



Prepared: 12/30/2016
Introduced: 01/17/2017
Revised:
Adopted:
Effective:

ORDINANCE O-02-2017

AN ORDINANCE ENACTING AND ADOPTING A NEW CODE OF ORDINANCES FOR THE CITY OF NEW ALBANY, OHIO AND DECLARING AN EMERGENCY

WHEREAS, council for the City of New Albany has chosen Municipal Code Corporation, also known as "Municode," to publish its codified ordinances on paper and on-line; and

WHEREAS, Municode has completed and provided a new Code of Ordinances which contains ordinances of a general and permanent nature enacted by council, and incorporates updates through March of 2016 to the prior published Code of Ordinances issued on behalf of the City of New Albany by American Legal in 2013, and

WHEREAS, council has contracted with Municode will to update and supplement its code until otherwise decreed; and

WHEREAS, the codified ordinances to be approved herein represent measures already adopted by council; and

WHEREAS, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city and for the further reason that this ordinance is required to be immediately effective in order to make the updated code available to the public without delay.

NOW, THEREFORE, be it ordained by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio:

Section 1: That the Code of Ordinances of New Albany as submitted by Municipal Code Corporation of Tallahassee, Florida and attached as Exhibit A hereto, is hereby adopted by reference as if set out in its entirety.

Section 2: All ordinances or parts thereof which are in conflict or inconsistent with any provision of the new Code of Ordinances adopted in Section 1 of this ordinance are hereby repealed as of the effective date of this ordinance.

Section 3. That it is hereby found and determined that all formal actions of this council concerning and relating to the passage of this ordinance were adopted in an open meeting of the council and any decision making bodies of the City of New Albany which resulted in such formal action were in meetings open to the public or in compliance with all legal requirements of the City of New Albany, Counties of Franklin and Licking, State of Ohio.

Section 4. By reason of the emergency set forth in the preamble hereto, and pursuant to Article 6.07(b) of the New Albany Charter, this ordinance shall become effective immediately upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2017.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

**CERTIFICATION BY CLERK OF COUNCIL
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-02-2017** were posted in accordance with Section 6.12 of the Charter,
for 30 days starting on _____, 2017.

Jennifer Mason, Clerk of Council

Date

CODE OF ORDINANCES

CITY OF

NEW ALBANY, OHIO

Published in 1997 by Order of the City Council
Republished in 2016

municode

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PREFACE

This Code constitutes a republication of the general and permanent ordinances of the City of New Albany, Ohio.

Source materials used in the preparation of the Code were the 1997 Code, as supplemented through March 19, 2013, and ordinances subsequently adopted by the City Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1997 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been divided into parts, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a period. The figure before the period refers to the chapter number, and the figure after the period refers to the position of the section within the chapter. Thus, the second section of chapter 101 is numbered 101.02, and the first section of chapter 157 is 157.01. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted. New parts and chapters may be included, as well. The next successive number shall be assigned to the new part or chapter.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a part of the Code, the number to the left of the colon indicates the number of the part. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CHARTER	CHT:1
RELATED LAWS	RL:1
SPECIAL ACTS	SA:1

CHARTER COMPARATIVE TABLE	CHTCT:1
RELATED LAWS COMPARATIVE TABLE	RLCT:1
SPECIAL ACTS COMPARATIVE TABLE	SACT:1
CODE	PT1:1
CODE APPENDIX	PTA:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:1
CHARTER INDEX	CHTi:1
CODE INDEX	PTi:1

Looseleaf Supplements

A special feature of this republication is the looseleaf system of binding and supplemental servicing of the republication. With this system, the republication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the republication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this republication up to date at all times will depend largely upon the holder of the republication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This republication was under the direct supervision of Mary Margaret Bielby, Code Attorney, and Jodi Hunt, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Jennifer Mason for her cooperation and assistance during the progress of the work on this republication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the City readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the City's affairs.

