditorium, not containing fixed seats, or one space for every six fixed seats in the main auditorium, whichever is greater.

(14) *Furniture and appliances, household equipment decorators, electricians, shoe repair.* One parking space for each 800 square feet of floor area, plus one space for each two employees.

(15) *Hospitals.* One parking space for each two beds, plus one space for each staff doctor, plus one space for each two full-time employees on shift, including nurses.

(16) *Hotel or motel.* One parking space per unit, plus one space for each employee.

(17) *Housing for the elderly.* One parking space for each two units, plus one space for each employee.

(18) *Laundromats.* One parking space for each two washing machines.

(19) *Libraries, museums, or art galleries.* One parking space for each 600 square feet of floor area, plus one space for each four employees.

(20) *Manufacturing plants or research laboratories.* One parking space for each 1-1/2 employees per largest work shift.

(21) *Mortuaries or funeral homes.* One parking space for each 50 square feet of floor area in the slumber rooms, parlors or individual funeral service rooms.

(22) *Multiple-family dwellings.* Two parking spaces per dwelling unit, plus one space for each employee.

(23) *Office buildings.* One parking space for each 200 square feet of gross floor area, excluding any floor space used for parking.

(24) *One-family dwellings.* Two spaces for each family unit plus one space for each roomer, one of which may project into the required front yard.

(25) *Post Office.* One parking space for each 500 square feet of floor area, plus one space for each three employees.

(26) *Private clubs, lodges.* One parking space for each three persons allowed by applicable Fire, Health or Building Codes.

(27) *Professional offices, medical clinics.* One parking space for each 150 square feet of floor area;

however, professional offices when used as a home occupation shall provide one parking space for each 100 square feet, or major fraction thereof, of office area in addition to that required for the resident family or families.

(28) *Public golf courses.* Six parking spaces for each golf hole, plus one space for each employee.

(29) *Restaurants with only inside service, or taverns.* One parking space for each four seats, plus one space for each two employees.

(30) *Retail stores, including rental service stores.* One parking space for each 200 square feet of gross floor area; excepting self-service or supermarket, which shall provide one parking space for each 100 square feet of gross floor area.

(31) *Sanitariums, convalescent homes or children's homes.* One parking space for each two beds, plus one space for each two employees.

(32) *Senior high schools.* One parking space for each employee, plus one space for each ten students, or one space for each 80 square feet of floor area in the main auditorium not containing fixed seats, or one space for every six fixed seats in the main auditorium, whichever is greater.

(33) *Sports arenas, auditoriums, theaters, and assembly halls, other than in schools.* One parking space for each four persons allowed by the Fire Code up to l,000 seats, plus one space for each three persons allowed by the Fire Code over 1,000 seats, plus one space for each two employees.

(34) *Stadiums, sports arenas, or similar places of outdoor assembly.* One parking space for each three seats.

(35) *Two-family dwellings.* Two parking spaces for each family, plus one space for each roomer.

(36) *Used car lots.* One parking space for each l,500 square feet of lot area.

(37) *Warehouses, wholesale stores.* One parking space for each 800 square feet of floor area.

(38) *Off-street parking.* In the case of a use not specifically mentioned, the requirements for off-street parking shall be the same as for a similar use specifically mentioned; such similarity shall be determined by the Enforcing Officer.

## § 150.286 SCREENING.

No buildings or structures shall be erected, altered or enlarged, nor shall land be used, for any nonresidential use on a lot that adjoins or faces any residential district until a plan for screening has been submitted and approved by the Enforcing Officer or Planning Board.

(A) Screening shall be provided for one or more of the following purposes.

(1) As a visual barrier to partially or completely obstruct the view of unattractive structures or activities;

(2) As an acoustic screen to aid in absorbing or deflecting noise; and

(3) For the containment of debris and litter.

(B) Screening may consist of one of the following, or a combination of two or more.

(1) A solid masonry wall;

(2) A solidly constructed decorative fence;

(3) A louvered fence;

(4) Dense evergreen plantings; and

(5) Deciduous trees and shrubs.

(C) *Location of screening.* Whenever any nonresidential use abuts a residential district, a visual screening wall, fence or a planting shall be erected or placed along such mutual boundary lines.

(D) *Height of screening.* Visual screening walls, fences or plantings shall be at least five feet, six inches high, except in required front yards, where maximum height shall be not greater than two feet.

(E) *Depth or width of screening.* Screening for purposes of absorbing or deflecting noise shall have a depth of at least 15 feet of dense plantings or a solid masonry wall in combination with decorative plantings.

(F) *Protection.* Whenever required screening is adjacent to parking areas or driveways, the screening shall be protected by bumper blocks, posts or curbing, to avoid damage by vehicles.

## § 150.287 MINIMUM FLOOR ELEVATION.

In any zone, no structure intended or used for residential purposes or human occupancy may be constructed or moved to a site unless the minimum floor elevation is not less than one foot above the water level as indicated on the Flood Plain Map.

## § 150.288 PERMITTED SIGNS.

(A) *Scope of regulations.*

(1) The regulations herein set forth shall apply and govern in all districts. No sign shall be erected or maintained unless it is in compliance with the regulations for the district in which it is located. No sign shall be erected or continued in operation which in any manner constitutes a nuisance because of glare, focus, animation, flashing or danger to the public caused by either electrical or structural deficiencies.

(2) All signs erected, constructed or modified shall comply with yard and setback requirements of the districts in which they are located.

(3) Where illumination of signs is permitted, the illumination shall be neither flashing nor intermittent, and shall be designed and constructed so as to concentrate the illumination upon the area of the sign and prevent glare upon the street or adjacent property. The illumination shall be turned off no later than 11:00 p.m., or the

end of the business day, whichever is later, when the sign is within 200 feet of any R-1, R-2 or R-3 District.

(4) No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window or fire escape.

(5) No sign shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision; or at any location where by reason of the positions, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device; or which makes use of the words "STOP", "LOOK", "DRIVE-IN", "DANGER", or any other words, phrases, symbols or characters in such manner as to interfere with, mislead or confuse traffic.

(6) It shall be unlawful for any person to display upon any sign or other advertising structure any obscene, indecent or immoral matter.

(7) No sign shall be erected or maintained in Residential, Business, Flood Plain and Agricultural Districts unless the sign complies with all of the following conditions.

(a) It is erected and maintained for a permitted use for the district in which the sign is located.

(b) It is clearly incidental and customary to, and commonly associated with, the operation of the use.

(c) It is limited in location to the premises on which the use is located.

(d) It is limited in subject matter to the name, design, picture or trade mark of the owner, operator, builder, sales agent, managing agent, lessor or lessee of the premises or of the activities (including merchandise handled or services rendered) on the premises on which such sign is located, and does not include any general commercial advertising unrelated to or extending in substantial degree beyond the enumerated permitted subjects.

(8) Portable signs shall not be erected or maintained unless in compliance with the regulations for the district in which they are located.

(9) All signs, both conforming and nonconforming, shall be maintained so as to not constitute a nuisance because of glare, focus, animation, flashing or danger to the public caused by either electrical or structural deficiencies. The Enforcing Officer shall order the elimination of any such nuisance. If the property owner fails to comply, the Enforcing Officer shall order the removal of any sign deemed a nuisance. Any and all costs incurred by the removal shall be the responsibility of the property owner. Any sign erected after removal shall be in compliance with the regulations for the district in which it is located.

(B) *Exemptions.* The provisions and regulations of this code shall not apply to the following signs, provided they are not illuminated or animated, and that there is no more than one such sign per use per each street front of the lot on which the sign is located.

(1) Real estate signs not exceeding 4-1/2 square feet in area which advertise only the sale, rental or lease of the premises on which such signs are located.

(2) Professional or occupational name plates not exceeding one square foot in area.

(3) Occupational signs denoting only the name and profession of an occupant in a commercial building, public institutional building or multiple dwelling, and not exceeding two square feet in area.

(4) Temporary signs denoting the architect, engineer or contractor when placed upon work under construction, and not exceeding 32 square feet in area, to be removed upon completion of the building.

(5) Memorial signs or tablets, or names and dates of erection of buildings, when cut in any masonry surface, or when constructed of bronze or other noncombustible materials.

(6) Traffic or other municipal signs, legal notices, railroad crossing signs and such temporary emergency or nonadvertising signs as may be authorized by the legislative body.

(7) The flag, pennant, or insignia of any nation, state, city or other political unit, or any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event; to be removed within ten days after the conclusion of the event.

(8) The banner of any political, educational, charitable, philanthropic, civic, professional, religious, or like campaign, drive, movement or event may be hung after approval of the Enforcing Officer. Such a banner shall be hung at a minimum height not less than 15 feet above grade and supported by means sufficient to maintain its weight. After approval of the Enforcing Officer, the banner shall be hung no more than 30 days prior to the event, and shall be removed within ten days after conclusion of the event.

(9) Political signs, provided that they:

(a) Are no more than 12 square feet in area;

(b) Shall not be posted by the candidate more than 90 days prior to the election to which the sign relates, and shall be removed by the candidate within 15 days after the election to which the sign relates.

(10) Parking or directional signs not over two square feet in area, provided that the sign contains no advertising matter.

(11) Bulletin boards and signs for a church, school, community or other public or semi-public institutional building, and multiple dwellings containing eight or more units. Such wall and ground signs shall not exceed 15 square feet in area; the ground signs shall have a maximum height of six feet above grade, shall be located not less than ten feet from the street right-of-way line. Such signs may be illuminated, but only from a concealed light source.

(12) *Subdivision signs.* Upon application to the Board of Adjustment, a permit may be issued as a special exception to the terms of this Code allowing a land-sale sign, provided that:

(a) The sign shall not be illuminated;

(b) The sign shall advertise the sale or development of a recorded lot subdivision;

(c) The sign shall not be in excess of 40 square feet;

(d) The sign shall be erected only upon the property for sale or being developed;

(e) Not more than one sign shall be placed along single road frontage of any property in single and separate ownership; and not more than two such signs may be permitted in any single development;

(f) A permit for the erection, construction or maintenance of the sign shall expire within one year.

(13) *A-1, F-1, B-1, and B-2 Districts.* Wall or ground signs, single or double face, shall not exceed 50 square feet in area for each face; however, where the sign is used for two or more uses, the area shall not exceed 100 square feet. Maximum height above grade at sign shall not exceed 40 feet. One sign for each street front of the lot on which the use is located may be used.

(14) *B-3 District.* Wall or ground signs, single or double face, on a street front shall not exceed 100 square feet in area, plus one square foot for each foot of building width over 50 feet. Maximum height above grade at the sign shall not exceed 40 feet. Not more than two signs for each street front of the lot on which the sign is located may be used.

(15) *B-4 District.* Wall or ground signs, single or double face on a street front shall not exceed 100 square feet in area plus one square foot for each foot of building width over 50 feet. Maximum height above grade at sign shall not exceed 40 feet. Overhanging wall signs, single or double face, on a street front shall not exceed 100 square feet in area plus one square foot for each foot of building width over 50 feet. Maximum height above grade at the sign shall not exceed 30 feet. Minimum height above grade at the sign shall not be less than 12 feet. Maximum overhang shall not exceed six feet, measured at a right angle from the building wall. At no time shall such overhang protrude within two feet of the curb line. Not more than two signs for each street front of the lot on which the sign is located may be used.

(16) *I-1 District.* Wall or ground signs, single-face, shall not exceed 100 feet in length, and not be located within 100 feet of any other ground sign, except when separated by an intervening building or when adjoining at a right angle or less measured on the backs of the sign. Not more than one such sign or group of signs shall be permitted on property held in one contiguous ownership.

(17) All signs and advertising structures in the Business and Industrial Districts may be illuminated internally or by reflected light, provided that the source of light is not directly visible and is so arranged to reflect away from the adjoining premises, and provided that such illumination shall not be so placed as to cause confusion or a hazard to traffic or conflict with traffic-control signs or lights. Where such illuminated signs exceed 50 square feet, they shall not be placed nearer than 50 feet to an adjacent residential lot line, and where such illuminated signs exceed 100 square feet in area and face any lot in a Residential District, they shall be placed not nearer than 100 feet from the front lot line.

(C) *Conditional use permit.* Any sign that does not clearly fit into one of the sign regulations in this section shall not be permitted except through issuance of a conditional use permit obtained from the Board of Adjustment. This includes all signs that have flashing or pulsating illumination, animation, rotation or excess dimensions; and temporary construction signs in excess of 16 square feet, or signs in excess of 4-1/2 square feet advertising lots or buildings in a subdivision.

(D) *Enforcement.* Legal nonconforming signs may be continued unless discontinued for a two-year period, in which case they may not again be used except in conformity with this Code. Illegal nonconforming signs shall be removed forthwith by the owner or lessee, or the Enforcing Officer shall cause the removal of the signs and assess the owners or lessees of the signs the costs of removal.

## § 150.289 NONCONFORMITIES.

Within the districts established by this code, or amendments that may later be adopted there exist lots, structures, and uses of land and structures which were lawful before this code was adopted on March 12, 1976, or subsequently amended, but which would be prohibited, regulated, or restricted under the terms of this code or future amendment. It is the intent of this code to permit these nonconformities to continue until they are removed, but not to encourage their continuance. Such uses are declared by this code to be incompatible with permitted uses in the districts involved. It is further the intent of this code that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district except by appeal to the Board of Adjustment for approval of specific plans.

(A) A nonconforming use of a structure, a nonconforming use of land or a nonconforming use of a structure and land shall not be extended or enlarged after adoption of this code on March 12, 1976, by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.

(B) To avoid undue hardship, nothing in this code shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption of this code on March 12, 1976, or of any subsequent amendment thereto, and upon which actual building construction has been diligently carried on. Actual construction is herein defined to include the placing of construction materials in permanent position and fastening them in a permanent manner; however, where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

(1) *Nonconforming lots of record.* In any district in which single-family dwellings are permitted, notwithstanding other limitations imposed by other provisions of this code, a single-family dwelling and customary accessory building may be erected on any single lot of record after the effective date of adoption of this code on March 12, 1976, or of any subsequent amendment thereto, subject to the following conditions. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of adoption or amendment of this code, and if all or part of the lots do not meet the requirements for lot width and area as established by this code, the lands involved shall be considered to be an undivided parcel for the purposes of this code, and no portion of such parcel shall be used or sold which does not meet lot width and area requirements established by this code, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this code.

(2) *Nonconforming uses of land.* Where, at the effective date of adoption or amendment of this code, lawful use of land exists that is made no longer permissible under the terms of this code as adopted or amended, the use may be continued, so long as it remains otherwise lawful, subject to the following provisions.

(a) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption of this code on March 12, 1976, or of any subsequent amendment thereto, except as provided in code.

(b) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption of this code on March 12, 1976, or of any subsequent amendment thereto, except as provided in code.

(c) If any such nonconforming use of land ceases for any reason for a period of more than 30

days, any subsequent use of the land shall conform to the regulations specified by this code for the district in which the land is located.

(d) Where a nonconforming use of the land by the nature of the use requires expansion or enlargement of the land area so used in order to continue in operations such as removal of sand, earth, stone, or minerals, continuance of such operations following the adoption of this code on March 12, 1976, or of any subsequent amendment thereto, shall be deemed a violation.

(3) *Nonconforming structures.* Where a lawful structure exists at the effective date of adoption of this code on March 12, 1976, or of any subsequent amendment thereto, that could not be built under the terms of this code by reasons of restrictions on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, the structure may be continued so long as it remains otherwise lawful.

(4) *Nonconforming uses of structures.* If a lawful use of a structure or of structure and premises in combination, exists at the effective date of adoption of this code on March 12, 1976, or of any subsequent amendment thereto, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions.

(a) If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may be changed to another nonconforming use, provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Adjustment, in collaboration with the Planning Board, may require appropriate conditions and safeguards in accord with the provisions of this code.

(b) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which the structure is located, and the nonconforming use may not thereafter be resumed.

(c) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for 24 consecutive months, or for 27 months during any 3-year period, the structure or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(d) When nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

(5) *Repairs and maintenance.* On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing.

(6) *Restoring buildings.*

(a) When a building or structure, the use of which does not conform to the provisions of this code, has been damaged by explosion, fire, act of God, or the public enemy, to the extent of twice its assessed value for tax purposes, it shall not be restored or reconstructed or in any way used except in conformity with the district regulations of the district in which the building is situated.

(b) When a nonconforming use qualifies for the reconstruction, a building permit shall be secured

for that purpose within one year from the date of occurrence of the damage, and the reconstruction shall be diligently prosecuted and completed without delay.

(c) Failure to comply with these requirements shall cause such nonconforming uses to lapse, and the premises shall conform thereafter to the established district regulations therein.

(7) Violations not rendered nonconforming.

(a) A use, structure, or lot which was in violation of the provisions of Ordinance No. CM-61 did not become validated or nonconforming upon the adoption of this code on March 12, 1976.

(b) Nothing in this code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.
(Ord. CM-93-44, passed 11-9-93

## § 150.290 RECREATIONAL VEHICLES AND UTILITY TRAILERS.

(A) *Definitions*. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***HARD SURFACE.*** An area with a compacted base, surfaced with a thickness of asphalt, concrete or other all-weather material approved by the village. However, a compacted base of dustless material, such as gravel or limestone, which also prevents the possibility of the growth of grass, weeds or other plant material, may be approved by the village as a ***HARD SURFACE.*** The area shall be rectangular in shape, extending at least one foot outside the dimension of the stored equipment, installed so as not to disturb the natural or designed storm sewer drainage.

***RECREATIONAL VEHICLE.*** Any vehicle or equipment designed for or primarily used as a travel trailer, fifth wheel trailer, camper, motor home, truck camper, tent trailer, boat, boat trailer, snowmobile or snowmobile trailer, motorcycle trailer or any other trailer incidental to recreational uses.

***UTILITY TRAILER.*** Any vehicle drawn by a motor vehicle and designed or used for carrying property wholly on or in its own structure including but not limited to construction equipment, construction materials, tools, lawn or landscaping equipment, landscaping materials, motorcycles, all terrain vehicles, horses and other animals and/or livestock.

(B) *Parking and storage of recreational vehicles and utility trailers*.

(1) No such recreational vehicle or utility trailer, as defined herein and while parked or stored on the zoning lot, shall have fixed (permanent) connections to electricity, water, gas or sanitary sewer facilities. While on zoning lot, such recreational vehicle may be used for living or housekeeping purposes for a maximum of 72 hours at a time, but not more than a total of 21 days in any calendar year.

(2) Recreational vehicles and utility trailers parked or stored outside of a garage shall be parked or stored to the rear or side of the front yard. On corner lots, no recreational vehicle or trailer is permitted to be

stored or parked between the right-of-way and side of the main structure, as well as the front of the structure. Any and all recreational vehicles and utility trailers parked or stored in the side or rear yard shall be on a hard surface. All wheels of the recreational vehicle or utility trailer shall be resting entirely upon a hard surface.

(3) Recreational vehicles and utility trailers shall have a minimum setback of ten feet from all property boundaries.

(4) Notwithstanding the provisions of division (B)(2) above, recreational vehicles and utility trailers may be parked anywhere on the zoning lot for loading, unloading or maintenance purposes, for a period not to exceed 72 hours.

(5) Unless parked or stored in a garage, all such recreational vehicles and utility trailers shall be maintained in good repair, in working condition and shall carry a current year's license and registration.

(6) In no instance shall there be more than two recreational vehicles and/or utility trailers total, stored outside on a single residential property.

(7) All recreational vehicles and utility trailers that are longer than 30 feet, higher than 12 feet or have more than six wheels are strictly prohibited from being stored on residential property within the village.

(8) The prohibitions contained herein shall apply equally to the owner, lessee, or other person owning or controlling the land, as well as the owner, lessee, or other person owning or controlling the temporary residential unit.
(Ord. CM-14-15, passed 10-14-2014) Penalty, see § 150.999

## § 150.291 DRIVE-IN SERVICE ESTABLISHMENTS.

(A) Establishments that by their nature create periodic lining up of customers in automobiles waiting to be serviced shall provide off-street waiting areas for these customers. This includes such activities as:

(1) Drive-in banks;

(2) Quick auto washes;

(3) Drive-in retail outlets; and

(4) Drive-in service and repair drop stations for such items as clothing, appliances and equipment.

(B) Those establishments that can normally serve their customers in three minutes or less shall provide at least five off-street waiting spaces per window.

(C) Quick auto washes shall provide at least ten off-street waiting spaces.

(D) Where normal customer servicing time is greater than three minutes per car, additional spaces shall be provided on the basis of one additional space per additional minute of service time.

## § 150.292 BARRIERS TO ENCROACHMENT.

Any lot used for parking, storage or display of vehicles for sale or rent, including boats, trailers, mobile homes and trucks, where such use is permitted to come within three feet of any property line separating such lot from any property held by any other ownership including public land, such property lines shall be protected from encroachment by the installation of wheel stops, so placed and erected as to prevent vehicles from projecting over the lines except at approved points of ingress and egress.

## *BOARD OF ADJUSTMENT*

## § 150.300 CREATION.

A Board of Adjustment is created in accordance with § 8.05 of the Charter of the municipality.

## § 150.301 MEMBERSHIP AND APPOINTMENT.

(A) The Board shall consist of five members, appointed by the Mayor with the advice and consent of the Council, who may remove any member of the Board for cause upon written charges and after public hearing. Vacancies shall be filled by the appointing authority for the unexpired term of the member affected. At least one member of the Planning Board shall be a member of the Board of Adjustment. Board members shall serve a 5-year term, and shall be eligible for reappointment. Members of the Board of Adjustment existing at the time of adoption of this code on March 12, 1976, shall complete their appointed terms of office.

(B) Board of Adjustment members shall be compensated at the rate of $25 per member per meeting attended, but in no event shall such compensation exceed $50 per member per month.
(Am. Ord. CM-99-09, passed 3-9-99)

## § 150.302 ORGANIZATION.

(A) The Board of Adjustment shall elect its own officers annually and shall adopt the rules necessary to the conduct of its affairs. Meetings shall be held at the call of the Chairperson, and at such other times as the Board may determine.

(B) Three members of the Board of Adjustment present at a meeting shall constitute a quorum for the conducting of business. The Chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(C) All meetings and records shall be open to the public.

## § 150.303 OFFICIAL ACTION.

The Board of Adjustment shall act by resolution or motion, and shall keep minutes of its proceedings,

showing:

(A) The vote of each member upon each question, or if any member is absent, or fails to vote, indicating such facts; and

(B) A statement of the facts of each appeal considered by the Board, and the section of this code where applicable which the Board has considered in approving or disapproving any petition or other matter brought before the Board.

### § 150.304 RIGHT OF PETITION OR APPEAL.

(A) Any person, property owner, tenant or any governmental officer, department, board or bureau may apply for a conditional use permit, or a variance from the strict applications of the terms of this code, or appeal a decision of the enforcing officer to the Board of Adjustment.

(B) An appeal of a ruling of the Enforcing Officer shall stay all proceedings, unless the Enforcing Officer certifies that, by reason of facts pertaining to the matter in question, a stay in his opinion would cause imminent peril to life and property. When such certification is made, proceedings shall not be stayed except by a restraining order granted by the Board of Adjustment or by the Court of Common Pleas.

### § 150.305 FEE.

(A) Each application for a variance or exception shall be accompanied by a fee of $25.

(B) Each application for a conditional use permit shall be accompanied by a fee of $50.

(C) Application fees shall not be refunded in any case.

### § 150.306 HEARING.

The Board of Adjustment shall fix a reasonable time for the hearing of any application, petition or appeal. It shall give at least ten days notice of the time and place of such hearing to the Enforcing Officer, and to the owners of record of property within 300 feet of the premises in question. The notice shall be delivered personally or by mail addressed to the respective owners at the address given on the last assessment roll. Any party may appear at the hearing in person, by agent or by attorney. The Board shall decide the application or appeal within a reasonable time.

### § 150.307 POWERS AND DUTIES.

The Board of Adjustment shall have all the appropriate power and duties prescribed by law, and by this code. The Board shall have the following powers and duties:

(A) *Administrative review.* To hear and decide appeals only in such cases where it is alleged there is error in any order, requirement, decision or determination made by the Enforcing Officer in the enforcement of this code. The concurring vote of four members of the Board present and voting shall be necessary to reverse any

order, requirement, decision or determination of the Enforcing Officer, or to decide in favor of the applicant on any matter upon which the Board is required to pass under the terms of this code.

(B) *Determination of similar uses.* To determine if uses not specifically mentioned in this code are similar to uses permitted within a district.

(C) *Determination of district boundary location.* To determine the exact location of any district boundary, if there is uncertainty as to exact location thereof. In making such determination the Board shall be guided by the provisions of § 150.007.

(D) *Conditional use permits.* To hear and decide only such conditional uses as the Board of Adjustment is specifically authorized to pass on under the terms of this code, or to deny conditional use permits when not in harmony with the intent and purpose of this code or the Comprehensive Master Plan. The following requirements shall be complied with prior to any approval or denial of a conditional use permit by the Board of Adjustment.

(1) A written application for a conditional use shall be submitted, indicating the section of this code under which the conditional use is sought and stating the grounds on which it is requested.

(2) A public hearing shall be held as specified in § 150.306.

(3) The Board of Adjustment shall determine:

(a) *Authority.* Whether it has the authority to grant the request.

(b) *Adverse effect.* That the granting of the conditional use will not adversely affect the neighborhood in which the conditional use is to be located.

(c) *Master plan.* That the conditional use is not one which is contrary to the Comprehensive Master Plan of the municipality. In making this determination, the Board shall be advised by the recommendation of the Planning Board.

(4) *Conditions.* In granting any conditional use permit, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity to the provisions of this code and the recommendation of the Planning Board. The Board of Adjustment shall require a performance bond or letter of credit to assure conformance to such conditions and safeguards as may be necessary. Violation of such conditions and safeguards shall cause the performance bond mentioned above to be forfeited, or a draft to be drawn on the full amount of the letter of credit, and shall be deemed a violation of this code and punishable under § 150.999. A conditional use permit shall expire one year after it is issued unless actual construction has taken place or is under way, except as provided elsewhere in this code. A conditional use permit issued for other than construction shall expire in six months after it is issued unless the actual use has been established. The validity of a conditional use permit will continue until such use is terminated by the discontinuance of the use, by special conditions set forth by the Board of Adjustment, or by change of ownership of the property on which the use is located.

(5) In every instance where a conditional use permit has been applied for in the B-1 Highway Business district, adult entertainment facility, applicant shall comply with the following conditions:

(a) No adult entertainment facility shall be established within 1,000 feet of any area zoned for residential use.

(b) No adult entertainment facility shall be established within a radius of 1,500 feet of any school, library or teaching facility, whether public or private, governmental or commercial, which school, library or teaching facility is attended by persons under 18 years of age.

(c) No adult entertainment facility shall be established within a radius of 1,500 feet of any park or recreational facility attended by persons under 18 years of age.

(d) No adult entertainment facility shall be established within a radius of 1,500 feet of any other adult entertainment facility or within a radius of 2500 feet of any two of the following establishments:

1. Cabarets, clubs or other establishments which feature topless or bottomless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers;

2. Establishments for the sale of beer or intoxicating liquor for consumption on the premises;

3. Pawn shops;

4. Pool or billiard halls;

5. Pinball palaces, halls or arcades; and

6. Dance halls or discotheques.

(e) No adult entertainment facility shall be established within a radius of 1,500 feet of any church, synagogue or permanently established place of religious services which is attended by persons under 18 years of age.

(f) No advertisements, displays or other promotional materials shall be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways, or from other areas public or semi-public.

(g) All building openings, entries, windows and the like for adult uses shall be located, covered or serviced in such a manner as to prevent a view into the interior from any public or semi-public area, sidewalk or street. For new construction, the building shall be oriented so as to minimize any possibility of viewing the interior from public or semi-public areas.

(h) No screens, loudspeakers or sound equipment shall be used for adult motion picture theaters (enclosed or drive-in) that can be seen or discerned by the public from public or semi-public areas.

(i) Off-street parking shall be provided in accordance with § 150.205 for similar uses, as well as all other standards for permitted uses within the B-1 Zoning Districts as appropriate.

(E) *Variances.* To vary the strict application of any of the requirements of this code in the case of exceptionally irregular, narrow, shallow or deep lots, or other exceptional physical conditions whereby such strict application would result in practical difficulty or unnecessary hardship, not economic in nature, that would deprive the owner of the reasonable use of the land or building involved, but in no other case. The fact that another use would be more profitable is not a valid basis for legally granting a variance. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance. No variance in the strict application of this code shall be granted by the Board of Adjustment unless and until the applicant submits, and

the Board concurs with, the following.

(1) *Condition and circumstances.* That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same district.

(2) *Property rights.* That literal interpretation of the provisions of this code would deprive the applicant of property rights commonly enjoyed by other properties in the same district under the terms of this code.

(3) *Applicant not at fault.* That the special conditions and circumstances do not result from the actions of the applicant, his or her agents or prior property owners.

(4) *No special privilege.* That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other lands, structures or buildings in the same district.

(5) *Harmony with locality.* That the variance requested shall not alter the essential character of the locality, nor be in conflict with the comprehensive master plan. In making this determination, the Board of Adjustment shall be advised by the recommendation of the Planning Board.

(F) *Procedure for consideration of petitions for variances.*

(1) Upon filing an application for a variance, the request shall be first forwarded to the Planning Board for its consideration and recommendation to the Board of Adjustment.

(2) The Board of Adjustment shall make a finding that the reasons set forth in the application are valid and justify the granting of the variance. The Board shall also determine if the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

(3) Under no circumstances shall the Board of Adjustment grant a variance which will permit a use which is not permitted in the district involved.

(4) The Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this code. The Board of Adjustment shall require a performance bond or irrevocable letter of credit to assure conformance to such conditions and safeguards as the Board may require.

(5) Violation of such conditions and safeguards, when they are made a part of the terms under which a variance is granted, shall cause the aforementioned performance bond to be forfeited or a draft to be drawn on the full amount of the letter of credit, and shall be deemed in violation of this code and punishable under § 150.999.

(6) Prior to taking action on a request for a variance, the Board of Adjustment shall hold a public hearing and give notice to property owners as provided in § 150.306.

(7) The decision of the Board of Adjustment shall not become final until the expiration of five days from the date of entry of such order, unless the Board shall find the immediate effect of such order is necessary for the preservation of property or personal rights, and shall so certify on the record.
(Am. Ord. CM-726, passed 1-8-85)

## *AMENDMENT*

### § 150.315 AMENDMENT.

The Council may from time to time amend, supplement, change, modify or repeal the regulations, restrictions and boundaries as set forth in this code and the Zoning Map of the municipality in accordance with the procedures set forth in §§ 150.316 through 150.321.

### § 150.316 RECOMMENDATION FOR AMENDMENT.

Any amendment, supplement, change, modification or repeal may be recommended by the Planning Board or the Council. All such proposals recommended by the Council shall first be referred to the Planning Board for a recommendation thereon. All such proposals recommended by the Planning Board shall be made in writing together with a recommendation thereon and submitted to Council.

### § 150.317 PETITION FOR AMENDMENT.

Any amendment, supplement, change, modification or repeal may be petitioned for by one or more property owners. All such petitions by property owners shall be filed with the Planning Board on the form and in the manner prescribed by the Planning Board.

### § 150.318 RECOMMENDATION OF PLANNING BOARD.

(A) The Planning Board shall study the proposals recommended by Council or petitioned for by the property owner. If the Planning Board determines the proposal or petition has merit, it may hold a public hearing thereon, but is not required to do so.

(B) In the event the Planning Board determines a public hearing on the proposal or petition is necessary or desirable, it shall give, at least 15 days before the date of the public hearing, written notice of the time and place of the hearing to the petitioner; however, in the event the proposal or petition involves rezoning of a part or all of a zoning district, the written notice shall also be given to all owners of property within 200 feet of the property from the parcel or parcels to be affected by the proposal or petition for rezoning. Notices shall be addressed to the owners of the property appearing on the County Auditor's current tax list or the County Treasurer's mailing list. Notice shall be given by regular mail by the Secretary of the Planning Board.

(C) Upon the completion of its study or public hearing by the Planning Board, it shall make a written report of its findings and recommendation to the Council.

### § 150.319 COUNCIL ACTION.

(A) When the Council receives an affirmative recommendation, or a recommendation upon its own initiative, from the Planning Board, Council may proceed with action on the recommendation.

(B) When the Council receives an adverse recommendation, Council may concur with the recommendation and take no further action on the recommendation, or if the Council does not agree with the recommendation of the Planning Board, Council may proceed with action on the recommendation.

(C) All action taken by Council involving amendment, supplement, change, modification, or repeal of any regulations, restrictions or boundaries shall be by ordinance in the manner set forth in Charter §§ 4.14 or 4.15.

### § 150.320 AMENDMENT LIMITATION.

Petitions for zoning amendment, conditional use permits or variances concerning any parcel of property, portion thereof, or use thereon shall not be accepted for consideration more than once during any consecutive 12-month period.

### § 150.321 FEE.

When a petition for a change, amendment, supplement, repeal or modification is filed, and before any action shall be taken as provided in accordance with § 150.315, any person desiring such action shall be required to pay a fee of $100, and under no conditions shall such sum or part thereof be refunded.

## *ENFORCEMENT AND PENALTIES*

### § 150.330 ENFORCING OFFICER.

The Building Official is designated as the Enforcing Officer of this code. The Enforcing Officer is authorized to enforce this code, to issue orders to prevent and stop violations thereof and to administer the provisions thereof. He may be assisted by such personnel as the Municipal Council may authorize.

### § 150.331 BUILDING PERMIT.

No building or other structure shall be erected, moved, added to or structurally altered without a building permit therefor, issued by the Enforcing Officer. No building permit shall be issued except in conformity with the provisions of this code.

### § 150.332 CERTIFICATE OF HEALTH OFFICER.

In every instance where the Enforcing Officer determines that public water or the disposal of sanitary wastes by means of public sewers are not reasonably accessible to a lot, the application for a building permit shall be accompanied by a Certificate of Approval by the County Health Officer of the proposed method of water supply or disposal of sanitary wastes.

## § 150.333 CERTIFICATE OF ZONING COMPLIANCE.

(A) It shall be a violation of this code to use, or permit the use or occupancy of, any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure, until a certificate of zoning compliance shall have been issued therefor by the Enforcing Officer, stating that the proposed use of the building or land conforms to the requirements of this code.

(B) Each application for a certificate of zoning compliance shall be accompanied by a fee of $20. This application fee shall not be refunded in any case.

(C) These provisions shall apply to all buildings and land uses except the raising of crops and other agricultural uses.
(Am. Ord. CM-12-28, passed 10-9-2012)

## § 150.334 REMEDIES.

(A) If any building or land is used, altered, constructed, enlarged or any such action is proposed in violation of the provisions of this code or any amendment or supplement thereto, the Municipal Attorney, the Enforcing Officer, or any person or any property owner damaged by or subject to damage by such violation, in addition to other remedies provided by law, is empowered or authorized to institute appropriate action or proceedings to prevent such unlawful location, erection, construction, reconstruction, alteration, enlargement, change, maintenance or use.

(B) Nothing herein contained shall prevent the municipality from taking such other lawful action as is necessary to prevent or remedy any violation.

## § 150.335 VIOLATION DECLARED NUISANCE PER SE; ABATEMENT.

Buildings erected, altered, razed or converted, or uses carried on in violation of any provision of this code is declared to be a nuisances per se. The court shall order the nuisance abated, and the owner or agent in charge of the building or land shall be adjudged guilty of maintaining a nuisance per se.

## § 150.999 PENALTY.

(A) Violation of any provision of this code, or any amendment or supplement thereto, or failure to comply with any of the requirements of this code, shall constitute a misdemeanor. Any person, firm or corporation violating any of the provisions of this code, or any amendment thereto, or failing to comply with any of the requirements of this code, or any amendment or supplement thereto, shall upon conviction be fined not less than $25 nor more than $200, or imprisoned for not more than 30 days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(B) The owner or tenant of any building, structure, premises or part thereof, and any architect, engineer, surveyor, builder, contractor, agent or other person who commits, participates in, assists in or maintains a violation may be found guilty of a separate offense and suffer the penalties herein provided.

# CHAPTER 151: SUBDIVISION CODE

Section

***Subdivision Design Standards***



***Requirements for Construction of Improvements***

***Hillside Regulations***



***Improvements; Sale of Land***

## *GENERAL PROVISIONS*

### § 151.001 AUTHORITY.

By authority of R.C. § 711.101 and § 8.04 of the Municipal Charter, the legislative authority of the municipality is authorized to adopt rules and regulations governing plats and subdivisions, both multiple and single unit, of land falling within its jurisdiction; to recommend the nature and the extent of improvements required to be installed in a subdivision; and to approve, conditionally approve or disapprove subdivision plats.

### § 151.002 SHORT TITLE.

This chapter shall be known and may be cited as the "West Milton Subdivision Code", and will be referred to herein as "this code."

### § 151.003 INTENT AND PURPOSE.

It is the purpose of this code to accomplish the following objectives, which will promote the safety, morals, welfare and health of the present and future population of the municipality:

(A) To establish standards for logical, sound and economical development of the municipality;

(B) To coordinate streets and highways in a manner which may promote safe and convenient circulation and which may eliminate traffic hazards;

(C) To prevent subdivision involving lack of water supply, drainage, sewer facilities and other public services which may impose excessive expenditure of funds; and

(D) To plan adequate provision for schools, recreation, light and air, and to avoid congestion of population.

### § 151.004 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALLEY.*** See ***THOROUGHFARE.***

***BOARD.*** The West Milton Planning Board.

***BUILDING LINE.*** See ***SETBACK LINE.***

***COMPREHENSIVE DEVELOPMENT PLAN.*** A plan, or any portion thereof, adopted by the Planning Board and legislative authority of the municipality showing the general location and extent of present and proposed physical facilities, including housing, industrial and commercial uses, major streets, parks, schools and other community facilities. This plan establishes the goals, objectives and policies of the community.

***CORNER LOT.*** See specific lot types.

***COVENANT.*** A written promise or pledge.

***CROSSWALK.*** A 10-foot right-of-way, publicly owned, cutting across a block in order to provide pedestrian access to adjacent streets or property.

***CUL-DE-SAC.*** See ***THOROUGHFARE.***

***CULVERT.*** A transverse drain that channels under a bridge, street or driveway.

***DEAD-END STREET.*** See ***THOROUGHFARE.***

***DENSITY.*** A unit of measurement; the number of dwelling units per acre of land.

(1) ***GROSS DENSITY.*** The number of dwelling units per acre of the total land to be developed.

(2) ***NET DENSITY.*** The number of dwelling units per acre of land when the acreage involved includes only the land devoted to residential uses.

***DENSITY, LOW RESIDENTIAL.*** Land to be utilized for residential purposes which does not exceed 3-1/2 dwelling units per net acre.

***DENSITY, MEDIUM-LOW RESIDENTIAL.*** Land to be utilized for residential purposes which does not exceed seven dwelling units per net acre. For the purposes of street design requirements, the medium-low density residential classification shall be considered as medium density.

***DENSITY, MEDIUM RESIDENTIAL.*** Land to be utilized for residential purposes which does not exceed ten dwelling units per net acre.

***DENSITY, MEDIUM-HIGH RESIDENTIAL.*** Land to be utilized for residential purposes which does not exceed 14 dwelling units per net acre. For purposes of street design requirements, the medium-high density residential classification shall be considered as high density.

***DENSITY, HIGH RESIDENTIAL.*** Land to be utilized for residential purposes which does not exceed 17 dwelling units per net acre.

***DEVELOPER.*** Any individual, subdividence firm, association, syndicate partnership, corporation, trust, or any other legal entity commencing proceedings under this code to effect a subdivision of land hereunder for himself or for another, including any agent of the subdivider.

***DWELLING UNIT.*** Space within a building, comprising living, dining and sleeping room or rooms, and storage closets, as well as space and equipment for cooking, bathing and toilet facilities; all used by only one family and its household employees.

***EASEMENT.*** Authorization by a property owner for the use by another, for a specified purpose, of any designated part of his or her property.

***ENGINEER.*** Any person registered to practice professional engineering by the state's Board of Registration, as specified in R.C. § 4733.14.

***FRONTAGE.*** See ***LOT FRONTAGE.***

***HIGHWAY (TRANSPORTATION) DIRECTOR.*** The Director of the Ohio Department of Transportation (Highways).

***IMPROVEMENTS.*** Street pavement or resurfacing, curbs, gutters, sidewalks, water lines, sewer lines, storm drains, street lights, flood control and drainage facilities, utility lines, landscaping and other related matters normally associated with the development of raw land into building sites.

***LOCATION MAP.*** See ***VICINITY MAP.***

***LOT*** or ***PLOT.*** A parcel of land of sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required. The lot shall have frontage on an improved public street, and may consist of a single lot of record; a portion of a lot of record; or a combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record.

***LOT FRONTAGE.*** The width of a lot at the building setback line. The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under ***YARD*** herein.

***LOT, MINIMUM AREA OF.*** The area of a lot is computed exclusive of any portion of the right-of-way of any public or private street.

***LOT MEASUREMENTS.*** A lot shall be measured as follows.

(1) ***DEPTH OF A LOT.*** The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

(2) ***WIDTH OF A LOT.*** The distance between straight lines connecting the front and rear lot lines at each side of the lot, measured at the building setback line; however, the width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than 80% of the required lot width.

***LOT OF RECORD.*** A lot which is part of a subdivision recorded in the office of the County Recorder, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

***LOT TYPES.***

(1) ***CORNER LOT.*** A lot located at the intersection of two or more streets. A lot abutting on a curved street shall be considered a ***CORNER LOT*** if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135°.

(2) ***INTERIOR LOT.*** A lot other than a corner lot with only one frontage on a street.

(3) ***THROUGH LOT.*** A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

(4) ***REVERSED FRONTAGE LOT.*** A lot on which frontage is at right angles to the general pattern in the area. A ***REVERSED FRONTAGE LOT*** may also be a ***CORNER LOT.***

***MAJOR THOROUGHFARE PLAN.*** The comprehensive plan adopted by the Planning Board, indicating the general location recommended for arterial, collector and local thoroughfares within the incorporated areas, and establishing the official right-of-way widths of the existing roads or streets which will prevail on subdivision frontages.

***MINOR SUBDIVISION.*** A division of a parcel of land that does not require a plat to be approved by a planning authority according to R.C. § 711.131; such division may also be known as "lot split."

***MONUMENTS.*** Permanent iron markers used to definitely establish all lines of the plat of a subdivision, including all lot corners and points of change in street alignment.

***MULTIPLE UNIT PLAT.*** Two or more lots.

***OPEN SPACE.*** An area open to the sky, which may be on the same lot with a building. The area may include, along with the natural environmental features, swimming pools, tennis courts, any other recreational facilities that the Planning Board deems permissive. Streets, parking lots, structures for habitation and the like shall not be included.

***OUT-LOT.*** Property shown on a subdivision plat outside of the boundaries of the land which is to be developed, and which is to be excluded from the development of the subdivision.

***PAD.*** A building site prepared by artificial means, including, but not limited to, grading, excavation or filling, or any combination thereof.

***PARKING SPACE, OFF-STREET.*** An area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, located totally outside of any street or alley right-of-way.

***PERFORMANCE BOND*** or ***SURETY BOND.*** An agreement by a subdivider or developer with the municipality for the amount of the estimated construction cost guaranteeing the completion of physical improvements according to plans and specifications within the time prescribed by the subdivider's agreement.

***PLANNED DEVELOPMENT.*** An area of land in which a variety of housing types or related commercial and industrial facilities are accommodated in a preplanned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply under this code. The procedure for approval of such development contains requirements in addition to those of the standard subdivision, such as building design principles and landscaping plans.

***PLAT.*** The preliminary map, drawing or chart on which the developer's plan of subdivision is presented to the Planning Board for approval; and, after such approval, the final map, drawing or chart, or portion thereof, submitted to the County Recorder for recording.

***PUBLIC WAY.*** An alley, avenue, boulevard, bridge, channel, ditch, easement, expressway, freeway, highway, land, parkway, right-of-way, road, sidewalk, street, subway, tunnel, viaduct, walk or other way which has been dedicated, whether improved or not.