Copyright

All editorial enhancements of this Code are copyrighted by Municipal Code Corporation and the City of New Albany, Ohio. Editorial enhancements include, but are not

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In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

Ord. No.	Date Adopted	Included/Omitted
REPUBLICATION		
O-43-2010	1-11-2011	Included
O-09-2013	5-21-2013	Included
O-15-2013	6-4-2013	Included
O-37-2013	12-3-2013	Included
O-03-2014	2-18-2014	Included
O-06-2014	3-18-2014	Included
O-07-2014	3-18-2014	Included
O-12-2014	6-3-2014	Included
O-34-2014	11-18-2014	Included
O-37-2014	10-16-2014	Included
O-05-2015	2-24-2015	Included
O-07-2015	3-3-2015	Included
O-19-2015	5-19-2015	Included
O-35-2015	11-3-2015	Included
O-41-2015	11-17-2015	Included
O-42-2015	11-17-2015	Included
O-47-2015	12-15-2015	Included
O-50-2015	1-5-2016	Included
O-51-2015	1-5-2016	Included
O-06-2016	3-15-2016	Included

CHARTER OF THE CITY OF NEW ALBANY*

Preamble

Article I. Name, Boundaries, and Form of Government

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- 1.02 Boundaries.
- 1.03 Form of government.

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***Editor's note**—The New Albany Revised Charter was approved by the voters at the November 2, 1999 election. Dates appearing in parentheses following sections indicate those sections were subsequently amended, added or repealed on the date given.

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Article X. Boards and Commissions

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Article XI. Elections, Recall, Initiative, and Referendum

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Article XII. General Provisions

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PREAMBLE

We, the people of the Village of New Albany, Ohio, for the purpose of continuing the established plan for fair, efficient, and effective municipal government, preparing for city status, securing the benefits of home rule, and exercising the powers of local self-government conferred by the Constitution and laws of the State of Ohio, adopted this Revised Charter, which became effective on March 1, 2000, and which was amended effective 1/1/10, hereinafter referred to as "Charter", as a complete replacement to the original Charter approved by the electorate on November 3, 1992 and which became effective on January 1, 1993.

ARTICLE I. NAME, BOUNDARIES, AND FORM OF GOVERNMENT

1.01 Name.

The Village of New Albany shall continue to be a municipal corporation known as the "Village of New Albany" until such time as it becomes a City in the manner provided by the Constitution and laws of the State of Ohio. At such time it shall then be known as the "City of New Albany", unless otherwise provided by Council.

1.02 Boundaries.

The Village shall have the same boundaries that exist on the adoption date of the current Charter, with power and authority to change its boundaries and annex territory. Territory annexed to the Village shall immediately be subject to the provisions of this Charter.

(Amended 11-3-09, eff. 1-1-10)

1.03 Form of government.

The form of government provided for by this Charter shall be known as "Mayor-Council-Administrator".

ARTICLE II. POWERS OF THE VILLAGE

2.01 General powers granted.

The Village shall have all powers possible for a municipality to have under the Constitution and laws of the State of Ohio as fully and completely as though they were specifically enumerated in this Charter.

2.02 Exercise of powers.

All powers shall be exercised in a manner prescribed in this Charter, or if not so prescribed, in a manner provided by legislation of the Village. When not prescribed in this Charter or by legislation of the Village, the powers shall be exercised in the manner provided by the laws of the State of Ohio, until Council provides by legislation a different manner of exercising the powers.

(Amended 11-3-09, eff. 1-1-10)

2.03 Construction of powers.

The powers of the Village under this Charter shall be construed liberally in favor of the Village, and the specific mention of particular powers in the Charter shall not be construed as limiting the general powers granted in this Charter.

2.04 Cooperative authority.

The Village may exercise any of its powers, perform any of its functions, and provide related financing, jointly or in cooperation, by contract or otherwise, with any one or more states, including but not limited to the State of Ohio, and any of their political subdivisions, special districts, instrumentalities, divisions, or agencies; the United States or any of its divisions or agencies; or any individual, partnership, corporation, or other type of entity, whether for profit or not-for-profit, unless prohibited by the Constitution of the State of Ohio.
(Amended 11-3-09, eff. 1-1-10)

ARTICLE III. MAYOR**3.01 Term.**

The Mayor shall be elected, at large, by separate ballot for a four (4) year term.

3.02 Powers and duties.

(A) *General Grant of Powers and Duties.* The Mayor shall have all the powers, rights, and duties as a Council member, as described in Section 4.02.