***RIGHT-OF-WAY.*** A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting and drainage facilities, and may include special features required by the topography or treatment such as grade separation, landscaped areas, viaducts and bridges.

***SETBACK LINE.*** A line indicating the minimum horizontal distance between the street right-of-way line and buildings, or any projection thereof other than steps and unenclosed porches, established by the subdivision zoning codes, generally parallel with and measured from the lot line, defining the limits of a yard in which no building, other than an accessory building, or structure may be located above ground, except as may be provided in such codes. See also ***YARD.***

***SEWER, CENTRAL OR GROUP.*** An approved sewage disposal system which provides a collection network and disposal system and central sewage treatment facility for a single development, community or region.

***SEWERS, ON-SITE.*** A septic tank or similar installation on an individual lot, which utilizes an aerobic bacteriological process or equally satisfactory process for the elimination of sewage, and provides for the proper and safe disposal of the effluent, subject to the approval of health and sanitation officials having jurisdiction.

***SHOULD.*** Indicates a requirement that is preferred, but not mandatory.

***SIDEWALK.*** That portion of the road right-of-way outside the roadway, which is improved for the use of pedestrian traffic. See also ***WALKWAY.***

***SINGLE UNIT PLAT.*** A single unit plat is considered to be one single lot.

***SUBDIVIDER.*** See ***DEVELOPER.***

***SUBDIVISION.***

(1) The division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two or more parcels, sites or lots any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership; however, the division or partition of land into parcels or more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempted; or

(2) The improvement of one or more parcels of land for residential, commercial or industrial structures; or the allocation of land for the opening, widening or extension of any street or streets except private streets serving industrial structures; or the division or allocation of land as open spaces for common use by owners, occupants or lease holders, or as easements for the extension and maintenance of public sewer, water, storm drainage or other public facilities. See also ***MINOR SUBDIVISION.***

***SURVEYOR.*** A registered surveyor, as defined by the Registration Act of the State of Ohio.

***TERRAIN CLASSIFICATION.*** Terrain within the entire area of the preliminary plat is classified as level, rolling, hilly or hillside for street design purposes. The classifications are as follows.

(1) ***LEVEL.*** Land which has a cross slope range of 2% or less.

(2) ***ROLLING.*** Land which has a cross slope range of more than 2% but not more than 6%.

(3) ***HILLY.*** Land which has a cross slope range of more than 6% but not more than 15%.

(4) ***HILLSIDE.*** Land which has a cross slope range of more than 15%.

***THOROUGHFARE, STREET*** or ***ROAD.*** The full width between property lines bounding every public way of whatever nature, with a part thereof to be used for vehicular traffic and designated as follows.

(1) ***ALLEY.*** A minor street used primarily for vehicular service access to the back or side of properties abutting on another street, having a right-of-way of not less than 20 feet.

(2) ***ARTERIAL STREET.*** A general term denoting a highway primarily for through traffic, carrying heavy loads and large volume of traffic, usually on a continuous route.

(3) ***COLLECTOR STREET.*** A thoroughfare, whether within a residential, industrial, commercial, or other type of development, which primarily carries traffic from local streets to arterial streets, including the principal entrance and circulation routes within residential subdivisions.

(4) ***CUL-DE-SAC.*** A local street of relatively short length with one end open to traffic and the other end terminating in a vehicular turnaround.

(5) ***DEAD-END STREET.*** A street temporarily having only one outlet for vehicular traffic and intended to be extended or continued in the future, not containing a vehicular turnaround.

(6) ***LOCAL STREET.*** A street primarily for providing access to residential, commercial or other abutting property.

(7) ***LOOP STREET.*** A type of local street, each end of which terminates at an intersection with the same arterial or collector street, and whose principal radius points of the 180° system of turns are not more than 1,000 feet from such arterial or collector street, nor normally more than 600 feet from each other.

(8) ***MARGINAL-ACCESS STREET.*** A local or collector street, parallel and adjacent to an arterial or collector street, providing access to abutting properties and protection from arterial or collector streets. Also called a "frontage street."

***THROUGH LOT.*** See ***LOT TYPES.***

***USED*** or ***OCCUPIED.*** Includes any premises intended, designed or arranged to be used or occupied.

***VARIANCE.*** A modification of the strict terms of the relevant regulations, where such modification will not be contrary to the public interest, and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.

***VICINITY MAP.*** A drawing located on the plat, which sets forth by dimensions or other means the relationship of the proposed subdivision or use to other nearby developments or landmarks and community facilities or services within, in order to better locate and orient the area in question.

***WALKWAY.*** A dedicated public way, four feet or more in width, for pedestrian use only, whether along the side of a road or not.

***WATERSHED.*** The drainage basin in which the subdivision drains, or that land whose drainage is affected by the subdivision.

***YARD.*** A required open space other than a court, unoccupied and unobstructed by any structure or portion of a structure from three feet above the general ground level of the graded lot upward; however, accessories, ornaments and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.

(1) ***YARD, FRONT.*** A yard extending between side lot lines across the front of a lot, and from the front lot line to the farthest protrusion of the principal building.

(2) ***YARD, REAR.*** A yard extending between side lot lines across the rear of a lot, and from the front lot line to the farthest protrusion of the principal building.

(3) ***YARD, SIDE.*** A yard extending from the farthest protrusion of the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear yards.

## § 151.005 ADMINISTRATION.

This code shall be administered by the West Milton Planning Board.

## § 151.006 SCOPE OF CHAPTER; JURISDICTION.

This code shall be applicable to all subdivisions hereinafter made of land within the incorporated area of the municipality. The West Milton Planning Board shall have the power of final approval of the plats.

## § 151.007 RELATION TO OTHER LAWS.

The provisions of this code shall supplement any and all laws of the State of Ohio, ordinances of the municipality or any and all rules and regulations promulgated by authority of such law or ordinance relating to the purpose and scope of these regulations. Whenever the requirements of these regulations are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern, except as provided in § 151.008.

***Cross-reference:***

*Subdivision Design and Construction Standards, see Ch. 152*

## § 151.008 PLANNED DEVELOPMENT ENCOURAGED; REGULATIONS MAY BE MODIFIED.

The planned development approach to development is greatly encouraged. These regulations may be modified by the degree necessary to accomplish the objectives and standards required for the planned development of residential, commercial or industrial subdivisions, or a mixture thereof, in accordance with §§ 150.235 through 150.247 of the zoning code. Nothing within this section, however, shall exempt the developer from the requirement of subdivision plat approval as specified in §§ 151.020 through 151.045.

## § 151.009 AMENDMENTS.

The Board may, on its own motion, and after public hearing, amend, supplement or change these regulations as specified in the appropriate sections of the Ohio Revised Code.

## § 151.010 VARIANCES.

The following regulations shall govern the granting of variances.

(A) Where the Planning Board finds that extraordinary and unnecessary hardship may result from strict compliance with this code due to exceptional topographic or other physical conditions, it may vary the regulations thereof so as to relieve the hardship, provided that the relief may be provided without impairing the intent and purpose of this code, or the desirable development of the neighborhood and community. The variations shall not have the effect of nullifying the intent and purpose of this code, the comprehensive plan, or the zoning code. Application for any such exemption shall be submitted in writing by the subdivider at the time when the preliminary plan is submitted for consideration to the Board. The petition shall state fully the grounds of the application and all the facts relied upon by the petitioner.

(B) In granting variances or modifications, the Planning Board may require such conditions as will, in its judgment, secure substantially the objective of the standards or requirements as varied or modified.

## § 151.011 APPEAL.

Any person who believes he has been aggrieved by the regulations or the action of the Planning Board has all the rights of appeal as set forth in R.C. Ch. 711, or any other applicable section of the Ohio Revised Code.

# *PROCEDURE FOR SUBDIVISION APPROVAL*

## § 151.020 PREAPPLICATION MEETING REQUIRED.

The subdivider shall meet with the Planning Board or its designated representative prior to submitting the preliminary plat. The purpose of this meeting is to discuss early and informally the purpose and effect of these

regulations and the criteria and standards contained therein; and to familiarize the developer with the comprehensive plan, the major thoroughfare plan, the parks and public open space plan, the zoning code and the drainage, sewage and water systems for the municipality.

## § 151.021 PREAPPLICATION SKETCH CONTENT.

The subdivider shall submit to the Planning Board a sketch plan, legibly drawn at a suitable scale and containing the following information.

(A) The proposed subdivision in relation to existing community facilities, thoroughfares and other transportation modes, shopping centers, manufacturing establishments, residential developments and existing natural and man-made features such as soil types, vegetation, contours and utilities in the neighboring area.

(B) The layout and acreage of streets, lots and any nonresidential sites such as commercial, manufacturing, school or recreational uses within the proposed subdivision.

(C) The location of utilities in the proposed subdivision, if available, or the locations of the nearest sources for water and public facilities for the disposal of sewage and storm water.

(D) The scale and title of the subdivision, a north arrow and the date.

(E) The name, address and phone number of the owners and developer.

## § 151.022 PRELIMINARY PLAT REQUIRED.

After the preapplication stage, the subdivider shall submit a preliminary plat of the proposed subdivision, which shall conform with the requirements set forth in §§ 151.023 through 151.030. The purpose of the preliminary plat is to show, on a map, all facts needed to enable the Board to determine whether the proposed layout of the land in a subdivision is satisfactory from the standpoint of public interest. The preliminary plat shall be prepared by a qualified registered surveyor or engineer.

## § 151.023 SUBMISSION TO STATE TRANSPORTATION DIRECTOR.

Before any plat is approved affecting any land within 300 feet of the center line of a proposed new highway, or a highway for which changes are proposed as described in the certification to local officials by the State Transportation (Highway) Director, of any land within a radius of 500 feet from the point of intersection of the center line with any public road or highway, the Board shall give notice, by registered or certified mail, to the Transportation Director. The Board shall not approve the plat for 120 days from the date the notice is received by the Transportation Director. If the Director notifies the Board that he shall proceed to acquire the land needed, then the Board shall refuse to approve the plat. If the Director notifies the Board that acquisition at this time is not in the public interest, or upon the expiration of the 120-day period or any extension thereof agreed upon by the Transportation Director and the property owner, the Board shall, if the plat is in conformance with all provisions of this code, approve the plat.

## § 151.024 APPLICATION FOR TENTATIVE REVIEW AND APPROVAL.

(A) An application in writing for the tentative approval of the preliminary plat, together with five copies of the preliminary plat and the supplementary information specified in §§ 151.025 through 151.028, shall be submitted to the Planning Board.

(B) The Planning Board shall review subdivision proposals and other proposed new developments to assure that:

(1) All such proposals are consistent with the need to minimize flood damage;

(2) All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided so as to reduce exposure to flood hazards.

(C) The Planning Board shall require new or replacement water supply systems or sanitary sewerage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the system into flood waters, and shall require on-site waste disposal systems to be located so as to avoid impairment from flood waters during flooding.

## § 151.025 PRELIMINARY PLAT FORM.

The preliminary plat shall be drawn at a scale not less than 100 feet to the inch, and shall be on one or more sheets at least 18 by 24 inches in size.

## § 151.026 PRELIMINARY PLAT CONTENTS.

(A) The preliminary plat shall contain the following information.

(1) The proposed name of the subdivision, which shall not duplicate or closely approximate the name of any other subdivision in the municipality;

(2) The location of the subdivision by section, range and township, or other surveys;

(3) The names, addresses and phone numbers of the owner, subdivider and registered surveyor who prepared the plat; and appropriate registration numbers and seals;

(4) The date of the survey;

(5) The scale of the plat and the north arrow;

(6) The boundaries of the subdivision and its acreage;

(7) The names of adjacent subdivisions, the owners of adjoining parcels of unsubdivided land and the location of their boundary lines;

(8) Locations, widths and names of existing streets, easements, parks, permanent buildings and corporation and township lines; the location of wooded areas and other significant topographic and natural features within and adjacent to the plat for a minimum distance of 200 feet;

(9) The zoning classification of the tract and adjoining properties, and a description of proposed zoning changes, if any;

(10) Existing contours at an interval of not greater than two feet if the slope of the ground is 15% or less, and not greater than five feet where the slope is more than 15%; (Existing contours should also include flood elevation data for 150-year floods.)

(11) Existing sewers, water lines, culverts and other underground structures; and power transmission poles and lines, within and adjacent to the tract;

(12) The location, names and widths of proposed streets and easements;

(13) Building setback lines, with dimensions;

(14) Location and dimensions of all proposed utility and sewer lines, showing their connections with the existing systems;

(15) Layouts, numbers and approximate dimensions of each lot; and (When a lot is located on a curved street or when side lot lines are not at 90-degree angles, the width at the property line shall be shown.)

(16) Parcels of land in acres to be reserved for public use, or to be reserved by covenant for residents of the subdivision.

(B) A vicinity map at a scale of not less than 2,000 feet to the inch shall be shown on, or accompany, the preliminary plat. This map shall show the most advantageous connections between the roads in the proposed subdivision and those of the neighboring areas.

## § 151.027 SUPPLEMENTARY INFORMATION.

The following information shall be supplied in addition to the requirements set forth in § 151.026.

(A) A statement of proposed use of lots, giving type and number of dwelling units and type of business or industry.

(B) The location and approximate dimensions of all existing buildings.

(C) For commercial and industrial development, the location, dimensions and approximate grade of proposed parking and loading areas, alleys, pedestrian walks, streets; and the points of vehicular ingress and egress to the development.

(D) A description of proposed covenants and restrictions.

(E) In a letter accompanying the request for approval of the preliminary plat, the subdivider shall state the type of sewage disposal he or she proposes to use. If other than a treatment plant, it shall be accompanied by a letter from the Miami County Health Department stating what type of sewage disposal will be approved for the soil conditions encountered in the area of the proposed subdivision. A central sewage treatment plant and a central water system shall be constructed by the subdivider when deemed necessary by the Planning Board or the appropriate Health Officer. If a central plant is to be used, a proposal shall be included discussing the method and cost for the incorporation of the system into the general municipal system.

(F) A signed statement from the subdivider confirming the minimum lot area relative to zoning district requirements.

## § 151.028 FILING OF PRELIMINARY PLAT.

The preliminary plat shall be considered officially filed on the day it is received and properly noted in the minutes of the Planning Board, and shall be so dated. A filing fee shall be charged, as indicated in § 151.998.

## § 151.029 PUBLIC HEARING.

The West Milton Planning Board on its own initiative or upon petition by a citizen or neighboring property owner may, prior to acting on a preliminary plat of a subdivision, hold a public hearing thereon at such time and upon the notice as the Board may designate.

## § 151.030 APPROVAL OF PRELIMINARY PLAT.

The Planning Board shall forward copies of the preliminary plat to such officials and agencies as may be necessary for the purpose of study and recommendation. These shall include at least the Municipal Engineer and the Municipal Sanitary Engineer. After receipt of reports from such officials and agencies, the Planning Board shall determine whether the preliminary plat shall be approved, approved with modifications or disapproved. If a plat is disapproved, the reasons for the disapproval shall be stated in writing. The Planning Board shall act on the preliminary plat within 30 days after filing, unless the time is extended by agreement with the subdivider. When a preliminary plat has been approved by the Planning Board, the Chairperson shall sign and date all copies and return one to the subdivider for compliance with final approval requirements. Approval of the preliminary plat shall be conditional upon compliance with all applicable state statutes, and other ordinances and regulations of the municipality. Approval of the preliminary plat shall be revocable, and shall not authorize the subdivider to record the plat in the office of the Recorder of Miami County, Ohio, nor to proceed with the construction of improvements, unless approval is granted by the Board for a specific phase of the improvements.

## § 151.031 APPROVAL PERIOD.

The approval of the preliminary plat shall be effective for a maximum period of 12 months, and shall guarantee that the terms under which the approval was granted will not be affected by changes to this code.

## § 151.032 FINAL PLAT REQUIRED.

The subdivider, having received approval of the preliminary plat of the proposed subdivision, shall submit a final plat of the subdivision, and drawings and specifications of the improvements required therein. The final plat shall have incorporated all changes in the preliminary plat required by the Planning Board. Otherwise, it shall conform to the preliminary plat, and it may comprise only that portion of the approved preliminary plat, which the subdivider proposes to record and develop at the time. The final plat and the supplementary information shall be certified by a professional surveyor. Construction plans, drawings and specifications shall be certified by a professional engineer.

## § 151.033 APPLICATION FOR APPROVAL OF FINAL PLAT.

A written application for approval for the final plat shall be submitted on forms provided by the Planning Board to the Board, together with five copies of the plat and the supplementary information specified.

## § 151.034 REGULATIONS GOVERNING IMPROVEMENTS.

(A) Included with the final plat shall be a set of construction and utility plans for all improvements prepared by a registered professional engineer. The plans shall consist of all improvements required by §§ 151.080 *et seq.*, including specifications, typical sections, plans and profile views, construction details and estimates of quantities. All typical sections and major engineering details to be used on any particular street shall be approved in advance by the Municipal Engineer before completion of the plans. All plans dealing with sanitary sewer, sewage disposal systems or water supply systems shall be approved by the Municipal Sanitary Engineer before completion of the plans.

(B) Prior to the granting of approval of the final plat, the subdivider shall have installed the minimum required improvements, or shall have furnished a surety or certified check for the amount of the estimated construction cost of the ultimate installation and the initial maintenance of the improvements. Before the surety is accepted, it shall be approved by the proper administrative officials. The term of the surety shall extend 12 months beyond the completion date of the project. To assist the municipality, the developer's engineer shall prepare an itemized estimate of quantities for all proposed improvements, including estimates of cost.

***Cross-reference:***

*Inspection, installation and completion of improvements, see §§ 151.130 through 151.132*

## § 151.035 FINAL PLAT FORM.

(A) The final plat shall be legibly drawn in waterproof ink on tracing cloth or material of approved permanent equal performance. It shall be drawn at a scale not less than 100 feet to the inch, and shall be one or more sheets 18 by 24 inches in size. If more than one sheet is needed, each sheet shall be numbered and the relation of one sheet to another clearly shown, shall be identified as to plat designation, and shall contain the necessary recording data.

(B) The final construction drawings shall be legibly drawn in waterproof ink on tracing cloth in accordance with Chapter 152, Subdivision Design and Construction Standards.

## § 151.036 FINAL PLAT CONTENTS.

The final plat shall contain the following information:

(A) The name of the subdivision, its location by section, range and township, or by other survey number; and the date, north arrow, scale and acreage;

(B) The name and address of the subdividers and the registered surveyor who prepared the plat and appropriate registration numbers and seals;

(C) The plat boundaries, based on accurate traverse, with angular and lineal dimensions; (All dimensions, both linear and angular, shall be determined by an accurate control survey in the field which must balance and close within the limit of one in 10,000.)

(D) The bearings and distance to the nearest established street lines or other recognized permanent monuments;

(E) The exact locations, right-of-way and names of all streets within and adjoining the plat, and building setback lines;

(F) Radii, internal angles, points of curvature, tangent bearings, lengths of arcs, lengths of bearings and length of chords of all applicable streets, within the plat area;

(G) All easements and right-of-way provided for public services, utilities or waterways;

(H) All lot numbers and lines, with accurate dimensions in feet and hundredths. When lots are located on a curve, the lot width at the building setback line shall be shown;

(I) The accurate location and description of all monuments;

(J) Accurate outlines of areas to be dedicated or reserved for public use, or any area to be reserved to the common use of all property owners; (The use and accurate boundary location shall be shown for each parcel of land to be dedicated.)

(K) A copy of any restrictions and covenants the subdivider intends to include in the deeds to the lots in the subdivision;

(L) Certifications by a registered surveyor to the effect that the plat represents a survey made by him or her, that the monuments shown thereon exist as located, and that all dimensional details are correct;

(M) Notarized certification by the owner or owners of the adoption of the plat and the dedication of streets and other public areas;

(N) The location of and a description of all monuments and pins as specified in § 151.082;

(O) Complete construction and utility plans prepared and certified by a professional engineer, showing improvements including estimates of quantities and cost, shall be filed with the final plat; and

(P) The language of dedication on the plat drawing, which is superimposed upon the land from which such plat is drawn, shall follow the form set forth below as follows:

(1) *Streets.* ". . . dedicate the streets, ways, commons, and right-of-ways shown on this plat to the public use forever."

(2) *Alleys.* ". . . dedicate the alleys, ways, commons, and right-of-ways shown on this plat to the public use forever."

(3) *Other public uses.* ". . . dedicate (describe the public use of the area intended to be dedicated, e.g., park) ways, commons, and right-of-ways shown on this plat to the public use forever."

## § 151.037 REQUIRED STATEMENTS AND SIGNATURES ON FINAL PLAT.

The following statements shall be affixed on the subdivision plat.

*DESCRIPTION*

Being a subdivision of ___ acres of Lot # ___ as conveyed to _____ by Deed recorded in Volume __, Page __, of the Miami County Record of Recorded Deeds.

*DEDICATION*

We, the undersigned, being all the owners and lien holders of the land herein platted, hereby accept this plat of same and dedicate to public use as such all parts of the roads, streets, boulevards, cul-de-sacs, parks, planning strips, public grounds, etc., shown herein and not heretofore dedicated.

Easements shown on this plat are for the construction, operation, maintenance, repair, replacement, or removal of water, sewer, gas, electric, telephone, or other utility lines or services, maintenance of drainage and open waterways, and for the express privilege of removing any and all trees or other obstructions to the free use of said utilities and for providing ingress and egress to the property for said purpose and are to be maintained as such forever.

We, the undersigned, further agree that any use of improvements made on this land shall be in conformity with all existing valid zoning, platting, health, or other lawful rules and regulations including the application of off-street parking and loading requirements of West Milton, Ohio, for the benefit of himself and all other subsequent owners or assigns taking title from, under, or through the undersigned.

Witness _____ Signed _____

_____ _____

STATE OF OHIO, MIAMI COUNTY, ss:

Be it remembered that on this __ day of __, 19_, before me, the undersigned, a notary public in and for said County and State, personally came _____ and _____, who acknowledged the signing and execution of the foregoing plat to be their voluntary act and deed, in testimony whereof, I have set my hand and notarial seal on the day and date above written.

_____
Notary Public

My Commission Expires_____

## § 151.038 SUPPLEMENTARY INFORMATION.

(A) If a zoning change is involved, certification from the Municipal Enforcing Officer shall be required indicating that the change has been approved and is in effect.

(B) Certification shall be required showing that all required improvements have been either installed and approved by the proper officials or agencies, or that a bond or other surety has been furnished assuring installation and initial maintenance of the required improvements.

## § 151.039 FILING OF FINAL PLAT.

The final plat shall be filed with the Planning Board not later than 12 months after the date of approval of the preliminary plat; otherwise, it will be considered void unless an extension is requested by the developer and granted in writing by the Planning Board.

## § 151.040 REFERRAL TO OTHER OFFICIALS.

(A) The Board shall, after the filing of the final plat, transmit copies of the plat to the Municipal Engineer, Municipal Sanitary Engineer or County Board of Health for their final study and recommendations. The cross sections and all other construction drawings shall be forwarded to the Municipal Engineer and Municipal Sanitary Engineer for final review and approval.

(B) After receiving a written report from each of the aforementioned officials, the Board shall notify the subdivider of any recommended changes or suggestions so that the subdivider may correct the final tracing and submit same for final approval.

(C) The final tracing shall be submitted at least ten working days prior to the meeting at which the plan is to be considered by the Board.

## § 151.041 APPROVAL OF FINAL PLAT.

The Planning Board shall approve or disapprove the final plat within 30 days after it has been properly filed with the Planning Board, and so noted in the minutes. Failure of the Board to act upon final plat within such time shall be deemed as approval of the plat. If the plat is disapproved, the grounds for disapproval shall be stated in the records of the Board, and a copy of the record shall be forwarded to the subdivider. The Board shall not disapprove the final plat if the developer has done everything that he was required to do and has proceeded in accordance with the conditions and standards specified in the approved preliminary plat. If it is disapproved, the subdivider shall make the necessary corrections and resubmit the final plat within 30 days to the Board for final approval. If a plat is refused by the Board, the person submitting the plat which the Board refused to approve may file a petition to reconsider the action of the Board within ten days after such refusal in the Court of Common Pleas of the county in which the land described in the plat is situated.

## § 151.042 TRANSMITTAL OF COPIES.

When the final plat has been approved by the Planning Board, the original tracing shall be returned to the subdivider for transfer by the County Auditor and filing with the County Recorder after all necessary certifications are received.

## § 151.043 RECORDING OF FINAL PLAT.

No plat of any subdivision shall be recorded by the County Recorder of Miami County or have any validity until the plat has received final approval in the manner prescribed in § 151.041.

## § 151.044 AUTHORIZATION PRIOR TO TRANSFER.

Authorization as related to improvements or development, in accordance with this code, must be obtained from the Municipal Engineer and County Board of Health, and presented and duly filed with the County Auditor, prior to transfer of deed.

## § 151.045 REVISION OF PLAT AFTER APPROVAL OR RECORDING.

No changes, erasures, modifications or revisions shall be made in any plat of a subdivision after approval has been given by the Board and endorsed in writing on the plat, unless the plat is first resubmitted to the Commission. In the event that any such plat is recorded without complying with the aforementioned requirement, the same shall institute proceedings to have the plat stricken from the records of Miami County, Ohio.

## § 151.046 MINOR SUBDIVISIONS (LOT SPLITS).

(A) Approval without a recorded plat of a minor subdivision may be granted by the Planning Board, if the proposed division of a parcel of land meets all the following conditions.

(1) The proposed subdivision is located along an existing public road, and involves no opening, widening or extension of any street or road;

(2) No more than five lots are involved after the original parcel has been completely subdivided;

(3) The proposed subdivision is not contrary to applicable subdivision or zoning regulations; and

(4) The property has been surveyed and a plat submitted for filing in the Miami County Engineer Record of Lot Surveys. The plat shall be legibly drawn in waterproof ink on tracing cloth on a sheet size of 17 by 21 inches.

(B) If approval is given under these provisions, the authorized representative of the Planning Board shall, within seven working days after submission, approve such proposed division and, upon presentation of a conveyance for such parcel, shall stamp it “Approved by the West Milton Planning Board; no plat required.”; and the authorized representative of the Board shall sign the conveyance.

## § 151.047 FLOOD HAZARD REGULATIONS.

(A) The Planning Board shall review subdivision proposals and other proposed new developments to assure that:

(1) All such proposals are consistent with the need to minimize flood damage;

(2) All public utilities and facilities, such as sewer, gas, electrical and water systems, are located, elevated and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided so as to reduce exposure to flood hazards.

(B) The Planning Board shall require new or replacement water supply systems or sanitary sewerage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the system into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment from flood waters during flooding.

## *SUBDIVISION DESIGN STANDARDS*

## § 151.050 SCOPE OF REGULATIONS.

(A) The regulations set forth in §§ 151.051 through 151.065, shall control the manner in which streets, lots and other elements of a subdivision are arranged on the land. These design controls shall help insure convenient and safe streets, creation of usable lots, provision of space for public utilities and reservation of land for recreational uses. The planning of attractive and functional neighborhoods shall be promoted, minimizing the undesirable features of unplanned, haphazard growth.

(B) The Planning Board has the responsibility for reviewing the design of each future subdivision early in its design development. The Board shall insure that all of the requirements of §§ 151.051 through 151.065, are met.

***Cross-reference:***

*Subdivision design and construction standards, see Ch. 152*

## § 151.051 CONFORMITY TO DEVELOPMENT PLANS AND ZONING.

The arrangements, character, width and location of all arterial and collector thoroughfares or extensions thereof shall conform with the adopted municipal major thoroughfare plan. Thoroughfares not contained in the aforementioned plan shall conform to the recommendation of the Planning Board, based upon the design standards set forth in §§ 151.053 through 151.061. In addition, no final plat of land within the area to which the zoning code applies shall be approved unless it conforms with such code.

## § 151.052 SUITABILITY OF LAND.

If the Planning Board finds that land proposed to be subdivided is unsuitable for subdivision development due to flooding, bad drainage, topography, inadequate water supply, schools, transportation facilities and other such conditions which may endanger health, life or property; and, if from investigations conducted by the public agencies concerned, it is determined that in the best interest of the public the land should not be developed for the purpose, the Board shall not approve the land for subdivision unless adequate methods are advanced by the subdivider for solving the problems that will be created by the development of the land.

## § 151.053 STREET DESIGN.

The arrangements, character, extent, width, grade construction and location of all streets shall conform to the major thoroughfare plan of the municipality, or subsequent amendments thereto, and shall be considered in their relation to existing and planned streets, topographical conditions and public convenience and safety; and in their appropriate relation to the proposed uses of land to be served by the streets. The street pattern shall discourage through traffic in the interior of a subdivision. The subdivider shall provide, within the boundaries of the subdivision plat, the necessary right-of-way for the widening, continuance or alignment of such streets in conformity with the major thoroughfare plan.

***Cross-reference:***

*Specific street design standards, see § 152.05*

*Street construction standards, see § 152.11*

## § 151.054 INTERSECTION DESIGN STANDARDS.

(A) Streets shall intersect one another at an angle as near to a right angle as possible. Street intersections shall be rounded with a minimum radius of 25 feet measured at the back of curbs when the intersection occurs at right angles. If an intersection occurs at an angle other than right angle, it shall be rounded with a curve of a radius acceptable to the Board.

(B) Multiple intersections involving junctions of more than two streets shall be avoided.

(C) Four-way intersections of local streets should be avoided and 3-way or T-intersections should be encouraged wherever possible.

(D) Four-way intersections should be encouraged whenever involving a collector or arterial street.

## § 151.055 WIDTH.

The minimum right-of-way width of a street shall be 50 feet. When the subdivision is intended for a single-family residential development, the pavement shall have a minimum width of 31 feet, measured from back of curb to back of curb. In cases where the street in question, in the opinion of the Planning Board, will become a collector highway or street, the right-of-way width of such street shall be 60 feet, and the pavement shall have a minimum width of 37 feet, measured from back of curb to back of curb. Arterial streets shall have a minimum

right-of-way width of 80 feet, and shall have a pavement width of 57 feet from back of curb to back of curb. All existing thoroughfares, streets or roads not designated local streets shall have a minimum designation of collector street and right-of-way and pavement width provided accordingly.

## § 151.056 STREET NAME SIGNS AND STREET NAMING.

(A) Street name signs, of a type in use throughout the municipality, shall be erected at all intersections.

(B) For the purpose of street naming, the following suffixes shall apply.

(1) "Avenue" shall be used only for streets that run in a generally east-west direction;

(2) "Boulevard" or "Drive" shall be used only for a large meandering type street;

(3) "Circle" or "Court" shall be used only for cul-de-sac type streets that run in a generally east-west direction;

(4) "Lane" or "Place" shall be used only for cul-de-sac type streets that run in a generally north-south direction;

(5) "Road" or "Way" shall be used only for streets that run in a diagonal manner, either a generally northwest-southeast direction or a northeast-southwest direction;

(6) "Street" shall be used only for thoroughfares that run in a generally north-south direction;

(7) The words "north," "south," "east" or "west" should be avoided as part of a street name whenever possible.

(C) Names of new streets shall not duplicate existing or platted street names unless a new street is a continuation of, or in alignment with, the existing or platted street. In addition, names of streets shall not duplicate names of existing or platted streets within the same Post Office service area.

(D) Whenever a street alignment changes direction more than 75 degrees without a return to the original alignment within a distance of 500 feet, the name of the street shall be changed at the point of curvature.

(E) Whenever a cul-de-sac street serves not more than three lots, the name of the intersecting street shall apply to the cul-de-sac.

(F) To avoid duplication and confusion, the proposed names of all streets shall be approved by the Municipal Engineer prior to such names being assigned or used.

## § 151.057 VACATION.

The Board shall not recommend the vacation of any street or part of a street dedicated for public use, if the vacation interferes with the uniformity of the existing street pattern or any future street plans prepared for the area.

## § 151.058 PRIVATE STREETS.

Private streets shall not be approved, nor shall public improvements be approved for any private street.

## § 151.059 SPECIAL STREET TYPES.

The following requirements shall apply to special street types.

(A) Permanent dead-end streets shall not be permitted. Temporary dead-end streets shall be permitted only as part of a continuing street plan, and only if a temporary turnaround satisfactory to the Board in design is provided, and provisions for maintenance, and removal are advanced. Temporary dead-end streets longer than 200 feet shall not be permitted.

(B) Dedication of new half-streets shall not be permitted. Where a dedicated or platted half-street exists adjacent to the tract being subdivided, the other half shall be platted.

(C) Where a subdivision adjoins an arterial street, a marginal-access street shall be designed, if the subdivision design is such that residential lots would require direct vehicular access onto the arterial highway. Points of access to the arterial street shall be spaced at a minimum of 1,320 feet. A planting strip having a minimum width of 20 feet shall be provided between the pavement of the arterial street and the pavement of the marginal-access street.

(D) Alleys shall not be approved in residential subdivisions, except where justified by extreme conditions. Alleys may be required in commercial and industrial districts if other provisions cannot be made for adequate service access. The minimum widths for alleys shall be 20 feet for the right-of-way and 20 feet for the pavement width.

## § 151.060 STREETS FOR COMMERCIAL SUBDIVISIONS.

Streets serving business developments and accessory parking areas shall be planned to connect with arterial streets so as not to generate traffic on local streets. The intersections of driveways from parking areas with arterial or collector streets shall be located so as to cause the least possible interference with traffic movement on the streets; shall be located not less than 100 feet from the intersection of an arterial or collector street with any other street; and shall be spaced not less than 200 feet from each other. The Board may require marginal-access streets to provide maximum safety and convenience.

## § 151.061 STREETS FOR INDUSTRIAL SUBDIVISIONS.

Collector streets for industrial subdivisions shall be planned to serve industrial areas exclusively, and shall connect with arterial streets so that no industrial traffic will be directed into any residential streets. The intersections of service streets from parking areas with arterial or collector streets shall not be less than 100 feet from the intersection of the arterial or collector street with any other street. Streets shall be planned to be extended to the boundaries of any adjoining land planned for industry, except when severe physical conditions exist, or if the Board finds such extension is not in accord with the approved plan of the area.

## § 151.062 EASEMENTS.

Easements shall have a minimum width of five feet on each side of the lot line, or such additional width as may be required for necessary access to the utility involved or to accommodate surface drainage. Easements shall be located along rear or side lot lines or along alleys, and along rear or side lot lines where necessary for sanitary sewer, gas mains, water lines and electric lines. Easements shall also be provided along every water course, storm sewer, drainage channel or stream within a subdivision, as provided for in § 151.064.

## § 151.063 OPEN SPACES.

Provision of green belts or similar buffer areas may be required by the Planning Board in areas where they are desirable to separate or protect residential subdivisions from adjacent commercial developments, major streets or highways, railroad rights-of-way, electric transmission lines, underground gas transmission mains, other underground public facilities, major drainage channels, public parks or areas of special scenic or historical significance. Such provision of land shall be in accordance with § 151.997 (H).

## § 151.064 FLOOD AREAS AND STORM DRAIN DITCHES.

(A) In order to protect the health, safety and general welfare of the people, the Planning Board shall reject any proposed subdivision located in an area subject to periodic flooding. If the sub-division is located in an area having poor drainage or other adverse physical characteristics, the Board may approve the subdivision, provided that the subdivider agrees to perform such improvements as will render the area safe for the intended use. In lieu of improvements, the subdivider shall furnish a surety of certified check covering the cost of the required improvements.

(B) Flood control or storm drainage facilities shall be provided as follows.

(1) Access to flood control or storm drainage ditches and channels shall be by means of easements. The easements shall be not less than 30 feet in width, exclusive of the width of the ditch or channel, and an easement of this type shall be provided on one side of the flood control or storm drainage ditch, channel or similar type of facility.

(2) Flood control or storm drainage easements containing underground facilities shall have a minimum width of ten feet.

(3) Whenever a flood control or storm drainage ditch or channel has a depth of five feet or more, or a bank slope of two feet horizontal to one foot vertical or steeper, a 5-foot high masonry wall or a 5-foot high chain link fence may be required by the Board.

***Cross-reference:***

*Storm sewer design standards, see § 152.02*

*Storm sewer construction standards, see § 152.13*

## § 151.065 RESERVE STRIPS.

Reserve strips set up by the subdivider which may prevent access through a subdivision to an adjacent tract shall be prohibited.

## § 151.066 SIDEWALKS.

(A) Sidewalks shall be required on both sides of the street in all residential subdivisions where the predominant lot width is 100 feet or less, and on one side where the predominant lot width is greater than 100 feet but less than 150 feet. The Board may require that sidewalks be constructed where lot frontage is greater than 100 feet where they may be essential to better circulation or to access to schools, playgrounds, shopping centers, transportation depots or other facilities. In any case, on major thoroughfares or residential streets serving as collectors of traffic from minor streets, 5-foot sidewalks shall be required.

(B) Public sidewalks shall be required for all commercial lots.

(C) Public sidewalks may be required for industrial lots, subject to the approval of the Planning Board.

***Cross-reference:***

*Sidewalk construction standards, see § 152.16*

## § 151.067 BLOCKS.

The following regulations shall govern the design and layout of blocks.

(A) The arrangement of blocks shall be such as to conform to the street planning criteria set forth in §§ 151.053 through 151.062, and shall be arranged to accommodate lots and building sites of the size and character required for the district as set forth in this Subdivision code or the zoning code and to provide for the required community facilities.

(B) When a subdivision adjoins a major thoroughfare, the block length or the greater dimension, shall front along the major thoroughfares, to avoid unnecessary ingresses and egresses.

(C) The Board may require that the characteristics of blocks bear close relation to the use of the land.

(D) Irregularly shaped blocks, those intended for cul-de-sacs or loop streets, and those containing interior parks or playgrounds, may be approved by the Board if properly designed and located, and if the maintenance of interior public spaces is covered by agreement.

(E) No block shall be longer than 1,400 feet, nor less than 500 feet, and the block width shall accommodate two tiers of lots, except where unusual topography or other exceptional physical circumstances exist.

(F) (1) Where blocks are 900 feet in length, a crosswalk easement not less than ten feet in width at or near the halfway point may be required, if necessary, to provide proper access to schools, recreational areas, shopping centers, transportation depots and other facilities.

(2) The Board has the authority to require an easement of ten feet, five feet from each lot, through the tier of two lots for pedestrian access to schools, playgrounds, shopping centers or other facilities. The pavement width for the walk shall be five feet.

(G) All block corners shall be rounded with a radius of not less than 25 feet measured at the back of curbs. Where a radius has been previously established at an intersection, such radius shall be used as a standard for the other corners of the intersection.

(H) For slope area where the average topographic slope is 15% or greater, see §§ 151.110 through 151.122.

**§ 151.068 LOTS.**

The following regulations shall govern the design and layout of lots.

(A) The lot arrangement and design shall be such that all lots will provide satisfactory building sites, properly related to the topography and the character of surrounding development.

(B) All lots shall conform to or exceed the requirements of those subdivision regulations and the zoning district requirements for the district in which they are located and the use for which they are intended.

(C) (1) All lots shall abut by their full frontage on a publicly dedicated street or a street that has received the legal status of such. Lots abutting on private streets or easements shall not be approved.

(2) The minimum lot size, widths and setbacks shall be as specified in the zoning code. For slope areas where the average topographic slope is 15% or greater, see §§ 151.110 through 151.122.

(D) All side lot lines shall be at right angles to street line and radial to curved street lines, except where the Board determines that a variation to this rule would provide a better layout.

(E) Lots with double frontage shall be avoided, except where the Board determines that it is essential to provide separation of residential development from arterial streets.

(F) All corner lots shall have minimum frontage of 90 feet, measured at the building line, in order to permit adequate building setback. Where, according to the provisions of this Subdivision code, or the zoning code, the lot width is increased due to the type of development or the protection of the health of the community, the lot width of any corner lot shall comply with the higher requirements.

(G) No lot shall have an average depth which is more than three times its average width, nor shall it have a depth of less than 114 feet; however, whenever a lot fronts upon an exterior curved portion of a street, lot depth may be reduced to not less than 100 feet.

(H) A minimum 25-foot setback line, measured from the front property line, shall be required for all building, unless larger setbacks are required by the zoning code or plat restrictions.

(I) Any lot upon which it is intended that commercial uses will be permitted, shall have a minimum frontage as set forth in the appropriate section of the zoning code. However, where an overall design for a business

section is submitted for an area of five acres or more, the Board may not require the platting of individual lots. In such case, the development plans for the aforementioned business development shall be submitted to the Board for consideration and approval prior to the filing of an application for building permits.

(J) In the case of vacation of lots, or parts of lots, in a subdivision previously recorded in the office of the Recorder of Miami County, Ohio, the same procedure, rules and regulations shall apply as for a new plat. The title of the vacations shall indicate just what is being vacated, and the final map shall include enough of the surrounding plat or plats to show its relation to adjoining areas.

(K) Whenever a subdivider or developer proposes a resubdivision of a plat previously recorded in the office of the Recorder of Miami County, Ohio, he or she shall follow the same procedure as for a new plat, except that a preliminary map may not be required if changes in street alignment or similar changes are not included in the proposal. The lots in the resubdivision shall conform as to size and arrangement with the requirements of this Subdivision Code, and the appropriate requirements of the zoning code.

### § 151.069 DEED RESTRICTIONS.

All restrictions shall be designated on the plat, and shall run with the land and be enforceable by the owner of any of the property lying within the subdivision. Restrictions shall be so written that they may be amended to meet changing conditions. All covenants and restrictions shall indicate the proposed use of the land.

## *REQUIREMENTS FOR CONSTRUCTION OF IMPROVEMENTS*

### § 151.080 GUARANTEE FOR INSTALLATION OF IMPROVEMENTS.

All improvements required herein shall be constructed prior to the granting of final plat approval by the Planning Board. In lieu of the completion of the improvements, a bond executed by a surety company shall be furnished by the subdivider equal to the cost of construction and initial maintenance of such improvements as shown by the plans based on an estimate furnished and approved by the Municipal Engineer and, when applicable, the Municipal Sanitary Engineer. The surety will be subject to the condition that the improvements will be completed within 12 months after approval, and in the event they are not completed, the municipality shall proceed with the work, and hold the owner and the bonding company jointly responsible for the cost thereof. The bond shall be subject to the approval of the Municipal Council. As an alternative, the subdivider may deposit a certified check with, and payable to the Municipal Treasurer, in place of the surety bond.

### § 151.081 MINIMUM IMPROVEMENTS.

The minimum improvements which the subdivider will be required to make, or enter into agreement to make, in a subdivision prior to the approval of the final map by the Board shall be prescribed by the foregoing provisions. All of these improvements shall be carried out in full compliance with the specifications, supervision and inspection for each of the various units of work as required by the Municipal Engineer, Municipal Sanitary Engineer or County Board of Health, according to the nature of the improvement, and shall be completed within

the time fixed or agreed upon by the Municipal Engineer. All inspection costs shall be paid for by the subdivider. Nothing in this code shall be construed to prohibit the subdivider from constructing higher type of improvements than required by the Municipality.

## § 151.082 MONUMENTS, MARKERS AND PINS.

(A) A complete survey shall be made by a registered surveyor.

(B) The traverse of the exterior boundaries of the tract and of each block when computed from filed measurements of the ground shall close within a limit of error of l foot to 10,000 of the perimeter before balancing the survey. Computation sheets shall be submitted when requested.

(C) Permanent iron pins or pipe monuments 5/8-inch in diameter and 30 inches long shall be placed by the surveyor at all changes of direction about the perimeter, all changes of direction on boundary lines, all lot corners, all points of curvature and points of tangency, and all right-of-way lines when property lines extend to the center of an existing road.

## § 151.083 STREETS.

The subdivider shall improve all streets or highways which are a part of the subdivision, including that portion of the subdivision located on existing streets or highways. The required improvements shall be such as may be necessary for the general use of the residents, and shall include grading and surfacing of streets and highways and the drainage thereof. The grades and all items of work shall be in accordance with § 152.11.

## § 151.084 STREET IMPROVEMENTS.

All streets shall be graded to their full width, including side slopes, and improved in conformance with the standards given or referred to in these regulations.

## § 151.085 STREET WIDTH.

Minimum street pavement widths shall conform to § 151.055.

## § 151.086 STREET SUBGRADE.

The subgrade shall be free of sod, vegetative or organic matter, soft clay, and other objectionable materials. The subgrade shall be properly rolled, shaped and compacted, and shall be subject to the approval of the Municipal Engineer.

***Cross-reference:***

*Specific street subgrade construction requirements, see § 152.11(A)*

### § 151.087 STREET BASE COURSE.

The street base course used by the developer shall conform with the standards and specifications set forth in § 152.11(B).

### § 151.088 STREET SURFACE COURSE.

Upon the expiration of the established maintenance period for the base course, the surface course shall be constructed in accordance with the standards and specifications set forth in § 152.11(C).

### § 151.089 STREET CURBS AND GUTTERS.

Curbs and gutters shall be required for all subdivision streets including construction on existing highways. In commercial or industrial developments, or where other similar intensive urban uses exist or are anticipated, curbs shall be required. Curbs, combined curbs and gutters shall be constructed in accordance with the standards set forth in § 152.16.

### § 151.090 SIDEWALKS.

All sidewalks shall be constructed in accordance with the standards and specifications set forth in § 152.16.

### § 151.091 STREET AND WALKWAY LIGHTING.

(A) The subdivider is responsible for having street lights installed in accordance with standards and specifications set forth in § 152.17 in each residential subdivision which contains a majority of lots with an individual lot width of 100 feet or less at the front property line. The lights shall be located at each entrance (streets and walkways) to the subdivision, and in each street intersection within the subdivision. In addition, whenever the distance between two adjacent street (walkway) lights would exceed 250 feet, then additional street lights shall be installed in such a manner that proper light intensity shall be provided and maintained.

(B) New subdivision street (walkway) lighting should be installed with all associated wiring underground.

### § 151.092 STREET TREES.

Trees should be provided by the subdivider in accordance with standards and specifications set forth in § 152.18. The trees shall be species which are resistant to damage and disease and which do not cause interference with underground utilities, street lighting, or visibility at street intersections. Existing trees should be retained in new subdivisions wherever possible. No trees or shrubbery shall be located within street or road right-of-way.

## § 151.093 WATER SUPPLY IMPROVEMENTS.

(A) Where a public water supply is located within 120 feet of any boundary of the proposed subdivision, or where a public water supply is required because of pollution problems in the determination of the Planning Board, the subdivision shall be provided with a complete water distribution system, including a connection for each lot and appropriately spaced fire hydrants. Public water distribution and public wells systems shall meet the requirements of the Ohio Department of Health as cited in R.C. §§ 3701.18 through 3701.21.

(B) Where public water supply is not available or not required, the subdivider shall supply acceptable evidence of the availability of water. The subdivider may be required to make one or more test wells in the area to be platted if the evidence is deemed not acceptable. Copies of well logs which are obtainable shall include the name and address of the well driller and shall be submitted with the plat to the Planning Board.

(C) (1) Individual private wells shall be located and constructed in conformance with the requirements and specifications of the County Board of Health. Minimum lot sizes shall be in accordance with the requirements of the zoning district in which the subdivision is located.

(2) In all cases where it has been determined that individual water supplies from private wells are not feasible, a public water distribution system shall be required.

***Cross-reference:***

*Water system design, see § 152.04*

## § 151.094 FIRE PROTECTION.

Fire hydrants and water lines serving any hydrant shall be installed in accordance with the standards and specifications of the municipality.

## § 151.095 SANITARY SEWER IMPROVEMENTS.

The following requirements shall govern sanitary sewer improvements.

(A) Where an adequate public sanitary sewer system is reasonably accessible, in the determination of the Planning Board, public sanitary sewers shall be installed to adequately serve all lots, including lateral connections to the public system. Public sewer system extensions shall meet the requirements of the Ohio Environmental Protection Agency and municipal standards. Combinations of sanitary sewers and storm sewers shall be prohibited.

(B) Where a public sanitary sewer system is not reasonably accessible, the subdivider may provide a central treatment plant for the group, provided that such central treatment plant is installed in accordance with State and County Board of Health requirements.

***Cross-reference:***

*Sanitary sewer construction standards, see § 152.03*

## § 151.096 DRAINAGE IMPROVEMENTS.

The subdivider shall construct all necessary facilities, including underground pipe, inlets, catch basins or open drainage ditches as determined by the Municipal Engineer, to provide for the adequate disposal of subsurface and surface water and maintenance of natural drainage courses. Design shall be in accordance with the requirements set forth in § 152.02. Adequate provisions shall be included in design and construction to accommodate all upstream drainage, and where necessary, all drainage improvements shall extend to plat limits. The velocity of flow in an open ditch shall not exceed four feet per second in soil ditches or six feet per second in turf gutters. Paved gutters will be required if velocities of flow are greater than those specified, or if it is otherwise likely that destructive erosion will result. Drainage ditches shall not be permitted to discharge into any sanitary sewer facility. Sedimentation and erosion control shall be in accordance with specifications established by the Soil Conservation Service. All newly graded open waterways shall be sodded, or when approved by the Municipal Engineer, seeded in accordance with Soil Conservation Service specifications.

## § 151.097 STORM SEWERS AND STORM WATER DRAINAGE.

Where an adequate public storm sewer is available at the plat boundary, the subdivider shall construct a storm sewer system and connect with the storm sewer line. If such a storm sewer system is not accessible a natural drainage channel with easements of adequate width shall be provided, as determined by the Municipal Engineer and approved by the Planning Board so that all drainage improvements may be extended to an adequate outlet. Paved gutters or storm sewers shall be required if velocities of flow are greater than specified in § 151.097, or if they cause destructive erosion. Storm drainage, including drain tile around basements, shall not be permitted to discharge into any sanitary sewer facility, but shall connect to an adequate drainage outlet.

***Cross-reference:***

*Storm sewer construction standards, see § 152.13*

## § 151.098 CULVERTS AND BRIDGES.

Where natural drainage channels intersect any street right-of-way, it shall be the responsibility of the subdivider to have satisfactory bridges or culverts constructed. Where culverts are required, minimum requirements shall be observed as follows.

(A) All culverts shall extend across the entire right-of-way width of the proposed street. The cover over the culvert and its capacity shall be determined by the Municipal Engineer. Depending on existing drainage conditions, head walls may be required.

(B) Driveway culverts shall be as specified by the Municipal Engineer. The driveway culverts shall be laid so as to maintain the flow lines of the ditch or gutter. Head walls may be required.

(C) All structures shall be designed to standard highway loadings or H.S. 20.

## § 151.099 ELECTRIC, GAS, AND TELEPHONE IMPROVEMENTS.

(A) Electric service and telephone service shall be provided within each subdivision. Gas service may be required where reasonably accessible. Whenever the facilities are reasonably accessible and available, they may

be required to be installed within the area prior to the approval of the final plat. Telephone, electric and street lighting wires, conduits, and cables shall be constructed underground except in cases where the Municipal Engineer determines that topographic, bedrock or underground water conditions would result in excessive costs to the subdivider.

(B) Overhead utility lines, where permitted, shall be located at the rear of all lots. The width of the easement per lot shall be not less than five feet and the total easement width shall be not less than ten feet.

(C) Whenever a sanitary sewer line and electric or telephone line are each placed underground in the same utility easement, the following provisions shall be applicable.

(1) The total easement width shall be not less than 20 feet; and

(2) The sanitary sewer line shall be installed within three feet of one side of the easement, and the electric or telephone lines shall be installed within three feet of the opposite side of the easement.

## § 151.100 OVERSIZE AND OFF-SITE IMPROVEMENTS.

The utilities, pavements and other land improvements required for the proposed subdivision shall be designed of oversize dimensions or provided with extensions to serve nearby land which is an integral part of the neighborhood service or drainage area as determined by the Municipal Engineer.

## § 151.101 COST OF OVERSIZE IMPROVEMENTS.

(A) The subdivider shall be required to pay for all of that part of the construction costs for the arterial streets, trunk sewers or water lines which are serving the proposed subdivision, as determined by the Municipal Engineer. The municipality may pay all or any part of the difference between the cost of the required improvements for the proposed subdivision and improvements required to service the surrounding areas specified in § 151.101, provided that improvement is beneficial to the municipality.

(B) Whenever the oversizing shall be deemed in the best interest of the municipality, the Municipal Manager shall, with the counsel of the Municipal Engineer, determine the total cost of the oversizing and make preliminary determinations concerning the extent of municipal participation in an oversizing project.

(C) Upon completion of the above calculations and prior to the commencement of construction, the information shall be presented to the Municipal Council who, after study, shall make the final determination concerning payment for oversizing costs. In making this determination, Council may be guided by the advice, study and recommendation of the Planning Board.

(D) No payment shall be made to the subdivider for such over-sizing until approval of Council has been secured by resolution, and until the work has been completed and accepted by the Municipal Engineer on behalf of the municipality.

### § 151.102 EXTENSION OF IMPROVEMENTS TO BOUNDARIES.

The subdivider shall be required to extend the necessary improvements to the boundary of the proposed subdivision to serve adjoining unsubdivided land.

### § 151.103 OFF-SITE EXTENSIONS.

If streets or utilities are not available at the boundary of a proposed subdivision, and if the Planning Board finds the extensions across undeveloped areas would not be warranted as a special assessment to the intervening properties or as a municipal expense until some future time, the subdivider may be required, prior to approval of the final plat, to obtain necessary easements or rights-of-way and construct and pay for such extensions. The improvements shall be available for connections by subdividers of adjoining land.

### § 151.104 FINAL INSPECTION.

Upon completion of all the improvements, the subdivider shall request, in writing, a final inspection by the Municipal Engineer as required under R.C. § 711.091 and Municipal Sanitary Engineer or County Health Department.

## *HILLSIDE REGULATIONS*

### § 151.110 SCOPE OF REGULATIONS.

Sections 151.110 through 151.122 shall apply to all hillside areas. A hillside area as referred to herein is defined as one with an average slope of more than 15%. The subdivider shall submit sufficient detailed information as to geologic conditions, soil types, and underground water level, in order that a determination can be made by the Municipal Engineer as to the safety of development of the particular location.

### § 151.111 DETERMINATION OF AVERAGE SLOPE.

The average slope for a hillside development shall be determined by the Planning Board during the time of preliminary subdivision design. Determination will be on an area-by-area basis, with each lot sized according to the average topographic change falling within each area.

### § 151.112 MINIMUM LOT REQUIREMENTS FOR SINGLE-FAMILY HOMES.

The minimum lot requirements set forth in “Appendix A” to this chapter shall be used to determine the minimum lot area for a single-family home. The average percent of slope is determined by the Planning Board. The lot area in thousands of square feet shall then be determined by charting the average natural ground slope and the minimum lot area. Rounding shall be made to the nearest five-foot frontage interval. Deviations from these requirements may be allowed subject to determination by the Planning Board where exceptional circumstances warrant.

## § 151.113 GRADING PLAN AND CONTROLS.

The grading plan shall show contour lines at 5-foot intervals where average slopes exceed 15% and at two-foot intervals where slopes are less than 15%. Elevations are to be based on the sea level datum (USGS), if available. The approximate lot layout and approximate dimensions shall be shown for each lot and each building site. Where pads are utilized or proposed for building sites, engineering data shall show the existing topography, and the approximate finished grades, location and size of each building site, and the finished grade of streets prior to consideration of the final plat.

## § 151.114 CUTS AND FILLS.

No land shall be graded, cut or filled so as to create a slope exceeding a vertical rise of one foot for each 2-1/2 feet of horizontal distance between abutting lots, unless a retaining wall of sufficient height and thickness is provided to retain the graded bank. Major cuts, excavation, grading and filling, where the same materially changes the site and its relationship with surrounding areas and materially affects such areas, shall not be permitted if the excavation, grading, and filling will result in a slope exceeding a vertical rise of one foot for each 2-1/2 feet of horizontal distance between abutting lots or between adjoining tracts of land, except where adequate provision is made to prevent slides and erosion by cribbing and retaining walls.
('80 Code, § 151.114)

## § 151.115 COMPACTION OF FILL.

All fill shall be compacted to a density of 90% or greater. Inspection of fill shall be conducted by the Municipal Engineer.

## § 151.116 RETAINING WALLS.

Retaining walls may be required whenever topographic conditions warrant, or where necessary to retain fill or cut slopes with the right-of-way. The improvements shall require the approval of the Municipal Engineer.

## § 151.117 MINIMUM HILLSIDE REQUIREMENTS.

The following regulations shall govern the front yard, side yard, street right-of-way and pavement requirements in hillside subdivisions.

| *Group* | *Percent of Slope* | *Front Yard* | *Side Yard In Percent of Lot Width* | *Right-of-way* | *Pavement* |
|---|---|---|---|---|---|
| 1 | 15 - 25% | 25 ft. | 10% | 50 ft. | 24 ft. |
| 2 | 26 - 30% | 23 ft. | 10% | 45 ft. | 22 ft. |
| 3 | 31% - Over | 20 ft. | 10% | 40 ft. | 20 ft. |

### § 151.118 STREET ALIGNMENT.

The following regulations shall govern street alignment.

(A) Vertical profile grades shall be connected by vertical curves up to 20%, but only for short, straight stretches.

(B) Waiver of visibility requirements may be given, subject to the approval of the Planning Board.

(C) Waiver of vertical curve requirements may be given, subject to the approval of the Planning Board.

### § 151.119 DRIVEWAYS.

The maximum grade on driveways shall not exceed 10%. Each drive shall provide sufficient space and distance to turn around prior to entering the street.

### § 151.120 SIDEWALKS.

Concrete sidewalks having a minimum width of four feet and having a minimum thickness of four inches shall be installed along the uphill side of Group one (15% through 25%) subdivisions.

### § 151.121 SEWAGE DISPOSAL.

Where public sewers are not available or reasonably accessible, a central treatment plant shall be installed by the subdivider in accordance with State and County Board of Health requirements. The use of individual systems shall be prohibited.

### § 151.122 UNDEVELOPED LAND.

Land subject to flooding, land with excessive slope, and land deemed by the Planning Board to be undesirable for development shall not be platted for residential occupancy, nor for such other uses as may involve danger to health, life or property, or may aggravate erosion or flood hazard. The land shall be set aside for compatible uses.

## *IMPROVEMENTS; SALE OF LAND*

### § 151.130 APPROVAL OF INSTALLATION OF IMPROVEMENTS.

(A) Periodic inspections during the installation of improvements shall be made by the municipality, to insure conformity with the approved plans and specifications. The subdivider or owner shall notify the proper administrative officers, when each phase of the installation is completed and ready for inspection.

(B) Upon completion of installation of the required improvements, the administrative officers charged with the responsibility for each of the various types of improvement shall issue a letter of approval to the developer or subdivider, and such letter shall be evidence for the release of a surety bond which shall have been furnished as a guarantee of satisfactory installation.

## § 151.131 PROPER INSTALLATION OF IMPROVEMENTS.

If, in the opinion of the administrative officers charged with the responsibility of inspection, the various types of the required improvements have not been constructed in accordance with the plans and specifications filed in their respective offices by the subdivider, the responsibility of the municipality shall cease. The subdivider and the bonding company will be severally and jointly liable for the costs of completing such improvements according to specifications. No plat which may be an extension, part or section of a previously recorded plat, and no new plat, regardless of location, shall be approved by the Board if the subdivider has not fully complied with the construction of all the required improvements in a previously recorded plat, submitted by him or her for approval. As a condition for the approval of the plat, the Board shall require that the conditions of the former agreement be met by the subdivider before the Board shall take action on the plat.

## § 151.132 EVIDENCE OF COMPLETION OF IMPROVEMENTS.

Whenever a subdivider has chosen to install the improvements prior to the approval of the Board, satisfactory evidence shall be submitted to the Board indicating that the required improvements have been completed to the satisfaction and according to the standards set up by the Municipal Engineer and Board of Health.

## § 151.133 SALE OF LAND WITHIN SUBDIVISIONS.

No owner or agent of the owner of any land located within a subdivision shall transfer or sell any land by reference to, exhibition of, or by a plat of the subdivision before such plat has been approved and recorded in the manner prescribed in these regulations. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of this code.

## § 151.997 BUILDING PERMIT FEES; ALLOCATION TO PARK FUND.

(A) (1) There is established a fee to be paid on each building permit issued for the construction of a residence structure in the municipality. This fee shall be determined as follows.

| ***NUMBER OF BEDROOMS*** | | | | | |
|---|---|---|---|---|---|
| | *0 - 1* | *2* | *3* | *4* | *5* |
| ***FEE*** | $20 | $30 | $40 | $50 | $60 |

(2) This fee is applicable to mobile homes and other industrially manufactured residential units where such units do not otherwise require a building permit but where it is required that they have a footer, foundation or other supporting slab or pad. And no permit shall be issued for the construction of such foundations, footers or pads and slabs until and at such time as the appropriate fee is paid.

(B) There is established a fee to be paid on each building permit issued for the construction of a commercial or business structure in the municipality. This fee shall be 0.2% of the cost of the work.

(C) The fees set forth in (A) and (B) above shall be used for the acquisition, purchase, development and equipping of neighborhood parks and park sites in the municipality, and all fees collected under this section shall be placed in the Park Fund.

(D) No building permit for the construction of a residence structure or a commercial or business structure in the municipality shall be issued unless and until the fee provided for in this section is paid on each such building permit issued.

(E) No person, firm or corporation shall receive or be entitled to receive the building permit for the construction of a residence structure or commercial or business structure in the municipality unless and until the fee provided for in this section is paid on each such building permit issued.

(F) Nothing contained in this section shall relieve or be interpreted as relieving any person, firm or corporation from complying with all other ordinances, laws, rules or regulations of the municipality or of any other governmental agency where they are now in force or hereafter enacted, regulating and governing the issuance of building permits for the construction of residence structures or commercial or business structures in the municipality.

(G) Notwithstanding provisions in this section to the contrary, Council may, at its sole option, enter into a contract with a person, firm or corporation, who or which is subject to the payment of the fees established in divisions (A) and (B) of this section. The contract shall provide that upon the execution and delivery by such a person, firm, or corporation of a deed of general warranty conveying to the municipality and its successors and assigns, a good and marketable title to the real estate described in the deed, free and clear of all liens and encumbrances thereon, such person, firm or corporation, upon executing and delivering the deed, shall receive a credit against the fees established in divisions (A) and (B), which credit shall be in an amount equal to the value of the real estate. The value of such real estate shall be determined by negotiation between the parties or agents for the parties.

(H) Notwithstanding provisions in this section to the contrary, Council may, in the case of a Planned Development, waive part or all of the fees established in divisions (A) and (B) of this section. The waiver may be granted when, in the opinion of Council, common areas, created and developed in a Planned Development pursuant to §§ 150.235 through 150.247, provide recreation opportunity for the residents of the areas which impose no measurable increment in the need for neighborhood park acreage.

(I) When invoking the waiver provisions contained in division (H) above, Council shall seek the written recommendations of the Planning Board and the Park Board.

(J) All persons, firms and corporations, who or which are subject to payment of the fees established in divisions (A) and (B) of this section, must pay the fee, unless and until such persons, firms or corporations are relieved of the payment thereof by Council in the manner provided in this section.
(Am. Ord. CM-1022, passed 8-13-91)

## § 151.998 FEES, CHARGES AND EXPENSES.

The following schedule of fees, charges and expenses, and a collection procedure for same, is established by the Municipal Council. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

(A) For a preliminary plat, there shall be a fee of $10 per lot, to be developed, to be collected prior to the official filing of the preliminary plat with the West Milton Planning Commission.

(B) For a final plat, there shall be a fee of $20 per lot, to be collected prior to the official filing of the final plat with the West Milton Planning Commission.

(C) For a minor subdivision (lot split) there shall be a fee of $50 per lot, collected at the time of submission for plat approval.

(D) For general inspection of required improvements, there shall be a fee of 1.5% of the total required improvements construction costs as approved and be certified by the Municipal Engineer, to be collected at the time of bonding for the improvements. Upon completion of the required improvements the municipality shall either reimburse or charge additional fees to the developer to cover the actual costs of the required inspections. In addition to the 1.5% fee, the developer shall also be required to pay $30 per hour minimum for any callback/return inspection necessary on the required improvements. This fee shall be paid prior to the municipality approving the required improvements. If required improvements are installed prior to final plat approval, the required fee shall be collected at the time inspection of completed improvements is requested by the developer.

(E) In the case of a large lot having more than one building site, there shall be a fee as follows.

(1) For a preliminary plat, there shall be a fee of $10 per acre, computed to the nearest tenth of an acre, to be collected prior to the official filing of the preliminary plat with the West Milton Planning Commission.

(2) For a final plat, there shall be a fee of $20 per acre, computed to the nearest tenth of an acre, to be collected prior to the official filing of the final plat with the West Milton Planning Commission.

(3) For general inspection of required improvements, there shall be a fee of $75 per acre, computed to the nearest tenth of an acre, to be collected at the time of bonding for such improvements. If required improvements are installed prior to final plat approval, the required fee shall be collected at the time inspection of completed improvement is requested by the developer.

(F) The Service Director shall be required to adopt guidelines which shall provide the developer with a comprehensive list of required inspections and items to be inspected. The contractor is required to provide the municipality reasonable notice when an inspection is necessary.
(Am. Ord. CM-1022, passed 8-13-91)

## § 151.999 PENALTY.

(A) Whoever violates any provision of this code, or any other rule or regulation adopted by the Council for the purpose of setting standards and requiring and securing the construction of improvements within a subdivision, or fails to comply with any order pursuant thereto, is creating a public nuisance, and the creation thereof may be enjoined and maintenance thereof may be abated by an action instituted by the municipality or any citizen thereof. Whoever violates these regulations shall forfeit and pay not less than $100 nor more than $1,000. Such sum may be recovered with costs in a civil action brought in the Court of Common Pleas of Miami County.

(B) A County Recorder who records a plat contrary to the provisions of this code shall forfeit and pay not less than $100 nor more than $500 to be recovered with costs in a civil action by the Prosecuting Attorney in the name and for the use of Miami County.

(C) Whoever, being the owner or agent of the owner of any land within or without the municipality, transfers any lot, parcel, or tract of such land from or in accordance with a plat of a subdivision before the plat has been recorded in the office of the County Recorder, shall forfeit and pay the sum of not less than $100 nor more than $500 for each lot of land so sold. The description of the lot by metes and bounds in the deed of transfer shall not serve to exempt the seller from the forfeiture provided in this section. The sum may be recovered in a civil action brought in the Court of Common Pleas of Miami County by the legal representative of the municipality in the name of the municipality.

(D) Any person who disposes of, offers for sale or leases for a time exceeding five years, any lot or any part of a lot in a subdivision before provisions of this code are complied with shall forfeit and pay the sum of not less than $100 nor more than $500 for each lot or part of a lot so sold, offered for sale, or leased, to be recovered with costs in a civil action, in the name of the Municipal Treasurer for the use of the municipality.

# CHAPTER 152: SUBDIVISION DESIGN AND CONSTRUCTION STANDARDS

Section

O Type “C” catch basin
P Type “D” catch basin
Q Standard manhole
R Standard drop manhole
S Water service installation detail
T Concrete blocking for bends and tees
U Typical sewer pipe trench

## *DESIGN STANDARDS*

### § 152.01 CONSTRUCTION DRAWINGS.

(A) Complete construction drawings, signed and approved by a registered engineer, shall be made for all new streets and other improvements to be constructed in any subdivision within the municipality. The drawings are to be approved by the Municipal Engineer before any construction may begin and before the plat of the subdivision may be recorded. Two sets of prints of the construction drawings shall be submitted to the Municipal Engineer for checking purposes before the drawings shall be approved.

(B) All grade elevations shall be based on U.S.G.S. or MCD datum.

(C) Construction drawings shall be on standard plan-profile linen Federal Aid Sheets at a scale of one inch = 50 feet horizontal, one inch = five feet vertical, or on other 24-by-36-inch plan-profile linen sheets at scale of one inch = 40 feet horizontal, and one inch = six feet vertical, as approved by the Municipal Engineer. Construction drawings shall show all necessary plans in sufficient detail for the complete construction of all work and improvements to be made in the plat. Final approved construction tracings shall be filed with the Municipal Office for permanent record.

(D) “As built” construction plan tracings shall be filed at the completion of the construction work prior to final acceptance of the subdivision by the municipality.

(E) All construction drawings shall show and include all of the items as shown in the following table.

| ***PLAN*** | ***PROFILE*** |
|---|---|
| *General* | |
| Typical street and curb sections | Stations and grid elevations |
| Construction notes | Curb elevations (25-foot stations) |
| Structure details | Label “Proposed Curb Grade” and “Existing Centerline Profile” |
| North arrow, preferably up or to the right | Station and centerline elevation of intersecting streets |
| Street names | Label “Curb Elevations” at upper left corner of grid |

| | |
|---|---|
| Centerline stations, from South to North and West to East where possible | |
| Easement for utility lines | |
| Pavement and right-of-way widths | |
| Lot numbers and dimensions | |
| Curb radius at intersections (if not covered in general notes) | |
| Curve data: Station P.C., P.T. and P.C.C. | |
| Sheet reference | |
| Plat section lines (show station) | |
| Existing pavement, headwalls, pipes, etc. | |
| Dimension utility locations | |
| Label sidewalk | |
| Curb elevations at each end of curb; radius at street intersections | |
| Direction of flow of water in gutter of curb radius at street intersections | |
| *Storm Sewer* | |
| Label each span (length and size) | Show length of span, size, grade, and class of pipe |
| Station low points | Label storm manhole, junction box, etc., and give street station for each |
| Catch basin types, where necessary | Give elevations of all pipe inverts at manholes except laterals |
| | Show elevation of top of manhole or inlet not in paved street. |
| *Sanitary Sewer* | |
| Label each span (length and size) | Show length of span, size and grade of pipe |
| Label type “D” manholes | Label sanitary manholes, and give station of each |
| Show sewer lateral pipes | Label type “D” manholes |
| | Give elevations of all pipe openings |
| *Water System* | |
| Label (size) | Show water main in profile |
| Show and note fittings, valves, and hydrants | |

| | |
|---|---|
| Hydrant connections should not cross storm sewer | |
| Show bends on curved streets if necessary | |
| Show water service pipes | |

## § 152.02 STORM SEWER DESIGN.

(A) Storm sewers in proposed developments and streets shall be designed by the rational method according to the following formula:

$$Q = A \times C \times \frac{16}{t}$$

Where:

Q = Runoff in cubic feet per second (cfs)

C = Runoff characteristic coefficient (80% for hard surfaces, 25% for all other surfaces, 35% average for all subdivisions)

A = Area drained, in acres

t = Time interval from beginning of rain to point of calculation, based upon an original inlet time of 20 minutes, plus the lapsed time interval, based on the velocity in pipe conduit or open ditch.

(1) The runoff coefficients shown in Appendix A to this chapter are calculated in accordance with the following formula:

$$\text{Coefficient} = C \times \frac{16}{\sqrt{t}} \quad \text{where } C = 0.25$$

(2) Velocity of flow in pipes is obtained from Chezy's Formula for discharge of pipes in flowing full:

[Please insert image here]

(3) Velocity of flow in open ditches is computed by Manning's Formula:

$$V = \frac{1.486}{n} \times R^{2/3} \times S^{1/2}$$

Where:

V = Velocity in feet per second

n = Roughness coefficient

R = Hydraulic radius (area - wetted perimeter)

S = Slope in feet per foot

(4) The flow in open ditches is determined by the formula:

$$Q = A V$$

Where:

Q = Volume in cubic feet per second (cfs)

A = Cross-sectional area in square feet

V = Velocity in feet per second

(5) The flow in pipe conduits may be computed by the above formula or may be taken from nomograph or flow and velocity charts.

(6) Roughness coefficients for storm sewer design are as follows:

(a) Concrete pipe:n = .012

(b) Open ditches: n = .0275 (based on uniform grassed slopes with no obstructions)

(7) The minimum allowable velocity for storm sewers shall be two feet per second.

(B) Pipe requirements.

(1) All pipe for storm sewers shall be concrete pipe unless otherwise approved by the Municipal Engineer, and shall be in accordance with applicable A.S.T.M. or State of Ohio Highway Department Specifications as designated by the Municipal Engineer.

(2) All storm sewers shall conform to the minimum requirements for cover as shown in Appendix B to this chapter.

(3) Where different-sized storm sewer pipes enter a storm manhole, the tops of the inner diameter shall be held at the same elevation. Elevations shall be shown on the storm sewer profile for each of the inverts on the different pipes.

(4) All storm sewers shall generally be offset parallel to, and eight feet from, the centerline of proposed roads or streets; or otherwise as approved by the Municipal Engineer.

(5) Minimum diameter of storm sewer laterals shall be 12 inches.

(6) Storm water flow in street gutters shall generally be intercepted by catch basins spaced at a maximum distance of 300 feet on all streets.

(7) Storm manholes shall be spaced at a maximum distance of approximately 300 feet.

(8) Storm sewer mains shall generally be located on the west and south sides of proposed streets.

***Cross-reference:***

*Catch basin design, see Appendices M through P to this chapter*
*Concrete blocking for bends and tees, see Appendix T to this chapter*
*Design capacity chart for circular sewers, see Appendix L to this Chapter*
*Drainage improvements, see § 151.097*
*Flood areas and storm drain ditches, see § 151.064*
*Manhole design, see Appendices Q and R to this chapter*
*Minimum and maximum cover over storm sewers, see Appendix B to this chapter*

## § 152.03 SANITARY SEWER DESIGN.

(A) All sanitary pipe, including all house laterals, shall be vitrified sewer pipe in accordance with ASTM specifications for class C-700 extra strength pipe, unless otherwise approved by the Municipal Engineer.

(B) All sanitary sewer designs shall meet the approval of the Municipal Engineer.

(C) The size required for all main sanitary sewer lines shall be designed and determined from the following table for expected CFS discharge.

| | |
|---|---|
| Areas of 30 acres | 0.80 C.F.S. |
| Areas of 50 acres | 1.20 C.F.S. |
| Areas of 80 acres | 1.60 C.F.S. |
| Areas of 110 acres | 2.00 C.F.S. |
| Areas of 180 acres | 2.80 C.F.S. |

(D) For acreage between those shown in (C) above, straight line interpolation may be used.

(E) Minimum allowable velocity of two FPS will be allowed. Minimum grades shall be as follows.

| | |
|---|---|
| 8 in. diameter | 0.40% |
| 10 in. diameter | 0.28% |
| 12 in. diameter | 0.22% |

| | |
|---|---|
| 15 in. diameter | 0.16% |
| 18 in. diameter | 0.12% |
| 21 in. diameter | 0.095% |
| 24 in. diameter | 0.08% |
| 27 in. diameter | 0.065% |

(F) The minimum acceptable cover over the top of any sanitary pipe is 4.0 feet.

(G) All joints for vitrified sanitary pipe shall be premium joints of the compression type as defined by ASTM designation C-425. Poured joints or slip seal type will not be accepted. Joints for concrete pipe shall be according to ASTM designation C-443.

(H) All sanitary sewer manholes are to be constructed with precast concrete manhole sections. Precast concrete manhole sections shall conform to ASTM designation C-478 and the joints between sections shall conform to ASTM designation C-443.

(I) If satisfactory materials other than vitrified clay or concrete are used for sanitary sewer pipe, the joints shall meet standards at least equal to the standards set forth above for clay and concrete pipes.

(J) All house laterals shall extend to a point at least two feet behind the street property line. All laterals shall be four inch minimum diameter vitrified sewer pipe (C-700). Minimum slope of laterals shall be 2%, unless otherwise approved by the Municipal Engineer. All connections shall be made above the centerline of the main with a saddle if possible, or any comparable fitting.

(K) All sanitary sewer mains shall generally be constructed on the centerline of all proposed streets, or as approved by the Municipal Engineer.

***Cross-reference:***

*Concrete blocking for bends and tees, see Appendix T to this chapter*
*Design capacity chart for circular sewers, see Appendix L to this chapter*
*Manhole design, see Appendices Q and R to this chapter*
*Sanitary sewer improvements, see § 151.096*

## § 152.04 WATER SYSTEM DESIGN.

(A) All water mains shall be constructed using Ductile Cast Iron pipe. Pipe shall conform to specifications ANSI A21,50-1976; AWWA C150-1976 and ANSI A21.51-1976; AWWA C151-1976, Class 53, Push-on type.

(B) Cement Mortar lining shall conform to AWWA C104; ANSI 21.4 specifications.

(C) All fittings shall conform to the latest applicable AWWA or ANSI specifications.

(D) All joints shall be Clow “Bell-Tite” joints or equivalent, with Clow “Cable-Bond” conductors, or equivalent, and continuity straps installed at each joint.

(E) Minimum depth of cover over the top of pipe shall be 48 inches, as measured to the finish grade of the street over the pipe.

(F) The size of water main required shall take into consideration the proposed master water distribution system of the municipality. Eight-inch water mains shall be the minimum size installed in all new developments for the purpose of supplying adequate quantities of water for fire hydrants. Six-inch fire hydrant connection lines shall be required. All dead-end water mains in cul-de-sac streets shall be terminated with a standard fire hydrant installation. All water main sizes must be approved by the Municipal Engineer.

(G) All fire hydrants shall be Traffic Model “500" by the Dresser Company, or equivalent, and shall be a “Break Flange” model hydrant. Hydrants shall be furnished with one 4-l/2 inch steamer nozzle with National Standard Threads, and two 2-l/2 inch discharge nozzles with male Dayton Standard Threads to fit couplings used by the municipal Fire Department.

(H) Fire hydrants shall be spaced to serve an area not to exceed 120,000 square feet for residential areas. Hydrants shall be set between the walk and curb at lot line extensions, and at corners of street intersections. Hydrant spacing shall be from 300 feet minimum to 400 feet maximum.

(I) A valve and box shall generally be set on each main each way from every tee or cross connection, or as directed by the Municipal Engineer. Where a long length of water main occurs in a street, with no branches off of it, a valve shall be placed at least every l,000 feet. All fire hydrants shall have a valve installed between the hydrant and the water main.

(J) All valves shall be butterfly valves of the rubber-seated tight-closing type. They shall meet or exceed performance requirements for water application of applicable recognized standards of AWWA Specification C-504. All valves shall be Dresser “450" butterfly valves, or approved equivalent. All valves shall be designed for working pressure of 150 p.s.i. and shall open by turning counterclockwise. Valves shall be provided with either bell or mechanical joints. All valves at dead ends of mains must be securely strapped to the main.

(K) All valve boxes shall be heavy duty, as manufactured by Clow or Tyler, or equivalent, with a two-piece 5-1/4 inch shaft, with the cover marked “WATER.” The box shall be of such length so as to extend upward to the finish grade of the ground or street pavement.

(L) All water services to single-family residences shall employ tubing with a minimum diameter of 3/4-inch, and shall extend to a point at least two feet behind the street property line. Water meters shall be placed at the direction of the municipality. The material for water services shall be type “K” Copper tubing, subject to the approval of the Municipal Engineer.

(M) (1) At the time of installation of copper water services, a No. two insulated seven-strand copper wire shall be laid in the trench with the water service pipe. This wire shall be firmly attached to the corporation stop at the water main with a suitable grounding clamp.

(2) The other end of this wire shall terminate near the ground surface in the standard curb box for easy connection to a welding machine.

(N) All water mains shall be generally constructed parallel to, and offset ten feet from, the centerline of the proposed street, on the side opposite the storm sewer, as approved by the Municipal Engineer, on the north or east sides of proposed streets.

***Cross-reference:***

*Water service installation detail, see Appendix S to this chapter*
*Water supply improvements, see § 151.094*

## § 152.05 STREET DESIGN.

(A) *Street grade.*

(1) Minimum street grade for purposes of drainage shall be a minimum of 0.4%.

(2) Maximum street grades shall be as follows:

(a) Arterial streets - 6%;

(b) Collector and minor streets - 8%.

(3) Street grades shall not exceed 3% within a distance of 100 feet from an intersection with another street centerline.

(B) *Street alignment.*

(1) *Vertical.* For all streets and thoroughfares, profile grades shall be connected by vertical curves of a minimum length equivalent to 20 times the algebraic difference between the rates of grade, expressed in feet per hundred feet. The minimum length of any vertical curve shall be 50 feet.

(2) *Horizontal.* The minimum radii of centerline of curvature of any proposed street shall be as follows:

(a) Arterial streets - 400 feet;

(b) Collector streets - 300 feet;

(c) Minor streets - 200 feet.

(3) A minimum 50-foot tangent shall be introduced between reverse curves.

(C) *Visibility requirements.*

(1) Minimum vertical visibility, measured from 4.5 feet (eye level) to l.5 feet (taillight level) shall be as follows:

(a) 500 feet on main thoroughfares;

(b) 300 feet on arterial streets;

(c) 200 feet on collector and minor streets;

(d) 100 feet on streets shorter than 500 feet.

(2) Minimum horizontal visibility shall be as follows:

(a) 300 feet on main thoroughfares, measured on the centerline;

(b) 200 feet on arterial streets, measured on the centerline;

(c) 100 feet on all other streets, measured on the centerline.

***Cross-reference:***

*Arterial street section, see Appendix D to this chapter*
*Collector street section, see Appendix E to this chapter*
*Minor street section, see Appendix F to this chapter*
*Street design generally, see § 151.053*
*Typical street and cul-de-sac plan, see Appendix G to this chapter*

## *CONSTRUCTION STANDARDS*

### § 152.10 GENERAL STANDARDS.

The recommended procedure for street and underground utility construction in a new subdivision shall generally be as follows.

(A) Excavate streets and compact any fill areas to subgrade elevations;

(B) Install all sanitary sewers;

(C) Install all water mains;

(D) Install all storm sewers;

(E) Install all electric, telephone and gas lines which are to cross the street in underground trenches;

(F) Reshape, grade and compact the street subbase to the required cross section before installing any base material;

(G) Construct concrete curb and gutter, and backfill;

(H) Construct concrete walk as required; place and compact street base as per specifications; and

(I) Complete surface treatment as per specifications.

## § 152.11 STREETS.

(A) *Subgrade.*

(1) Prior to the actual excavation for any street, all vegetation or other unsuitable material shall be cleared and scalped from the street right-of-way and removed.

(2) All streets shall be cored to the proposed subgrade elevation; the width of such work shall extend two feet back of the proposed curb. Any soft spots which may be encountered in the subbase shall be removed to sufficient depth as may be required by the Municipal Engineer, and replaced with a suitable granular material and compacted. The surface of the subbase shall be maintained in a generally smooth condition, and adequate drainage shall be provided at all times to prevent ponding of water. Subgrade is to be compacted to 90% modified proctor density.

(3) Any fill areas shall be constructed with suitable material placed in lifts not to exceed six inches. Each lift shall be thoroughly compacted to the satisfaction of the Municipal Engineer to 90% of modified proctor density. Fill material which does not contain sufficient moisture for proper compaction shall be sprinkled and mixed before compaction.

(4) Just prior to the placement of street base, the subgrade shall be shaped, rolled and compacted to its proper cross section to the satisfaction of the Municipal Engineer. Subbase shall be shaped to a tolerance of one-half inch at the centerline.

(B) *Base course.*

(1) The base material for any street shall be placed only after the subbase has been inspected and approved by the Municipal Engineer. The base material shall be placed in four-inch (compacted thickness) layers spread evenly upon the subbase to a true line and grade. The material for the entire base shall be item 304 crushed aggregate to meet State of Ohio Highway Department specification 703.04 with a sieve analysis as follows:

| *Sieve Size* | *Percent Passing* |
|---|---|
| 2 inch | 100 |
| 1 inch | 70 - 90 |
| 3/4 inch | 50 - 85 |
| No. 4 | 25 - 60 |
| No. 40 | 7 - 30 |
| No. 200 | 0 - 15 |

(2) All base material shall be graded, rolled and compacted to the true line and grade of the required cross section. Compaction shall be obtained by using a 3-wheeled roller or a tandem roller, each weighing at least ten tons. A self-propelled pneumatic tire roller weighing at least 18,000 lbs. with ballast may be used upon the approval of the Municipal Engineer. Water shall be applied uniformly over base material during compaction in an amount necessary to obtain maximum compaction.

(3) The finished surface of the street base shall not vary more than 3/8 inch from a 10-foot straight edge parallel to the centerline nor more than ½ inch from a template conforming to the required cross section of the street. The contractor shall furnish a straight edge or template satisfactory to the Municipal Engineer for checking the surface for conformance to the above requirements.

(C) *Street surface.*

(1) After the street base has been rolled and graded to the permissive tolerance of the required cross section and approved by the Municipal Engineer, the developer may proceed with the prime treatment and placing of asphaltic concrete. The rate of application shall be as shown on the typical street cross sections which are a part of these specifications.

(2) All material for paving work shall meet the specifications of the Ohio Department of Highways. Paving shall be done during the time period specified by Ohio Highway Department.

(3) The mixing plant for asphaltic concrete shall be state-approved. The paving contractor shall be state-qualified.

***Cross-reference:***

*Arterial street section, see Appendix D to this chapter*
*Collector street section, see Appendix E to this chapter*
*Minor street section, see Appendix F to this chapter*
*Street design generally, see § 151.053*
*Street subgrade generally, see § 151.086*

## § 152.12 TRENCHES FOR STORM SEWERS, SANITARY SEWERS AND WATER MAINS.

(A) *General standards.*

(1) The contractor shall perform all excavation necessary to the depth shown on plans. All excavated material not required for backfill shall be removed. Excavation shall not be carried below the required level for the pipe. Any excess excavation shall be backfilled at the contractor's expense with earth, sand, gravel or concrete as may be directed by the Municipal Engineer.

(2) All ground adjacent to trench excavations shall be graded to prevent water running into the trench. The contractor shall remove any water accumulation in the trench by pumping or other means as approved by the Municipal Engineer.

(B) *Trench excavation.*

(1) The sides of all trenches shall be kept vertical unless otherwise approved by the Municipal Engineer.

(2) Trenches shall be of sufficient width to allow six inches clearance on each side of pipe bell. Excavation for manholes shall have 12 inches minimum to 24 inches maximum clearance on all sides.

(3) All bedding for pipe shall be class "C" bedding or better. Pipe shall be bedded with "ordinary" care in soil foundation shaped to fit the lower part of pipe exterior with reasonable closeness for at least 10% of its overall height. Bell holes shall be excavated accurately to size by hand so that after pipe is in place only the barrel of the pipe receives bearing pressure from the trench bottom. The remainder of the pipe shall be surrounded by material placed by hand tools to fill completely all spaces under and adjacent to the pipe. Backfilling to the top of the pipe shall then be completed as specified in division (C) below.

(4) Where ledge rock or other unyielding material is encountered, excavation shall be carried to a depth of 1/4 the nominal diameter of the pipe below the bottom of the pipe, but in no case less than four inches. Granular bedding material shall then be uniformly spread in the trench bed, shaped and compacted according to above specifications for Class "C" bedding in division (B)(3) above.

(5) Contractors shall provide any shoring and bracing necessary to protect all excavations as may be required for safety or by governing laws.

(C) *Backfilling.*

(1) In unpaved areas, backfilling of pipe shall be accomplished by excavated material being placed over the pipe, which has been installed in a granular bed, in 6-inch layers. Each layer shall be thoroughly and carefully compacted until one foot of cover exists over the pipe. This initial backfill shall not contain any large stones, frozen lumps, chunks of highly plastic clay or other objectionable material. For trenches not within any paved areas, excavated material may be used for backfilling the remainder of the trench, provided that it is sufficiently compacted so as to avoid excess settlement. Filling of entire trenches within paved areas will require pit run or crusher run gravel, placed and compacted to the elevation of the subgrade of the street. Maximum size of pit run gravel shall be 4-inch stones.

(2) In lieu of the backfilling procedure set forth in division (C)(1) above, for trenches within the roadway areas of a street, trenches may be backfilled with earth, provided that sufficient compaction to the satisfaction of the Municipal Engineer can be obtained. If earth backfill is used, the material shall be placed in the trench in a maximum of 6-inch layers, moistened and mechanically tamped to at least the density of the surrounding unexcavated ground.

(3) Backfill of sandy soils may be water-settled, at the option of the Municipal Engineer. Water-settling will not be permitted in clay soils.

(4) The above specifications for trench backfill shall also apply to all backfill around manholes, catch basins or any other similar structures. No trash or other debris will be permitted in any backfill material or in any trenches prior to the backfill.