(B) *Specific Grant of Powers and Duties.* In addition to the powers, rights, and duties as a Council member, the Mayor shall:

- (1) Serve as president and preside over all Council meetings;
- (2) Act as a Council member and have the right to vote on all matters before the Council, but shall have no veto power;
- (3) Perform all ceremonial duties and functions as necessary for nonadministrative purposes;
- (4) Exercise all judicial powers and functions granted to mayors of municipal corporations by the laws of the State of Ohio and applicable court rules;
- (5) Have authority and discretion to appoint a magistrate, with approval of Council, to hear and determine prosecutions of traffic and criminal cases subject to the laws of the State of Ohio;
- (6) Act as chief spokesperson for the Village in dealing with other governments;
- (7) Exercise military powers and functions granted to mayors of municipal corporations by the laws of the State of Ohio or the United States; and

(8) Perform or exercise such other powers, duties, and functions as provided by this Charter and Council Rules, to the extent such Council Rules are consistent with this Charter.
(Amended 11-3-09, eff. 1-1-10)

3.03 President pro tempore and acting mayor.

(A) *President Pro Tempore.* During its organizational meeting held pursuant to Section 4.03(A), in each even numbered year, Council shall choose, by a vote of four Council members, one of its members as President pro tempore who shall serve as the Mayor during the temporary absence or disability of the Mayor.

(B) *Acting Mayor.* In the event of the temporary absence of both the Mayor and President pro tempore, the senior Council member, based on length of continuous elected service with the Village, shall serve as the Acting Mayor. If two or more Council members have held the same length of continuous elected service with the Village, then an Acting Mayor shall be chosen from among those two or more Council members by a vote of four Council members at the organizational meeting of Council in each even-numbered year held pursuant to Section 4.03(A).
(Amended 11-3-09, eff. 1-1-10)

ARTICLE IV. COUNCIL

4.01 Composition, terms, and quorum.

(A) *Composition.* Council shall be composed of seven (7) members, including the Mayor.

(B) *Terms.* Council Members, other than the Mayor, shall be elected at large for four (4) year overlapping terms beginning on January 1 after their election.

(C) *Quorum.* Four Council members shall constitute a quorum at all meetings.

4.02 Powers and duties.

(A) *General Grant of Powers and Duties.* All powers of the Village permitted by this Charter and the Constitution and laws of the State of Ohio shall be vested in Council. Council shall provide for the exercise of all powers and for the performance of all duties and obligations imposed on the Village by law, through the adoption of legislation.

(B) *Specific Grant of Powers and Duties.* Without limitation of the powers and duties stated in Section 4.02(A), Council shall have the power and duty to:

- (1) Establish or authorize the number of positions in the various departments, divisions, offices, bureaus, boards, commissions, and committees of the Village and to adopt a wage, salary, and benefit structure for all positions within the classified and unclassified service;
- (2) Create, combine, change, and abolish departments, divisions, offices, bureaus, boards, commissions, and committees not specifically created by this Charter;

- (3) Provide for an independent audit of the accounts and records of the Village, which may be in addition to audits by State offices and agencies as may be required under the laws of the State of Ohio;
- (4) Conduct inquiries and investigations regarding the affairs of the Village and the conduct of any Village department, office, or agency and for this purpose subpoena witnesses, administer oaths, take testimony, and require the production of evidence;
- (5) Levy taxes and assessments and incur debt subject to limitations imposed thereon by this Charter and the Constitution and laws of the State of Ohio;
- (6) Adopt and to provide for the enforcement of local police, sanitary, and other similar regulations as are not in conflict with general laws;
- (7) Appropriate funds based on the annual operating and capital budgets and to delegate execution of such annual budgets to the Administrator;
- (8) Regulate by Ordinance the use of private real estate in the Village; and
- (9) Appoint and remove the Administrator, to establish the Administrator's compensation, and to appoint an acting Administrator when necessary.

4.03 Meetings.

(A) *Organizational Meeting.* Council shall be a continuing body and shall meet annually before the first regularly scheduled meeting of the year for the purpose of organizing. At such meeting, the newly elected Council members, if any, may take the oath of office; the Council may transact such other business as may come before it; and in even number years Council shall nominate a President pro tempore and Acting Mayor as required by Section 3.03.

(B) *Regular Meetings.* Council shall hold at least one regular meeting each month and shall determine the frequency, dates, and times of additional regular meetings in order to properly conduct its business.