***Cross-reference:***

*Typical sewer pipe trench, see Appendix U to this chapter*

## § 152.13 STORM SEWERS.

(A) *General standards.*

(1) All storm sewers shall be designed and constructed in accordance with design standards for size and cover set forth in §§ 152.02 and 152.12.

(2) All concrete pipe used for storm sewers shall be of first class material only. No "seconds" will be permitted.

(3) All pipe shall be laid to a true and even grade and line as shown on the approved plans. Workmanship shall be first class at all times.

(4) Catch basins shall be constructed according to the standard drawing of the municipality.

(5) All specifications for trenches shall be carefully followed in the construction of all storm sewers.

(6) Line and grade stakes shall be set at regular intervals not to exceed 25 feet in spacing at a convenient offset parallel to the centerline of pipe not to exceed ten feet. Approved laser beam equipment may be used.

***Cross-reference:***

*Catch basin design, see Appendices M through P to this chapter*
*Concrete blocking for bends and tees, see Appendix T to this chapter*
*Flood areas and storm drain ditches, see § 151.064*
*Storm sewers and storm water drainage, see § 151.098*
*Typical sewer pipe trench, see Appendix U to this chapter*

## § 152.14 SANITARY SEWERS.

(A) *General standards.* Sanitary sewers shall be constructed in accordance with the specifications for design and trenches set forth in §§ 152.03 and 152.12.

(B) *Pipe laying.* Grade and line stakes at regular intervals, not to exceed 25 feet, shall be placed at any convenient offset from the centerline of the pipe not to exceed ten feet, except in unusual circumstances. Batter boards shall be carefully placed immediately following the excavating equipment and a continuous check on trench depth shall be maintained. Suitable equipment for measuring from a line drawn taut over the batter boards shall be supplied by the contractor. Such line shall be carefully located on the batter boards at the specified offset. The bottom man or pipe layer shall carefully prepare the bed for the pipe both from a grade and line standpoint. All rock or stones protruding above the prepared bed shall be removed so that in no case will rock touch the pipe. In no event will pipe be laid unless a minimum of three batter boards are in place and checked. All sanitary sewer shall be bedded in four inch minimum pea gravel or sand. Approved laser beam equipment may be used.

(C) *Sanitary sewer leakage test.*

(1) All sanitary sewers, including house laterals to the right-of-way line, shall be subject to an exfiltration test under the supervision of the Municipal Engineer. The contractor shall provide all necessary material, personnel, and equipment to make such test. The allowable amount of exfiltration shall be based upon the data of 100 gallons water per inch diameter per day per mile of pipe under a minimum head of four feet.

(2) As an alternate to the above exfiltration test with water the contractor may elect to test the line with a low-pressure air test. If this method is used, the following specifications shall apply.

(a) The contractor shall properly construct and brace the sewer system to municipal specifications for sanitary sewer construction, before requesting an air test.

(b) The sanitary main and all service laterals are to be tested at one time. No separate tests will be made for each.

(c) The contractor shall be responsible for the blocking and plugging of all service laterals.

(d) The contractor will furnish the main sewer plugs, equipment, gages and personnel to run them.

(e) The contractor shall furnish all labor and a method for furnishing air necessary for performing the test.

(3) The acceptance of any sanitary system by the municipality will be governed by the following procedure for air test.

(a) Plug all pipe outlets; brace each plug securely.

(b) Add air slowly to the portion of pipe installed and under test until the internal pressure is raised to 4.0 pounds per square inch gauge (p.s.i.g.).

(c) Check exposed pipe and plugs for abnormal leakage by coating with a soap solution. If leakage is observed, bleed off air and make the necessary repairs.

(d) After an internal pressure of four p.s.i.g. is obtained, allow at least two minutes for the air temperature to stabilize, adding only the amount of air required to maintain pressure.

(e) After a two-minute period, disconnect the air supply.

(f) When the pressure drops to 3.5 p.s.i.g., start the stop watch. Determine the time in seconds that is required for the internal air pressure to reach 2.5 p.s.i.g.; record this time. This time shall not be less than the time shown by graph or calculated by formula.

(g) Should the test fail, the contractor shall start a procedure whereby he will be able to isolate the failure, or failure points.

(4) When testing the sewer main and laterals in a residential area, consider the two as one by averaging (e.g., 8-inch main = 4-inch lateral = 12 divided by 2, or 6-inch sewer system for testing purposes). By using the graph or formula, a time can be determined. This time shall be the governing time for acceptance.

(5) All sanitary sewers constructed of concrete pipe shall be subjected to a water exfiltration test as previously described in division (C)(1) above.

(D) *Deflection test.*

(1) Deflection test shall be performed on all flexible pipe. The test shall be conducted after the final backfill has been in place for at least 30 days to permit stabilization of the soil-pipe system.

(2) No pipe shall exceed a deflection of 5%. If deflection exceeds 5%, replacement or correction shall be accomplished in accordance with requirements in the specifications and at the direction of the Municipal Engineer.

(3) The rigid ball or mandrel used for the deflection test shall have a diameter not less than 95% of the base inside diameter or average inside diameter of the pipe depending on which is specified in the ASTM Specifications. The pipe shall be measured in compliance with ASTM D 2122 Standard Test Method of Determining Dimensions of Thermoplastic Pipe and Fittings. The test shall be performed without mechanical pulling devices.

(4) A second deflection test shall be done 12 months after the initial installation or repairs. This test shall insure that the pipe has not deflected beyond the 95% level. If the pipe fails, division (C)(2) above shall apply.

(D) *Vacuum testing of manholes:*

(1) Each manhole shall be tested immediately after assembly and prior to backfilling. All lift holes shall be plugged with an approved non-shrink grout. No grout will be placed in the horizontal joints before testing. All pipes entering the manhole shall be plugged, taking care to securely brace the plugs from being drawn into the manhole.

(2) The test head shall be placed at the inside of the top cone section and the seal inflated in accordance with the manufacturer's recommendations. A vacuum of ten inches of mercury shall be drawn and the vacuum pump shut off. With the valves closed, the time shall be measured for the vacuum to drop to nine inches. The manhole shall pass if the time is greater than 60 seconds for a 48" diameter manhole, 75 seconds for a 60", and 90 seconds for a 72". If the manhole fails the initial test, necessary repairs shall be made with a non shrinking grout while the vacuum is still drawn. Retesting shall proceed until a satisfactory test is obtained. (Ord. CM-97-04, passed 3-12-97)

***Cross-reference:***

*Air test table, see Appendix C to this chapter*
*Concrete blocking for bends and tees, see Appendix T to this chapter*

## § 152.15 WATER MAINS.

(A) *General standards.* All water mains shall be constructed in accordance with the specifications for design and trenches set forth in §§ 152.02 and 152.12.

(B) *Inspection.*

(1) All materials furnished by the contractor are subject, at the discretion of the municipality, to inspection and approval at the plant of the manufacturer.

(2) All material found during the progress of the work to have cracks, flaws or other defects will be rejected by the Engineer. All defective materials furnished by the contractor shall be promptly removed by him or her from the site.

(C) *Responsibility for material.*

(1) The contractor shall be responsible for all material furnished by him or her, and shall replace at his or her own expense all such material found defective in manufacture, or damaged in handling after delivery

by the manufacturer. This shall include the furnishing of all material and labor required for the replacement of installed material discovered defective prior to the final acceptance of the work.

(2) Ductile iron pipe, fittings, valves, hydrants and accessories shall be loaded and unloaded by lifting with hoists or skidding so as to avoid shock or damage. Under no circumstances shall such materials be dropped. Pipe handled on skidways shall not be skidded or rolled against pipe already on the ground.

(3) Pipe shall be so handled that the coating and lining will not be damaged. If, however, any part of the coating or lining is damaged, the repair shall be made by the contractor at his expense in a manner satisfactory to the Engineer.

(D) *Alignment and grade.*

(1) The water main shall be laid and maintained in the required locations; spigots shall be centered in bells; and all valves and hydrant stems shall be plumb.

(2) The contractor shall proceed with caution in the excavation and preparation of the trench so that the exact location of underground structures, both known and unknown, may be determined; and he or she shall be held responsible for the repair of such structures when broken or otherwise damaged as a result of his or her work.

(E) *Excavation and preparation of trench.*

(1) The trench shall be dug so that the pipe can be laid to the alignment and depth required, and it shall be excavated only so far in advance of pipe-laying as permitted by the Engineer. The trench shall be so braced and drained that the workmen may work therein safely and efficiently. It is essential that the discharge of the trench dewatering pumps be conducted to natural drainage channels, drains or sewers.

(2) The width of the trench at the top of the pipe shall not exceed the nominal diameter of the pipe, plus two feet. Any variation therefrom should be made only at the order of the Engineer.

(3) Bell holes shall be provided at each joint to permit the jointing to be made properly.

(4) Ledge rock, boulders and stones shall be removed to provide a clearance of at least six inches below and on each side of all pipe, valves and fittings for pipes 24 inches in diameter or less, and nine inches for pipes larger than 24 inches in diameter.

(5) These specified minimum clearances are the minimum clear distances which will be permitted between any part of the pipe and appurtenances being laid and any part, projection or point of such rock, boulder or stone.

(6) The trench shall be excavated to a depth four inches below the bottom of the pipe, and all loose material removed by hand. The pipe shall than be bedded in compacted granular material placed on the trench bottom. The granular material may be sand, No. 9 gravel with sand, or pea gravel. Any part of the bottom of the trench excavated below the specified grade shall be corrected with approved material, thoroughly compacted as directed by the Engineer. The finished subgrade shall be prepared accurately by means of hand tools.

(7) Where the bottom of the trench at subgrade is found to be unstable or to include ashes, cinders, any type of refuse, vegetable or other organic material, or large pieces or fragments of inorganic material which in the judgment of the Engineer should be removed, the contractor shall excavate and remove such unsuitable material to the width and depth ordered by the Engineer. Before the pipe is laid, the subgrade shall be made by backfilling with an approved material in three-inch layers.

(8) The layers shall be thoroughly tamped as directed by the Engineer so as to provide a uniform and continuous bearing and support for the pipe at every point between bell holes, except that it will be permissible to disturb and otherwise damage the finished surface over a maximum length of 18 inches near the middle of each length of pipe by the withdrawal of pipe slings or other lifting tackle. The finished subgrade shall be prepared accurately by means of hand tools.

(9) Where excavation is made in rock or boulders, the trench shall be excavated at least six inches below the pipe if it is 24 inches or less in diameter, and nine inches below the pipe for pipes larger than 24 inches in diameter. The pipe shall then be bedded in compacted granular material placed on the trench bottom. The granular material shall conform to the material requirements set forth in the plans and specifications.

(F) *Laying.*

(1) Proper implements, tools, and facilities satisfactory to the Engineer shall be provided and used by the contractor for the safe and convenient prosecution of the work. All pipe, fittings, valves and hydrants shall be carefully lowered into the trench piece by piece by means of a derrick, ropes or other suitable tools or equipment, in such a manner as to prevent damage to water main materials and protective coatings and linings. Under no circum-stances shall water main materials be dropped or dumped into the trench.

(2) The pipe and fittings shall be inspected for defects and, while suspended above grade, be rung with a light hammer to detect cracks.

(3) Every precaution shall be taken to prevent foreign material from entering the pipe while it is being placed in the line. During laying operation, no debris, tools, clothing or other materials shall be placed in the pipe.

(4) After placing a length of pipe in the trench, the spigot end shall be centered in the bell and the pipe forced home and brought to correct line and grade. The pipe shall be secured in place with approved backfill material tamped under it, except at the bells. Pipe and fittings which do not allow a sufficient and uniform space for joints shall be removed and replaced with pipe and fittings of proper dimensions to insure such uniform space. Precautions shall be taken to prevent dirt from entering the joint space.

(5) At times when pipe laying is not in progress, the open ends of pipe shall be closed by a watertight plug or other means approved by the Engineer.

(6) The cutting of pipe for inserting valves, fittings or closure pieces shall be done in a neat and workmanlike manner, without damage to the pipe or cement lining and so as to leave a smooth end at right angles to the axis of the pipe.

(7) The flame cutting of pipe by means of an oxyacetylene torch shall not be allowed.

(8) Pipe shall be laid with bell ends facing in the direction of laying, unless directed otherwise by the Engineer.

(9) Deflections in pipe joints in excess of the manufacturer's recommendations shall not be permitted.

(10) No pipe shall be laid in water, or when in the opinion of the Engineer trench conditions are unsuitable.

(G) *Setting valves and fittings.*

(1) Valves, fittings, plugs and caps shall be set and jointed to pipe in the manner heretofore specified for cleaning, laying and jointing pipe.

(2) Valves in water mains shall, where possible, be located on the street property lines extended, unless shown otherwise on the plans.

(3) A valve box (or a masonry pit where specified) shall be provided for every valve.

(4) A valve box shall not transmit shock or stress to the valve, and shall be centered and plumb over the wrench nut of the valve, with the box cover flush with the surface of the finished pavement or such other level as may be directed.

(H) *Setting hydrants.*

(1) Hydrants shall be located as shown or as directed, and in a manner so as to provide complete accessibility; and in such a manner that the possibility of damage from vehicles or injury to pedestrians will be minimized.

(2) When placed behind the curb, the hydrant barrel shall be set so that no portion of the pumper or hose nozzle cap will be less than 12 inches from the gutter face of the curb.

(3) All hydrants shall stand plumb, and shall have their nozzles parallel with or at right angles to the curb, with the pumper nozzle facing the curb; however, hydrants having two hose nozzles 90 degrees apart shall be set with each nozzle facing the curb at an angle of 45 degrees. Hydrants shall be set to the established grade, with nozzles at least 12 inches above the ground as shown or directed by the Engineer.

(4) Each hydrant shall be connected to the main with a 6-inch ductile iron branch controlled by an independent 6-inch butterfly valve, except as otherwise directed.

(5) When so specified, or shown on the plans, a drainage pit two feet in diameter and two feet deep shall be excavated below each hydrant, and shall be filled compactly with coarse gravel or crushed stone mixed with coarse sand, under and around the elbow of the hydrant and to a level of six inches above the waste opening. No drainage pit shall be connected to a sewer.

(I) *Anchorage.*

(1) The bowl of each hydrant shall be well braced against unexcavated earth at the end of the trench with blocking as shown on the drawings or as directed by the Engineer.

(2) All plugs, caps, tees and bends shall be provided with a reaction backing, or movement shall be prevented by attaching suitable metal rods or clamps as shown or specified.

(3) Reaction backing shall be a concrete equal in all respects to "Ohio State Highway Material Specifications" Class "F" Concrete. Backing shall be placed between solid ground and the fitting to be anchored; the area of bearing on the pipe and on the ground in each instance shall be that shown or directed by the Engineer. The backing shall, unless otherwise shown or directed, be so placed that the pipe and fitting joints will be accessible for repair.

(4) Metal harness of tie rods or clamps of adequate strength to prevent movement may be used instead of concrete backing, as directed by the Engineer. Steel rods or clamps shall be painted with one prime coat equivalent to Inertol Primer #626 and two finish coats equivalent to Inertol Standard Thick Black, or as may be directed by the Engineer.

(J) *Hydrostatic tests.*

(1) For the purpose of this division, ***LEAKAGE*** shall mean the quantity of water to be supplied into the newly laid pipe, or any valved section thereof, necessary to maintain the specified leakage test pressure after the pipe has been filled with water and the air expelled.

(2) After the pipe has been laid and backfilled, all newly laid pipe, or any valved section thereof, shall be subjected to a hydrostatic pressure and leakage test.

(3) Each valved section of pipe shall be slowly filled with water and the specified test pressure, based on the elevation of the lowest point of the line or section under test and corrected to the elevation of the test gage, shall be applied by means of a pump connected to the pipe in a manner satisfactory to the Engineer. The contractor shall furnish the pump, pipe connections and all other necessary apparatus and assistance to conduct the test. Gages for the test shall be furnished by the contractor or by the owner, at the owner's option.

(4) Before applying the specified test pressure, all air shall be expelled from the pipe. The duration of each pressure and leakage test shall be two hours. During the test the main shall be subjected to a hydrostatic pressure of 150 pounds per square inch.

(5) No pipe installation will be accepted unless the leakage is not more than three gallons per hour per inch diameter per mile of pipe. Should any test of pipe laid disclose leakage greater than that specified, the contractor shall locate and repair the defective joints, pipes, fittings or the like until the leakage is within the specified allowance, and the line shall be again tested until proven satisfactory to the Engineer.

(K) *Chlorination.* After the main is completed and tested, the contractor shall make the necessary arrangements with the Municipal Superintendent of Water, for chlorination. The contractor shall furnish connections or other facilities required and shall pay all charges of the municipality for this work. After chlorination, the contractor shall remove all temporary connections and fill all excavations made.

***Cross-reference:***

*Water service installation detail, see Appendix S to this chapter*

## § 152.16 SIDEWALKS, CURBS AND GUTTERS.

All new construction abutting any highway, street or thoroughfare shall be required to have sidewalk, curb and gutter conforming to the following design and construction standards.

(A) *General standards.* All grades for curb and gutter construction shall be set by the developer's engineer. Stakes shall be set at least every 25 feet, and at all PCs and PTs of all radius curb. The contractor shall be responsible for protecting such stakes and any other markers set for grade and line control.

(B) *Forms.* Steel forms shall be used to form the front and back sides of combined curb and gutter. All forms and templates shall conform to the exact contour of the curb as shown on the standard drawings. All forms and rails set on a radius of 200 feet or less shall be of a flexible type, so that a true curve will be held at all times.

(C) *Curb sections and joints.* Curb sections shall be a maximum of ten feet in length. Expansion joints shall be spaced at a maximum of 30 feet. Expansion joint material shall be 1/2-inch premolded bituminous material, and shall conform to the cross section of the curb and gutter. Expansion joints will be required when any sidewalk or curb and gutter abuts any existing sidewalks or curb. Sidewalks shall be grooved with an edging tool one inch deep every four feet.

(D) *Finish.* All concrete shall be given a reasonably smooth uniform float finish (broom finish) with all edges rounded. The gutter line shall be true to grade and unobstructed by expansion joints or uneven contraction joints.

(E) *Protection.* After concrete has attained its set, it shall be cured with a white transparent waterproof membrane. The membrane shall be applied as fine mist spray application at the rate of one gallon per 200 square feet. The contractor shall at all times provide protection against weather, rain, wind, storms, frost and heat so as to maintain all work and materials free from injury or damage. Minimum air temperature shall be 40°F., with concrete protected a minimum of five days at 50°F. or three days at 70°F.

(F) *Cement.* All cement shall be portland cement, and shall meet ASTM specifications C 150 types I or III, or air-entraining; portland cement ASTM C 175 type one A or 111 A.

(G) *Concrete mix.*

(1) All concrete shall be according to "State of Ohio Highway Department Specifications" for Class "C" concrete, as shown below:

| ***Type of Coarse Aggregate*** | ***Dry Aggregates (lbs. per 94 lb. sack of cement)*** | | | ***Cement Content (per cu. yd. of concrete, sacks)*** | ***Net Water Content (Gal. per sack, min.)*** |
|---|---|---|---|---|---|
| | *Fine Agg.* | *Coarse Agg.* | *Total* | | |
| *Gravel* | 265 | 195 | 460 | 6.0 | 5.0 |
| *Limestone* | 285 | 175 | 460 | 6.0 | 5.0 |
| *Slag* | 300 | 140 | 440 | 6.0 | 5.0 |

(2) All concrete shall have 6% air entrainment.

(H) *Placing concrete.*

(1) The contractor shall take due precaution in placing concrete to insure a first-class product. All concrete shall be spaded thoroughly to insure contact with the forms at all points and to eliminate any honeycomb. Concrete shall be placed only on a thoroughly compacted subbase as shown on the municipal drawings for streets. The excavation for curb and gutter shall be made to allow for the subbase material to be placed and compacted prior to the setting of any forms. Where fill is necessary to obtain proper subgrade, crushed material shall be used for such fill, thoroughly tamped and compacted. All excavation shall be maintained in a dry condition prior to the placing of concrete. Water and mud shall be removed from all forms and dry material placed to assure a dry trench.

(2) All utility trenches crossing the line of the curb and gutter shall be thoroughly compacted and tamped to provide proper settlement prior to the placing of any concrete.

(I) *Automatic curb and gutter machine.*

(1) At the developer's option, subject to approval by the Municipal Engineer, an automatic machine may be used for the placing of concrete curb and gutter. The cross section template for the curb shall conform exactly to the curb cross section as shown on standard drawings of the municipality. All of the other above specifications shall apply, except that the mix shall be changed to the following.

*For One Cubic Yard of Concrete:*

1950 lbs. sand SSD 4% moisture
564 lbs. cement (6 sacks)
1442 lbs. 3/8-inch gravel or crushed stone
16 gal. water

(2) Whenever such a curb machine is used, expansion joints shall be placed at a minimum distance of every 100 feet.

(J) *Sewer and water lateral marks.* The contractor shall mark newly constructed curb and gutter with "W" for water service and "S" for sewer lateral over lateral locations for future reference.
(Am. Ord. CM-782, passed 3-10-87)

***Cross-reference:***

*Driveway approaches, see Appendix J to this chapter*
*Integral curb and sidewalk, see Appendix I to this chapter*
*Pedestrian ramps, see Appendix K to this chapter*
*Replacement curb; standard barrier curb, see Appendix H to this chapter*
*Sidewalks generally, see § 151.066*
*Street curb and gutter generally, see § 151.089*

## § 152.17 STREET AND WALKWAY LIGHTING.

(A) An overall plan for street and walkway lighting for any subdivision that is planned for development within the municipality shall be submitted by the subdivider as a part of, or supplemental to, the preliminary plan that is presented for review by the Planning Commission of the municipality.

(B) The street and walkway lighting plan shall be developed in conjunction with recommendations of the Dayton Power and Light Company and the Municipal Engineer.

(C) The contractor shall be responsible for excavation and backfill of trenches which will be required for installation of underground services to street light poles. The Dayton Power and Light Company, in accordance with a contractual agreement with the municipality, shall install service lines and poles and lights at locations specified on the lighting plan.

***Cross-reference:***

*Street and walkway lighting, see § 151.092*

## § 152.18 STREET TREES.

(A) A general tree-planting plan shall be submitted to the Planning Board of the municipality at the time the preliminary plan is being reviewed.

(B) Existing trees should be retained in new subdivisions wherever possible.

(C) No trees or shrubbery shall be located within any street or road right-of-way.

***Cross-reference:***

*Street trees generally, see § 151.093*

## § 152.19 STREET DRIVEWAY ENTRANCES.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***COMMERCIAL DRIVEWAY.*** A driveway providing access to a commercial establishment.

***INDUSTRIAL DRIVEWAY.*** A driveway providing access to an industrial establishment.

***RESIDENTIAL DRIVEWAY.*** A driveway providing access to a residence.

***STREET DRIVEWAY ENTRANCE WIDTH.*** Width of driveway measured at the street right-of-way line.

***STREET DRIVEWAY ENTRANCE.*** Any area constructed within the public right-of-way, connecting the paved public roadway with private property for the purpose of providing access for motor vehicles to private property.

(B) No street driveway entrance shall interfere with municipal facilities such as street light poles, traffic signal standards, signs, catch basins, hydrants, crosswalks, utility poles, underground utilities or ducts or other

necessary street structures. Arrangements shall be made with the proper authority for the adjustment or relocation of the facility affected and adjustments made in the driveway design before a permit may be issued.

(C) Any construction granted by the Director of Public Safety and/or Municipal Manager pursuant to this section may be revoked by him or her at any time the terms of this section are being violated, or when the continued exercise of a privilege constitutes a menace to the public safety or is an unreasonable use of the public streets or right-of-ways.

(D) Each commercial/industrial driveway/parking shall consist of an improved surface of concrete, asphalt or brick, and the property shall be limited to the following number of street driveway entrances:

(1) For the first 150 feet of property frontage along a street right-of-way line, a maximum of two driveways.

(2) For each additional 100 feet of property frontage along a street right-of-way line, a maximum of one additional driveway. In no case shall more than 60% of the property frontage along a street right-of-way line be used for driveway purposes.

(E) At the intersection of a minor street and a secondary thoroughfare, street driveway entrances shall not be constructed within 30 feet of the intersecting street right-of-way lines.

(F) At the intersection of a minor or secondary thoroughfare with a major thoroughfare, street driveway entrances when located on the major thoroughfare shall not be constructed within 50 feet of the intersecting street right-of-way lines.

(G) The minimum street driveway entrance width for a commercial or industrial driveway shall be 12 feet and the maximum shall be 40 feet.

(H) The minimum distance between two adjacent commercial or industrial driveways shall be 20 feet.

(I) Driveways/parking for single-family and multi-family dwellings. Driveways and associated off-street parking areas shall be provided for residences in accordance with the following standards:

(1) Driveway/parking shall consist of an improved surface of concrete, asphalt or brick;

(2) Driveway/parking shall not cover more than 14% of an entire lot nor shall they cover more than 35% of front yard;

(3) Driveway/parking shall be located in accordance with the following regulations:

(a) The location shall be approved by the Director of Public Service and/or Municipal Manager.

(b) The location may be in a required front, side or rear yard in accordance with the following regulations:

1. Vehicles shall not be parked:

a. On lawns or other unpaved areas;

b. Where they extend over any portion of a lot line or public sidewalk; or

c. Within an unobstructed sight zone.

2. The location of parking areas shall typically be in front of and not wider than the garage for the residence with the maximum width of the driveway limited to 20 feet when not within 25 feet of the garage.

3. The rear yard shall not be paved for parking unless it is also the location of a garage.

4. Ancillary parking is permitted on circular driveways and/or on parking pads adjacent to driveways.

a. Parking pads shall not be located within side yard setbacks.

b. Parking pads are limited to one per property for a maximum of two vehicles.

(4) Illustrative driveway/parking layouts:

(a) Driveway/parking examples of permitted layouts.

(b) Driveway/parking examples of layouts that are not permitted.

(J) At a property line, with an adjacent property or alley, a curb length of not less than three feet shall be left undisturbed between the near edge of the driveway and the property line projected at right angles to the curb line. A curb length is not required between the near edge of a driveway and the projected property line in a cul-de-sac.

(K) The Director of Public Service and/or manager may relax the requirements of this section to the extent deemed just and proper, so as to relieve any difficulty or hardship, provided the relief may be granted without detriment to the public safety and without impairing the intent and purpose of this section.
(Am. Ord. CM-782, passed 3-10-87; Am. Ord. CM-18-06, passed 3-13-2018)

## § 152.20 SUMP AND DOWNSPOUT DRAINS.

All new subdivision or lots abutting and/or installing any highway, street or thoroughfare shall be required to install drains and service laterals conforming to the following design and construction standards.

(A) *General.* Sump and downspout drains are required on both sides of the street, and shall provide service to each lot. All sump pumps and downspouts shall be connected to the underdrain system.

(B) *Excavation.* Trench excavation shall be of such dimensions in all cases as will give ample room for construction. In no case shall the trench widths be less than eight inches (4 inches on each side) wider than the outside diameter of the pipe.

(C) *Laying pipe.* The pipe shall have a minimum size of six inches, and may be larger if directed by the municipality. The pipe shall be laid true to line and grade and it shall be located 12 inches behind the curb or as directed by the Engineer. The sump and downspout drains shall have a depth of approximately two-3 feet. Lateral connections shall be made with suitable branches and bends. The upper ends of pipe sump and downspout drains shall be closed with suitable plugs. –12 or approved equal is the preferred pipe for installation.

(D) *Underdrain cleanouts.* Underdrain cleanouts behind the curb should be provided at a desirable interval of 200 feet with a maximum interval of 400 feet.

(E) *Sump and downspout drains.* Sump and downspout drains outlets should be at least one foot above the flowline of the receiving ditch, catch basin, storm manhole or storm pipe. Where necessary, the depth of the sump and downspout drains may vary slightly to accomplish this.

(F) *Backfilling.* The sump and downspout drains shall be inspected before any granular filter material is place. The granular filter materials shall be made from durable No. 8 or No. 57 size gravel stone. It shall be placed for the full width of the trench around the pipe and shall extend to within six inches of the finish grade. The remainder of the trench shall be backfilled with topsoil.

(G) *Lateral connections.* Lateral connections shall be made with suitable branches and bends. The lateral line shall be run to the property line in the center of the lot. The upper ends of the lateral line shall be closed with suitable plugs. The curb shall be marked (inscribed) with a “U” at the location of the drain lateral. One lateral connection shall be required for each lot.
(Ord. CM-96-36, passed 10-8-1996)

## *APPENDIX A: TABULATION OF VALUES OF RUN-FF COEFFICIENTS BASED ON TIME IN MINUTES*

(To be used in connection with run-off charts)

| *Time in Minutes* | *Run-off Coefficient* | *Time in Minutes* | *Run-off Coefficient* |
|---|---|---|---|
| 20 | 1.25 | 41 | 0.87 |
| 21 | 1.22 | 42 | 0.86 |
| 22 | 1.18 | 43 | 0.85 |
| 23 | 1.17 | 44 | 0.84 |
| 24 | 1.14 | 45 | 0.83 |
| 25 | 1.12 | 46 | 0.83 |
| 26 | 1.10 | 47 | 0.82 |
| 27 | 1.08 | 48 | 0.81 |
| 28 | 1.06 | 49 | 0.80 |
| 29 | 1.04 | 50 | 0.79 |
| 30 | 1.02 | 51 | 0.78 |
| 31 | 1.01 | 52 | 0.78 |
| 32 | 0.99 | 53 | 0.77 |
| 33 | 0.97 | 54 | 0.76 |
| 34 | 0.96 | 55 | 0.76 |
| 35 | 0.95 | 56 | 0.75 |
| 36 | 0.93 | 57 | 0.74 |
| 37 | 0.92 | 58 | 0.74 |
| 38 | 0.91 | 59 | 0.73 |
| 39 | 0.90 | 60 | 0.72 |
| 40 | 0.89 | | |

| ***APPENDIX B: MINIMUM AND MAXIMUM COVER OVER STORM SEWERS*** | | | | | | | |
|---|---|---|---|---|---|---|---|
| *ASTM Spec. No.* | *C-14 Table 1* | *C-14 Table 2* | *C-76 CL. 1* | *C-76 CL. 2* | *C-76 CL. 3* | *C-76 CL. 4* | *C-76 CL. 5* |
| *State No.* | | *706.01* | *706.02 CL. I* | *706.02 CL. II* | *706.02 CL. III* | *706.02 CL. IV* | *706.02 CL. V* |
| 12 in. | 6-7 | 3-14 | | 4-8 | 3-14 | 2-30 | 2-40 |
| 15 in. | 6-7 | 3-13 | | 3.5-8 | 3-14 | 2-30 | 2-40 |
| 18 in. | 6-7 | 3-13 | | 3.5-8 | 3-13 | 2-30 | 2-40 |
| 21 in. | 6-7 | 3-13 | | 3.5-9 | 3-13 | 2-30 | 2-40 |
| 24 in. | 6-7 | 3-13 | | 3-10 | 2.5-16 | 2-30 | 1.5-40 |
| 27 in. | | | | 3-10 | 2.5-17 | 2-30 | 1.5-40 |
| 30 in. | | | | 3-11 | 2.5-17 | 1.5-30 | 1.5-40 |
| 36 in. | | | | 2.5-11 | 2.0-17 | 1.5-30 | 1.0-40 |
| 42 in. | | | | 2.5-10 | 2.0-15 | 1.0-30 | 1.0-40 |
| 48 in. | | | | 2.5-10 | 2.0-15 | 1.0-30 | 1.0-40 |
| 54 in. | | | | 2.0-10 | 1.5-15 | 1.0-30 | 1.0-40 |
| 60 in. | | | 2.5-8 | 2.0-11 | 1.5-15 | 1.0-30 | 1.0-40 |
| 66 in. | | | 2.5-8 | 2.0-11 | 1.0-16 | 1.0-30 | 1.0-40 |
| 72 in. | | | 2.0-8 | 1.5-11 | 1.0-16 | 1.0-30 | 1.0-40 |
| 78 in. | | | 2.0-9 | 1.5-11 | 1.0-17 | 1.0-30 | 1.0-40 |
| 84 in. | | | 2.0-9 | 1.5-11 | 1.0-17 | 1.0-30 | 1.0-40 |
| 90 in. | | | 2.0-9 | 1.5-12 | 1.0-17 | 1.0-30 | 1.0-40 |
| 96 in. | | | 1.5-9 | 1.0-12 | 1.0-17 | 1.0-30 | 1.0-40 |
| 102 in. | | | 1.5-9 | 1.0-12 | 1.0-17 | 1.0-30 | 1.0-40 |
| 108 in. | | | 1.5-9 | 1.0-12 | 1.0-17 | 1.0-30 | 1.0-40 |

## *APPENDIX C: AIR REST TABLE*

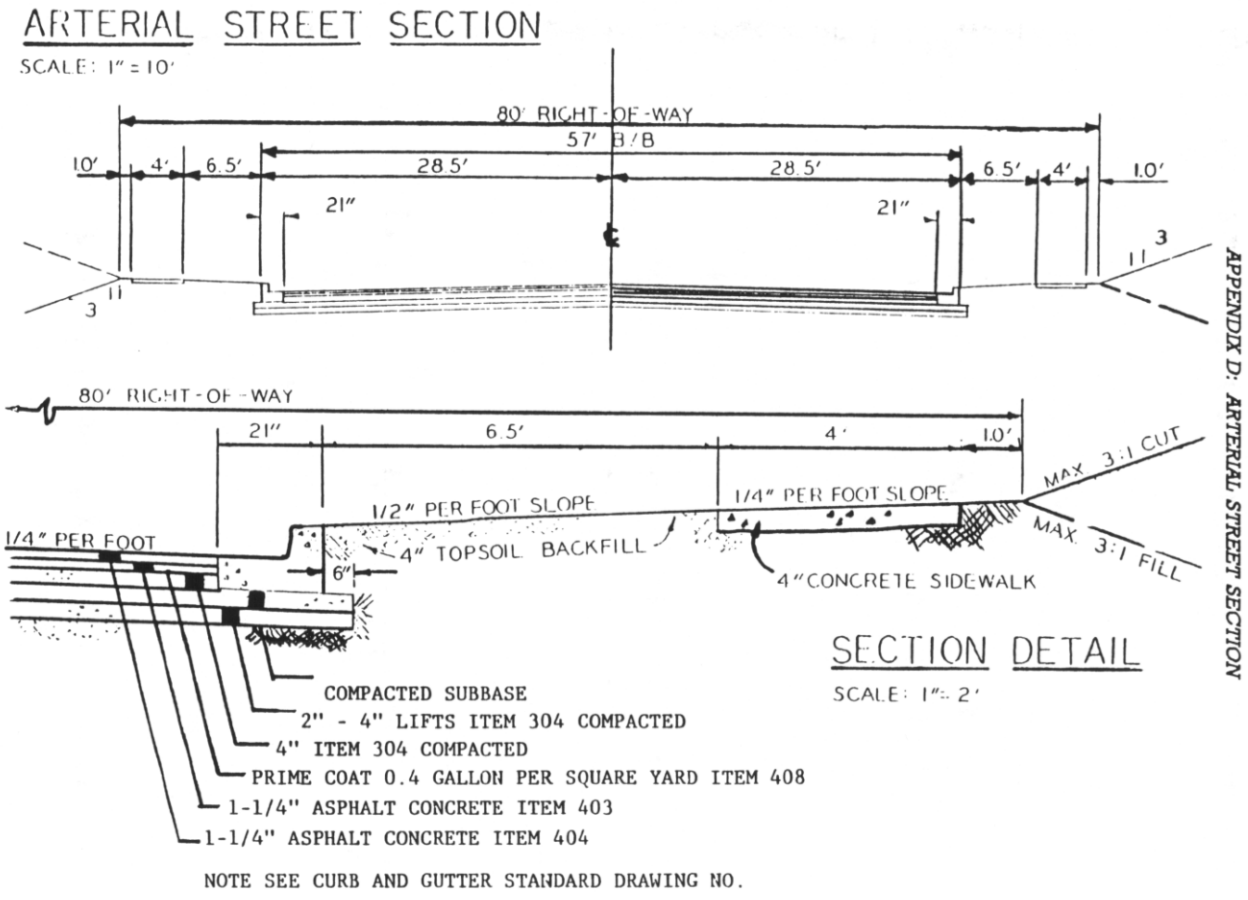
Based on equations from ASTM C 828

Specification Time (min:sec) required for pressure drop from 3-1/2 to 2-1/2 PSIG when testing one pipe diameter only (no laterals)
Pipe diameter, inches

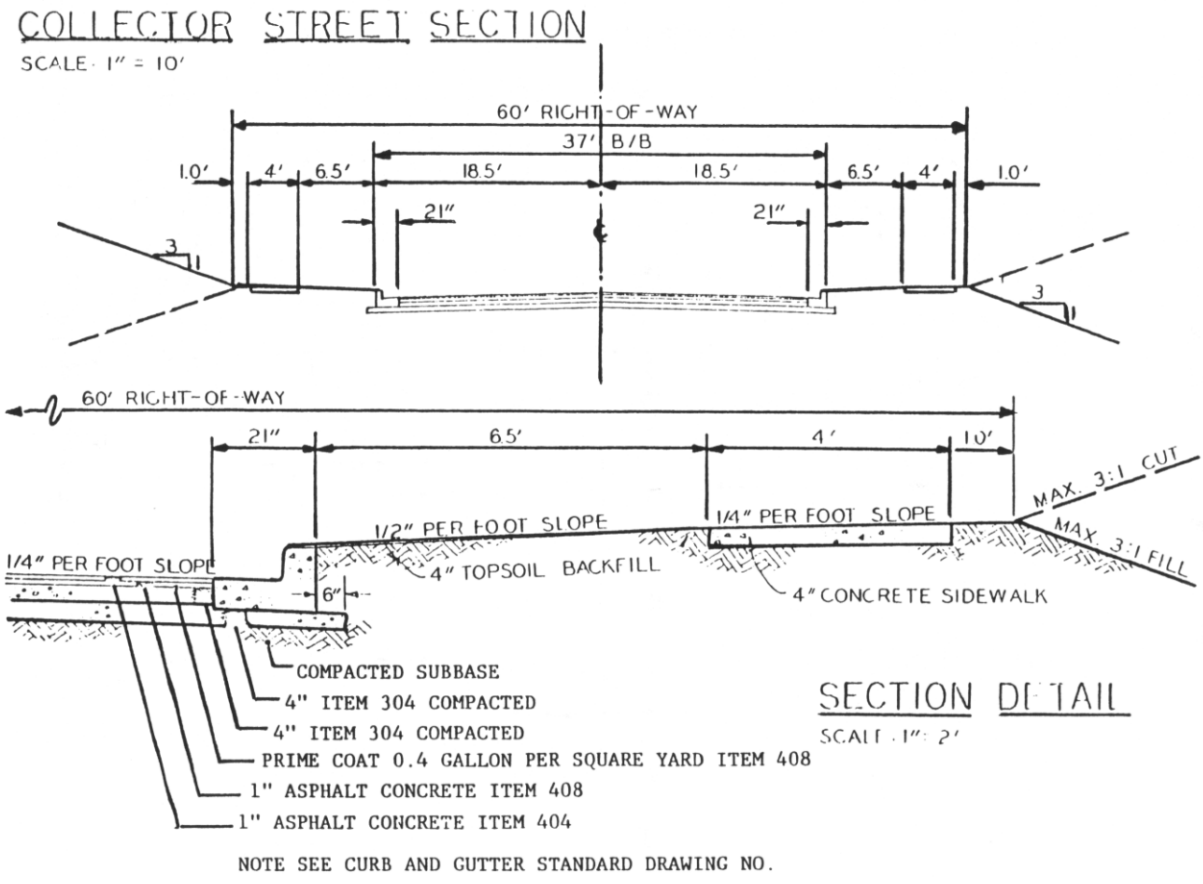
Length of line, feet

| | | 4 | 6 | 8 | 10 | 12 | 15 | 18 | 21 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|
| | 25 | 0:04 | 0:10 | 0:18 | 0:28 | 0:40 | 1:02 | 1:29 | 2:01 | 2:38 |
| | 50 | 0:09 | 0:20 | 0:35 | 0:55 | 1:19 | 2:04 | 2:58 | 4:03 | 5:17 |
| | 75 | 0:13 | 0:30 | 0:53 | 1:23 | 1:59 | 3:06 | 4:27 | 6:04 | 7:55 |
| | 100 | 0:18 | 0:40 | 1:10 | 1:50 | 2:38 | 4:08 | 5:56 | 8:05 | 10:34 |
| | | | | | | | | | | |
| | 125 | 0:22 | 0:50 | 1:28 | 2:18 | 3:18 | 5:09 | 7:26 | 9:55 | 11:20 |
| | 150 | 0:26 | 0:59 | 1:46 | 2:45 | 3:58 | 6:11 | 8:30 | – | – |
| | 175 | 0:31 | 1:09 | 2:03 | 3:13 | 4:37 | 7:05 | – | – | – |
| | 200 | 0:35 | 1:19 | 2:21 | 3:40 | 5:17 | – | – | – | 12:06 |
| | | | | | | | | | | |
| | 225 | 0:40 | 1:29 | 2:38 | 4:08 | 5:40 | – | – | 10:25 | 13:36 |
| | 250 | 0:44 | 1:39 | 2:56 | 4:35 | – | – | 8:31 | 11:35 | 15:07 |
| | 275 | 0:48 | 1:49 | 3:14 | 4:43 | – | – | 9:21 | 12:44 | 16:38 |
| | 300 | 0:53 | 1:59 | 3:31 | – | – | – | 10:12 | 13:53 | 18:09 |
| | | | | | | | | | | |
| | 350 | 1:02 | 2:19 | 3:47 | – | – | 8:16 | 11:54 | 16:12 | 21:10 |
| | 400 | 1:10 | 2:38 | – | – | 6:03 | 9:27 | 13:36 | 18:31 | 24:12 |
| | | | | | | | | | | |
| | 450 | 1:19 | 2:50 | – | – | 6:48 | 10:38 | 15:19 | 20:50 | 27:13 |
| | 500 | 1:28 | – | – | 5:14 | 7:34 | 11:49 | 17:01 | 23:09 | 30:14 |