(C) *Special Meetings.* Special meetings of Council may be called, for any purpose, by the Mayor or any three (3) Council members upon at least twenty-four hours notice to each Council member, which notice may be served personally or left at the usual place of residence. Council members who attend special meetings of Council or who are present at another regular or special meeting where a special meeting is announced by the presiding Mayor, President pro tempore, or Acting Mayor need not receive notice of the special meeting. Council members may waive receipt of notice of a special meeting either prior or subsequent to the meeting. Attendance at a special meeting constitutes a waiver of receipt of notice of special meeting.

(D) *Adjournment or Recess of Meetings.* Any meeting of Council may be adjourned or recessed to another time, date, or place without giving the notice required in Section 4.03(C).

(E) *Open Meetings*. All meetings of Council shall be open to the public, except as allowed by the laws of the State of Ohio, and for economic development purposes.
(Amended 11-3-09, eff. 1-1-10)

4.04 Compensation.

Once in any calendar year and only as a non-emergency ordinance, Council may determine the annual compensation and benefits of its current members, including the Mayor. In the event Council shall fail to establish salaries and benefits as required in this Section, the salaries and benefits in effect shall remain until changed in accordance with this Section.

4.05 Rules and journals.

Council shall adopt its own rules of procedure which shall not conflict with this Charter and which shall remain in effect until amended or repealed by Council. The Council Rules shall not be subject to initiative or referendum. The Council Rules shall provide for such matters as Council shall determine to be necessary for the proper functioning and governance of Council. Council shall maintain a journal of its proceedings.

4.06 Clerk of council.

Council shall appoint a person to serve as Clerk of Council. The Clerk of Council shall be an employee of the Village and shall give notice of Council meetings to its members and the public, keep the minutes of Council's proceedings, and perform such other duties as are provided by this Charter or by Council. The Clerk of Council shall be Council's employee subject to Council's direction and under the general supervision of the Administrator. The Clerk of Council shall serve at the pleasure of Council and may be removed without cause by Council.

ARTICLE V. ELECTED OFFICIALS

5.01 Eligibility and nominations.

(A) *Eligibility*. Any elector of the Village who has been domiciled in the Village, or any area annexed to the Village, for one (1) year immediately prior to filing a nominating petition, shall be eligible to hold an elected office. All elected officials shall be domiciled in and electors of the Village during their entire term of office.

(B) *Nominations*. No primary election shall be held for the nomination of candidates for elected office. Nominations for the elected offices of the Village shall be made by petition signed by not less than twenty-five (25) nor more than seventy-five (75) electors of the Village. Petitions shall be in the form determined by the election officials of the State of Ohio for the nomination of non-partisan candidates. Group petitions shall not be permitted. Petitions shall be filed with the election officials of the State of Ohio as provided by the law of the State of Ohio.

(Amended 11-3-09, eff. 1-1-10)

5.02 Prohibitions.

(A) *Holding Other Office.* Except where authorized by the laws of the State of Ohio or legislation of the Village, no elected official of the Village shall hold any other elected public office during the term for which the elected official is elected. No elected official shall hold any other Village office or employment with the Village during the term for which the elected official is elected. Except for boards, commissions, and committees, no former elected official of the Village shall hold any compensated appointed office or employment with the Village until one year after the expiration of the term for which the elected official was elected. Nothing in this Section shall be construed to prohibit Council from selecting any current or former elected official to represent the Village on the governing board of any intergovernmental agency or organization.

(B) *Village Employees.* Except for the purpose of inquiries and investigations under Section 4.02(B)(4), elected officials of the Village shall deal with Village employees who are subject to the direction and supervision of the Administrator solely through the Administrator. No elected official of the Village shall in any manner direct or demand the hiring or termination of any Village employee whom the Administrator is empowered to hire, but Council may express its views and fully and freely discuss with the Administrator anything pertaining to the hiring and termination of such employees.

5.03 Forfeiture of office.

(A) *Grounds Constituting Forfeiture.* The office of an elected official shall be forfeited upon a determination that the elected official:

- (1) Has pled to or has been convicted of a felony while in office;
- (2) Has pled to or has been convicted of any crime involving dereliction of duties or breach of public trust while in office;
- (3) Lacks, or is found to have lacked, at any time prescribed by this Charter, any eligibility requirements of Section 5.01(A);
- (4) Has violated any prohibition of Section 5.02(A); or
- (5) Has failed to attend three consecutive regular Council meetings without being excused by Council.