## *APPENDIX D: ARTERIAL STREET SECTION*

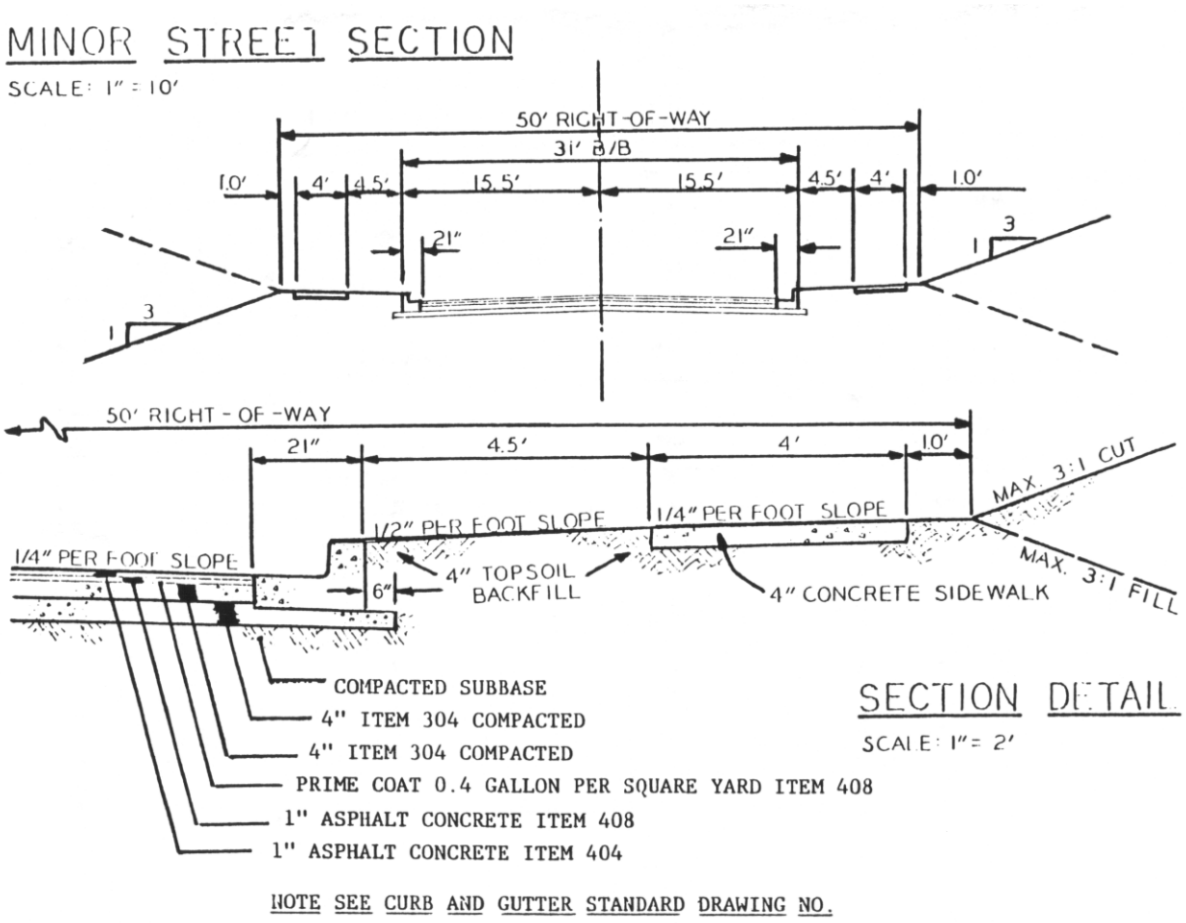


## *APPENDIX E: COLLECTOR STREET SECTION*



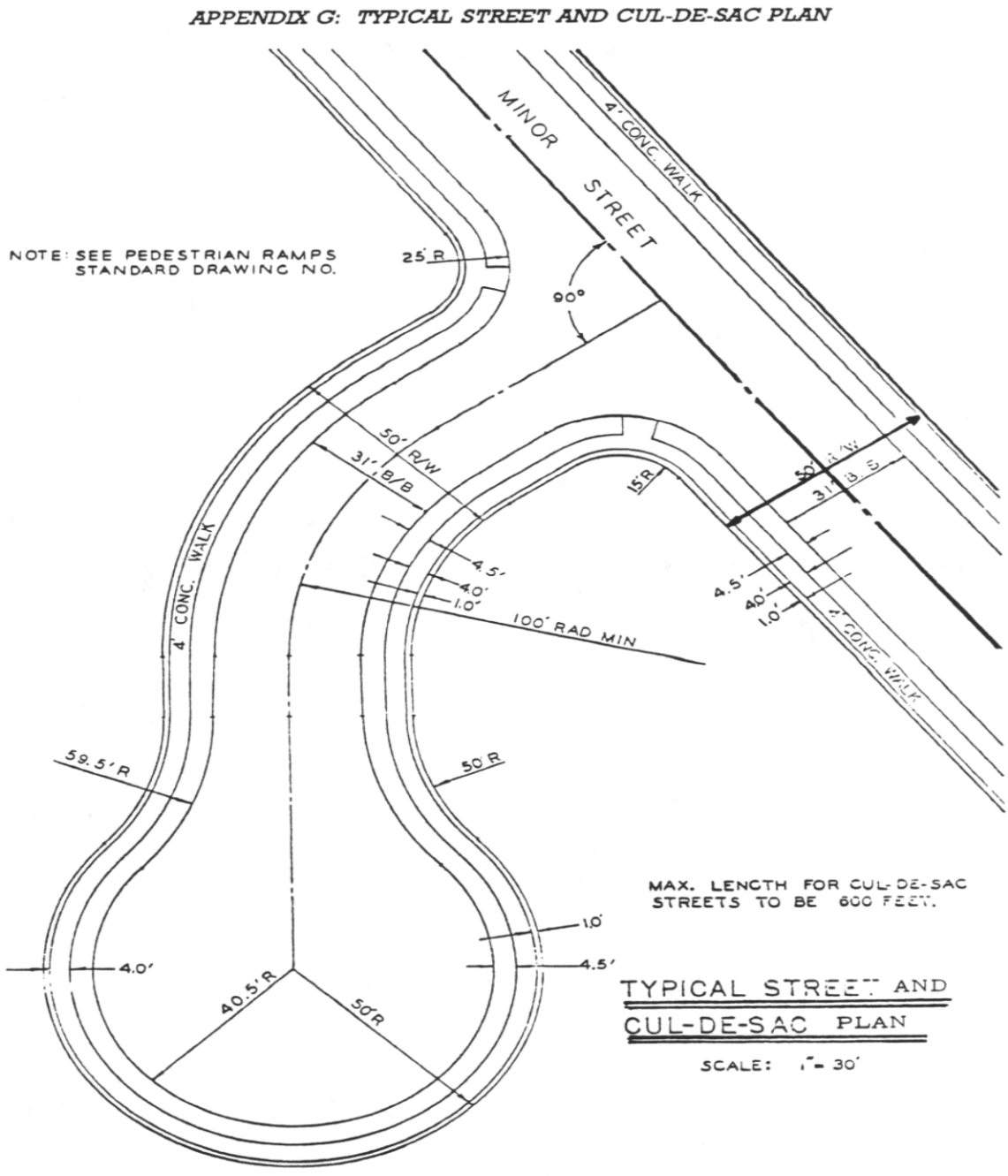

*APPENDIX E: COLLECTOR STREET SECTION*

## *APPENDIX F: MINOR STREET SECTION*




*APPENDIX F: MINOR STREET SECTION*

## *APPENDIX G: TYPICAL STREET AND CUL-DE-SAC PLAN*



## *APPENDIX H: REPLACEMENT CURB; STANDARD BARRIER CURB*

# *APPENDIX I: INTEGRAL CURB AND SIDEWALK*

# *APPENDIX J: DRIVEWAY APPROACHES*

**Subdivision Design and Construction Standards**

## *APPENDIX K: PEDESTRIAN RAMPS*

# *APPENDIX L: DESIGN CAPACITY CHART FOR CIRCULAR SEWERS*

## *APPENDIX M: TYPE "A" CATCH BASIN*

## *APPENDIX N: TYPE "B" CATCH BASIN*

## *APPENDIX O: TYPE "C" CATCH BASIN*

## *APPENDIX P: TYPE "D" CATCH BASIN*

**Subdivision Design and Construction Standards**

## *APPENDIX Q: STANDARD MANHOLE*

## *APPENDIX R: STANDARD DROP MANHOLE*

## *APPENDIX S: WATER SERVICE INSTALLATION DETAIL*

# *APPENDIX T: CONCRETE BLOCKING FOR BENDS*

## *APPENDIX U: TYPICAL SEWER PIPE TRENCH*

# CHAPTER 153: HOUSING CODE

Section



## § 153.01 ADOPTION OF HOUSING CODE BY REFERENCE.

There is adopted by Council for the purpose of establishing rules and regulations for the design, fabrication, erection, construction, enlargement, alteration, repair, location and use and maintenance of buildings and structures including permits and penalties, that certain document being marked, designated and known as "One- and Two-Family Dwelling Code - 1979 Edition," as amended, as published by the Building Officials and Code Administrators International, Inc., except such portions as are hereinafter added, inserted, deleted, modified, changed or amended, is adopted and incorporated as fully as if set out at length herein. The provisions shall be controlling in the construction of all dwellings and structures therein contained within the corporate limits of the municipality.
(Am. Ord. CM-644, passed - -1982)

## § 153.02 AMENDMENTS TO DWELLING CODE.

(A) The "One- and Two-Family Dwelling Code - 1979 Edition," as published and on file with the Clerk of this Council is revised by additions, insertions, deletions and changes, if any, in the following sections of such adopted code as are respectively indicated.

(B) The provisions of this code are also hereby extended to cover 3-family residential units within the municipality of West Milton.

*Part I - Administrative.*

"Sec. R-104 - Authority," is repealed and amended to read as follows.

Sec. R-104 - Building Official.

(a) *Appointment.* There is hereby created the office of Building Official within the Planning Department, and the executive official in charge shall be known as the "Building Official." The Building Official shall be appointed by the Municipal Manager with the approval of the Council, for an indefinite term of office, to whom he shall have the delegated duty to administer the building laws.

(b) The Building Official shall be authorized and directed to administer and enforce all the provisions of this Code. The Building Official, or his duly authorized representative, shall generally be informed on good engineering practice in respect to design and construction of buildings, in the principles of fire prevention, requirements for means of egress, and the installation of plumbing and other service equipment necessary for the health, safety, and general welfare of the public.

(c) *Inspection.* The Building Official shall make all inspections within 24 hours after call or notice of the owner or his representative, or within such reasonable time as the circumstances permit.

(d) *Relief From Personal Responsibility.* The Building Official, officer or employee charged with the enforcement of this code shall not be personally liable while acting for the Municipality, and he is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his official duty.

(e) In order to carry out the provisions of this section the Municipal Manager, has received a Building and Electrical Inspection Agreement dated September 25, 1979, from the Miami County Department of Planning and Zoning, Troy, Ohio, for conducting building and electrical inspections within the Municipality of West Milton, Ohio. A copy of the agreement together with the inspection fee schedule is on file with the Municipal Manager and available for inspection. Council has determined that building and electrical inspection in West Milton is a specialized service of a specialized nature, and requires particular skills and applications and that the Miami County Planning and Zoning Department possesses such skills. The Municipal Manager is authorized to execute said Building and Electrical Inspection Agreement and the same shall constitute a contract agreement by and between the Municipality of West Milton, Ohio and Miami County Commissioners for the work and based on the terms and conditions as set forth in said Agreement, dated September 25, 1979, without formal bidding and advertising.

"Sec. R-106 - Violations and Penalties" is repealed and amended to read as follows.

Sec. R-106 - Violations and Penalties.

(a) *Notices of Violations.* Whenever the Building Official is satisfied that a building or structure, or any work in connection therewith, the erection, construction, addition, alteration, or execution of which is regulated, permitted, or forbidden by this Code, is being erected, constructed, added to, or altered in violation of the provisions or requirements of this Code, or in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, he shall serve a written notice or order upon the person responsible therefor directing discontinuance of such illegal action and the remedying of the condition that is in violation of the provisions or requirements of this Code.

(b) *Disregard of Violation Notices.* In case a violation notice or order is not properly complied with, the Building Official shall notify the Director of Law of such noncompliance, and the Director of Law upon such notice shall institute an appropriate action or proceeding at law or in equity, to restrain or correct the erection or alteration of, or to require the removal of, or to prevent the occupancy or use of, the building or structure erected, constructed, added to, or altered in violation of, or not in compliance with, the provisions of this Code, or with respect to which the requirements thereof, or of any order or direction made pursuant to provisions contained therein, shall not have been complied with.

(c) *Stopping Work.* Whenever in the opinion of the Building Official, by reason of defective or illegal work in violation of a provision or requirement of this Code, the continuance of a building operation is contrary to public welfare, he shall order, in writing, all further work to be stopped, and he may require suspension of all work until the condition in violation has been corrected.

(d) *Noncompliance; Penalties.* A person who shall violate a provision of this Code or of a permit or certificate issued thereunder, or fails to comply therewith, or who shall erect, construct, add to or alter, move or demolish, or has erected, constructed, added to or altered, moved or demolished a building or structure or portion thereof, shall be guilty of a misdemeanor. The owner of a building or structure or portion thereof, or of the premises where anything in violation of this Code shall be placed or shall exist; or an architect, engineer, builder, contractor, agent, person, or corporation employed in connection therewith and who assisted in the commission of such violation, shall be deemed guilty of a separate offense for each day or portion thereof during which any violation of any provision of this Code is committed or continued, and upon conviction of such violation each such person shall be fined not more than $50 for each offense.

(e) *Abatement.* The imposition of the penalties herein prescribed shall not preclude the Director of Law from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, addition, alteration, conversion, removal, demolition, maintenance, or use; or to restrain, correct, or abate a violation; or to prevent the occupancy of a building or structure or portion thereof, or of the premises; or to prevent an illegal act, conduct, business or use in or about any premises.

"Sec. R-107 - Right of Appeal" is repealed and amended to read as follows.

Sec. R-107 - Board of Adjustment and Right to Appeals.

(a) *Board of Adjustment.* The Board of Adjustment, created by Ordinance No. CM-72 passed March 5, 1968, shall have the additional duties and powers and be regulated as herein provided, and to conduct hearings authorized by this Code. This section is not intended to conflict with or repeal any provisions of Ordinance No. CM-72.

(b) *Procedure.* The Board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this Code.

(c) *Right to Appeal.* Any person aggrieved, or the head of any department of the municipality, may take an appeal to the Board of Adjustment from any decision of the Building Official.

An appeal may be taken within 20 days from the date of the decision appealed, by filing with the Building Official and with the Board of Adjustment a notice of appeal, specifying the grounds thereof; except that in the case of a building or structure which in the opinion of the Building Official is a public nuisance, unsafe, or dangerous, the Building Official may in his order limit the time for such appeal to a shorter period. The Building Official shall forthwith transmit to the Board of Adjustment all the papers upon which the action appealed from was taken.

(d) *Modifications and Variations by the Board of Adjustment.* The Board of Adjustment, when so appealed to and after a public hearing, may vary the application of any provision of this Code to any particular case when,

in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of this Code or the public interest, or when in its opinion, the interpretation of the Building Official should be modified or revised.

A decision of the Board of Adjustment to vary the application of any provision of this Code, or to modify an order of the Building Official, shall specify in what manner such variation or modification is made, the conditions upon which it is made, and the reasons therefor.

(e) *Decision of the Board of Adjustment.* The Board of Adjustment shall in every case reach a decision without unreasonable or unnecessary delay. Every decision of the Board of Adjustment shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the Building Official and shall be open to public inspection. A certified copy shall be sent by mail or otherwise to the appellant, and a copy shall be kept publicly posted in the office of the Building Official for two weeks after filing.

If a decision of the Board of Adjustment reverses or modifies a refusal, order, or disallowance of the Building Official, or varies the application of any provision of this Code, the Building Official shall take action immediately in accordance with such decision.

(f) *Appeals From Decision of the Board of Building Appeal.* A person aggrieved by a decision of the Board, whether previously a party to the proceeding or not, or an officer or other board, may within 15 days after the filing of such decision in the office of the Building Official, apply to the appropriate court to correct errors of law in such decisions.

"Sec. R-109 - Permit" is repealed and amended to read as follows.

Sec. R-109 - Building Permit, Procedure and Fee Schedule.

(a) *Building Permit Required.*

(1) No person shall begin construction, alteration, addition, or repair of any structure, or the moving of any existing structure, within the corporate limits of the municipality without first having obtained an approved building permit from the Building Official, using application forms furnished by the Building Official.

(2) The Building Official shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including prefabricated and mobile homes) must:

(a) Be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure;

(b) Use construction materials and utility equipment that are resistant to flood damage; and

(c) Use construction methods and practices that will minimize flood damage.

(b) *Building Permit.*

(1) Building permits approved by the Building Official of the municipality shall expire one year after the approval date.

(2) Extensions may be granted by the Building Official in case of extreme hardship, such as damage by natural causes, or work stoppage by strike.

(3) Building permit extensions must be submitted to the Building Official for approval or disapproval 30 days prior to the expiration date.

(4) Application for extension of building permits must be in written form.

(c) *Application.*

(1) Application forms for building permits are on file at the office of the Clerk of the Municipality.

(2) The applicant shall prepare building permit forms in triplicate.

(3) The applicant shall provide all information on the application form.

(4) The applicant shall sign the application.

(5) The application shall be accompanied by a detailed drawing showing the plat plan.

(6) When required by the Building Official, plans shall be drawn to scale, and shall be of sufficient clarity to indicate the nature and extent of the work proposed, and shall show in detail that it will conform to the provisions of this Code and all relevant laws, ordinances, rules and regulations. The plans shall include a plot plan drawn to scale showing the location of all easements, drainage facilities, and adjacent grades.

(7) Drawings shall also include:

(a) Street name and location.

(b) Zone.

(c) Lot area in square feet.

(d) All property lines and measurements.

(e) Dimensions of proposed structure or additions, including height.

(f) Location of proposed structure or additions on lot.

(g) Location of existing structures on lot, if any, including dimensions.

(h) Location of existing structures on all adjoining lots.

(i) Any other information which might help the Building Official in reviewing the application.

(d) *Fees.*

Building permit fees shall be paid at the time the approved permit is received at the Clerk's office, payable to “The Municipality of West Milton, Ohio.”

(e) *Building Official's Procedure.*

(1) The application, along with drawings and plat plans, shall be filed with the Building Official of the municipality.

(2) The Building Official shall assign a number as outlined in Sec. R-109 (f), to the application, and log the number, address, lot number, and applicant's name in the Building Official Control Book.

(3) After the Building Official has taken action on the building permit, the Building Official shall collect the building permit fee as listed in Sec. R-109 (d). One copy of the application and building tag shall be returned to the applicant; the original copy of the building permit and all drawings shall be kept on file in the office of the Building Official.

(f) *Numbering of Building Permits.*

(1) Numbers shall be assigned to building permit applications by the Building Official of the municipality.

(2) Numbers shall start at “1" preceded by the letters BP, for building permit, and run consecutively for a period of one year, January one through December 31.

(3) At the beginning of each new year the building numbers shall again at “1", preceded by the letters BP.

(4) When the Building Official acts upon the application, he shall add the number “1" through “12", and the last two digits of the year, which will indicate the month and year the application was acted upon. (Example: BP-17-6-80).

(5) The Building Official shall enter the above information on the application and into the Building Official's Control Book, along with the action taken on the application, and the date the permit expires.

(g) *Building Official Action.*

(1) All building permit applications shall be acted upon by the Building Official within ten days from the date of the receipt of the full complete application, unless the Building Official determines that the application is not complete, at which time he shall notify the applicant and request the additional information.

(2) All applications shall be approved, disapproved, or held until all necessary information is obtained by the Building Official, and if necessary, time to allow the Building Official to investigate any unusual circumstances in regard to the application.

(3) All applications shall be finally approved or disapproved by the Building Official.

(4) All applications approved shall be signed by the Building Official.

(5) The Building Official shall inform the applicant by letter of the results of his action.

*Part II - Building Planning*

"Sec. R-211 - Exits" is amended to read as follows.

Sec. R-211 - Exits.

(a) Not less than two exits conforming to this Chapter shall be provided from each dwelling unit.

(b) Sleeping rooms shall have at least one openable window or exterior door to permit emergency exit or rescue. Where windows are provided, they shall have a sill height of not more than 48 inches above the floor, and shall provide not less than five square feet of openable area with no dimension less than 22 inches.

"Sec. R-219 - Insulation" is added to read as follows.

Sec. R-219 - Insulation.

(a) Extension ceilings and/or attics in residential structures, where the ceiling or attic is above heated habitable space or heated garage, shall be insulated to an R-value of at least 30.

(b) Walls in residential structures, where such walls enclose heated habitable area, or where such walls separate heated habitable area from unheated areas of the same structure shall be insulated to an R-value of at least 11.

(c) Insulation must be of fire retardant material and must be marked by the manufacturer so as to indicate the R-value obtainable with its use. In the event there is no clear indication of R-value evident on the material, literature printed by the manufacturer must be available to the Building Inspector which clearly indicates the R-value obtainable with the use of such insulating material.

*Part III - Construction*

"Sec. R-603.l - General" is amended to read as follows.

Sec. R-603.l - General.

(a) Concrete slab-on-ground floors constructed at or above grade.

(b) Concrete floors constructed below finish grade shall have six x six -6/6 welded wire fabric or equivalent placed at mid-depth of the slab.

(c) Concrete slabs or patios constructed attached or adjacent to the principal dwelling of a lot shall be installed with standard footers under the slab.

"Sec. R-809 Wood Shingles" is repealed and deleted.

"Sec. R-810 Wood Shakes" is repealed and deleted.

*Part V - Plumbing*

Chapters 20, 21, 22, 23, 24, and 25 of Part V - Plumbing (Sec. P-2001 through Sec. P-2510) are repealed and deleted.

*Part VI - Electrical*

Part VI - Electrical is repealed and deleted.
(Am. Ord. CM-644, passed - -82)

# CHAPTER 154: ELECTRICAL CODE

Section



## § 154.01 ELECTRICAL CODE ADOPTED BY REFERENCE.

For the purpose of establishing standards, rules and regulations arising from the use of electricity in buildings, dwellings and structures, including permits and penalties therefor, that certain document being known as the "Electrical Code For One- and Two-Family Dwellings," NFPA No. 70A-1981, as amended, as published by the National Fire Protection Association, is adopted by the Municipal Council, and incorporated fully as if set out at length herein; the provisions thereof shall be controlling regarding the use of electricity in relation to all buildings, dwellings and structures situated within the corporate limits of the municipality. The provisions of this code are also hereby extended to cover 3-family residential units within the municipality of West Milton.
(Am. Ord. CM-645, passed - -1982)

## § 154.02 AMENDMENT TO ELECTRICAL CODE.

The "Electrical Code for One- and Two-Family Dwellings" as adopted by § 154.01 of this code is revised by additions, insertions, deletions and changes, if any, in that it shall be enforced, governed and administered in conformity with the terms, conditions and provisions of "Part l - Administrative" in the "One- and Two-Family Dwelling Code - 1979 Edition" as adopted by reference by § 153.01 of this code and as amended by § 153.02 of this code.
(Am. Ord. CM-645, passed - -1982)

## § 154.03 PERMIT PROCEDURES AND FEE SCHEDULE.

(A) *Permit procedure.*

(1) Application forms for electrical permits are on file at the office of the Clerk for the Municipality.

(2) The applicant shall prepare electrical permit forms in triplicate.

(3) The applicant shall answer all information on application form.

(4) The applicant shall sign the application.

(B) *Application fee.* An application fee shall be charged and collected from the applicant at the time the application for an electrical permit is submitted; such fee shall not be refundable.

(C) *Service fee.* In addition to the above application fee, and prior to approval of the application, the applicant shall pay to the municipality the fees for processing and inspection services.

(D) All fees for processing and inspection services shall be payable to the municipality, prior to the approval of the permit application and inspection.

## APPENDIX: INSPECTION AGREEMENT

WHEREAS, the Municipality of West Milton has adopted a Building and Electrical Code by authority of the Municipal Charter, regulating the erection and construction on one-, two- and three- family residential structures; and

WHEREAS, The County of Miami has established a Development Department which provides for building and electrical inspection to enforce the Building Code of Miami County adopted under authority of R.C. § 307.37; and

WHEREAS, the two political subdivisions are desirous of entering into an agreement under authority of R.C. § 307.15 whereby the Development Department of Miami County will enforce the provisions of the Building Code and Electrical Code of the Municipality of West Milton;

NOW, THEREFORE, it is mutually agreed by and between the Municipality of West Milton, hereinafter referred to as "WEST MILTON" duly authorized to enter into this contract by Ordinance CM-512 enacted on the 2nd day of October, 1979, and the Board of County Commissioners of Miami County, Ohio, hereinafter referred to as "COUNTY", duly authorized to enter into this contract by Resolution in Commissioners Journal 49, dated the 24th day of October, 1979, as follows:

(1) West Milton shall receive all applications for building permits, heating and cooling permits, and electrical permits, together with the plans and specifications for the work to be performed. West Milton shall collect all fees from the applicants. West Milton shall transport all applications, plans, and specifications to Gary Cline of the Miami County Development Department within two days.

(2) County, for the consideration hereinafter provided to be paid by West Milton, shall receive from said municipality all applications, plans and specifications and shall review same, make any necessary changes or amendments thereto and approve, modify or reject said plans, in accordance with the building and electrical codes of West Milton, within one week.

(3) West Milton shall receive back from the county one copy of said application, plans and specifications and shall notify the applicant of the approval, modification, or rejection of said plans.

(4) The applicant may contact Gary Cline of the Miami County Development Department directly to arrange for any and all inspections. Once the work is approved, the county shall notify the municipality, who shall issue the proper permits. If any additional fees or penalties as provided for in paragraph (5) below are due and owing by applicant, county shall notify West Milton of such fees at the time of final approval for the proper permit. West Milton shall collect such fees from applicant before issuing any permit.

(5) In consideration of furnishing said services, West Milton shall pay the initial cost of printing copies of applications for building permits, heating and cooling permits, and electrical permits and the following fees.

Fees for living area and attached garages of residential structures:

| | |
|---|---|
| Up to 1,000 sq. ft. | $60 |
| 1,001 to 1,100 sq. ft. | 63 |
| 1,101 to 1,200 sq. ft. | 66 |
| 1,201 to 1,300 sq. ft. | 69 |
| 1,301 to 1,400 sq. ft. | 72 |
| 1,401 to 1,500 sq. ft. | 75 |
| 1,501 to 1,600 sq. ft. | 78 |
| 1,601 to 1,700 sq. ft. | 81 |
| 1,701 to 1,800 sq. ft. | 84 |
| 1,801 to 1,900 sq. ft. | 87 |
| 1,901 to 2,000 sq. ft. | 90 |
| 2,001 to 2,100 sq. ft. | 93 |
| 2,101 to 2,200 sq. ft. | 96 |
| 2,201 to 2,300 sq. ft. | 99 |
| 2,301 to 2,400 sq. ft. | 102 |
| 2,401 to 2,500 sq. ft. | 105 |
| 2,501 to 2,600 sq. ft. | 108 |
| 2,601 to 2,700 sq. ft. | 111 |
| 2,701 to 2,800 sq. ft. | 114 |
| 2,801 to 2,900 sq. ft. | 117 |
| 2,901 to 3,000 sq. ft. | 120 |
| 3,001 to 3,100 sq. ft. | 123 |
| 3,101 to 3,200 sq. ft. | 126 |
| 3,201 to 3,300 sq. ft. | 129 |
| 3,301 to 3,400 sq. ft. | 132 |

Fees for unfinished basements and unattached accessory buildings will be calculated at the rate of $l.50 per 100 square feet.*

Unattached accessory buildings of less than 100 square feet - minimum charge $10.

Fee for Heating and Air conditioning Permit $10.

Penalty Fee for Commencing Construction without Permit $15.

Fireplace Fee $20.
Prefabricated Fireplace Fee $10.

*Minimum for any permit $20.

In situations where portions of a new addition existed prior to the adoption of the code (e.g. the footer, foundation, and roof of a porch to be enclosed) the fee may be adjusted at the discretion of the Building Official.

*Fees for Electrical Inspection:*

| | |
|---|---|
| Minimum Fee | $10 |
| New Service | 10 ea. |
| Service Change | 10 ea. |
| Temporary (Pole) Service | 10 ea. |
| 2 Wire Circuits | one ea. |
| 3 Wire Circuits | one ea. |
| Openings of existing building | 10 ea.* |
| Additions, Alterations or Extensions of Existing Wiring | 10 ea.* |
| Cable Heat per Residence | 10 |
| Air conditioning, five tons or less | 10 ea. |
| Pre-heat (system) (avail. Oct. - April) | 10 ea. |
| Electric heat, (system) Central | 10 ea. |
| Electrical heating ductwork (system) | 10 ea. |
| Swimming Pool | 10 ea. |
| Swimming Pool Bonding | 10 ea. |
| Final Inspection | 10 |
| Special Inspection | 15 |

* one to five openings. Each additional opening $.50

In addition West Milton shall make available for sale to applicants, copies of the Building and Electrical Codes.

(6) West Milton shall collect the above fees from the applicants and pay over to the county on a monthly basis within 30 days from the presentation of properly itemized bills for same; however, the fees set forth in paragraph (5) above shall be due and owing to the county when the service is performed whether or not West Milton has collected said fees from the applicants.

(7) West Milton shall prosecute any and all violators through their Law Director and the county shall cooperate by making their personnel and records available for West Milton's use.

(8) The Building Inspector will attend any Board of Adjustment meeting held as a result of an appeal or a decision he has made.

(9) This agreement shall be in force and effect from and after the 1st day of November, 1979, and may be terminated by either party by giving 30 days written notice of the intention to terminate.

# CHAPTER 155: MOBILE HOME PARK CODE

Section

## *GENERAL PROVISIONS*

### § 155.01 SHORT TITLE.

This chapter shall be known and may be cited as the "West Milton Mobile Home Park Code," and shall be referred to herein as "this code."

### § 155.02 INTENT AND PURPOSE.

(A) It is the intent of this code to regulate mobile home parks as permitted and provided for in the authorized zoning districts set forth in § 150.005, and the sections related to such zoning districts as found in Chapter 150 of this code. It is further intended that this code shall be read and administered in conjunction with and supplemental to Zoning and Subdivision Codes, Chapters 150 and 151, and that the provisions of those codes shall govern where applicable, but shall be modified to permit things contemplated by this code.

(B) It is the purpose of the Mobile Home Park Code and the requirements herein to provide for the establishment of mobile home parks in the municipality, and to regulate the development and use of the parks and the mobile homes therein. It is the further purpose of this code to protect and promote the general health, welfare, morals and safety of the citizens of the municipality, and of the mobile home occupants, and to recognize that a well-planned, -constructed and- maintained mobile home park can be an asset to the municipality and its citizens.

### § 155.03 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BUILDING REGULATIONS.*** Chapter 153 of this code, known as "One-and Two-Family Dwelling Code- 1971 Addition" and "Ohio Building Code," together with all amendments thereto as of February 11, 1962, as adopted by the Board of Building Standards, State of Ohio, as adopted in § 153.01, and as now in effect, including amendments thereto, or as hereafter enacted or amended.

***ELECTRICAL REGULATIONS.*** Chapter 154 of this code, known as "Electrical Code For One- and Two-Family Dwellings," NFPA No. 70-1972, ANSI C 1.1 - 1971, as published by the National Fire Protection Association and "National Electrical Code - 1971," NFPA No. 70 - 1971, ANSI C one - 1971, as published by the National Fire Protection Association, as adopted in § 154.01, and as now in effect, including amendments thereto, or as hereafter enacted or amended.

***MOBILE HOME*** or ***HOUSE TRAILER.*** Any self-propelled or nonself-propelled vehicle so designed, constructed, reconstructed or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation when connected to indicated utilities, whether resting on wheels, jacks or other temporary foundation; and used or so constructed as to permit its being used as a conveyance upon the public streets or highways.

***MODULAR HOME*** or ***UNIT.*** A structure on wheels so designed, constructed, reconstructed or added to by means of accessories in such a manner as will permit the use and occupancy thereof for human habitation when connected to indicated utilities; which is drawn by a vehicle to a site where it is to be connected to a like structure by removing from one side a covering temporarily used during transit, bolting that side to the exposed side of a like structure and making both units weathertight.

***PLANNED DEVELOPMENT.*** Land under unified control, planned and developed as a whole according to comprehensive and detailed plans, including streets, utilities, lots or building sites, site plans and design principles for all buildings as intended to be located, constructed, used and related to each other, and for other uses and improvements on the land as related to buildings. Development may be a single operation or a definitely programmed series of development operations including all lands and buildings, with a program for provision, operation, and maintenance of such areas, improvements and facilities necessary for common use by the occupants of the development.

***PLANNING BOARD.*** The Planning Board of West Milton, Ohio.

***SEWER REGULATIONS.*** Chapter 51 of this code known as the "Sewer Rules and Regulations," as now in effect, including amendments thereto, or as hereafter enacted or amended.

***SHOULD.*** Shall be interpreted to mean "shall," both where it appears in this chapter and where it appears in Regulations 260 through 290 of the Ohio Sanitary Code, or in the explanation thereof.

***SUBDIVISION REGULATIONS.*** Chapter 151 of this code known as the "Subdivision Code," as now in effect, including amendments thereto, or as hereafter enacted or amended.

***TRAVEL TRAILER*** or ***RECREATION VEHICLE.*** A vehicular portable structure built on a chassis and not exceeding a gross weight of 4,500 pounds when factory equipped for the road, or an overall length of 30 feet; and designed to be used as a temporary dwelling for travel, recreational and vacation uses.

***WATER REGULATIONS.*** Chapter 52 of this code, known as "Water Rules and Regulations," as now in effect, including amendments thereto, or as hereafter enacted or amended.

***ZONING REGULATIONS.*** Chapters 150 through 153 of this code, known as the "Zoning, Building and Subdivision Codes," as now in effect, including amendments thereto, or as hereafter enacted or amended.

(B) If any words or phrases not defined herein are defined in Chapters 150 through 154, or any other related regulations, they shall have the meaning defined therein as used herein.

## § 155.04 MOBILE HOME REQUIREMENTS.

No mobile home "house trailer" shall be permitted in any park unless it can be demonstrated that it meets the requirements of the Code provision A-119.1, "American Standard for Installation in Mobile Homes of Electrical, Heating, and Plumbing Systems" which was adopted by the American Standards Association in 1963; or that the mobile home bears the MHMA - TCA Seal, which indicates that the mobile home conforms to electrical, plumbing and heating requirements which are sound; or that it conforms to any state-administered code insuring equal or better plumbing, heating or electrical installations.

## *MOBILE HOME PARK REQUIREMENTS*

### § 155.10 PARKS TO CONFORM TO REQUIREMENTS.

All mobile home parks shall conform to the requirements set forth in §§ 155.11 through 155.28, and no application for a mobile home park shall be approved by the Planning Board, nor shall a mobile home park be permitted or maintained thereafter, unless these requirements are met and complied with.

### § 155.11 DESIGN.

The following design requirements shall apply to all mobile home parks.

(A) No travel trailer (recreational vehicle) or modular home or unit shall be permitted to be placed or occupy an individual mobile home lot within a mobile home park. Only mobile homes (house trailers) shall be permitted to occupy or be placed upon an individual mobile home lot within a mobile home park.

(B) *Access.* Each mobile home park shall have direct access "with an access and right-of-way not less than 36 feet in width" to a major or secondary county, township, municipal or state highway or arterial street or road. In the event a mobile home park shall consist of more than 100 mobile home lots, there shall be more than one access to such street or road.

(C) *Park size.* Each mobile home park shall have minimum gross site area of ten acres.

(D) *Public utilities.* Each mobile home park shall be served by municipal water and sewer systems.

(E) *Underground utilities.* In each mobile home park all wires, cables and lines providing telecommunication, including cable television, and all electric utility services and connections of such utility systems to buildings and poles in such parks, shall be located underground.

(F) *Enclosed undercarriage; skirting.* All mobile homes located in mobile home parks shall be enclosed or skirted from the bottom of the structure to the ground.

(G) *Density.* Gross density for a mobile home park shall not exceed six dwelling units per gross acre.

(H) *Recreational open space area.* A minimum of 10% of the gross site area shall be set aside and reserved for usable recreational and open space uses. Such area shall be in one or more parcels, not less than one acre each. The minimum dimension of such open space shall be 200 feet in any direction. For the purposes of this division, recreational and open space area shall be construed to mean parks, common open areas and areas containing a combination of community service buildings (clubhouses, swimming pools and the like) and outdoor recreation areas. This minimum of 10% of the gross site area is in addition to any other open areas required by yard requirements and other sections of this code.

### § 155.12 SETBACK.

The following setback requirements shall apply to all mobile homes located in a mobile home park.

(A) From all perimeter lot lines, 50 feet.

(B) From any mobile home located in the mobile home park, 25 feet

(C) From any community building, 50 feet.

(D) From any public or private street located within the park, 25 feet.

## § 155.13 STREETS.

The following street requirements shall apply to all mobile home parks.

(A) The design and construction of the interior street system shall be sufficient to adequately serve the size and density of the development. All streets shall be paved, and curbs and gutters shall be installed. The pavement width of all streets shall be not less than 30 feet. The design and construction of the interior street system shall conform to the requirements of the Municipal Engineer. Parking on interior streets shall not be permitted unless the pavement width is at least 35 feet. Street width shall be measured from back of curb to back of curb.

(B) Streets shall be adapted to the topography, and shall have suitable alignment and gradient for traffic safety, and satisfactory surface and ground water drainage.

(C) The required base shall be a minimum of eight inches thick, and shall be composed of crushed stone, gravel or other appropriate durable material compacted to the practical maximum density. The wearing surface shall be of bituminous concrete a minimum of 1-1/2 inches thick, compacted to the maximum practical density.

(D) Where portland cement concrete is used, it shall not be less than five inches thick on a prepared subgrade, constructed in accordance with accepted practices, with expansion joints where driveways and walks abut each other or at the curb.

## § 155.14 PARKING.

Two paved, off-street parking spaces, having a minimum area of 400 square feet, shall be provided for each mobile home site. Such parking space shall be located either on the mobile home site behind the front setback area, or in a common parking area within the mobile home park.

## § 155.15 WALKS.

All mobile home parks shall be provided with safe, convenient, all-season sidewalks with a minimum width of three feet six inches for the intended use of pedestrian circulation; and constructed of concrete, plant mix or other approved material; and shall be constructed along one side of all interior streets.

## § 155.16 LIGHTING.

Appropriate lighting shall be provided along all interior roadways and walkways. All lights shall be so positioned and shaded to avoid glare on adjoining properties.

## § 155.17 DRAINAGE.

Each mobile home space shall be so constructed to provide adequate storm water drainage from ramps, patios and all walls and foundations of mobile homes to the roadway. Grading shall not obstruct the natural drainage of surrounding properties. Open drainage ditches are prohibited.

## § 155.18 FUEL; SUPPLY.

Where fuel is stored in outdoor storage tanks, they shall be supported by a concrete base and screened from view of surrounding mobile home spaces and the street.

## § 155.19 GARBAGE AND REFUSE STORAGE.

The collection and storage of garbage and refuse within each mobile home park shall be conducted so as to create no health hazards, rodent harborage, insect breeding, area, fire hazard or air pollution. All garbage and refuse shall be stored in fly-tight, rodent-proof containers. These containers shall be located no more than 150 feet from any mobile home lot, and shall be collected at least once weekly.

## § 155.20 LANDSCAPING.

In all mobile home parks, the following provisions shall apply.

(A) Along each park boundary property line, and within the 50-foot setback area, except street frontage lines where the screening shall be along the setback line, there shall be provided a green strip of landscape planting, or a landscaped berm, or a combination thereof which shall be so designed or planted as to be 25% or more opaque when viewed horizontally between two and eight feet above ground level.

(B) Trees of at least 1-inch caliper shall be installed on both sides of all streets within the mobile home park at a spacing of 50 feet between trees; or on each mobile home lot, at least one deciduous hardwood tree of at least 1-inch caliper shall be planted in the front yard.

## § 155.21 SIGNS.

Signs within the mobile home development shall be limited to a name plate attached to each mobile home, which is no larger than one square foot; directional signs indicating the location of utility buildings, including management office, parking areas and common recreation areas; and traffic-control signs.

## § 155.22 LOTS.

Individual mobile home lots within the mobile home parks shall conform to the following requirements.

(A) *Lot size.* Each mobile home lot shall contain a minimum area of 4,000 square feet.

(B) *Lot width and depth.* The minimum width of each mobile home lot shall be 40 feet, and the minimum depth of each lot shall be 100 feet. The minimum width of corner lots, however, shall be 50 feet.

(C) *Clearance.* There shall be a minimum clearance of 20 feet between individual mobile homes.

(D) *Driveway and parking.* Each mobile home lot shall be provided with a paved driveway to accommodate off-street parking for two vehicles. The size of the driveway shall not be less than 400 square feet.

(E) *Walkway.* Each mobile home lot shall be provided with a 3-foot walkway leading from the main entrance to the main walkway or adjacent street.

(F) *Mobile home stand.* Every mobile home lot or site shall consist of a pad constructed of reinforced concrete or equivalent material with a minimum thickness of4 inches. The size of the concrete pad shall not be less than the length and width of the mobile home using the lot or site.

(G) *Anchors.* Each mobile home lot shall be provided with anchors and tie-downs such as cast-in-place concrete "dead men" eyelets imbedded in the concrete runways, screw augers, arrowhead anchors or other devices for securing the stability of the mobile home.

(H) *Floor area.* Each mobile home placed within the mobile home park shall have a minimum area of 400 square feet.

(I) *Patio.* Each mobile home lot shall be provided with a paved patio area at least 100 square feet in area. The patio should be located on the entrance side of the mobile home.

(J) *Height.* The maximum height of mobile homes and accessory buildings shall not exceed 20 feet.

## § 155.23 UTILITIES AND OTHER SERVICES.

Mobile home park utilities and other services shall conform to the following requirements.

(A) *Water.* Within each mobile home park there shall be installed a water supply and distribution system, which shall be connected with the municipal water system. Each mobile home lot shall be connected to this system all in conformity with and regulated by the "Water Regulations," and amendments thereto.

(B) *Sewage disposal.* Within each mobile home park there shall be installed a sanitary waste distribution system which shall be connected with the municipal sewer system. Each mobile home lot shall be connected to this system in conformity with and regulated by the "Sewer Regulations," and amendments thereto.

(C) *Electrical system.* Each mobile home shall be provided with suitable electrical equipment in conformity with and regulated by the "Electrical Regulations," and amendments thereto.

(D) *Fire Protection.* Within each mobile home park there shall be provided a fire protection system approved by the Ohio Department of Health and the local fire authority. Standard fire hydrants should be located within 400 feet of all mobile homes. Portable fire extinguishers should be provided at convenient and accessible locations.

(E) *Service building.* Service buildings may be provided by the management for offices, repair and storage, laundry facilities and indoor recreation areas. No such building shall be located closer than 50 feet from any mobile home.

(F) *Supplementary conditions and safeguards.* In approving any mobile home park, the Board may recommend and the Board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of such conditions and safeguards, when made a part of the zoning permit, shall be deemed a violation of this code and punishable under this code.

## § 155.24 FACILITIES.

(A) *Building facilities.* An enclosed facilities building of a minimum of 2000 square feet with space devoted to office, laundry, toilet and recreation must be provided in each mobile home park, and no application shall be approved by the Planning Commission, and no mobile home park shall be permitted or maintained without one.

(B) *Open space.* For each 100 mobile homes in the park at least 960 square feet of open space shall be provided for recreation area and 250 square feet of open space for each additional 25 mobile homes or parts thereof.

(C) *Yards.* The following minimum yard requirements shall apply to any Mobile Home Park facilities building.

(1) Minimum front yard - 50 feet.

(2) Minimum side yard - 25 feet.

(3) Minimum rear yard - 25 feet; except if abutting onto a dedicated public right-of-way, 35 feet.

## § 155.25 PERMITTED USES.

No building, structure or land shall be used, and no building shall be erected, structurally altered or enlarged, except as provided herein. The following uses are permitted in a mobile home park.

(A) Mobile homes only for 1-family dwellings, one per mobile home lot.

(B) Accessory buildings and uses incidental to and in conformance with the foregoing use.

(C) Schools, public and parochial, provided that all structures and buildings are set back not less than 50 feet from the side lot lines and 100 feet from the front property lines.

(D) Churches and parish houses, provided the church is set back 35 feet from side lot lines.

(E) Public utility substations.

(F) Commercial sale of mobile home units shall be prohibited in the mobile home park and purchase of a mobile home cannot be a condition of rental.

## § 155.26 ACCESSORY USES.

(A) Coin-operated laundry; laundry and dry cleaning pickup stations for use of tenants only. No external sign of any nature whatsoever shall be permitted.

(B) Other accessory uses, buildings or structures customarily incidental to the aforesaid use.

(C) (1) Neighborhood commercial facilities in mobile home parks of 50 acres or more; neighborhood commercial facilities such as markets, barbers, beauty shops and doctor's offices, may be planned in conjunction with a mobile home park, but may not be physically occupied until the park is 75% occupied by residents.

(2) Such establishments and the related parking areas shall occupy no more than 10% of the gross area of the mobile home park; shall be subordinate to the residential use and character of the park; shall be located, designed and intended to serve frequent trade or service needs of persons residing in the park; and shall present no visible evidence of their commercial character from any portion of any residential district outside the park.

## § 155.27 SANITARY AND HEALTH REQUIREMENTS.

No application for a mobile home park shall be approved, nor shall a mobile home park be permitted or maintained thereafter, unless all sanitary and health standards of the Departments of Health of the State of Ohio, Miami County, and the municipality, including but not limited to the regulations relating to garbage and trash containers, racks and rack locations, rodent and insect control, and garbage and trash collection and removal, are met, adhered to and complied with.

## § 155.28 SITE IMPROVEMENTS.

(A) No application for a mobile home park shall be approved, nor shall a mobile home park be permitted or maintained thereafter, unless the site improvements and the off-site improvements, if any, are constructed in accordance with the provisions of the zoning and subdivision codes of the municipality, where applicable; or the construction of the improvements provided for to the satisfaction of the Planning Board.

(B) Site improvements shall be required as if the site of the mobile home park were a subdivision. The ownership of the site improvements, however, shall be retained by the owner of the mobile home park.

(C) Nor shall such application be granted if existing municipal-owned and -operated utilities are not adequate to serve the site of the proposed mobile home park.

## § 155.29 ADDITIONS OR ENLARGEMENTS.

An applicant seeking to expand or enlarge an approved existing mobile home park shall be required to comply with all provisions of this code; however, such addition or enlargement shall not require a minimum gross site area of ten acres as established by § 155.11(C).

## *ADMINISTRATION AND ENFORCEMENT*

## § 155.40 APPLICATION PROCEDURES; CONTENTS.

(A) *Contents of application.* A written application on the form supplied by the Planning Board shall be filed with the Secretary of the Planning Board. At a minimum, the application shall contain the following information.

(1) The name, address and phone number of applicants and interested parties;

(2) A plot plan prepared by and bearing the seal of an Ohio registered engineer or architect, complete in details;

(3) The location and legal description of the property;

(4) A certificate of title of such property, certified by an attorney-at-law, showing any and all restrictions of record.

(5) A vicinity map showing property lines, streets, alleys, drives, ways, existing and proposed zoning, and such other items as the Board may require to show the relationship of the development to the comprehensive plan;

(6) A plan at a scale showing the location and dimensions of streets and other roadways, lot size and arrangements, areas of recreation, clothes washing and drying storage, storage areas and off-and on-street parking; buffering, screening, fencing or planting; provisions for garbage and trash collection and removal; location and size of service lines and mains for utilities, including street lighting; pedestrian walkways; location of all gas, electric and telephone service connections to each lot or area; and such other information or things the Board may deem necessary; and

(7) "Design Requirements," in addition to those set forth in this code, and so far as applicable and not modified, altered or in conflict with this code, shall be in accordance with the subdivision code of the municipality.

(B) *Planned development.* All applicants and applications for a mobile home park, in addition to the provisions of this code, shall proceed in conformity with §§ 150.235 through 150.244 of the zoning code. Mobile home parks shall be considered and treated as planned development.

(C) No application shall be approved until it is determined by the Planning Board that the proposed mobile home park shall meet all the design and planned development requirements.

## § 155.41 APPLICATION REVIEW BY PLANNING BOARD; STANDARDS.

The Planning Board shall review the particular facts and circumstances of each application for a mobile home park in terms of the following standards, and shall find adequate evidence showing that the mobile home park:

(A) Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such will not change the essential character of the area;

(B) Will not be hazardous or detrimental to existing or future neighboring uses;

(C) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage, refuse disposal and schools; or that the persons or agencies responsible for the establishment of the proposed park shall be able to provide adequately any such services;

(D) Will not create excessive additional requirements at public cost for public facilities or services, or for public educational requirements, and will not be detrimental to the economic welfare of the community;

(E) Will provide and secure livability in a mobile home park, and avoid any adverse affects to surrounding zoning districts, uses or property values; (In considering livability, recognition shall be given to the availability of school and shopping facilities, the nature of the abutting zone districts, the availability of water and sewer facilities, and police and fire protection.)

(F) Will be consistent with the intent and purpose of this code, the comprehensive plan, the zoning code, and the subdivision code of the municipality;

(G) Will have vehicular approaches to the property which shall be designed so as not to create an interference with traffic on surrounding public streets or roads;

(H) Will neither be located in any area where the mobile home park would be completely surrounded by or in any area where the entrances or exits would front on, an R1-AA, R1-A, R1-B or R1-C One-Family Residential District as set forth in §§ 150.020 through 150.027 of the zoning code, nor in the Miami Conservance Flood Plain District indicated on the West Milton Zoning Map as an A-1 District immediately adjacent to the Stillwater River;

(I) Will not result in the destruction or loss of, or damage to, natural, scenic or historic features of major importance; and

(J) Will meet all the requirements of the Ohio Revised Code, ordinances and codes of the municipality, and all state, county and municipal health and sanitary regulations, including by way of illustration but not limitation, Regulations 260 through 290 of the Ohio Sanitary Code relating to mobile home parks.

## § 155.42 FINAL APPROVAL OF APPLICATION.

When the Planning Board finds that an owner has made application for a mobile home park which satisfies the provisions of this code, and any requirements under the Ohio Revised Code, the Board shall approve the

application and issue the final certificate of approval. Upon the issuance of such certificate, the owner may then have the right to construct and thereafter operate and maintain a mobile home park, so long as the construction, operation, and maintenance thereof is in accordance with the terms and provisions of this code as it now is or may hereafter be amended.

## § 155.43 ENFORCEMENT PROCEDURES.

(A) The Building Official of the municipality is authorized and directed to administer and enforce all of the provisions of this code.

(B) Upon presentation of proper credentials, the Building Official or his duly authorized representatives may enter at reasonable times any building, structure or premises in the jurisdiction to perform any duty imposed upon him or her by this code.

(C) Whenever the Building Official is satisfied that the provisions of this code or any amendments or supplements thereto have been violated, he or she shall serve a written notice or order upon the person responsible therefor, and upon the owner of the mobile home park, or the tenant of the mobile home park, directing discontinuance of such illegal action and the remedying of the condition that is in violation of the provisions or requirements of this code.

(D) In case a violation notice or order is not properly complied with, the Building Official shall notify the Director of Law of such noncompliance, and the Director of Law upon such notice shall institute an appropriate action or proceeding at law or in equity to restrain or correct the erection or alteration thereof, or to require the removal of, or to prevent the occupancy or use of, the buildings or structures or any other part of the premises in violation of the provisions of this code, or with respect to which the requirements thereof, or of any order or direction made pursuant to provisions contained therein, shall not have been complied with.

(E) Whenever in the opinion of the Building Official, by reason of defective or illegal work in violation of the provisions or requirements of this code, the continuance of such violation is contrary to the public welfare, he shall order, in writing, all further work to be stopped and may require suspension of all work until the condition in violation has been corrected.

## § 155.99 PENALTY.

Any person who shall violate any provision of this Code or fails to comply therewith, or with any of the requirements of a permit or certificate issued thereunder, shall be guilty of a misdemeanor. Each day such violation continues shall constitute a separate offense and shall be punishable as such.

# CHAPTER 156: SPECIAL PURPOSE FLOOD DAMAGE REDUCTION

Section

*Appeals and Variances*



*Enforcement*



## *GENERAL PROVISIONS*

### § 156.01 STATUTORY AUTHORIZATION.

Article XVIII, Section 3, of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. Therefore, the Village Council of West Milton, State of Ohio, does ordain this chapter.
(Ord. CM-11-06, passed 5-10-2011)

### § 156.02 FINDINGS OF FACT.

The village has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.
(Ord. CM-11-06, passed 5-10-2011)

### § 156.03 STATEMENT OF PURPOSE.

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

(A) Protect human life and health;

(B) Minimize expenditure of public money for costly flood control projects;

(C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) Minimize prolonged business interruptions;

(E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

(F) Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;

(G) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;

(H) Minimize the impact of development on adjacent properties within and near flood-prone areas;

(I) Ensure that the flood storage and conveyance functions of the floodplain are maintained;

(J) Minimize the impact of development on the natural, beneficial values of the floodplain;

(K) Prevent floodplain uses that are either hazardous or environmentally incompatible; and

(L) Meet community participation requirements of the National Flood Insurance Program.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.04 METHODS OF REDUCING FLOOD LOSS.

In order to accomplish its purposes, these regulations include methods and provisions for:

(A) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;

(B) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(D) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and

(E) Preventing or regulating the construction of flood barriers, which will unnaturally divert flood, waters or which may increase flood hazards in other areas.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.05 LANDS TO WHICH THESE REGULATIONS APPLY.

These regulations shall apply to all areas of special flood hazard within the jurisdiction of the Village of West Milton as identified in § 156.06, including any additional areas of special flood hazard annexed by the Village of West Milton.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.06 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

(A) For the purposes of these regulations, the following studies and/or maps are adopted:

(1) *Flood Insurance Study Miami County, Ohio and Incorporated Areas* and *Flood Insurance Rate Map Miami County, Ohio and Incorporated Areas* both effective August 2, 2011.

(2) Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard.

(3) Any hydrologic and hydraulic engineering analysis authored by a registered professional engineer in the State of Ohio which has been approved by the village as required by § 156.37 Subdivisions and Large Developments.

(B) Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the Village Hall at 701 South Miami Street West Milton, Ohio.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.07 ABROGATION AND GREATER RESTRICTIONS.

These regulations are not intended to repeal any existing ordinances, including subdivision regulations, zoning or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by the regulations.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.08 INTERPRETATION.

In the interpretation and application of these regulations, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.09 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the village, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.10 DEFINITIONS.

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.

***ACCESSORY STRUCTURE.*** A structure on the same lot with, and of a nature customarily incidental and subordinate to the principal structure.

***APPEAL.*** A request for review of the Floodplain Administrator's interpretation of any provision of these regulations or a request for a variance.

***BASE FLOOD.*** The flood having a 1% chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% chance annual flood or 100-year flood.

***BASE (100-YEAR) FLOOD ELEVATION (BFE).*** The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in feet mean sea level (MSL). In Zone AO areas, the base flood elevation is the natural grade elevation plus the depth number (from one to three feet).

***BASEMENT.*** Any area of the building having its floor subgrade (below ground level) on all sides.

***DEVELOPMENT.*** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

***ENCLOSURE BELOW THE LOWEST FLOOR.*** See “Lowest Floor” as defined in this section.

***EXECUTIVE ORDER 11988 (FLOODPLAIN MANAGEMENT).*** Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

***FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).*** The agency with the overall responsibility for administering the National Flood Insurance Program.

***FILL.*** A deposit of earth material placed by artificial means.

***FLOOD*** or ***FLOODING.*** A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters; and/or

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

***FLOOD HAZARD BOUNDARY MAP (FHBM).*** Usually the initial map, produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate special flood hazard areas.

***FLOOD INSURANCE RATE MAP (FIRM).*** An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.

***FLOOD INSURANCE RISK ZONES.*** Zone designations on FHBMs and FIRMs that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:

(1) *Zone A:* Special flood hazard areas inundated by the 100-year flood; base flood elevations are not determined.

(2) *Zones A1-30 and Zone AE:* Special flood hazard areas inundated by the 100-year flood; base flood elevations are determined.

(3) *Zone AO:* Special flood hazard areas inundated by the 100-year flood; with flood depths of one to three feet (usually sheet flow on sloping terrain); average depths are determined.

(4) *Zone AH:* Special flood hazard areas inundated by the 100-year flood; flood depths of one to three feet (usually areas of ponding); base flood elevations are determined.

*(5)* ***Zone A99:*** Special flood hazard areas inundated by the 100-year flood to be protected from the 100-year flood by a federal flood protection system under construction; no base flood elevations are determined.

(6) *Zone B and Zone X (shaded):* Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than one square mile; and areas protected by levees from the base flood.

(7) *Zone C and Zone X (unshaded):* Areas determined to be outside the 500-year floodplain.

***FLOOD INSURANCE STUDY (FIS).*** The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway

boundaries (sometimes shown on Flood Boundary and Floodway Maps), and the water surface elevations of the base flood.

***FLOOD PROTECTION ELEVATION.*** The Flood Protection Elevation, or FPE, is the base flood elevation plus two feet of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the Floodplain Administrator.

***FLOODWAY.*** The channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community. The floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity flood waters, high potential for debris and projectile impacts, and moderate to high erosion forces.

***FREEBOARD.*** A factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

***HISTORIC STRUCTURE.*** Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

(3) Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office.

***HYDROLOGIC AND HYDRAULIC ENGINEERING ANALYSIS.*** An analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.

***LETTER OF MAP CHANGE (LOMC).*** An official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMCs are broken down into the following categories:

(1) *Letter of Map Amendment (LOMA):* A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.

(2) *Letter of Map Revision (LOMR):* A revision based on technical data that, usually due to man-made changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevation and is, therefore, excluded from the special flood hazard area.

(3) *Conditional Letter of Map Revision (CLOMR):* A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

***LOWEST FLOOR.*** The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood-resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.

***MANUFACTURED HOME.*** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term ***MANUFACTURED HOME*** does not include a recreational vehicle. For the purposes of these regulations, a ***MANUFACTURED HOME*** includes manufactured homes and mobile homes as defined in R.C. Chapter 3733.

***MANUFACTURED HOME PARK.*** As specified in O.A.C. 3701-27-01, a ***MANUFACTURED HOME PARK*** means any tract of land upon which three or more manufactured homes, used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots, is not a ***MANUFACTURED HOME PARK***, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority.

***NATIONAL FLOOD INSURANCE PROGRAM (NFIP).*** The NFIP is a federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the federal government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the federal government will make flood insurance available within the community as a financial protection against flood loss.

***NEW CONSTRUCTION.*** Structures for which the start of construction commenced on or after the initial effective date of the Village of West Milton Flood Insurance Rate Map, June 8, 1998, and includes any subsequent improvements to such structures.

***PERSON.*** Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined in the R.C. § 111.15 as any governmental entity of the state and includes, but is not limited to any board, department,

division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. ***AGENCY*** does not include the general assembly, the controlling board, the Adjutant General's department, or any court.

***RECREATIONAL VEHICLE.*** A vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projection; (3) designed to be self- propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

***REGISTERED PROFESSIONAL ARCHITECT.*** A person registered to engage in the practice of architecture under the provisions of R.C. §§ 4703.01 to 4703.19.

***REGISTERED PROFESSIONAL ENGINEER.*** A person registered as a professional engineer under R.C. Chapter 4733.

***REGISTERED PROFESSIONAL SURVEYOR.*** A person registered as a professional surveyor under R.C.
Chapter 4733.

***SPECIAL FLOOD HAZARD AREA.*** Also known as “Areas of Special Flood Hazard”, it is the land in the floodplain subject to a 1% or greater chance of flooding in any given year. ***SPECIAL FLOOD HAZARD AREAS*** are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1-30, and A99. ***SPECIAL FLOOD HAZARD AREAS*** may also refer to areas that are flood-prone and designated from other federal, state or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and flood-prone soils associated with a watercourse.

***START OF CONSTRUCTION.*** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The ***ACTUAL START*** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual ***START OF CONSTRUCTION*** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of a building.

***STRUCTURE.*** A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

***SUBSTANTIAL DAMAGE.*** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

***SUBSTANTIAL IMPROVEMENT.*** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures, which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include:

(1) Any improvement to a structure that is considered new construction;

(2) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(3) Any alteration of a historic structure, provided that the alteration would not preclude the structure's continued designation as a historic structure.

***VARIANCE.*** A grant of relief from the standards of these regulations consistent with the variance conditions herein.

***VIOLATION.*** The failure of a structure or other development to be fully compliant with these regulations. (Ord. CM-11-06, passed 5-10-2011)

## *ADMINISTRATION*

### § 156.20 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.

The Municipal Manager is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.
(Ord. CM-11-06, passed 5-10-2011)

### § 156.21 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

(A) Evaluate applications for permits to develop in special flood hazard areas.

(B) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.

(C) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.

(D) Inspect buildings and lands to determine whether any violations of these regulations have been committed.

(E) Make and permanently keep all records for public inspection necessary for the administration of these regulations, including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, variances, and records of enforcement actions taken for violations of these regulations.

(F) Enforce the provisions of these regulations.

(G) Provide information, testimony, or other evidence as needed during variance hearings.

(H) Coordinate map maintenance activities and FEMA follow-up.

(I) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.22 FLOODPLAIN DEVELOPMENT PERMITS.

It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in § 156.06, until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.23 APPLICATION REQUIRED.

An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his or her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

(A) Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

(B) Elevation of the existing, natural ground where structures are proposed.

(C) Elevation of the lowest floor, including basement, of all proposed structures.

(D) Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.

(E) Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:

(1) Floodproofmg certification for nonresidential floodproofcd structure as required in § 156.39.

(2) Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of § 156.39(E) are designed to automatically equalize hydrostatic flood forces.

(3) Description of any watercourse alteration or relocation that the flood-carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in § 156.43(C).

(4) A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway as required by § 156.43(B).

(5) A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by § 156.43(A).

(6) Generation of base flood elevation(s) for subdivision and large-scale developments as required by § 156.37.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.24 REVIEW AND APPROVAL OF A FLOODPLAIN DEVELOPMENT PERMIT APPLICATION.

(A) *Review.*

(1) After receipt of a completed application, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all information required in § 156.23 has been received by the Floodplain Administrator.

(2) The Floodplain Administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

(B) *Approval.* Within 30 days after the receipt of a complete application, the Floodplain Administrator shall either approve or disapprove the application. If an application is approved, a floodplain development permit shall

be issued. All floodplain development permits shall be conditional upon the commencement of work within one year. A floodplain development permit shall expire one year after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.25 INSPECTIONS.

The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.26 POST-CONSTRUCTION CERTIFICATIONS REQUIRED.

The following as-built certifications are required after a floodplain development permit has been issued:

(A) For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a Federal Emergency Management Agency Elevation Certificate completed by a registered surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.

(B) For all development activities subject to the standards of § 156.29(A), a Letter of Map Revision.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.27 REVOKING A FLOODPLAIN DEVELOPMENT PERMIT.

A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Appeals Board in accordance with §§ 156.50 through 156.55 of these regulations.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.28 EXEMPTION FROM FILING A DEVELOPMENT PERMIT.

(A) An application for a floodplain development permit shall not be required for:

(1) Maintenance work such as roofing, painting, and basement sealing, or for small non-structural development activities (except for filling and grading) valued at less than $5,000.

(2) Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of O.A.C. Chapter 3701.

(3) Major utility facilities permitted by the Ohio Power Siting Board under R.C. Chapter 4906.

(4) Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under R.C. Chapter 3734.

(5) Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 - Floodplain Management.

(B) Any proposed action exempt from filing for a floodplain development permit is also exempt from the standards of these regulations.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.29 MAP MAINTENANCE ACTIVITIES.

To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that village flood maps, studies and other data identified in § 156.06 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(A) *Requirement to submit new technical data.*

(1) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:

(a) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;

(b) Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;

(c) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and

(d) Subdivision or large development proposals requiring the establishment of base flood elevations in accordance with § 156.37.

(2) It is the responsibility of the applicant to have technical data, required in accordance with § 156.29(A), prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

(3) The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:

(a) Proposed flood way encroachments that increase the base flood elevation; and

(b) Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

(4) Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to § 156.29(A)(1).

(B) *Right to submit new technical data.* The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Chief Executive Officer of the village, and may be submitted at any time.

(C) *Annexation/detachment.* Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the village have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the village Flood Insurance Rate Map accurately represent the village boundaries, include within such notification a copy of a map of the village suitable for reproduction, clearly showing the new corporate limits or the new area for which the village has assumed or relinquished floodplain management regulatory authority.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.30 DATA USE AND FLOOD MAP INTERPRETATION.

The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

(A) In areas where FEMA has not identified special flood hazard areas, or in FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.

(B) Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.

(C) When Preliminary Flood Insurance Rate Maps and/or Flood Insurance Study have been provided by FEMA:

(1) Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.

(2) Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(D) The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in §§ 156.50 through 156.55 Appeals and Variances.

(E) Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, and the like) shall prevail.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.31 SUBSTANTIAL DAMAGE DETERMINATIONS.

(A) Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, and the like. After such a damage event, the Floodplain Administrator shall:

(1) Determine whether damaged structures are located in special flood hazard areas;

(2) Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and

(3) Make reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

(B) Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with increased cost of compliance insurance claims.
(Ord. CM-11-06, passed 5-10-2011)

### *USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION*

## § 156.35 USE REGULATIONS.

The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area as established in § 156.06 or 156.30(A):

(A) *Permitted uses.* All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by village are allowed provided they meet the provisions of these regulations.

(B) *Prohibited uses.*

(1) Private water supply systems in all special flood hazard areas identified by FEMA, permitted under R.C. Chapter 3701.

(2) Infectious waste treatment facilities in all special flood hazard areas, permitted under R.C. Chapter 3734.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.36 WATER AND WASTEWATER SYSTEMS.

The following standards apply to all water supply, sanitary sewerage and waste disposal systems not otherwise regulated by the Ohio Revised Code:

(A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

(B) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and

(C) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.37 SUBDIVISIONS AND LARGE DEVELOPMENTS.

(A) All subdivision proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations;

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(D) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or five acres, whichever is less.

(E) The applicant shall meet the requirement to submit technical data to FEMA in § 156.29(A)(1)(d) when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by § 156.37(D).
(Ord. CM-11-06, passed 5-10-2011)

## § 156.38 RESIDENTIAL STRUCTURES.

(A) New construction and substantia! improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring set forth in this division (A) of this section and construction materials resistant to flood damage set forth in division (B) of this section are satisfied.

(B) New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.

(C) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.

(D) New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. Where flood protection elevation data are not available, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.

(E) New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings sufficient to allow unimpeded movement of flood waters may have an enclosure below the lowest floor provided the enclosure meets the following standards:

(1) Be used only for the parking of vehicles, building access, or storage; and

(2) Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters; or

(3) Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of flood waters.

(F) Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

(G) Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of this section.

(H) In AO Zones, new construction and substantial improvement shall have adequate drainage paths around structures on slopes to guide flood waters around and away from the structure.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.39 NONRESIDENTIAL STRUCTURES.

(A) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of § 156.38(A) through (C) and (E) through (H).

(B) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:

(1) Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;

(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(3) Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with divisions (B)(1) and (2) of this section.

(C) Where flood protection elevation data are not available, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.40 ACCESSORY STRUCTURES.

Relief to the elevation or dry floodproofing standards may be granted for accessory structures containing no more than 600 square feet. Such structures must meet the following standards:

(A) They shall not be used for human habitation;

(B) They shall be constructed of flood-resistant materials;

(C) They shall be constructed and placed on the lot to offer the minimum resistance to the flow of flood waters;

(D) They shall be firmly anchored to prevent flotation;

(E) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the level of the flood protection elevation; and

(F) They shall meet the opening requirements of § 156.38(E)(3).
(Ord. CM-11-06, passed 5-10-2011)

## § 156.41 RECREATIONAL VEHICLES.

Recreational vehicles must meet at least one of the following standards:

(A) They shall not be located on sites in special flood hazard areas for more than 180 days; or

(B) They must be fully licensed and ready for highway use; or

(C) They must meet all standards of § 156.38.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.42 ABOVE-GROUND GAS OR LIQUID STORAGE TANKS.

All above-ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.43 ASSURANCE OF FLOOD-CARRYING CAPACITY.

Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood-carrying capacity of watercourses is minimized:

(A) *Development in floodways.*

(1) In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or

(2) Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:

(a) Meet the requirements to submit technical data in § 156.29(A);

(b) An evaluation of alternatives, which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;

(c) Certification that no structures are located in areas that would be impacted by the increased base flood elevation;

(d) Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and

(e) Concurrence of the Mayor of the Village of West Milton and the Chief Executive Officer of any other communities impacted by the proposed actions.

(B) *Development in riverine areas with base flood elevations but no floodways.*

(1) In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than one foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or

(2) Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:

(a) An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;

(b) Section 156.43(A)(2)(a) and (c) through (e).

(C) *Alterations of a watercourse.* For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bankfull stage." The field determination of "bankfull stage" shall be based on methods presented in Chapter 7 of the *USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique* or other applicable publication available from a federal, state, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:

(1) The bankfull flood-carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood-carrying capacity of the watercourse will not be diminished.

(2) Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.

(3) The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood-carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with the village specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.

(4) The applicant shall meet the requirements to submit technical data in § 156.29(A)(1)(c) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.
(Ord. CM-11-06, passed 5-10-2011)

## *APPEALS AND VARIANCES*

### § 156.50 APPEALS BOARD ESTABLISHED.

(A) The Planning Board is hereby appointed to serve as the Appeals Board for these regulations as established by Village Charter.

(B) A chairperson shall be elected by the members of the Planning Board. Meetings of the Planning Board shall be held the first Wednesday of each month as prescribed by Section 8.02 of the Charter of the municipality. All meetings of the Planning Board shall be open to the public except that the Board may deliberate in executive sessions as part of quasi-judicial hearings in accordance with law. The Planning Board shall keep minutes of its proceedings, showing the vote of each member upon each question and shall keep records of all official actions. Records of the Planning Board shall be kept and filed in Village Hall at 701 South Miami Street, West Milton, Ohio.
(Ord. CM-11-06, passed 5-10-2011)

### § 156.51 POWERS AND DUTIES.

(A) The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

(B) Authorize variances in accordance with § 156.53.
(Ord. CM-11-06, passed 5-10-2011)

### § 156.52 APPEALS.

(A) Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within 30 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

(B) Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.
(Ord. CM-11-06, passed 5-10-2011)

### § 156.53 VARIANCES.

Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific

cases, such variances from the standards of these regulations, not inconsistent with federal regulations, as will not be contrary to the public interest where, owning to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(A) *Application for a variance.*

(1) Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.

(2) Such application at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.

(3) All applications for a variance shall be accompanied by a variance application fee set by the schedule of fees adopted by the village.

(B) *Notice for public hearing.* The Appeals Board shall schedule and hold a public hearing within 30 days after the receipt of an application for a variance from the Floodplain Administrator. Prior to the hearing, a notice of such hearing shall be given in one or more newspapers of general circulation in the community at least ten days before the date of the hearing.

(C) *Public hearing.* At such hearing the applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

(1) The danger that materials may be swept onto other lands to the injury of others.

(2) The danger to life and property due to flooding or erosion damage.

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(4) The importance of the services provided by the proposed facility to the community.

(5) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.

(6) The necessity to the facility of a waterfront location, where applicable.

(7) The compatibility of the proposed use with existing and anticipated development.

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(D) Variances shall only be issued upon:

(1) A showing of good and sufficient cause.

(2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.

(3) A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.

(4) A determination that the structure or other development is protected by methods to minimize flood damages.

(5) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances, as it deems necessary to further the purposes of these regulations.

(E) *Other conditions for variances.*

(1) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(2) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in § 156.54(C)(1) through (11) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. CM-11-06, passed 5-10-2011)

## § 156.54 PROCEDURE AT HEARINGS.

(A) All testimony shall be given under oath.

(B) A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.

(C) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.

(D) The Administrator may present evidence or testimony in opposition to the appeal or variance.

(E) All witnesses shall be subject to cross-examination by the adverse party or their counsel.

(F) Evidence that is not admitted may be proffered and shall become part of the record for appeal.

(G) The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.

(H) The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.55 APPEAL TO THE COURT.

Those aggrieved by the decision of the Appeals Board may appeal such decision to the Miami County Court of Common Pleas, as provided in R.C. Chapter 2506.
(Ord. CM-11-06, passed 5-10-2011)

### *ENFORCEMENT*

## § 156.60 COMPLIANCE REQUIRED.

(A) No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in § 156.28.

(B) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with § 156.99.

(C) Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with § 156.99.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.61 NOTICE OF VIOLATION.

Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, he shall give notice of such violation to the person responsible therefor and order compliance with these regulations as hereinafter provided. Such notice and order shall:

(A) Be put in writing on an appropriate form;

(B) Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action, which, if taken, will effect compliance with the provisions of these regulations;

(C) Specify a reasonable time for performance;

(D) Advise the owner, operator, or occupant of the right to appeal;

(E) Be served on the owner, occupant, or agent in person. However, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy thereof is sent by registered or certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.
(Ord. CM-11-06, passed 5-10-2011)

## § 156.99 VIOLATIONS AND PENALTIES.

Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a fourth degree misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall, upon conviction thereof, be fined or imprisoned as provided by the laws of the village. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the village from taking such other lawful action as is necessary to prevent or remedy any violation. The village shall prosecute any violation of these regulations in accordance with the penalties stated herein.
(Ord. CM-11-06, passed 5-10-2011)

# CHAPTER 157: COMPREHENSIVE DEVELOPMENT PLAN

Section



## *GENERAL PROVISIONS*

### § 157.01 BASIC STUDIES OF 1990 CENSUS ADOPTED BY REFERENCE.

The basic studies, tables, charts and the like pertaining to the Comprehensive Development Plan of the city are hereby adopted by reference and made a part of this code as if fully set forth in this section.

### § 157.02 FUTURE LAND USE PLAN ADOPTED BY REFERENCE.

The Future Land Use Plan of the city is adopted by reference and made a part of this code as if set forth fully in this section.

### § 157.03 MAJOR THOROUGHFARE PLAN ADOPTED BY REFERENCE.

The Major Thoroughfare Plan of the city is adopted by reference and made a part of this code as if set forth fully in this section.

## § 157.04 COMPREHENSIVE PLAN ADOPTED BY REFERENCE.

The Comprehensive Plan of the city is adopted by reference and made a part of this code as if set forth fully in this section.

## *PLANNING ADMINISTRATION*

## § 157.15 GENERAL PROVISIONS.

(A) Completion of the Comprehensive Plan is only the beginning of the planning process. To derive any benefit from the Plan, additional steps must be taken. These include adoption of the Plan elements, implementation of the recommendations contained therein, and enforcement of the necessary regulations.

(B) The Planning Board is responsible for advising the Municipal Manager, Council, public officials and private agencies relative to Plan objectives. This responsibility should not be taken lightly. Special interests and others may attempt to divert the Board from its purpose. However, a concerted effort by the Planning Board, with support from the elected officials, will result in the gradual realization of the benefits to the community derived from the recommendations of the Comprehensive Plan.

(C) The Planning Board is primarily a fact-finding and advisory body. However, its advice concerning both public and private development should not be easily ignored. This responsibility requires that the Board assure itself that its recommendation is promotive of the best interests of the community, will not conflict with other features of the Development Plan, is in scale with both present and future needs, and is neither arbitrary nor capricious.

(D) After adoption of the Comprehensive Plan, no public improvement or private utility of the types included within the Plan may be constructed or authorized in the community until the project has been reviewed by the Planning Board. Disapproval by the Planning Board can be overruled by a majority vote of Council or any other board or agency having jurisdiction over the improvement. This takes no real power from municipal officials or public agencies but helps to insure that such an improvement will be beneficial to the community. It also provides a deterrent against individual pressure for hastily or ill-conceived local projects.

(E) With required submission of all plats to the Planning Board, subdivisions will be made to conform with the Comprehensive Plan in regard to the layout of streets and other public open spaces. In addition, modern standards relative to the size and shape of lots and essential street and utility improvements will be required prior to development.

(F) Enforcement of the zoning code will insure that residential, commercial and industrial structures and uses are placed in the proper districts and are in conformance with all other zoning regulations.

(G) The members of the Planning Board should possess a thorough understanding of the municipal problems and needs and have a genuine interest in the betterment of the community. They should be familiar with the planning laws and ordinances as well as with the general objectives and methods of city planning.

(H) Planning Board review in regard to land subdivision and other matters referred to it by Council requires intelligent appraisal and a considerable amount of time for the compilation of technical data and other information, field inspections, and the like. Consulting services to assist the Board in these matters should be considered.

(I) Approval or disapproval of subdivision plats should be based on the provisions of the subdivision regulations. The handling of requests for zoning changes should be in accordance with provisions of the zoning code. Recommendations concerning these and other matters should always be consistent with the Development Plan.

***Cross-reference:***

*Zoning Code, see Ch. 150*

## § 157.16 IMPLEMENTATION OF THE PLAN.

(A) The process used to implement the Plan involves regulation and control of all development and the provision of public services and facilities. The Comprehensive Plan, after receiving official adoption, should be made a matter of public record with its goals, standards, objectives and principles made available to both private citizens and public officials.

(B) This Plan, as a forward looking instrument, recognizes an area considerably larger than existing within legal community boundaries. Thus, the effectuation of the Development Plan establishes a need for coordination between West Milton and other political entities exercising planning control over the remaining area. This coordination and cooperation should be developed in a formal manner recognizing the powers assigned by statute to the various jurisdictions charged with plan implementation. All private and public development proposals, including public acquisition by responsible agencies, should be referred to the Planning Board for review and recommendation relative to compliance with the Comprehensive Plan. Such proposals should reflect, in writing, the recommendation of the Planning Board prior to being considered and reviewed by the responsible agencies. All actions of responsible agencies with jurisdiction in the planning area should be in accord with this Comprehensive Plan thus insuring recognition of the Plan and implementation thereof.

(C) In any area involving several jurisdictions, cooperative, integrated planning is necessary to obtain the best and most efficient development, especially in urban fringe areas. Therefore, West Milton should exercise a concerted effort to coordinate the development and subsequent revisions of the Miami County Land Use Plan as it relates to the community's growth area.

(D) To guide implementation and to insure that the Comprehensive Plan is kept current, a planning program should be undertaken to review each element at least every five years. Such review should result in reaffirmation of the Plan or produce a need for revision and readoption of pertinent sections. These actions will assure that the Plan remains a reliable, reasonable and realistic guide to a better future.

## § 157.17 ZONING.

(A) Zoning is the regulation of the use of private property for the purpose of promoting the orderly development of a community and furthering the health, safety and general welfare of its inhabitants. Under zoning, every property owner is allowed the enjoyment of all his or her property rights and is restricted from

encroaching on the rights of others. Thus, it protects every property owner from injury by others who would seek private gain at his or her expense or at the expense of the community as a whole.

(B) Zoning involves the allocating of all land in the community to districts or zones of different categories. It also regulates, district by district, the use of property and the height and size of buildings. It is the principal instrument for implementing that part of the Comprehensive Plan concerned with the use of private lands, as distinguished from that part which is concerned with public spaces and facilities.

(C) In the absence of zoning, commercial and industrial establishments have invaded predominately residential neighborhoods. In many communities, residences have been built in the past with little regard to desirable setback and with side yards too narrow for adequate light, air, privacy and fire protection. In certain cases, property has been used unwisely with no regard to the interest of the neighborhood or the community at large. The desirability, if not the livability, of some residential sections has been greatly lessened by such practices.

(D) The invasion of incompatible property uses into residential sections, inadequate open spaces and other malpractices in land use are among the principal causes of blighted areas and slums in our larger cities. From the standpoint of the community, the lowering of property values means a shrinking tax duplicate and, consequently, higher tax rates if reasonable standards of public services are to be maintained.

(E) Zoning regulations and maps are regulatory devices in carrying out the recommendations of the Comprehensive Plan. The present zoning code was revised in 1976. In form and other respects, the present code differs materially from the previous regulations.

(F) In the text of the revised code definitions are included. All commercial uses are permitted in four commercial districts to properly designate the various uses permitted in defined areas of the municipality. Residential uses are more clearly stated in each of the seven districts. Signs are described and regulated. Parking requirements and screening in commercial and industrial districts are now required. Duties and limitations of the Board of Adjustment are specified to cover all matters within its jurisdiction. Provisions for planned unit development, a newer concept in zoning and flood plain zoning are also included.

(G) Conditional uses are stated for the various zoning classifications and the intent of the provisions of each are included. Requirements and procedures to amend the zoning code, including the zoning of annexed areas, have been set forth. Items under general provisions, including regulation of nonconforming uses, were reviewed and revised.

(H) Inappropriate uses in zoning classifications result in a corresponding defect in the zoning map. In light of current trends and future prospects, some zoning districts should be reviewed and appropriately revised in accordance with the officially adopted Comprehensive Plan.

(I) The map should be designed to fit not only existing conditions but also future requirements based on findings of the population and economic studies. The delineation of zones should be determined on the basis of existing and potential development. Zoning should be based on a full knowledge of existing conditions and an appraisal of future needs and requirements.

(J) All of the basic Comprehensive Plan surveys and studies, together with plans of major streets, schools, parks, playgrounds and other elements of the Plan should be considered in the revision of the zoning map and

provisions of the code. This insures the integration of the zoning plan with all other features, public and private, of existing and proposed developments. Proposed zoning districts should be checked against property maps in establishing the district boundaries.

## § 157.18 ZONING ADMINISTRATION.

(A) The zoning code will be only as effective in achieving proper community development as the method in which it is administered by the Enforcing Officer. The mechanics of its administration should be combined with that of a modern building code.

(B) The code provides that every person who desires to erect a building or to reconstruct, enlarge, structurally alter or move an existing building or structure must apply for a certificate of zoning compliance. The application is accompanied by plans showing location of the building on the lot, nature of the work to be done and the use to which the building is to be put.

(C) The required plans and information enable the Enforcing Officer to determine whether the proposed building and its use or the proposed use of land, when no building is involved, conform to the provisions of the zoning code. When he finds that they conform in every particular, he or she will issue a certificate of zoning compliance, and, if they do not meet the requirements of the code, he or she will refuse to grant such permission.

(D) The zoning code does not vest discretionary powers to the Enforcing Officer. In general, he or she administers the ordinance in accordance with its literal terms. Whenever the plans for a building or alteration do not conform to the provisions of the code or whenever a change in the use of a building or parcel of land does not conform, the Enforcing Officer should refuse to issue a certificate. Appeal of a decision by the Enforcing Officer may be taken to the Board of Adjustment.

(E) The Board of Adjustment is an administrative board established under terms of the zoning code and by authority of the Charter. The Board is to apply the zoning code, as adopted, with adjustments for exceptional situations as provided. These adjustments must be consistent with the zoning regulations as set forth in the code.

(F) The Board of Adjustment has the authority to hear and determine each case which falls within its jurisdiction as defined in the zoning code. But in its decision, it must assume the correctness of every part of the zoning code, including the zoning map, and restrict itself to the field of adjustment, administration and interpretation. Correcting what it may consider bad zoning is not within its province.

(G) If the Board of Adjustment takes its task too lightly, interprets its discretionary powers too liberally, and thereby encroaches on the province of the Municipal Manager and Council, it can badly impair, if not destroy, the effectiveness of the zoning code, antagonize the Mayor and Council, and break down public respect and support for zoning directly as well as through adverse court decisions. If the Board interprets the code too rigidly and refuses to extend relief in specific cases to the extent it is authorized to do so, it will accumulate resentment, invite judicial disapproval on the grounds of unreasonableness, and fail to build up and maintain necessary public support. In performing its functions, sound policies and practices by the Board are of vital importance.

(H) The cases coming before the Board of Adjustment include interpretation, special exceptions and variances. It is important that the differences between the types of cases coming before the Board be clearly understood, because the procedure, principals and limitations in handling each type are quite different.

(1) Interpretation of the zoning code by the Board of Adjustment is necessary when the Enforcing Officer is uncertain as to the correct interpretation of a specific provision of the code, the precise location on the ground of a zoning district boundary as shown on the zoning map, or when an applicant feels that the Enforcing Officer's interpretation is in error.

(2) Special exceptions are those types of cases for which the Board of Adjustment has authority, in conformance with general rules and conditions set forth in the zoning code, to authorize the granting of a certificate of zoning compliance, subject to such conditions and safeguards as the Board may consider appropriate in order to protect the public interest. These cases are specifically named and described within the zoning code. Experience has shown that there are certain types of cases or situations which cannot be covered by the general standards of a zoning text and which can best be met through special exceptions or permits.

(3) Variances are modifications of the strict terms of the zoning code in cases where exceptional narrowness, shallowness or shape of an individual piece of property, exceptional topographic condition or other extraordinary condition of a piece of property, or the established uses or conditions of adjoining properties would result in an exceptional difficulty or undue hardship on the owner of that piece of property.

(I) The hardship which justifies a variance must be that of the individual lot and not a hardship due to those aspects of the regulations or districting which affect other properties not possessing the exceptional characteristics from which the hardship ensues. The zoning code specifically lists the conditions under which a variance may be granted, and the decision must be based upon a finding of facts.

(J) If the hardship arises out of a condition common to the neighborhood or to other lots similarly situated, but not having the peculiar characteristics of the lot in question, then the need is that of amending the zoning code. This is a legislative function.

(K) A request for a special exception comes before the Board of Adjustment on direct application. A request for a variance comes on appeal from the decision of the Enforcing Officer. The Municipal Manager and Council may, from time to time, amend the zoning map or the regulations of the zoning code. However, each proposed amendment will have to be submitted first to the Planning Board for recommendation.

(L) Request for an amendment to the zoning code by a property owner is made by filing an application. This application is then referred to the Planning Board. After hearing interested persons and consulting the proposals of the Comprehensive Plan, recommendation is forwarded to Council. After holding a public hearing, Council grants or denies the request for rezoning.

(M) Unexpected developments may occur or conditions on which the zoning regulations were based may undergo considerable change over a period of years making it necessary to amend the zoning code. Major improvements carried out under the Comprehensive Plan may make adjustments in zoning districts desirable. In every case, there should be a compelling reason for an amendment other than a collection of neighborhood desires.

(N) The zoning plan is an essential part of the Comprehensive Plan and the zoning code is a device for effectuating this Plan. In shaping its recommendations to the Municipal Manager and Council on zoning amendments, the Planning Board must always consider the promotion of the public good and the welfare of the community as a whole.

## § 157.19 SUBDIVISION CONTROL.

(A) Urban areas expand primarily by the development of new subdivisions. Usually, before land can be put to urban use, acreage must be converted into streets, blocks, and lots which establish the pattern and character of each new area. This process is known as platting or subdividing. Every subdivision located within or adjacent to the municipality becomes a lasting physical feature of the community.

(B) Consequently, control over land subdivision is one of the major tools for gradually bringing about a well-designed and attractive community. When subdivisions are not controlled or are inadequately controlled, they may be defective in several major respects. Their street system may be inadequate or badly designed, lots may be of inappropriate size or shape, or the street and utility improvements may fall short of minimum standards necessary for health, safety or desirable living conditions.

(C) Subdivisions may also be defective in relationship to the development of adjoining areas or to the community as a whole. The streets may be ill-adapted to existing or required future streets in contiguous areas of the community. The size and arrangement of lots may not be in harmony with the existing or desirable future character of the neighborhood. Finally, the utilities may not be properly coordinated in point of location or size with those of adjacent areas.

(D) The legal basis for control of land subdivision is the exercise of the right to withhold the privilege of public record for subdivision plats which have been poorly or inappropriately designed, which are not properly adjusted to the existing or desirable future development of adjoining areas, or which are not consistent with the Comprehensive Plan.

(E) The statutes of the State of Ohio vest subdivision control in the planning body. This control may be extended 1-1/2 miles beyond a village's political limits, after adoption of the Comprehensive Plan and subdivision regulations. Such control is increased to a 3-mile jurisdiction when a municipality gains city status.

(F) In order to control the subdivision of land, a set of subdivision regulations were adopted in 1968 and updated in 1976. The regulations, in conjunction with other features of the Comprehensive Plan, give the Planning Board adequate guidance and control over all future land subdivision within the community.

(G) The regulations set forth the general principles of design and the minimum requirements for subdivision layout, including street and block layout, minimum right-of-way widths for streets, alleys and utility easements, minimum roadway widths, maximum street grades, minimum sight distances, treatment of intersections, recommendations with respect to recreational and other desirable open spaces, and size, shape and layout of lots.

(H) The requirement for installation of street and sanitary improvements prior to building construction is among the most important provisions of the subdivision regulations. These installations are essential to protect the health and safety of future residents of the subdivision as well as the community as a whole.

(I) It should be recognized that exceptional situations may give rise to practical difficulty or undue hardship. In such cases, the Planning Board may vary the rules to relieve such hardship or difficulty, provided the relief may be granted without substantial detriment to the public good or without impairing the desirable development of the community.

(J) The regulations, if effectively enforced, are an important tool for coordinating all new subdivisions with the Comprehensive Plan. In presently undeveloped areas, the right-of-way needed for future thoroughfares or highways, or the strips necessary for the widening of existing ones, may be secured, in most cases, without cost to the public and usually at little, if any, cost to the subdivider.

(K) Subdivision control should prove to be one of the most effective and beneficial instruments for achieving desirable future development of the community when consistently and intelligently applied in accord with the Comprehensive Plan.

## § 157.20 CAPITAL IMPROVEMENTS PROGRAM.

(A) The Comprehensive Plan for West Milton is a long range plan, designed for the estimated population in the year 2000 and including the capital improvements which will be needed to adequately serve this anticipated population. These capital improvements include streets, parks, playgrounds, schools and public buildings.

(B) The Capital Improvements Program outlines the method of carrying out the improvements recommended in the Comprehensive Plan. Consideration should be given to other necessary public expenditures such as extension of the existing municipal utilities or new equipment. It is important that the community neither overreach its financial resources nor neglect to provide essential public improvements.