(B) *Judge of Grounds Constituting Forfeiture.* Council shall be the sole judge of the grounds constituting forfeiture of office. Council shall initiate the process to establish grounds for forfeiture of office by motion and shall have the power to subpoena witnesses, administer oaths, take testimony, and require the production of evidence.

(C) *Notice and Public Hearing.* Upon finding that grounds exist which subject the elected official to forfeiture of office, Council shall instruct the Clerk of Council to notify the elected official. The Clerk of Council shall notify the elected official by any method that includes written

evidence of receipt. The elected official so notified shall receive a public hearing before Council to be held no earlier than ten (10) days nor later than thirty (30) days after notification of forfeiture is received by the elected official.

(D) *Final Determination.* Council shall make a final determination by a motion to regard the office of the Mayor or Council member as forfeited. The elected official subject to forfeiture of office shall be entitled to vote. Upon passage of the motion, the office shall be deemed vacant and Council shall fill the vacancy as provided in Section 5.04.

5.04 Vacancies and filling of vacancies.

(A) *Vacancies.* An elected official's office shall become vacant upon the death, resignation or forfeiture of office as provided in Section 5.03.

(B) *Filling of Vacancies.*

- (1) *Mayor.* Any vacancy in the Office of Mayor shall be filled by the President pro tempore. If the vacancy occurs on or after July 1 of the second year of the Mayor's term, the President pro tempore shall serve for the remainder of the Mayor's unexpired term. If the vacancy occurs on or before June 30 of the second year of the Mayor's term, the President pro tempore shall serve until a successor is elected at the next regular municipal election. The person so elected shall take office on January 1 following such election for the remainder of the Mayor's term. Upon the election of a new Mayor, other than the President pro tempore then serving as Mayor, the President pro tempore shall serve the remaining original elected term as Council member.

In the event of a vacancy in the office of Mayor, whereby the President pro tempore is required to serve as Mayor, the Council shall select a person to fill the vacancy on Council, as provided in Section 5.04(B)(2). However, nothing herein shall prevent the President pro tempore from serving the original full elected term as Council member. The person chosen to fill the vacancy on Council shall serve a term as Council member equal to the term the President pro tempore serves as Mayor. In the event the President pro tempore's original elected term expires while filling the Mayor's unexpired term, the new President pro tempore shall assume the remainder of the Mayor's unexpired term.

- (2) *Council Member.* Any vacancy in the office of a Council member shall be filled by the appointment of an elector, qualified under 5.01(A), by a majority of the remaining Council members. If the vacancy occurs on or after July 1 of the second year of the vacated Council member's term, the person nominated by Council shall serve for the unexpired term, except as provided in Section 5.04(B)(1). If the vacancy occurs on or before June 30 of the second year of the vacated Council member's term, the qualified person nominated by Council shall serve until a successor is elected at the next regular municipal election. The person so elected shall take office on January 1 following such election for the remainder of the

vacated Council member's term. If Council fails to fill a vacancy in Council within sixty days after the occurrence of the vacancy, the Mayor shall appoint a person to serve for the time as provided in this Section.

ARTICLE VI. LEGISLATIVE AND OTHER PROCEDURES

6.01 Form of action.

Non-legislative action of Council shall be by motion and legislative action shall be by resolution or ordinance. No action of Council shall be invalidated merely because the form of the action taken fails to comply with the provisions of this Charter.

- (A) *Motions.* Council shall use a motion to determine policy and procedural matters; to conduct elections among and make appointments by Council; and as otherwise provided in this Charter or by Council.
- (B) *Resolutions.* Council shall use a resolution, where practicable, for any legislation of a temporary, informal, or ceremonial nature and as otherwise provided in this Charter or by Council.
- (C) *Ordinances.* Council shall use an ordinance, where practicable, for any legislation of a general or permanent nature and as otherwise provided in this Charter or by Council.

6.02 Form of legislation.

The form of legislation shall be established by the Council Rules. Legislation shall contain only one subject, which shall be clearly expressed in its title; provided that appropriation ordinances may contain the various accounts for which monies are appropriated, and that ordinances which are codified or recodified are not subject to the limitation of containing one subject.