(C) Once the Comprehensive Plan has been prepared, the Capital Improvements Program is one of the major instruments used for the systematic and economical implementation of the Plan. The Comprehensive Plan cannot, of itself, produce the more attractive and efficient community it portrays. The achievements which may be realized are dependent upon effective administration, including full use of the financial tools available to carry out the Plan's recommendations. Like the Plan itself which is subject to change based upon unforeseen developments, the Capital Improvements Program must be adjusted to change. Unforeseen developments may justify or necessitate undertaking certain projects sooner, or, on the other hand, may defer certain improvements until conditions are more favorable.

(D) Long range capital improvements must be programmed now to meet the needs of urban growth and maintain a high standard of development within the community. All available revenue and means of financing should be utilized to create and maintain a desirable community.

(E) The first Capital Improvements Program was presented in 1974 and has been updated annually according to Charter requirements. Although the Municipal Manager is responsible for its preparation, the Planning Board should review the Program and be prepared to comment based upon the previous year's progress and any new conditions or developments which may have arisen.

(F) It should be noted that the Capital Improvements Program is not intended to be a rigid time schedule for the strict implementation of the Comprehensive Plan. As previously indicated, it is simply a yearly analysis of the community's needs versus fiscal capabilities relative to planned public improvements.

# CHAPTER 158: WIRELESS TELECOMMUNICATIONS CODE

Section

*Wireless Telecommunication Facilities in Residential Districts*



*Wireless Telecommunication Facilities in Business Districts*



*Wireless Telecommunication Facilities in Industrial Districts*



*Abandonment of Tower*



*Application and Review Requirements*



## *GENERAL PROVISIONS*

### § 158.001 LEGISLATIVE PURPOSES.

The purpose of this code is to regulate the placement, construction and modification of wireless telecommunication facilities and their support structures in order to protect the public health, safety and welfare,

while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the Miami Valley Region. Specifically, the purposes of the Code are:

(A) To direct the location of various types of towers and wireless telecommunications facilities into appropriate areas of the city;

(B) To protect residential areas and lands from potential adverse impacts of towers and wireless telecommunications facilities;

(C) To minimize adverse visual impacts of towers and wireless telecommunications facilities through careful design, siting, landscaping and innovative camouflaging techniques;

(D) To promote and encourage shared use/co-location of towers and antenna support structures as a primary option rather than construction of additional single-use towers;

(E) To avoid potential damage to adjacent properties caused by towers and wireless telecommunications facilities by ensuring such structures are soundly designed, constructed and modified, are appropriately maintained, and are fully removed;

(F) To the greatest extent feasible, ensure that towers and wireless telecommunications facilities are compatible with surrounding land uses; and

(G) To the greatest extent feasible, ensure that towers and wireless telecommunications facilities are designed in harmony with natural settings and in a manner consistent with current development patterns. (Ord. CM-97-39, passed 12-10-1997)

## § 158.002 APPLICABILITY.

All towers, antenna support structures, and wireless telecommunication facilities, any portion of which are located within the municipality, are subject to this code. Except as provided in this code, any use being made of an existing tower or antenna support structure on the effective date of this code shall be deemed a nonconforming structure and allowed to continue, even if in conflict with the terms of this code. Any tower site that has received approval in the form of a building permit by the municipality, but has not yet been constructed or located, shall be considered a nonconforming structure so long as such approval is current and not expired. (Ord. CM-97-39, passed 12-10-1997)

## § 158.003 DEFINITIONS.

For the purposes of this code, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may”is permissive. Words not defined shall be given their common and ordinary meaning.

***ANTENNA.*** Any panel, whip, dish or other apparatus designed for communications through the sending and/or receiving of electromagnetic waves, excluding any support structure other than brackets.

***ANTENNA SUPPORT STRUCTURE.*** Any building or other structure other than a tower which can be used for location of wireless telecommunications facilities.

***APPLICANT.*** Any person that applies for a permit pursuant to this code.

***APPLICATION.*** The process by which an applicant submits a request and indicates a desire to be granted a conditional use permit under the provisions of this code. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the municipality concerning such a request.

***CO-LOCATION.*** The use of a wireless telecommunication facility by more than one wireless telecommunications provider.

***EMERGENCY.*** A reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

***ENGINEER.*** Any engineer licensed by the State of Ohio.

***EQUIPMENT SHELTER.*** The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.

***FAA.*** The Federal Aviation Administration and any legally appointed, designated or elected agent or successor.

***FCC.*** The Federal Communications Commission and any legally appointed, designated or elected agent or successor.

***MONOPOLE.*** A support structure constructed to a single, self-supporting hollow metal tube securely anchored to a foundation.

***MUNICIPALITY.*** The Municipality of West Milton.

***PERSON.*** Any natural person, firm, partnership, association, corporation or other legal entity, private or public, whether for profit or not-for-profit.

***TOWER.*** A self-supporting lattice, guyed or monopole structure constructed from grade which supports wireless telecommunications facilities. The term tower shall not include amateur radio operator's equipment, as licensed by the FCC.

***WIRELESS TELECOMMUNICATION FACILITY.*** Any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the transmission or reception of communications as authorized by the FCC which a person seeks to locate or have installed upon a tower antenna support structure. However, the term wireless telecommunications facilities shall not include:

(1) Any satellite earth station antenna two meters in diameter or less which is located in an area zoned industrial or commercial;

(2) Any satellite earth station antenna one meter or less in diameter, regardless of zoning category; and

(3) Antennas used by amateur radio operators.

***ZONING CODE.*** The Zoning Code of the municipality.
(Ord. CM-97-39, passed 12-10-1997)

## *STANDARDS APPLICABLE TO ALL WIRELESS TELECOMMUNICATION FACILITIES*

### § 158.010 CONSTRUCTION STANDARDS.

All wireless telecommunication facilities and support structures shall be certified by an engineer licensed in the State of Ohio to be structurally sound and, at a minimum, in conformance with Ohio Basic Building Code.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.011 NATURAL RESOURCE PROTECTION STANDARDS.

The location of the wireless telecommunication facility shall comply with all natural resource protection standards established either in this Zoning Code or in other applicable regulations, including those for flood plains, wetlands, groundwater protection and steep slopes.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.012 HISTORIC OR ARCHITECTURAL STANDARDS COMPLIANCE.

Any application to locate a wireless telecommunication facility on a building or structure that is listed on a federal, state or local historic register, or is in an historic district established by the municipality, shall be subject to review by the Architectural Review Board, or Zoning Enforcement Officer if there is no such review board, to insure architectural and design standards are maintained.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.013 COLOR AND APPEARANCE STANDARDS.

All wireless telecommunication facilities shall be painted a non-contrasting gray or similar color minimizing its visibility, unless otherwise required by the Federal Communications Commission, Federal Aviation Administration, and/or by historical or architectural standards imposed under § 158.012 of this Code. All appurtenances shall be aesthetically and architecturally compatible with the surrounding environment by the means of camouflage deemed acceptable by the municipality.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.014 ADVERTISING PROHIBITED.

No advertising is permitted anywhere upon or attached to the wireless telecommunication facility.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.015 ARTIFICIAL LIGHTING RESTRICTED.

No wireless telecommunication facility shall be artificially lit except as required by the Federal Aviation Administration.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.016 CO-LOCATION.

All wireless telecommunication facilities shall be subject to the co-location requirements set forth in §§ 158.030 to 158.035 of this Zoning Code.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.017 ABANDONMENT.

All wireless telecommunications facilities shall be subject to the abandonment requirements set forth in §§ 158.070 to 158.072 of this Zoning Code.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.018 SETBACK FROM EDGE OF ROOF.

Any wireless telecommunication facility and its appurtenances permitted on the roof of a building shall be set back one foot from the edge of the roof for each one foot in height of the wireless telecommunication facility. However, this setback requirement shall not apply to antennas that are less than two inches in thickness mounted to the sides of antenna support structures and do not protrude more than six inches from the side of such an antenna support structure. This requirement is subject to change by the municipality upon the review of the photo simulation provided in compliance with § 158.092.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.019 SECURITY ENCLOSURE REQUIRED.

All towers and equipment shelters shall be enclosed either completely or individually as determined by the municipality. No fencing shall be permitted in a residential zone. The municipality and co-locators shall have reasonable access. No fence shall be required on top of a building or other structure if access to the roof or top of the structure or building is secure.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.020 EXISTING VEGETATION AND BUFFER PLANTINGS.

Existing vegetation (trees, shrubs and the like) shall be preserved to the maximum extent possible. Buffer plantings shall be located around the perimeter of the security enclosure as deemed appropriate by the municipality. An evergreen screen may be required around the perimeter of the property in lieu of such buffer plantings.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.021 ACCESS CONTROL AND EMERGENCY CONTACT.

"No Trespassing" signs shall be posted around the wireless telecommunications facility, along with a telephone number of who to contact in the event of an emergency.
(Ord. CM-97-39, passed 12-10-1997)

## *CO-LOCATION REQUIREMENTS*

### § 158.030 JURISDICTION STUDY OF POTENTIAL PUBLIC SITES.

In order to encourage the location of a wireless telecommunication facility on publicly-owned property, the municipality shall undertake an identification of publicly-owned properties that the municipality determines are suitable for such use. The municipality shall regularly update such identification and make the results of such available to the public.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.031 EXEMPTION FROM PROOF OF CO-LOCATION AVAILABILITY.

Persons locating a wireless telecommunication facility upon a publicly-owned property identified in the study mentioned in § 158.030 above shall be exempted from the requirements herein regarding presentation of proof that co-location is not available. However, persons locating a wireless telecommunication facility on publicly-owned property shall continue to be subject to the requirements contained in § 158.033 below.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.032 EXEMPTION FROM CERTAIN REQUIREMENTS.

Persons locating a wireless telecommunication facility on a publicly-owned property identified by the municipality to be suitable for such purposes shall be exempt from the requirements of § 158.040 to 158.072 of this code.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.033 CO-LOCATION DESIGN REQUIRED.

No new tower shall be constructed in the municipality unless such tower is capable of accommodating at least two additional wireless telecommunication facility owned by another person.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.034 TECHNICALLY SUITABLE SPACE.

Authorization for a tower shall be issued only if there is not technically suitable space reasonably available on an existing tower or structure within the geographic area to be served.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.035 APPLICATION REQUIREMENTS.

(A) With the permit application, the applicant shall list the location of every tower, building or structure within a reasonably proximity that could support the proposed antenna.

(B) The applicant must demonstrate that a technically suitable location is not reasonable available on an existing tower, building or structure within such area. If another communication tower owned by another party within such area is technically suitable, applicant must show that an offer was made to the owner of such tower to co-locate an antenna on a tower owned by the applicant on reciprocal terms within the municipality, and the offer was not accepted.

(C) If such co-location offer has not been attempted by the applicant, then such other tower is presumed to be reasonably available.
(Ord. CM-97-39, passed 12-10-1997)

## *WIRELESS TELECOMMUNICATIONS FACILITIES IN AGRICULTURAL DISTRICTS*

### § 158.040 PERMITTED PRINCIPAL USE.

The following wireless telecommunication facilities are permitted as a principal use upon a lot, subject to the following requirements:

(A) *Tower maximum height.* The maximum height shall be less than 50 feet. Towers 200 feet or more in height shall require approval as a conditional use under the guidelines of § 158.042.

(B) *Tower minimum setback from property lines.* No tower shall be located a distance less than its height from the nearest property line.

(C) *Tower minimum setback from residential structure.* No tower shall be located less than 200 feet from a structure used as a residence.

(D) *Tower equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.
(Ord. CM-97-39, passed 12-10-1997)

## § 158.041 ACCESSORY USE.

The following wireless telecommunication facilities are permitted as an accessory use upon a lot, subject to the following requirements:

(A) *Tower.*

(1) *Maximum height.* The maximum height shall be less than 50 feet. Towers 200 feet or more in height shall require approval as a conditional use under the guidelines of § 158.042.

(2) *Minimum setback from property lines.* The minimum setbacks and yard requirements for principal structures shall apply.

(3) *Minimum setback from residential structure.* No tower shall be located less than 200 feet from a structure used as a residence on any adjoining property.

(4) *Equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.

(B) *Antenna.* The antenna shall not be attached to a structure used as a residence.
(Ord. CM-97-39, passed 12-10-1997)

## § 158.042 CONDITIONAL USE.

The following wireless telecommunication facilities are permitted as a conditional use upon a lot, subject to the following requirements:

(A) *Tower maximum height.* Any height of such tower in excess of the distance of such tower from the nearest property line shall require approval of the Board of Adjustment.

(B) *Tower minimum setback from property lines.* The minimum setbacks and yard requirements shall be established by the Board of Adjustment.

(C) *Tower minimum setback from residential structure.* No tower shall be located a distance less than its height from a structure used as a residence.

(D) *Tower equipment shelter.* The minimum setbacks and yard requirements shall be established by the Board of Adjustment and such shelter shall not be located above ground in any required front or side yard.
(Ord. CM-97-39, passed 12-10-1997)

## *WIRELESS TELECOMMUNICATION FACILITIES IN RESIDENTIAL DISTRICTS*

### § 158.050 PERMITTED PRINCIPAL USE.

No wireless telecommunication facility is permitted as a principal use upon a lot.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.051 ACCESSORY USE.

The following wireless telecommunication facilities are permitted as an accessory use upon a lot, subject to the following requirements:

(A) *Tower.* No wireless telecommunication tower is permitted as an accessory use within a residential district without a conditional use approval under the guidelines of § 158.053.

(B) *Antenna.* An antenna for a wireless telecommunication facility may be attached to an existing residential building four or more stories in height or to an existing nonresidential structure subject to the following conditions:

(1) *Maximum height.* The antenna shall not extend more than 20 feet above the roof of the existing building or top of the existing structure.

(2) *Separate equipment shelter.* If the applicant proposes to locate the telecommunications equipment in a separate equipment shelter, not located in or attached to the building, the equipment shelter shall comply with the accessory building regulations of the district and not be located above ground within any required front or side yard.

(3) *Vehicular access.* Vehicular access to the equipment shelter shall be via the existing circulation system and be paved with asphalt or concrete.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.053 CONDITIONAL USE.

The following wireless telecommunication facilities are permitted as a conditional use upon a lot, subject to the following requirements:

(A) *Tower.* A wireless telecommunications tower may be an accessory use to a public or institutional use within a residential zoning district, provided the Board of Adjustment finds the following standards have been met:

(1) *Minimum lot size for principal use.* The minimum lot size for principal use for which the tower is accessory shall be five acres.

(2) *Minimum setback from property lines and residential structures.* The minimum setbacks and yard requirements shall be established by the Board of Adjustment.

(3) *Maximum height.* The height of such tower shall be subject to approval by the Board of Adjustment and be the minimum height necessary, but in no case higher than 50 feet.

(4) *Equipment shelter.* The minimum setbacks, height limits, bulk requirements and screening standards shall be established by the Board of Adjustment during the conditional use process. Such shelter shall not be located above ground in any required front or side yard.

(B) *Antenna.* The Board of Adjustment may approve the location of an antenna extending more than 20 feet above the roof of an existing building or structure.

(1) *Attachment to existing building.* An antenna for a wireless telecommunication facility may be attached to an existing residential building four or more stories in height or to an existing nonresidential structure subject to the following conditions:

(a) *Roof setback.* The pole structure supporting such antenna shall be set back one foot distance from the edge of such roof for each one foot of height above such roof. This requirement shall not apply to antennas two inches or less in thickness without a supporting pole structure.

(b) *Separate equipment shelter.* If the applicant proposes to locate the telecommunications equipment in a separate equipment shelter, not located in or attached to the building, the equipment shelter shall comply with the accessory building regulations of the district. Such shelter shall not be located above ground in any required front or side yard.

(c) *Required buffer.* A buffer shall be planted in accordance with § 158.020.

(d) *Vehicular access.* Vehicular access to the equipment shelter shall be via the existing circulation system and be paved with asphalt or concrete.
(Ord. CM-97-39, passed 12-10-1997)

## *WIRELESS TELECOMMUNICATION FACILITIES IN BUSINESS DISTRICTS*

### § 158.060 PERMITTED PRINCIPAL USE.

The following wireless telecommunication facilities are permitted as a principal use upon a lot, subject to the following requirements:

(A) *Tower maximum height.* The maximum height shall be less than 100 feet.

(B) *Tower minimum setback from property lines.* The minimum setbacks and yard requirements for principal structures shall apply.

(C) *Tower minimum setback from residential structure.* No tower shall be located less than 200 feet from a structure used as a residence.

(D) *Tower equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.
(Ord. CM-97-39, passed 12-10-1997)

## § 158.061 ACCESSORY USE.

The following wireless telecommunication facilities are permitted as an accessory use upon a lot, subject to the following requirements:

(A) *Tower.*

(1) *Maximum height.* The maximum height shall be less than 100 feet.

(2) *Minimum setback from property lines.* The minimum setbacks and yard requirements for principal structures shall apply.

(3) *Minimum setback from residential structure.* No tower shall be located less than 200 feet from a structure used as a residence.

(4) *Equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.

(B) *Antenna.* The antenna shall not be attached to a residential structure.
(Ord. CM-97-39, passed 12-10-1997)

## § 158.062 CONDITIONAL USE.

The following wireless telecommunication facilities are permitted as a conditional use upon a lot, subject to the following requirements:

(A) *Tower 200 feet or more in height.*

(1) *Minimum setback from property lines.* The minimum setbacks and yard requirements for principal structures shall apply.

(2) *Minimum setback from residential structure.* No tower shall be located a distance less than its height from a structure used as a residence.

(3) *Equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.

(B) *Antenna.* The antenna shall not be attached to a residential structure unless such structure is four or more stories in height.
(Ord. CM-97-39, passed 12-10-1997)

## *WIRELESS TELECOMMUNICATION FACILITIES IN INDUSTRIAL DISTRICTS*

### § 158.070 PERMITTED PRINCIPAL USE.

The following wireless telecommunication facilities are permitted as a principal use upon a lot, subject to the following requirements:

(A) *Tower maximum height.* The maximum height of such tower shall be less than the distance of such tower from the nearest property line, but in no case higher than 150 feet.

(B) *Tower minimum setback from property lines.* The minimum setbacks and yard requirements for principal structures shall apply.

(C) *Tower minimum setback from residential structure.* No tower shall be located a distance less than its height from a structure used as a residence.

(D) *Tower equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.071 ACCESSORY USE.

The following wireless telecommunication facilities are permitted as an accessory use upon a lot, subject to the following requirements:

(A) *Tower.*

(1) *Maximum height.* The maximum height of such tower shall be less than the distance of such tower from the nearest property line, but in no case higher than 150 feet.

(2) *Minimum setback from property lines.* The minimum setbacks and yard requirements for principal structures shall apply.

(3) *Minimum setback from residential structure.* No tower shall be located a distance less than its height from a structure used as a residence.

(4) *Equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.

(B) *Antenna.* The antenna shall not be attached to a residential structure unless such structure is four or more stories in height.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.072 CONDITIONAL USE.

The following wireless telecommunication facilities are permitted as a conditional use upon a lot, subject to the following requirements:

(A) *Tower.*

(1) *Maximum height.* Any height of such tower in excess of the distance of such tower from the nearest property line shall require approval of the Board of Adjustment, but in no case higher than 150 feet.

(2) *Minimum setback from property lines.* The minimum setbacks and yard requirements for principal structures shall apply.

(3) *Minimum setback from residential structure.* No tower shall be located a distance less than it height from a structure used as a residence.

(4) *Equipment shelter.* The minimum setbacks and yard requirements for principal structures shall apply and such shelter shall not be located above ground in any required front or side yard.

(B) *Antenna.* The antenna shall not be attached to a residential structure unless such structure is four or more stories in height.
(Ord. CM-97-39, passed 12-10-1997)

## *ABANDONMENT OF TOWER*

### § 158.080 REQUIRED NOTIFICATION.

All providers utilizing towers shall present a report to the municipality notifying it of any tower facility located in the municipality whose use will be discontinued and the date this use will cease. Such report shall be filed with the municipality 30 days prior to the cessation date. If at any time the use of the facility is discontinued for 180 days, the zoning enforcement officer may declare the facility abandoned. The 180 day period excludes any dormancy period between construction and the initial use of the facility. The owner/operator of the facility will receive written notice from the zoning enforcement officer and be instructed to either reactivate use of the facility within 180 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the municipality will either remove the facility or will contract to have the facility removed and assess the owner/operator the costs.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.081 REQUIRED NOTICE TO OWNER.

The municipality must provide the tower owner 30 day notice and an opportunity to be heard before the Board of Adjustment before initiating such action. After such notice has been provided, the municipality shall

have the authority to initiate proceedings to either acquire the tower and any appurtenances attached thereto at the current fair market value at that time, or in the alternative, order the demolition of the tower and all appurtenances.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.082 RIGHT TO PUBLIC HEARING BY OWNER.

The municipality shall provide the tower owner with the right to a public hearing before the Board of Adjustment, which public hearing shall follow the 30 day notice required in § 158.081. All interested parties shall be allowed an opportunity to be heard at the public hearing.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.083 ORDER OF ABATEMENT OR DEMOLITION.

After a public hearing is held pursuant to § 158.082, the municipality may order the abatement or demolition of the tower. The municipality may require licensee to pay for all expenses necessary to acquire or demolish the tower.
(Ord. CM-97-39, passed 12-10-1997)

## *APPLICATION AND REVIEW REQUIREMENTS*

### § 158.090 REQUIRED INFORMATION FOR APPLICATIONS.

All applications for wireless telecommunication facilities, including towers, shall include the information required under this Code.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.091 PLOT PLAN REQUIRED.

When a proposed wireless telecommunications facility or antenna support structure is to include a new tower, a plot plan at a scale of not less than one inch equals 100 feet shall be submitted. This plot plan shall indicate all building and land uses within 200 feet of the proposed facility. Aerial photos and/or renderings may augment the plot plan.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.092 PHOTO SIMULATIONS REQUIRED.

Photo simulations of the proposed wireless telecommunication facility from affected residential properties and public rights-of-way taken at designated locations shall be provided.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.093 PROOF WHY NONRESIDENTIAL TOWER LOCATION NOT FEASIBLE.

In applying for authorization to erect a tower within any residential district, the applicant must present sufficient evidence as to why it is not technically feasible to locate such tower in a more appropriate nonresidential zone. This evidence shall be reviewed by the municipality. If the municipality refutes the evidence, then the tower is not permitted.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.094 TECHNICAL NECESSITY.

The applicant shall demonstrate that the telecommunication tower must be located where it is proposed in order to provide adequate coverage to the applicant's service area. There shall be an explanation of why a tower and the proposed site is technically necessary.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.095 REVIEW BY RADIO FREQUENCY ENGINEER.

The evidence submitted by the applicant shall be reviewed by a radio frequency engineer, who will support or refute the evidence.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.096 LAND OWNER SUPPORT AND ACCESS.

Where the wireless telecommunication facility is located on a property with another principal use, the applicant shall present documentation that the owner of the property supports the application and vehicular access is provided to the facility.
(Ord. CM-97-39, passed 12-10-1997)

### § 158.097 REQUIRED SITE AND LANDSCAPING PLAN.

The applicant shall present a site and landscaping plan showing the following:

(A) Specific placement of the wireless telecommunication facility on the site;

(B) The location of existing structures, trees and other significant site features;

(C) Type and locations of plant materials used to screen the facilities; and

(D) The proposed color of the facilities.
(Ord. CM-97-39, passed 12-10-1997)

## § 158.098 CO-LOCATION AND REMOVAL AGREEMENT.

The applicant shall present signed statements indicating that:

(A) The applicant agrees to allow for the potential co-location of additional wireless telecommunication facilities by other providers on the applicant's structure or within the same site location; and

(B) The applicant agrees to remove the facility within 180 days after its use is discontinued.
(Ord. CM-97-39, passed 12-10-1997)

## § 158.099 DENIAL BY JURISDICTION.

Any decision to deny a request to place, construct or modify a wireless telecommunication facility and/or tower shall be in writing and supported by evidence contained in a written record.
(Ord. CM-97-39, passed 12-10-1997)

## § 158.100 VARIANCES.

Any request to deviate from any of the requirements of this Code shall require approval of variance in conformance with the procedures set forth in the municipal Zoning Code.
(Ord. CM-97-39, passed 12-10-1997)

# CHAPTER 159: RIGHT-OF-WAY POLICY

Section



## § 159.01 PURPOSE AND SCOPE OF CHAPTER.

(A) The purpose of this chapter is to provide requirements for the use or occupation of any and all rights-of-way in the municipality, the issuance of permits to persons for such use or occupancy and to set forth the policies of the municipality related thereto.

(B) This chapter does not take the place of any franchise, license or permit which law may additionally require. Each permittee shall obtain any and all such additional franchises, licenses or permits necessary to the operation and conduct of its business.

(C) The Municipal Manager is hereby granted the authority and duty of enforcing the provisions of this chapter.

(D) No person shall use, occupy, own or operate facilities in, under or over any rights of way or any public property within the municipality unless such person first obtains a permit and conforms to the requirements set forth therein and in this chapter.

(E) Approvals for use, occupancy and/or ownership of facilities within the right-of-way, having been obtained through the municipalities zoning ordinance provisions shall not be required to obtain an additional right-of-way ordinance permit. Documentation and notification procedures for right-of-way activity shall still apply.

(F) The policy of the municipality with regard to rights-of-way is hereby declared to be:

(1) To promote public safety and protect public property;

(2) To promote the utilization of rights-of-way for the public health, safety and welfare in the municipality;

(3) To promote the availability of a wide range of utility, communication and other services to the municipality's citizens and taxpayers at reasonable rates;

(4) To promote cooperation among the municipality and permittees in the occupation of rights-of-way, and work therein, in order to minimize public inconvenience during right-of-way work, and uneconomic, unneeded and unsightly duplication of facilities;

(5) To ensure adequate public compensation for private use of the rights-of-way and the regulation thereof;

(6) To promote and require reasonable accommodation of all uses of rights-of-way and to establish the following priority of use of rights-of-way, when all requested usage of rights-of-way by permittees cannot be accommodated:

(a) First priority: use by the municipality;

(b) Second priority: use by another governmental entity with municipality's concurrence or other uses required by law;

(c) Franchise permittees shall have third priority;

(d) General permittees shall have fourth priority;

(e) Special permittees shall have fifth priority; and

(f) Residential permittees shall have the sixth priority; provided, however, that the Municipal Manager may reasonably require right-of-way permittees to cooperate to accommodate use by other permittees and provided further that the Municipal Manager may alter this priority when the Municipal Manager reasonably determines a deviation here from to be in the public interest.

(7) To protect the value of private property by setting minimum aesthetic standards for uses in public property;

(8) To require underground placement of all facilities in areas with existing underground facilities;

(9) To require the improvement of existing areas to underground facilities to be at the permittee's cost;

(10) To protect existing facilities, structures and trees in the public right-of-way during the installation of new underground facilities and to assure the repair of existing underground facilities and coexistence with new underground facilities to protect the first facilities usability; and

(11) To minimize the impact on existing facilities and/or utilities including landscaping.

(G) Nothing in this chapter should be construed to apply the provisions of this chapter to facilities owned or operated by the municipality or any of its operations.

(H) Unless otherwise specifically stated in a permit or in a franchise, all permits granted hereunder shall be non-exclusive.
(Ord. CM-00-17, passed 6-13-2000)

**§ 159.02 DEFINITIONS.**

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this § 159.02. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

***APPLICANT.*** Any person applying for a permit hereunder.

***APPROVED.*** Approval by the municipality pursuant to this chapter or any regulations adopted hereunder.

***BEST EFFORTS.*** The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expedition, available technology and human resources and cost.

***CHAPTER*** or ***THIS CHAPTER.*** Chapter 159 of the Codified Ordinances of the municipality, as amended from time to time and any regulations adopted hereunder.

***COUNCIL.*** The governing body of the municipality.

***FORCE MAJEURE.*** A strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies or political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, but only to the extent the disabled party notifies the other party as soon as practicable regarding such force majeure and then for only so long as and to the extent that, the force majeure prevents compliance or causes non-compliance with the provisions hereof.

***FRANCHISE.*** A valid franchise pursuant to the Constitution and laws of Ohio and/or the United States, extended by the municipality and accepted by any person, pursuant to which such person may operate or provide utility, cable television, communications or other such services to consumers within the municipality.

***GROSS REVENUES.*** All cash, credit, property of any kind or nature, or other consideration received directly or indirectly by a general permittee arising from or attributable to the sale or exchange of any services within the municipality in any way derived from the operation of its facilities in or use of the rights-of-way.

***MUNICIPALITY.*** The Municipality of West Milton, Ohio, or, as appropriate in the case of specific provisions of this chapter, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the Municipality of West Milton, or any officer, official, employee, representative or agent thereof, the designee of any of the foregoing, or any successor thereto.

***OPEN VIDEO SYSTEM.*** A term used, but not defined, in the Federal Telecommunications Act of 1996. It is understood to mean infrastructure distributing video and audio signals, a majority of whose bandwidth is leased to independent providers of programming, other than the owner of the infrastructure.

***PERMIT.*** The non-exclusive grant of authority to use or occupy all or a portion of municipality's rights-of-way granted pursuant to this chapter.

***PERMITTEE.*** Any person issued a permit pursuant to this chapter to use or occupy all or a portion of the rights-of-way in accordance with the provisions of this chapter and the permit.

***PERSON.*** Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

***PUBLIC PROPERTY.*** Any real property, other than a right-of-way, except for the last sentence of § 159.02, owned by the municipality.

***REGULATION.*** Any rule adopted by the Municipal Manager pursuant to the authority of this chapter, pursuant to the procedure set forth in § 159.10, to carry out its purpose and intent.

***RESIDENTIAL RELATED PURPOSES.*** Residential use of right-of-way for mailboxes, decorative purposes or any curb cuts and driveways.

***RIGHT-OF-WAY.*** The surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right-of-way now or hereafter held by the municipality which shall, in accord with its limiting language and within its proper use and meaning in the sole opinion of the municipality, entitle a permittee, in accordance with the terms hereof and of any permit, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or facilities as may be ordinarily necessary and pertinent to the provision of utility, cable television, communications or other services as set forth in any franchise or any permit. Right-of-way shall also include public property, but only to the extent the use or occupation thereof is specifically granted in a permit, ordinance or regulation.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.03 TYPES OF PERMITS; GRANT OF AUTHORITY.

(A) The following type of permits are available:

(1) Franchise permit - permit granted to holders of a valid franchise;

(2) General permit - permit granted to persons who do not hold a franchise but who desire and are granted authority to utilize rights-of-way generally; provided, however, that nothing in this chapter or in any general permit shall be construed to authorize the permittee to provide any utility, cable television, communications or other services for which the municipality may lawfully require a franchise;

(3) Special permit - permit granted to persons for a specific, limited use of the rights-of-way or a specific portion thereof; and

(4) Residential permit - permit granted to an adjacent or proximate residential landowner to occupy or use a portion of the right-of-way for residential related purposes.

(B) Any such permit may also allow the use of specified public property for the uses set forth herein and therein.

(C) All permits shall specify the use or uses for which such permits are granted and contain such other non-discriminatory terms and conditions as are appropriate and as are set forth in the regulations to provide for the public safety or welfare.

(D) Permits and the rights of permittees there under are not transferable without the express written approval of the municipality.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.04 PROCEDURE FOR PERMITS, TERMS.

(A) Applicants for franchise permits shall be granted a franchise permit hereunder which shall be valid so long as said franchise is valid and the applicable provisions that franchise and of this chapter are complied with; provided, however, that a franchise permit shall only entitle the franchise permittee to utilize the rights-of-way, in accordance with this chapter, for purposes directly related to the provision of the specific services for which it has a specific franchise. Any other right-of-way use by such permittee shall require a separate permit of another available type, as outlined in § 159.03, which shall be granted upon application and compliance with the terms and standards required.

(B) Applicants for general permits, or renewals thereof, shall file an application therefore, in such form as the regulations require, along with an application fee as also set forth in the regulations (which may contain disparate fees, for initial permits and renewal permits). The Municipal Manager shall determine if the application is in order and, if so, make a recommendation to Council as to whether or not, in accordance with the criteria set forth in § 159.05, the applicant should be granted a permit hereunder. Council shall then consider such recommendation and make a final determination as to whether or not such permit should be granted and if so, upon what terms and conditions. The term of such permit shall be for five years. Any person proposing to operate an open video system (OVS) shall be required to obtain a general permit.

(C) Applicants for special permits, or renewals thereof, shall file an application therefore, in such form as the regulations require, along with an application fee as also set forth in the regulations (which may require disparate fees for initial permits and renewal permits). The Municipal Manager shall determine if the application is in order and if so, and if the Municipal Manager also finds, in accordance with the criteria set forth in § 159.05, that the application should be granted, the Municipal Manager shall conditionally grant or renew such a permit. Such conditional special permit shall become final unless modified or rejected by Council within 30 days of issuance by the Municipal Manager. The term of such permits shall be two years unless the applicant requests a lesser term.

(D) Permits for residential related purposes are not required: however any residential related uses:

(1) Exists and continues at the sufferance of the municipality;

(2) May not jeopardize or adversely affect the public health, welfare, morals or safety;

(3) May not interfere with the municipality's own uses of the right-of-way;

(4) Must be modified, moved or removed, upon notice, when the municipality determines in its sole judgment that such action is necessary; provided further, that in an emergency, or upon failure of the responsible party to respond in a timely fashion, the municipality may do or contract to do whatever it requires and recover the costs of same as such costs are recoverable by law.

(E) Any Applicant may appeal the failure of the Municipal Manager to grant a permit or to recommend it to be granted upon terms and conditions acceptable to the applicant. In order to perfect such appeal, the applicant shall file, within ten days of the Municipal Manager's determination or recommendation or 90 days of the filing of the application if the Municipal Manager has taken no action, an appeal to Council. Council shall then review the matter and render a final determination after affording the Applicant an opportunity to be heard either in person or in writing. Except to the extent otherwise appealable by law, Council's decision shall be final.

(F) Any non-residential permittee shall, within 30 days of the initial granting of any permit hereunder, pay a pro-rata portion of the fees required by § 159.07(B) or (C) as applicable.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.05 CRITERIA FOR GRANTING PERMITS.

(A) Franchise permits shall be granted to all persons holding a valid franchise and shall be effective for so long as such franchise is valid and the permittee complies with the provisions of such permit and this chapter.

(B) General and special permits shall be granted to persons based upon a determination that the following criteria are met:

(1) The granting of the permit will contribute to the public health, safety or welfare in the municipality;

(2) The granting of the permit will be consistent with the policy of the municipality as set forth in § 159.01(F);

(3) That the permittee has and will continue to have liability insurance, which names the municipality as an additional insured, in effect in such amounts and for such liability as stated in § 159.11.

(4) That the Applicant is a proper person to hold a permit and will fulfill all its obligations hereunder.

(5) In the case of OVS operators, that they have made the required commitment and arrangement for paying fees in lieu of franchise fees charged to other providers of video services.

(6) All field and maintenance personnel and equipment shall be responsible to perform proper construction zone traffic control as per Ohio Department of Transportation (ODOT) Guidelines.

(C) Residential permits shall be granted if not inconsistent with the public health, safety and welfare. (Ord. CM-00-17, passed 6-13-2000)

## § 159.06 OBLIGATIONS OF PERMITTEES; CONDITIONS OF PERMITS.

(A) In addition to the other requirements set forth herein each franchise, general and special permittee shall:

(1) Locate its improvements within the right-of-way in a manner which attempts to anticipate and preserve available space for future use by the municipality or other permittees, and submit to the municipality, in the form of a scaled drawing, the proposed location of the improvements for approval by the municipality prior to the placement or installation of any of the improvements;

(2) Use its best efforts to cooperate with other permittees and the municipality for the best, most efficient, most aesthetic and least obtrusive use of rights-of-way, consistent with safety, and to minimize traffic and other disruptions including street cuts;

(3) Participate in such joint planning and advance notification of right-of-way work, excepting such work performed in emergencies or other exigent circumstances, as required by this chapter and as may be more specifically set forth in the regulations;

(4) Cooperate with other non-residential permittees in utilization of, construction in and occupancy of private rights-of-way, but only to the extent the same is not inconsistent with the grant thereof or is not additionally burdensome to any property owner;

(5) Upon written notice of, and at the direction of, the Municipal Manager and at the permittees' sole cost, promptly remove or rearrange facilities as necessary, e.g. during any construction, repair or modification of any street, sidewalk, municipal utility or other public improvement, or if additional or subsequent municipal or other public uses of rights-of-way are inconsistent with then current uses of permittees or for any other reasonable cause as determined by the Municipal Manager;

(6) All persons granted a permit of franchise on or after the effective date of this code, shall provide maps or other information in such form and at such times as the municipality may reasonably require. After the initial provision of maps, provide maps or other information in such form and at such times, no less than annually, as the regulations require. Said maps and information shall locate, describe and identify all changes since the most recent map, uses, structures and facilities of such permittee, of and in the rights-of-way;

(7) Perform all work, construction, maintenance or removal of structures and facilities within the right-of-way in accordance with good engineering and construction practice including any appropriate safety codes and in accordance with the regulations and use best efforts to repair and replace any street, curb or other portion of the right-of-way, or facilities or structure located therein, to a condition materially equivalent or to municipal standards, whichever is greater, to its condition prior to such work and to do so in a manner which minimizes any in accommodation to the public, the municipality and other permittees, all in accordance with the regulations and municipal standards;

(8) Register with all appropriate underground reporting services;

(9) Cooperate with the Municipal Manager with regard to periodic inspections during the installation and ongoing monitoring of any facilities to insure to the regulations; and

(10) Not, unless otherwise set forth in a permit and without municipality's prior written approval, enter into leases or other agreements for the use of such permittee's facilities located within the rights-of-way. All such leases or agreements shall be filed with the Municipal Manager.

(B) Each permittee shall assure that any subcontractors or others performing any work or services in the right-of-way on behalf of the permittee comply with all applicable provisions of this chapter and the permittee shall be responsible and liable hereunder for all actions of any such subcontractor or others as if the permittee had performed or failed to perform any such obligation.

(C) All franchisees or permittees shall obtain a right-of-way work permit from the municipality prior to beginning the erection, installation or maintenance including tree trimming, of any lines or equipment. Prior municipal approval shall not be required for emergency repairs, routine maintenance and operations which do not require excavation in the public right-of-way, blockage of any street of alley or disruption to any landscaping or structure and/or irrigation systems. The franchisee, permittee and/or subcontractors shall leave the streets, alley and other public places where such work is done in as good condition or repair as they were before such work was commenced and to the satisfaction of the municipality. Such right-of-way work permit shall be issued in writing and is subject to conditions that may be attached by the municipality including, but not limited to, requirements concerning traffic control, safety, scheduling, notification of adjoining property owners, and restoration with sod or specific plant material as directed by the municipality. The franchisee, permittee and/or subcontractors to repair the streets and roadways shall be subject to the inspection and approval of the municipal manager or his or her authorized agent and shall be warranted for a period of one year from the date of completion for any failure due to workmanship or quality of materials.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.07 PERMIT FEES AND AUDITING.

(A) Except for any fees associated with street openings as set forth in § 159.07(E), franchise permittees shall not be liable for any additional permit fees over and above their franchise fees for uses of rights-of-way pursuant to such permittee's franchise permit and this chapter.

(B) General permittees shall pay an annual fee, for each calendar year of 5% of that permittee's prior year's gross revenues. Estimated quarterly payments shall be made on or before April 15, July 15 and October 15 of the calendar year for that calendar year with a final payment, and true up, on February 15 for the prior calendar

year. The final payment shall be accompanied by a statement of an independent certified public accountant attesting to the accuracy of the payment and the gross revenues upon which it was based. Should the payment required by this section ever be declared unlawful, void or otherwise unenforceable for any reason whatsoever, general permittees shall pay the annual fee specified in § 159.07(C).

(C) Special permittees shall pay an annual fee per linear foot of right-of-way used or occupied. Such fee shall be paid in advance for each year prior to January 31 of such year.

(D) Residential permittees shall pay no annual fee.

(E) In addition to the annual fees set forth in § 159.07(B) and (C), general and special permittees shall pay a work permit fee plus a daily work fee per linear foot of right-of-way in which construction, maintenance or other activities take place. All permittees shall pay an additional work permit fee for each street opening or cut. Said fees are payable at the time the notice set forth in § 159.08 hereof is filed. Fees for work done without a § 159.08 prior notice shall be made within seven business days of the initiation of any such work.

(F) The fees set forth in § 159.07(C) and (E) shall be specified in the regulations.

(G) All fees pursuant to this chapter shall be paid by check, or money order to the appropriate municipal official as the regulations require.

(H) Each permittee shall maintain books (exclusive of residential permittee), records, maps, documents and other evidence directly pertinent to its gross revenues and calculation of payments to the municipality in accordance with generally accepted accounting principles. The municipality or its designated agents shall have reasonable access to such books, records, maps, documents and other evidence for inspection, audit and copying to the extent necessary to assure that the audited statement submitted pursuant to § 159.07(B) is accurate and that each permittee fully complies with the provisions of this chapter and its permit.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.08 NOTICE OF RIGHT-OF-WAY WORK, JOINT PLANNING.

(A) All non-residential permittees shall file a written notice, in such form as the regulations require, with the Municipal Manager at least 30 days before working in or on the right-of-way. In addition to such other information as the regulations require, such notice shall contain or indicate, to the extent applicable:

(1) The right-of-way affected; and

(2) A description of any facilities to be installed, constructed or maintained.

(3) Whether or not any street will be opened or otherwise need to be restricted, blocked or closed;

(4) An estimate of the amount of time needed to complete such work;

(5) A description and timetable of any remedial measures planned to close any street opening or repair any damage done to facilitate such work;

(6) A statement verifying that other affected or potentially affected permittees have been notified;

(7) A statement that any consumers of any utility, cable television, communications or other service which will be adversely affected by such work have been or will be notified; and

(8) A map showing the proposed facilities location, and the location of any other infrastructure located near the proposed facilities.

(B) The Municipal Manager shall adopt regulations governing joint planning requirements for all non-residential permittees.

(C) Permittees may, under emergency or other exigent circumstances, work in the right-of-way so long as the permittee uses best efforts to provide the municipality the notice required by § 159.08(a) at the earliest possible time.

(D) Permittees shall, under emergency conditions as declared by the Municipal Manager, work 24 hours per day with full crew levels.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.09 USE OF PERMITTEE FACILITIES.

(A) The municipality shall have the right to install and maintain, free of charge, upon any poles and within any underground pipes and conduits or other facilities of any franchise, general or special permittee, any facilities desired by the municipality unless:

(1) The installation and maintenance unreasonably and materially interferes with existing and future operations of the permittee; and

(2) The installation and maintenance would be unduly burdensome to such permittee.

(B) Each permittee shall cooperate with the municipality in planning and design of its facilities so as to accommodate the municipality's reasonably disclosed requirements in this regard.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.10 ADOPTION OF REGULATIONS.

(A) As set forth in various sections of this chapter, the Municipal Manager may promulgate regulations, as the Municipal Manager deems appropriate from time to time, to carry out the express purposes and intent of this chapter and such regulations shall be consistent therewith. Such regulations shall not materially increase the obligations of any permittee; provided, however, that increases in any fees set forth in such regulations shall not be construed to be a material increase in any permittee's obligations as used herein.

(B) The Municipal Manager shall promulgate such regulations by filing the same in proposed form with the Clerk of Council. Each non-residential permittee shall be served with a copy of the proposed regulations by

regular US mail; provided, however, that any failure of any permittee to actually receive such notice shall not in any way affect the validity or enforceability of any regulations. Any person, including any permittee, may file specific written comments or objections on the proposed regulations within a 30 day period thereafter (hereinafter "comment period"). To the extent any regulations are objected to by any non-residential permittee, the objected to regulations shall become effective only upon the affirmative vote of Council. To the extent no permittee objects to the proposed regulations, the same shall become effective 30 days after the end of the comment period (or such longer period as determined by Council), unless modified or rejected by Council.

(C) Council may adopt emergency regulations to be immediately effective, when it determines the same to be appropriate or required by the public health, safety or welfare.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.11 INDEMNITY AND INSURANCE.

(A) To the fullest extent permitted by law, the permittee or franchisee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the municipality, its officers, public officials, boards and commissions, agents and employees from and against any and all lawsuits, claims, (including without limitation worker's compensation claims against the municipality or others), causes of actions, actions, liability, and judgment for injury or damages (including but not limited to expenses for reasonable legal fees and disbursements assumed by the municipality in connection therewith):

(1) To persons or property, in any way arising out of or through the acts or omissions of the permittee or franchisee, its subcontractors, agents or employees, to which the franchisee or permittee's negligence shall in any way contribute, and regardless of whether the municipality's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury of damage.

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm corporation, but excluding claims arising out of or related to municipal programming.

(3) Arising out of permittee's failure to comply with the provisions of any federal, state or local statute, ordinances or regulations applicable to permittee in its business hereunder.

(B) The foregoing indemnification is conditioned upon the municipality:

(1) Giving permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;

(2) Affording the permittee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and

(3) Fully cooperate in the defense of such claim and making available to the permittee all pertinent information under the municipalities control.

(C) The municipality shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the permittee shall pay the reasonable fees and expense of such separate counsel if employed with the approval and consent of the permittee or if representation of both permittee and the municipality by the same attorney would be inconsistent with accepted canons of professional ethics.

(D) Each permittee shall maintain insurance coverage's in accordance with the following:

(1) The permittee shall maintain, and by its acceptance of any permit granted hereunder specifically agrees that it will maintain throughout the term of the permit, general liability insurance insuring the permittee in the minimum of:

(a) $1,000,000 for property damage per occurrence;

(b) $ 2,000,000 for property damage aggregate;

(c) $1,000,000 for personal bodily injury or death to any one person; and

(d) $ 2,000,000 bodily injury or death aggregate per single accident or occurrence.

(2) Such general liability insurance must include coverage for all of the following: comprehensive form, premises/operations, explosion and collapse hazard, products/complete operations hazard, contractual insurance, broad form property damage and personal injury.

(3) The permittee shall maintain, and by its acceptance of any permit granted hereunder specifically agrees that it will maintain throughout the term of the permit, automobile liability insurance for owned, non-owned or rented vehicles in the minimum amount of:

(a) S 1,000,000 for bodily injury and consequent death per occurrence;

(b) $1,000,000 for bodily injury and consequent death to any one person; and

(c) $ 500,000 for property damage per occurrence.

(4) The permittee shall maintain and by its acceptance of any permit granted hereunder specifically agrees that it will maintain throughout the term of the permit, Worker's Compensation and employer's liability, valid in the state, in the minimum amount of

(a) Statutory limit for Worker's Compensation; and

(b) $ 100,000 for employer's liability.

(Ord. CM-00-17, passed 6-13-2000)

## § 159.12 REMOVAL OF FACILITIES.

(A) In the event any non-residential permittee intends to discontinue or abandoned use of any facilities within the rights-of-way, such permittee shall submit a notice to the Municipal Manager describing the portion of the facilities to be discontinued and the date of discontinuance, which date shall not be less than 30 days from the date such notice is submitted to the Municipal Manager. The permittee may not remove, destroy or permanently disable any such facilities after such notice without the written approval of the Municipal Manager. The permittee shall remove and secure such facilities as set forth in the notice unless directed by the Municipal Manager to abandon such facilities in place.

(B) Upon such abandonment and acceptance by the municipality in writing, full title and ownership of such abandoned facilities shall pass to the municipality without the need to pay compensation to the permittee. The permittee shall, however, continue to be responsible for all taxes on such facilities or other liabilities associated therewith, until the date the same was accepted by the municipality.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.13 REMEDIES AND REVOCATION.

(A) In case of any failure of permittee's physical plant, whether due to damage, age, lack of maintenance or any other cause, the municipality shall notify permittee who shall, within the time stipulated by the municipality, respond and repair such failed plant. Should permittee fail to act as required, or in cases where protection of public safety requires an immediate response, the municipality may take any required, corrective action and recover the costs of same from the permittee by civil action or by certifying the amount to the County Auditor for collection with the permittee's personal property or real estate taxes.

(B) The Municipal Manager shall give the permittee 30 days prior written notice of municipality's intent to revoke the permit under this section stating the reasons for such action. If the permittee cures the stated reason within the 30 day notice period, or if the permittee initiates efforts satisfactory to the municipality to remedy the stated violation, the municipality shall not revoke the permit. If the permittee does not cure the stated violation or undertake efforts satisfactory to the municipality to remedy the stated violation, then, after granting the permittee an opportunity to be heard in person or in writing, the Council may revoke the permit.

(C) In the event the permit is revoked, all facilities located in the rights-of-way or located upon public property shall be removed from the streets and public places of the municipality at the sole expense of the permittee.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.14 RESERVATION OF RIGHTS.

(A) Nothing in this chapter shall be construed to prevent the municipality from constructing, maintaining, repairing or relocating any municipal utility, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street or right-of-way; or constructing, maintaining, relocating, or repairing any sidewalk or other public work or improvement.

(B) Nothing in this chapter should be construed so as to grant any right or interest in any right-of-way or public property other than that explicitly set forth herein or in a permit.

(C) In emergency situations, the municipality reserves the right to relocate any and all facilities with no compensation to the permittee. Any permittee facilities removed will remain on site or as otherwise arranged, until the permittee can reinstall the facilities. The municipality shall make no notice of such emergency removal to the permittee, but the municipality shall notify the permittee of the emergency removal as soon as it is practical. The permittee shall make no claims against the municipality for damages created by emergency removal of permittee facilities.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.15 STREET VACATION.

Unless preempted by state or federal law, in the event any street or right-of-way used by a permittee shall be vacated by the municipality during the term of any permit granted pursuant to this chapter, the permittee shall, at the permittee's expense, forthwith remove its facilities there from unless specifically permitted by the municipality to continue the same, and upon the removal thereof, restore, repair or reconstruct the area where such removal has occurred to a condition materially equivalent to that existing before such removal took place. Regulations may be adopted to further specify this requirement. In the event of failure, neglect or refusal of the permittee, after 30 days written notice by the municipality to remove the facilities or to repair, restore, reconstruct, improve or maintain such vacated area, the municipality may do such work or cause it to be done, and the cost thereof as found and declared by the municipality shall be paid by the permittee as directed by the municipality and collection may be made by any available remedy.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.16 TEMPORARY AND PERMANENT MOVEMENT OF FACILITIES.

(A) In the event it is necessary temporarily to move or remove any of the permittee's wires, cables, poles, or other facilities placed pursuant to this chapter, in order to lawfully move a large object, vehicle, building or other structure over the streets of the municipality, upon two weeks written notice by the municipality to the permittee, the permittee shall, at the expense of the person requesting the temporary removal of such facilities, comply with municipality's request.

(B) In the event that municipal utilities must be moved, removed or additional structures installed within the right-of-way or other public property which requires the relocation or removal of the permittee's facilities, the permittee shall, at its own expense, cause such relocation or removal to be made within 30 days.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.17 FORECLOSURE AND RECEIVERSHIP.

(A) Upon the foreclosure or other judicial sale of the permittee's facilities located within the right-of-way, the permittee shall notify the municipality of such fact and its permit shall be deemed void and of no further force

and effect. The permittee shall remove all facilities from the right-of-way and repair existing facilities to a condition equivalent to that existing upon the voiding of the permit, bonding shall be used as needed to insure the facilities are removed.

(B) The municipality shall have the right to cancel any permit granted pursuant to this chapter subject to any applicable provisions of law, including the Bankruptcy Act, 120 days after the appointment of a receiver or trustee to take over and conduct the business of the permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of the 120 days, or unless:

(1) Within 120 days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and the relevant permit and remedied all defaults there under; and

(2) Such receiver or trustee, within 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the relevant permit.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.18 NONENFORCEMENT AND WAIVERS BY VILLAGE.

The permittee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the municipality or to enforce prompt compliance. However, the municipal manager may in individual instances and upon a request in writing establishing hardship and for good cause, may waive, in writing, any requirements of this chapter.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.19 CONTROLLING LAW.

This chapter shall be construed and enforced in accordance with the Constitution and laws of the State of Ohio.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.20 CAPTIONS.

The captions and headings in this chapter are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this chapter.
(Ord. CM-00-17, passed 6-13-2000)

## § 159.99 PENALTIES.

(A) In addition to any other penalties set forth in this chapter, and the remedy of specific performance which may be enforced in the Miami County Municipal Court, the following penalties shall apply:

(1) Any person, firm, corporation or permittee violating §§ 159.01(D) or 159.12(A) shall be guilty of a misdemeanor of the fourth degree. Each day such violation continues shall be deemed a separate offense.

(2) For failure to comply with any other provision of this chapter, the penalty shall be a civil forfeiture, payable to the municipality, in the amount of $100 per day for each day of violation.

(B) Any permittee may be excused for violations of this chapter and its permit for reasons of force majeure.
(Ord. CM-00-17, passed 6-13-2000)

# TABLE OF SPECIAL ORDINANCES

Table

## TABLE I: ZONING MAP AMENDMENTS

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-399 | 12-6-1977 | Rear part of Outlot No. 135 rezoned from B-3 to R-4 District. |
| CM-410 | 3-7-1978 | Part of Outlot No. 153 rezoned from R-4 to B-3 District. |
| CM-411 | 3-7-1978 | North side of Inlot No. 47 rezoned from R-1C to B-4 District. |
| CM-415 | 4-4-1978 | Parts of Outlots Nos. 133, 139, 140, and 142 rezoned from I-1 to R-4 District. |
| CM-444 | 8-1-1978 | Inlot No. 1352 (formerly Outlot, No. 158 and part of Outlot No. 157) rezoned from A-1 to B-3 District. |
| CM-459 | 12-5-1978 | All of Inlots Nos. 55, 62 and 54, and the South half of Inlot No. 47 rezoned from R-1C to B-4 District. |
| CM-652 | 2-8-1983 | Inlots 140, 141, 142, 375, 376, 382, 888 and a part of Inlot 377; also Outlots 52, 89, 90, 106 and parts of Outlots 92, 93 and 94, also part of the abandoned D.T. and C. Railroad right-of-way, rezoned from R-1 to I-2 District. |
| CM-653 | 2-8-1983 | All of Inlots Nos. 34 and 37 rezoned from R-1 to R-4 District. |
| CM-696 | 3-13-1984 | All of Lots Nos. 432 and 433 rezoned from R-1 to I-2 District. |
| CM-697 | 3-13-1984 | A part of Lot No. 311, Springview Addition, rezoned from R-3 to I-2 District. |
| CM-734 | 4-9-1985 | All of Inlots Nos. 35 and 36 rezoned from R-1C to R-2 District. |
| CM-739 | 6-11-1985 | All of Lot No. 15 rezoned from R-2 to B-4 District. |
| CM-744 | 8-13-1985 | Part of Outlot No. 77 rezoned from A-1 to R-1B District. |
| CM-825 | 4-12-1988 | Part of Inlots 1348, 1349 and 1350 rezoned from A-1 to R-2 District. |

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-826 | 4-12-1988 | Part of Inlot 1350 rezoned from A-1 to R-1C District. |
| CM-827 | 4-12-1988 | Part of Inlot 1350 rezoned from A-1 to R-1C District. |
| CM-828 | 4-12-1988 | Part of Outlot 162 rezoned from B-3 to R-4 District. |
| CM-829 | 4-12-1988 | Part of Outlot 162 rezoned from B-3 to R-1C District. |
| CM-860 | 12-13-1988 | Inlots 1378, 1379 and 1380 rezoned from R-4 to R-1C District. |
| CM-877 | 2-14-1989 | Eastern half of part of Outlots 62, 61, 60, 59 and 58 rezoned from R-1B to B-3 District. |
| CM-886 | 4-11-1989 | Part of Outlot 161 rezoned from A-1 to B-1 District. |
| CM-926 | 2-13-1990 | Part of Inlot 1375 rezoned from I-2 to I-1 District. |
| CM-1036 | 10-8-1991 | Part of Inlot 1376 rezoned from I-2 to R-1C District. |
| CM-1046 | 11-12-1991 | Part of Outlot 157 rezoned from A-1 to R-4 District. |
| CM-1059 | 12-10-1991 | ±.258 acre annexation N.E. quarter of Section 20, Town 6, Range 5 - south side of Forest Avenue. |
| CM-1101 | 9-8-1992 | ±190.3751 acre annexations S.E. quarter of Section 28, Town 6, Range 5 + part of N.E. and S.W. quarters of Section 33, Town 6, Range 5, zoned A-1, R-1AA, R-3 and F-1 Districts. |
| CM-1109 | 11-10-1992 | ±144.534 acre annexation N.W., N.E., and S.W. quarters of Section 21, Town 6, Range 5, and part of N.E. quarter of Section 28, Town 6, Range 5, zoned A-1 and F-1 Districts. |
| CM-93-41 | 10-12-1993 | Part of Inlot 53 rezoned from R-1C to B-4 District. |
| CM-94-02 | 3-8-1994 | ±14.095 acre annexation southeast quarter of Section 28, Town 6, Range 5, zoned R-1AA District. |
| CM-94-03 | 3-8-1994 | Part of Outlot 162 rezoned from R-4 to B-1 District. |
| CM-95-03 | 2-14-1995 | Part of Inlot 1446 rezoned from R-3 to B-1 District. |
| CM-95-03 | 2-14-1995 | Part of Inlot 1447 rezoned from A-1 to B-1 District. |

## Zoning Map Amendments

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-95-04 | 2-14-1995 | Part of Inlot 1454 rezoned from A-1 to R-1AAA District. |
| CM-95-21 | 7-11-1995 | Part of Inlot 1446 rezoned from R-3 to B-1 District. |
| CM-95-22 | 7-11-1995 | Part of Outlot 162 rezoned from A-1 to R-1C District. |
| CM-95-24 | 8-15-1995 | ±10.424 acres annexation in Northwest quarter of Section 16, town 6N Range 5E, zoned R-1A and F-1 being Inlot 1515. |
| CM-95-27 | 10-3-1995 | Part of Outlot 161 rezoned from A-1 to R-1C. |
| CM-95-36 | 1-2-1996 | Part of Inlots 1348, 1349 and 1350 rezoned from B-3 to I-2 District. |
| CM-96-19 | 5-14-1996 | Part of Outlot 162 rezoned from R-3 to B-3 District. |
| CM-96-25 | 7-9-1996 | Part of Outlot 35 rezoned from R-4 to B-3 District. |
| CM-97-25 | 8-12-1997 | Inlots 56 and 61 rezoned from R-1C to B-4 District. |
| CM-97-36 | 11-10-1997 | ±0.830 acres annexation in Section 20, Town 6, Range 5E, zoned R-1C being Inlots 1584 and 1583. |
| CM-98-37 | 11-10-1998 | ±66.922 acres annexation in the southwest and southeast Section 17 and northwest and northeast quarters of Section 20, Township 6, Range 5 zoned A-1. |
| CM-98-41 | 12-8-1998 | ±0.315 acres annexation in southeast quarter of Section 17, Town 6, Range 5 being Inlot 1600. |
| CM-99-06 | 3-9-1999 | Inlot 1598 rezoned from A-1 to B-3, I-2, R-2, R-1B, R-1C. |
| CM-99-55 | 1-4-2000 | ±3.016 acre annexation, Township 6, Range 5, Southwest Section 17 zoned B-3. |
| CM-04-14 | 5-11-2004 | +/- 396.581 acres assigned permanent zoning. |
| CM-06-15 | 4-11-2006 | Rezoning two parcels of land, being 12.508 acres identified as Lots 1442 and 1443 on South Miami Street from A-1 to R-1AA. |
| CM-07-25 | 7-10-2007 | Rezoning a parcel of land, being Inlot 18 located at 125 South Miami Street from R-2 to B-4. |
| CM-07-37 | 1-8-2008 | Modifying the zoning district boundary and rezoning Lot 84, located at 40 North Main Street, from B-4 to R-1C. |

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-08-01 | 2-13-2008 | Modifying the zoning district boundary and rezoning Lot 55, located at 412 South Miami Street, from B-4 to R-1C. |
| CM-08-10 | 4-8-2008 | Modifying the zoning district boundary and rezoning Lot 212, located at 39 West Hayes Street, from B-4 to R-1C. |
| CM-08-21 | 7-8-2008 | Modifying the zoning district boundary and rezoning Lot 1349 at the northwest corner of State Route 48 and Frederick-Garland Road from I-2 to PD-2. |
| CM-09-10 | 5-12-2009 | Modifying the zoning district boundary and rezoning Lot 529, located at 945 South Miami Street from B-3 to R-1C. |
| CM-09-18 | 9-8-2009 | Accepting the annexation of certain territory containing 28.644 acres in Union Township. |
| CM-09-24 | 11-10-2009 | Accepting the annexation of certain territory containing 129.813 acres in Union Township. |
| CM-11-13 | 8-9-2011 | Modifying Inlot 1434, as described by Plat S-55, being 1.799 acres, into two separate lots which measure 0.97 acre and 0.826 acre. |
| CM-11-14 | 8-9-2011 | Modifying the zoning district boundary and rezoning Inlot 1434 from A-1 to R-1. |
| CM-14-19 | - -2014 | Modifying the zoning district boundary and rezoning Inlots 1724 and 1725 from A-1 to R-1. |
| CM-16-07 | - -2016 | Modifying the zoning district boundary and rezoning Inlot 1436 from A-1 to R-1. |
| CM-16-14 | - -2016 | Modifying the zoning district boundary and rezoning Inlot 1444 from R-1 to B-3, and rezoning Inlot 1445 from R-3 to B-3. |

## TABLE II: FRANCHISES

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| Res. CM-725 | 12-11-1984 | Approving the transfer of ownership of the cable television franchise from Miami County Communications, Inc. to Centel Cable Television Co. |
| CM-748 | 12-10-1985 | Authorizing execution of a contract with Blaylock Trucking Company for refuse collection for the period from January 1, 1986 to December 31, 1988. |
| CM-778 | 1-13-1987 | Amending Cable Franchise Agreement to allow Cable TV Review Board to include 5 residents from Union Township. |
| CM-800 | 8-11-1987 | Approving the transfer of ownership of the CATV franchise from Centel Cable TV Company to Centel Cable TV Company. |
| CM-866 | 12-13-1988 | Authorizing and executing a contract with Blaylock Trucking Company for refuse collection for the period of January 1, 1989 through December 31, 1991. |
| CM-891 | 5-9-1989 | Approving the transfer of ownership of the Cable TV franchise from Centel Cable TV Company of Ohio to Warner Cable Communications Inc. |
| CM-1033 | 8-13-1991 | Authorization and execution of a contract with Blaylock Trucking Company for refuse and commingled curbside recycling for the period of January 1, 1992 to September 30, 1994. |
| CM-1063 | 12-10-1991 | Approving the transfer of ownership of the Cable TV franchise from Warner Cable Communications Inc. to Time Warner Entertainment Company, L.P. |
| CM-93-31 | 8-10-1993 | Approving the limited partnership for West Milton Cable Television franchise. |
| CM-93-33 | 8-10-1993 | Authorization and execution of a contract with DP&L for street lighting for the period from January 1994 to December 31, 1997. |

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-93-53 | 12-14-1993 | Approving and adopting regulations governing charges for basic cable equipment and services. |
| CM-94-22 | 8-9-1994 | Authorizing entering into a contract for residential recycling, refuse and yardwaste collection for October 1, 1994 to September 30, 1997. |
| CM-94-32 | 1-10-1995 | Awarding franchise for a cable communications system within the municipality (Time Warner Cable). |
| CM-97-35 | 11-10-1997 | Authorizing the Manager to enter into a contract with DP&L commencing January 1, 1998 and ending December 31, 2000. |
| CM-99-22 | 9-14-1999 | Granting DP&L an electric franchise for a period of 10 years, automatically renewing for additional periods of 5 years unless notice is given. |
| CM-99-41 | 10-12-1999 | Granting Barefoot Canoes a franchise for 5 years for canoe livery and concession. |
| CM-03-29 | 8-12-2003 | Execution of franchise contract with waste management for collection and disposal of residential curbside refuse, co-mingled recycling collection, yard waste disposal and billing services. |
| CM-07-13 | 4-10-2007 | Granting to Vectren Energy Delivery of Ohio, Inc., and Indiana Gas Company, a gas franchise in the village for a period of 25 years, automatically renewing for additional periods of five years until notice is given. |
| Res. CM-10-01 | 2-9-2010 | Authoring renewal of Time Warner Cable lease agreement, to be extended for a period of 15 years. |

## TABLE III: REAL ESTATE TRANSACTIONS

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-742 | 7-9-1985 | Authorizing purchase of certain land in the Township of Union from Berlin Karns for park purposes. |
| CM-781 | 3-10-1987 | Authorizing sale of municipal property being Inlot 896. |
| Res. CM-850 | 8-9-1988 | Declaring intent to take immediate possession of ±3.644 acres of land on Outlots 174 and 175 for the sewer plant expansion. |
| Res. CM-854 | 10-11-1988 | Authorization to purchase land for sewer plant expansion being Lots 173 and 174 (3.644 acres) and Lot 172 (2.942 acres). |
| Res. CM-10-13 | 5-11-2010 | Authorizing purchase of real property located at 12 South Miami Street. |
| Res. CM-10-20 | 7-13-2010 | Authorizing purchase of real property located at 149 West Hayes Street. |

## TABLE IV: INTERGOVERNMENTAL AGREEMENTS

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-687 | 10-l-1983 | Continuing membership to the Miami Valley Regional Planning Commission for 1984, with notice of intention to withdraw thereafter. |
| CM-724 Res. | 10-9-1984 | Authorizing a renewed contract with the City of Dayton, Ohio, for collection of the West Milton income tax for a period of 5 years from January 1, 1985, to December 31, 1989.<br>This resolution is set out in full in Ch. 97, App. B. |
| CM-729 | 1-8-1985 | Authorizing a new agreement for mutual aid for additional police protection with the Board of Commissioners of Miami County, Ohio, and various other cities and villages in Miami County. |
| CM-750 | 11-12-1985 | Authorizing a contract agreement with the Board of Commissioners of Miami County, Ohio, to permit Miami County to administer and enforce within the village the Ohio Basic Building Code. |
| CM-757 | 1-7-1986 | Renewing a contract with the Miami County, Ohio, Commissioners for the keeping in the Miami County Jail of prisoners charged with violation of municipal ordinances. |
| CM-764 | 6-10-1986 | Authorizing an agreement with the Board of Commissioners of Miami County, Ohio, by which the County Building Regulation Department shall conduct building and electrical inspections and permit issuance within the village. |
| Res. CM-805 | 10-13-1987 | Approves membership in the North I-70/75 Development Association. |
| Res. CM-820 | 2-9-1988 | Approving and adopting the Miami County E-9-1-1 Plan for the Municipality of West Milton corporate limits. |
| Res. CM-890 | 4-11-1989 | Authorizing and directing execution of Mutual Aid Agreement with the Greater Dayton Area Fire Departments (GDAFD). |

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| Res. CM-915 | 11-21-1989 | Authorizing a renewed contract with the City of Dayton, Ohio for collection of the West Milton Local Income Tax for a period of five years from January 1, 1990 to December 31, 1994. |
| Res. CM-993 | 1-8-1991 | Authorizing and directing execution of an agreement with the Miami County Emergency Management Agency for emergencies relating to civil defense and natural disasters. |
| Res. CM-1072 | 1-7-1992 | Objecting and disapproving the Miami County Solid Waste Management Plan dated December 4, 1991. |
| Res. CM-1078 | 2-11-1992 | Supporting, endorsing and committing water and sewer capacity to the proposed Union Township Water and Sewer District. |
| CM-1096 | 7-14-1992 | Cooperation between West Milton and other governmental entities within the Miami Valley Region in the maintenance and operation of a transportation committee of the MVRPC. |
| CM-1110 | 10-13-1992 | Granting Director of Transportation authority to maintain state highways, apply pavement markings and the like on state highways inside village corporation. |
| CM-93-02 | 1-12-1993 | Cooperation between West Milton and other Miami Valley communities, and the Miami Valley Cable Council. |
| CM-93-28 | 6-8-1993 | Authorizing the municipality to become a member of the Northern Miami Valley Local Government's Association. |
| CM-93-37 | 9-14-1993 | Authorizing the municipality to utilize NMVLGA for franchise negotiations. |
| CM-93-46 | 11-9-1993 | Authorizing agreement for mutual aid with the Board of County Commissioners of Montgomery County, Ohio and various other cities, villages, and governmental bodies in Montgomery County, Ohio. |
| CM-93-47 | 11-9-1993 | Approving the Dayton/Springfield I/M Policy Committee's request to implement enhanced inspection and maintenance. |
| CM-93-55 | 1-4-1994 | Approving a lease for the municipal building. |
| CM-94-11 | 4-12-1994 | Authorizing entering into an agreement to join the Powell Road Landfill PRP Group. |

## Intergovernmental Agreements

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-94-18 | 6-14-1994 | Endorsing the NMVLGA orders regarding CATV basic service and equipment service. |
| CM-95-10 | 3-14-1995 | Reauthorizing a revised cooperative agreement between the municipality and other local communities known as NMVLGA. |
| CM-95-30 | 11-14-1995 | Authorizing to enter into a land lease agreement with Time Warner Cable. |
| CM-95-31 | 10-3-1995 | Supporting of State Issue 2 Capital Improvement Program Renewal. |
| CM-96-01 | 1-2-1996 | Authorizing the Manager to enter into an agreement for the purchase and use of the Deadly Force Scenario Electric Simulation Equipment. |
| CM-96-21 | 5-14-1996 | Authorizing the municipality to continue participation in the Ohio Department of Transportation Cooperative Purchasing Program. |
| CM-98-08 | 2-10-1998 | Authorizing the Manager to enter into an agreement for mutual aid for additional fire protection with Village of Pitsburg. |
| CM-98-25 | 6-9-1998 | Causing the municipality to become a member of the Ohio Benefits Cooperative Inc. |
| CM-98-51 | 12-8-1998 | Authorizing the Manager to enter an agreement for mutual aid for additional police protection with County Commissioner of Miami County, Ohio, and various other cities, villages and governmental bodies in Miami County, Ohio. |
| Res. CM-03-01 | 1-14-2003 | Authorizing the Manager to enter into a collection agreement for the administration of local income tax collections with the City of Hamilton, Ohio. |
| Res. CM-09-12 | 5-12-2009 | Authorizing an annexation agreement with Union Township for a 129.813 acre tract of land adjoining the western boundary of the corporation of the village. |
| Res. CM-09-13 | 5-12-2009 | Authorizing an annexation agreement with Union Township for a +/– 28.644 acre tract of land adjoining the western boundary of the corporation of the village. |
| Res. CM-10-32 | 12-14-2010 | Authorizing a collection services agreement for the administration of local income tax collection with the City of Hamilton, OH. |

## TABLE V: STREET NAME CHANGES

| *Ord. No.* | *Date Passed* | *Description* |
|---|---|---|
| CM-707 | 4-7-1984 | Stillwater Avenue changed to Stillacres Drive |

## PARALLEL REFERENCES

Legislative History References to Ohio Revised Code
References to Resolutions
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## LEGISLATIVE HISTORY REFERENCES TO OHIO REVISED CODE

***Editor's Note:*** *Legislative history references for Titles VII and XIII are found in the separate tables at the beginnings of those titles.*

| ***R.C. Cites*** | ***Code Section*** |
|---|---|
| 715.47 | 93.28 |
| 729.12 | 50.17 |
| 951.02 | 90.02 |
| 951.10 | 90.02 |
| 951.11 | 90.04 |
| 951.12 | 90.05 |
| 951.13 | 90.06 |
| 951.99 | 90.02 |
| 955.22 | 90.02 |
| 955.222 | 90.02 |
| 955.54 | 90.32 |
| 955.99(E) - (H), (J), (L) - (N), (P), (Q) | 90.02 |
| 955.99(O) | 90.32 |
| 959.01 | 90.20 |
| 959.02 | 90.21 |
| 959.03 | 90.22 |
| 959.04 | 90.21, 90.22 |
| 959.13 | 90.23 |
| 959.131 | 90.23 |
| 959.15 | 90.25 |
| 959.17 | 90.26 |
| 959.21 | 90.33 |
| 959.99(B) | 90.21 |
| 959.99(C) | 90.22, 90.25, 90.26 |
| 959.99(D) | 90.23, 90.33 |
| 959.99(E) | 90.23 |
| 959.99(E)(2) | 90.20 |
| 959.99(E)(7) | 90.33 |
| 959.99(I) | 90.25 |
| 3743.01 | 91.10 |
| 3743.54 | 91.12 |
| 3743.65(A) - (E) | 91.11 |
| 3767.16 | 93.22 |
| 3767.18 | 93.23 |
| 3767.32 | 93.26 |
| 4301.01 | 92.01 |

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|---|---|
| 4301.21 | 92.02 |
| 4301.22 | 92.04 |
| 4301.244 | 92.01 |
| 4301.58 | 92.05 |
| 4301.60 | 92.06 |
| 4301.62 | 92.07 |
| 4301.63 | 92.08 |
| 4301.631 | 92.09 |
| 4301.633 | 92.11 |
| 4301.634 | 92.12 |
| 4301.637 | 92.14 |
| 4301.638 | 92.04, 92.20 |
| 4301.639(A) | 92.15 |
| 4301.64 | 92.16 |
| 4301.65 | 92.10 |
| 4301.66 | 92.17 |
| 4301.67 | 92.18 |
| 4301.68 | 92.19 |
| 4301.69 | 92.20 |
| 4301.70 | 92.99 |
| 4301.74 | 92.28 |
| 4301.99(A) | 92.07, 92.10, 92.99 |
| 4301.99(B) | 92.04, 92.09, 92.16 |
| 4301.99(C) | 92.02, 92.05, 92.06, 92.11, 92.17 - 92.20, 92.28 |
| 4301.99(D), (H) | 92.04 |
| 4301.99(E) | 92.08, 92.09, 92.24 |
| 4301.99(F) | 92.12 |
| 4301.99(I) | 92.20 |
| 4301.99(J) | 92.10 |
| 4399.09 | 92.21 |
| 4399.10 | 92.22 |
| 4399.14 | 92.23 |
| 4399.15 | 92.24 |
| 4399.16 | 92.25 |
| 4399.17 | 92.26 |
| 4399.99(A) | 92.25 |
| 4399.99(B) | 92.21 |
| 4399.99(C) | 92.22 |
| 4399.99(D) | 92.23 |
| 4399.99(E) | 92.24 |
| 4399.99(F) | 92.26 |

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| *Res. No.* | *Date Passed* | *Code Section* |
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| CM-724 | 10-9-1984 | TSO Table IV |
| CM-725 | 12-11-1984 | TSO Table II |
| CM-805 | 10-13-1987 | TSO Table IV |
| CM-820 | 2-9-1988 | TSO Table IV |
| CM-850 | 8-9-1988 | TSO Table III |
| CM-854 | 10-11-1988 | TSO Table III |
| CM-890 | 4-11-1989 | TSO Table IV |
| CM-915 | 11-21-1989 | TSO Table IV |
| CM-993 | 1-8-1991 | TSO Table IV |
| CM-1072 | 1-7-1992 | TSO Table IV |
| CM-1056 | 11-12-1991 | 150.256, 150.257 |
| CM-1078 | 2-11-1992 | TSO Table IV |
| CM-94-19 | 6-14-1994 | 150.256 |
| CM-03-01 | 1-14-2003 | TSO Table IV |
| CM-09-12 | 8-12-2009 | TSO Table IV |
| CM-09-13 | 5-12-2009 | TSO Table IV |
| CM-10-01 | 2-9-2010 | TSO Table II |
| CM-10-13 | 5-11-2010 | TSO Table III |
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| CM-10-32 | 12-14-2010 | TSO Table IV |

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| CM-261 | 9-4-1973 | 50.24 |
| CM-399 | 12-6-1977 | TSO Table I |
| CM-410 | 3-7-1978 | TSO Table I |
| CM-411 | 3-7-1978 | TSO Table I |
| CM-415 | 4-4-1978 | TSO Table I |
| CM-444 | 8-1-1978 | TSO Table I |
| CM-459 | 12-5-1978 | TSO Table I |
| CM-541 | 7-1-1980 | 50.24 |
| CM-552 | 10-7-1980 | 33.18 |
| CM-568 | 1-6-1981 | 35.04 |
| CM-563 | 2-3-1981 | 52.116 |
| CM-565 | 2-3-1981 | 73.35 |
| CM-566 | 2-3-1981 | 137.25 |
| CM-588 | 6-9-1981 | 50.24 |
| CM-597 | 10-13-1981 | 150.245 |
| CM-601 | 12-8-1981 | 113.01, 113.10–113.12 |
| CM-644 | - -1982 | 153.01, 153.02 |
| CM-645 | - -1982 | 154.01, 154.02 |
| CM-610 | 3-9-1982 | 91.34 |
| CM-615 | 4-13-1982 | 31.01, 31.02 |
| CM-617 | 5-11-1982 | 50.24 |
| CM-616 | - -1983 | 50.18–50.23 |
| CM-652 | 2-8-1983 | TSO Table I |
| CM-653 | 2-8-1983 | TSO Table I |
| CM-656 | 3-8-1983 | 31.02 |
| CM-658 | 4-12-1983 | 150.073 |
| CM-666 | 6-14-1983 | 90.28 |
| CM-687 | 10-1-1983 | TSO Table IV |
| CM-696 | 3-13-1984 | TSO Table I |
| CM-697 | 3-13-1984 | TSO Table I |
| CM-707 | 4-7-1984 | TSO Table V |
| CM-710 | 6-12-1984 | 52.117 |
| CM-716 | 7-7-1984 | 50.24 |
| CM-717 | 9-11-1984 | 113.12 |
| CM-721 | 10-9-1984 | 52.154 |
| CM-726 | l-8-1985 | 150.004, 150.094, 150.307 |

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|---|---|---|
| CM-729 | 1-8-1985 | TSO Table IV |
| CM-734 | 4-9-1985 | TSO Table I |
| CM-733 | 5-14-1985 | 31.01 |
| CM-739 | 6-11-1985 | TSO Table I |
| CM-741 | 6-11-1985 | 112.05 |
| CM-742 | 7-9-1985 | TSO Table III |
| CM-744 | 8-13-1985 | TSO Table I |
| CM-750 | 11-12-1985 | TSO Table IV |
| CM-748 | 12-10-1985 | TSO Table II |
| CM-752 | 12-10-1985 | 78.01, 78.03, 78.05, 78.07, 78.09, 78.99 |
| CM-757 | 1-7-1986 | TSO Table IV |
| CM-758 | 4-8-1986 | 130.38 |
| CM-759 | 4-8-1986 | 32.001 |
| CM-764 | 6-10-1986 | TSO Table IV |
| CM-769 | 9-9-1986 | 98.01–98.15 |
| CM-773 | 11-12-1986 | 52.140 |
| CM-778 | 1-13-1987 | TSO Table II |
| CM-781 | 3-10-1987 | TSO Table III |
| CM-782 | 3-10-1987 | 152.16, 152.19 |
| CM-800 | 8-11-1987 | TSO Table II |
| CM-815 | 1-5-1988 | 52.120 |
| CM-816 | 1-5-1988 | 52.106, 52.130, 52.136 |
| CM-818 | 2-9-1988 | 50.24 |
| CM-824 | 4-12-1988 | 99.01–99.06, 99.99 |
| CM-825 | 4-12-1988 | TSO Table I |
| CM-826 | 4-12-1988 | TSO Table I |
| CM-827 | 4-12-1988 | TSO Table I |
| CM-828 | 4-12-1988 | TSO Table I |
| CM-829 | 4-12-1988 | TSO Table I |
| CM-830 | 5-10-1988 | 51.26, 52.120, 52.121 |
| CM-843 | 7-12-1988 | 150.148 |
| CM-845 | 7-12-1988 | 52.016 |
| - | 8-18-1988 | 77.03 |
| CM-860 | 12-13-1988 | TSO Table I |
| CM-866 | 12-13-1988 | TSO Table II |
| CM-864 | 1-10-1989 | 93.78, 95.01–95.06, 95.99 |
| CM-877 | 2-14-1989 | TSO Table I |
| CM-881 | 3-14-1989 | 33.18 |
| CM-886 | 4-11-1989 | TSO Table I |
| CM-891 | 5-9-1989 | TSO Table II |
| CM-896 | 6-13-1989 | 150.023 |
| CM-904 | 9-12-1989 | 32.001, 32.003, 32.047, 32.064 |
| CM-905 | 10-10-1989 | 50.24 |

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| CM-925 | 2-13-1990 | 150.165 |
| CM-926 | 2-13-1990 | TSO Table I |
| CM-938 | 3-13-1990 | 51.01, 51.21, 51.22 |
| CM-943 | 4-10-1990 | 112.05 |
| CM-966 | 9-11-1990 | 51.01, 51.18, 51.21, 51.22, 51.25, 52.055 , 52.116, 52.143 |
| CM-973 | 9-11-1990 | 31.01 |
| CM-991 | 1-8-1991 | 52.003 , 52.030, 52.041, 52.044 , 52.076, 52.081 , 52.093 , 52.094, 52.115–52.117 , 52.132, 52.137 , 52.140–52.143, 52.148 |
| CM-999 | 3-12-1991 | 33.18 |
| CM-1002 | 4-9-1991 | 51.22, 51.25, 52.116, 52.119 |
| CM-1015 | 7-9-1991 | 72.96 |
| CM-1020 | 8-13-1991 | 53.01–53.26, 53.99 |
| CM-1022 | 8-13-1991 | 151.997, 151.998 |
| CM-1033 | 8-13-1991 | TSO Table II |
| CM-1028 | 9-10-1991 | 51.03, 51.04, 51.07, 51.09, 51.14, 51.34, 51.98 |
| CM-1029 | 9-10-1991 | 52.154 |
| CM-1036 | 10-8-1991 | TSO Table I |
| CM-1038 | 10-8-1991 | 51.01, 51.21–51.23, 52.003 , 52.116, 52.118, 52.142 |
| - | 11-1-1991 | 77.03 |
| CM-1046 | 11-12-1991 | TSO Table I |
| CM-1056 | 11-12-1991 | 150.255 |
| CM-1059 | 12-10-1991 | TSO Table I |
| CM-1063 | 12-10-1991 | TSO Table II |
| CM-1069 | 4-14-1992 | 31.01, 31.02, 31.04–31.10, 33.60 |
| CM-1083 | 5-12-1992 | 51.22 |
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| CM-1096 | 7-14-1992 | TSO Table IV |
| CM-1101 | 9-8-1992 | TSO Table I |
| CM-1110 | 10-13-1992 | TSO Table IV |
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| CM-1105 | 11-10-1992 | 52.117 |
| CM-1109 | 11-10-1992 | TSO Table I |
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| CM-93-10 | 5-11-1993 | 113.11 |
| CM-93-28 | 6-8-1993 | TSO Table IV |
| CM-93-31 | 8-10-1993 | TSO Table II |
| CM-93-33 | 8-10-1993 | TSO Table II |
| CM-93-34 | 9-14-1993 | 31.06, 31.20–31.39, 31.99 |
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| CM-93-47 | 11-9-1993 | TSO Table IV |
| CM-93-50 | 12-14-1993 | 53.01, 53.28–53.30 |
| CM-93-53 | 12-14-1993 | TSO Table II |
| CM-93-55 | 1-4-1994 | TSO Table IV |
| CM-94-02 | 3-8-1994 | TSO Table I |
| CM-94-03 | 3-8-1994 | TSO Table I |
| CM-94-11 | 4-12-1994 | TSO Table IV |
| CM-94-18 | 6-14-1994 | TSO Table IV |
| CM-94-22 | 8-9-1994 | TSO Table II |
| CM-94-24 | 9-13-1994 | 51.23 |
| CM-94-32 | 1-10-1995 | TSO Table II |
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| CM-95-04 | 2-14-1995 | TSO Table I |
| CM-95-05 | 3-14-1995 | 32.063 |
| CM-95-10 | 3-14-1995 | TSO Table IV |
| CM-95-21 | 7-11-1995 | TSO Table I |
| CM-95-22 | 7-11-1995 | TSO Table I |
| CM-95-24 | 8-15-1995 | TSO Table I |
| CM-95-27 | 10-3-1995 | TSO Table I |
| CM-95-31 | 10-3-1995 | TSO Table IV |
| CM-95-30 | 11-14-1995 | TSO Table IV |
| CM-95-36 | 1-2-1996 | TSO Table I |
| CM-96-01 | 1-2-1996 | TSO Table IV |
| - | 2-9-1996 | 77.03 |
| CM-96-02 | 2-13-1996 | 150.190 |
| CM-96-06 | 3-12-1996 | 32.066 |
| CM-96-09 | 3-12-1996 | 52.148 |
| CM-96-13 | 4-9-1996 | 50.18, 50.21, 50.99 |
| CM-96-14 | 4-9-1996 | 51.12, 51.22 |
| CM-96-19 | 5-14-1996 | TSO Table I |
| CM-96-21 | 5-14-1996 | TSO Table IV |
| CM-96-25 | 7-9-1996 | TSO Table I |
| - | 10-8-1996 | 77.03 |
| CM-96-36 | 10-8-1996 | 152.20 |
| CM-96-38 | 12-11-1996 | 95.01 |
| CM-97-04 | 3-12-1997 | 152.14 |
| - | 7-8-1997 | 77.03 |
| CM-97-24 | 8-12-1997 | 53.21, 53.26, 53.31, 53.32 |
| CM-97-25 | 8-12-1997 | TSO Table I |
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| CM-97-36 | 11-10-1997 | TSO Table I |
| CM-97-39 | 12-10-1997 | 158.001–158.003, 158.010–158.021, 158.030–158.035, 158.040–158.042, |

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| CM-97-39 (Cont'd) | 12-10-1997 | 158.050–158.053, 158.060–158.062, 158.070–158.072, 158.080–158.083, 158.090–158.100 |
| CM-98-08 | 2-10-1998 | TSO Table IV |
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| CM-98-05 | 6-9-1998 | 150.073 |
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| CM-98-31 | 9-8-1998 | 51.01, 51.22, 52.003, 52.116, 52.131 |
| CM-98-37 | 11-10-1998 | TSO Table I |
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| CM-99-06 | 3-9-1999 | TSO Table I |
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| CM-99-09 | 3-9-1999 | 33.66, 150.301 |
| CM-99-23 | 6-8-1999 | 33.18 |
| CM-99-22 | 9-14-1999 | TSO Table II |
| CM-99-41 | 10-12-1999 | TSO Table II |
| CM-99-55 | 1-4-2000 | TSO Table I |
| CM-99-56 | 1-4-2000 | 73.37 |
| CM-01-22 | 9-18-2001 | 52.117 |
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| CM-03-29 | 8-12-2003 | TSO Table II |
| CM-03-35 | 12-9-2003 | 52.116 |
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| CM-04-08 | 5-11-2004 | 33.18 |
| CM-04-14 | 5-11-2004 | TSO Table I |
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| CM-05-12 | 4-12-2005 | 51.23 |
| CM-06-15 | 4-11-2006 | TSO Table I |
| CM-06-21 | 5-9-2006 | 150.256 |
| CM-06-33 | 12-12-2006 | 90.30, 90.31 |
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| CM-07-13 | 4-10-2007 | TSO Table II |
| CM-07-14 | 4-10-2007 | 50.01 |
| CM-07-25 | 7-10-2007 | TSO Table I |
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|---|---|---|
| CM-07-35 | 12-11-2007 | 33.05 |
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| CM-09-18 | 9-8-2009 | TSO Table I |
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| CM-11-25 | 11-8-2011 | 52.116 |
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| CM-12-23 | 8-14-2012 | 33.18 - 33.24 |
| CM-12-28 | 10-9-2012 | 31.39, 76.15, 150.333 |
| CM-13-17 | 9-10-2013 | 90.29 |
| CM-13-27 | 12-10-2013 | 51.22, 51.26, 51.98, 52.106, 52.116, 52.120, 52.121, 52.135, 52.137, 52.142, 52.150, 52.151 |
| CM-13-32 | 1-7-2014 | 52.003, 52.116 |
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| CM-15-09 | 3-10-2015 | 52.116 |
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| CM-15-32 | 11-10-2015 | 96.01 - 96.21, 96.97 - 96.99 |
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