6.03 General procedure for consideration of legislation.

(A) *Introduction.* Legislation may be introduced by any elected official or the Administrator at any regular or special meeting of Council. Prior to the introduction of any legislation, the Clerk of Council shall distribute a copy of the legislation to each elected official and to the Administrator, file a reasonable number of copies in the office of the Clerk of Council and such other public places as Council may designate, and publish the title of the legislation together with a notice setting forth the time and place for its public hearing before Council.

(B) *Public Hearing.* The procedure for public hearings shall be determined by the Council Rules. The public hearing of any legislation shall follow its publication by no less than seven days; may be held separately or in conjunction with a regular or special Council meeting; may be adjourned or recessed from time to time; and may be dispensed with for an emergency ordinance. The public hearing of a resolution shall be conducted at the time of its introduction. The public hearing of an ordinance shall be conducted at the next designated meeting subsequent to its introduction, unless otherwise specified by Council. Unless dispensed with by Council, the public

hearing of an emergency ordinance shall be conducted at the time of its introduction. Upon closing the public hearing and after discussion by Council, Council may adopt the legislation, with or without amendment, reject it, or table it.

(C) *Vote Recordation and Publication.* The vote on legislation shall be entered in the minutes or other record of Council proceedings. As soon as possible after adoption, the Clerk of Council shall have the legislation and a notice of its adoption published and available to the public at a reasonable fee.

(Amended 11-3-09, eff. 1-1-10)

6.04 Procedure for consideration of an emergency ordinance.

(A) *Public Hearing Notice.* An emergency ordinance shall be introduced in the form and manner prescribed for legislation generally, except that each emergency ordinance shall declare that it is necessary for the immediate preservation of the public peace, health, safety, or welfare, and shall clearly specify the nature of the emergency.

(B) *Voting Requirements.* Upon a successful motion to treat an ordinance as an emergency, and to dispense with the public hearing when appropriate, an ordinance may be adopted as an emergency ordinance by an affirmative vote of no less than five Council members after its first reading. If an emergency ordinance fails to receive an affirmative vote of at least five Council members, but receives a majority vote of Council, the ordinance shall become effective as non-emergency legislation as set forth in Section 6.07(B) of this Charter.

(Amended 11-3-09, eff. 1-1-10)

6.05 Procedure for consideration of a zoning ordinance.

(A) *Public Hearing Notice.* In addition to the requirements provided in Section 6.03, as to any zoning ordinance, initiated by an applicant or by Council, the Clerk of Council or designee shall mail written notice of the public hearing to the owners of the property within 200 feet of the affected parcel or parcels. The failure of delivery of the notice shall not invalidate any zoning ordinance.

(B) *Disposition Procedures.* Council, by ordinance, shall establish procedures for the disposition of ordinances establishing, amending, revising, changing, or repealing zoning classifications, districts, uses, or regulations.

(Amended 11-3-09, eff. 1-1-10)

6.06 Adoption of technical codes.

(A) *By Reference.* In conjunction with the procedures provided in Sections 6.03, 6.04, and 6.05 of this Charter, Council may, by ordinance, adopt codes relating to technical matters, construction standards, fire prevention, electric wiring, plumbing, heating, air conditioning, housing, health, safety, and such other matters as Council may determine to be appropriate for adoption by reference.

(B) *Publication Not Required.* An ordinance adopting any code shall make reference to the date and source of the code without reproducing it at length in the ordinance. In such cases, publication of the code shall not be required. A copy of each code and a copy of the adopting ordinance shall be authenticated and recorded by the Clerk of Council as provided in Sections 6.08 and 6.09 of this Charter. If the code is amended after its adoption by reference, Council may adopt the amendment or change by incorporation by reference under the same procedure established for the adoption of the original code.

6.07 Effective date of legislation.

(A) *Effective Immediately.* All resolutions and the following ordinances shall take effect upon adoption, unless Council specifies a later time:

- (1) Appropriations of money;
- (2) Annual tax levies for current expenses;
- (3) Improvements petitioned for by owners of the requisite majority of the front footage or of the area of the property benefited and to be assessed;
- (4) Submissions of any questions to the electorate or a determination to proceed with an election;
- (5) Approvals of a revision, codification, recodification, rearrangement, or publication of ordinances; and
- (6) Emergency ordinances.

(B) *Effective After Thirty Days.* Unless otherwise provided in this Charter, all other ordinances shall become effective thirty days after their adoption or at any later date specified by Council.

6.08 Authentication of legislation.

Legislation shall be authenticated by the signature of the presiding Mayor, President pro tempore, or Acting Mayor and the Clerk of Council. The failure or refusal to sign shall not invalidate otherwise properly enacted legislation.

6.09 Recording and certification of legislation.

Legislation shall be recorded in a book or other record prescribed by Council. The Clerk of Council or designee, upon request of any person and upon the payment of a fee if established by Council, shall certify true copies of any legislation.

6.10 Amendment of legislation.

(A) *Pending Legislation.* Pending legislation may be amended at any time prior to its adoption by Council, and such amendment shall not require an additional public hearing of the legislation.

(B) *Existing Legislation.* Any legislation may be amended by the adoption of subsequent legislation that revises existing section or parts; enacts new or supplemental sections or parts; or repeals existing sections or parts. This Section does not prevent, prohibit, nor preclude repeals by implication.

6.11 Codification.

Council shall provide for the preparation of a general codification, a recodification, a revision, or a rearrangement of all Village ordinances, which shall be adopted by Council by ordinance and shall be published in printed form, together with this Charter. A current service supplementing the Village's codified ordinances shall be maintained in the manner prescribed by Council.

6.12 Publication of ordinances.

(A) *Publish Defined.* Unless otherwise provided by this Charter, ordinances shall be published after adoption. As used in this Section, the term "publish" shall mean to post the ordinance or a summary of the ordinance in at least three public places as designated by Council for a period of at least thirty days after its adoption, and to take such other actions as provided by Council. Failure to publish ordinances as required by this Section shall not invalidate the ordinance, and in such event, the Clerk of Council may authorize the legislation to be published at a later date.

(B) *Certification.* The Clerk of Council shall make and retain a certificate as to the times and places by which the legislation is published. The certificate shall be prima facie evidence that the legislation was published as required by Section 6.12(A). Failure to make or retain the certificate required by this Section shall not invalidate any legislation.

(Amended 11-3-09, eff. 1-1-10)

ARTICLE VII. THE ADMINISTRATOR

7.01 Appointment, qualifications, and compensation.

(A) *Appointment.* Council shall appoint an Administrator.

(B) *Qualifications.* The Administrator shall be appointed on the basis of executive and administrative qualifications. The Administrator need not be a resident of the Village at the time of appointment, but shall become a resident of the Village within six months after appointment, unless Council approves a longer period of time or residence outside the Village.

(C) *Compensation.* Council shall determine the compensation of the Administrator.

7.02 Powers and duties.

(A) *General Powers and Duties.* The Administrator shall be the chief administrative and law enforcement officer of the Village. The Administrator shall be responsible to Council for the administration of all Village affairs placed in the Administrator's charge by or under this Charter, the legislation of the Village, and the laws of the State of Ohio.

(B) *Specific Powers and Duties.* Without limitation of the powers and duties stated in Section 7.02(A), the Administrator or designee shall:

- (1) Appoint, promote, suspend, remove, or otherwise discipline any Village employee, except as otherwise provided by or under this Charter, subject to the provisions of Section 8.07 pertaining to Personnel Systems;
- (2) Direct and supervise the administration of all departments, offices, and agencies of the Village, except as otherwise provided by this Charter;
- (3) Attend all regular and special Council meetings with the right to participate in discussions but not to vote;
- (4) Enforce within the Village all laws, provisions of this Charter, and legislation of the Village;
- (5) Prepare and submit budgets and capital programs to Council;
- (6) Keep Council fully advised as to the financial condition and future needs of the Village;
- (7) Submit to Council and make available to the public complete records of the financial and administrative activities of the Village;
- (8) Make such other reports as Council may require concerning the operation of Village departments, divisions, offices, boards, commissions, bureaus, and agencies;
- (9) Provide staff support services for Council and the Village's boards, commissions, and committees;
- (10) Execute on behalf of the Village all contracts, leases, deeds, easements, conveyances, and agreements; and
- (11) Perform such other powers, duties, and functions as are conferred or required by this Charter or by Council.

7.03 Acting administrator.

The Administrator shall designate by letter, filed with the Clerk of Council, a Village employee to exercise the powers and perform the duties of the Administrator during a temporary absence or disability. If such designation has not been made and the Administrator is unable to perform his or her duties or to make such designation, Council may appoint a Village employee to serve as Acting Administrator until the Administrator resumes his or her duties. Council may revoke any designation at any time and appoint another Village employee to serve as Acting Administrator.

7.04 Procedure for removal of the administrator.

The Administrator may be suspended by resolution of Council, which shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the Administrator. The Administrator shall have five days from the date of receipt of service in which to reply in writing and request a public hearing. Upon request, the Administrator shall be afforded a public hearing, which shall occur not earlier than ten days nor later than fifteen days

after the public hearing is requested. After the public hearing, if requested, and after full consideration, Council may adopt a final resolution of removal. The decision of Council to suspend or remove the Administrator shall be in the sole discretion of Council. If the Administrator is suspended from duty as provided under this Section, Council shall appoint an Acting Administrator.

ARTICLE VIII. ADMINISTRATIVE DEPARTMENTS AND PERSONNEL SYSTEMS

8.01 Creation and alteration.

(A) *Creation.* The Village shall have a Department of Law, a Department of Finance, and such other departments as Council may create.

(B) *Alteration.* Except for the Department of Law and the Department of Finance, Council may abolish, combine, merge, change, or alter any department of the Village.

8.02 Duties and functions.

Departments shall have those powers, duties, and functions as provided in this Charter or by Council.

8.03 Department directors.

(A) *Directors.* Departments shall be under the supervision of directors.

(B) *Appointment of Directors.* The Director of Law and the Director of Finance shall be appointed and removed by the Administrator, subject to the consent and approval of Council. The Director of Law and the Director of Finance shall serve at the pleasure of the Administrator and Council. All other Directors shall be appointed by the Administrator and shall serve at the pleasure of the Administrator. With the consent of Council, the Administrator may serve as the director of one or more departments or may appoint one person as the director of two or more departments.

8.04 Director of law.

(A) *Qualifications.* The Director of Law shall be an attorney-at-law duly authorized and licensed to practice law in the State of Ohio.

(B) *Duties.* The Director of Law shall be the prosecuting attorney and legal counsel for the Village, and subject to the direction of Council, shall represent the Village in all proceedings in Court or before any administrative board or body. The Director of Law shall perform other duties as required by this Charter, by legislation of the Village, by Council, or by the Administrator. The Director of Law shall not be required to represent any school district or any other unit of government, other than the Village.

8.05 Director of finance.

The Director of Finance shall be the chief financial officer of the Village; shall exercise the powers, duties, and functions as required by the laws of the State of Ohio, this Charter, legislation of the Village, Council, and the Administrator; and shall provide full and complete information concerning the financial affairs and financial status of the Village as required by the Administrator or Council.

8.06 Administrative code.

Subject to the provisions of this Charter, Council shall adopt and may amend an administrative code which shall provide, in detail, the organization of the Municipal Government; define the powers and duties of each organizational unit; and set forth administrative procedures. Amendments to and revisions of the Administrative Code shall be made by Council. Where the Administrative Code is silent as to a matter, or function, the officers and employees of the Village shall have and may exercise all the 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 laws of the State of Ohio in case of conflict to the fullest extent permitted by law.

8.07 Personnel systems.

(A) *Merit Principle.* All appointments and promotions of municipal employees shall be made on the basis of merit and fitness demonstrated through a competitive selection process to the extent practicable and except as otherwise provided by Council.

(B) *Classified and Unclassified Service.* Council shall establish a classified and unclassified service for employees of the Village. Council shall include as part of the Administrative Code, adopted pursuant to Section 8.06, a Section or Sections to define and govern the classified and unclassified service of the Village. All original appointments and promotions to full time positions below the level of Chief within the Division of Police and fire shall be within the classified service.

(C) *Elected and Appointed Offices.* Appointments to and removal from all elected and appointed offices, including the municipal boards, commissions, and committees, shall be made in accordance with the specific applicable provisions of this Charter or the specific applicable legislation of the Village, and shall not be subject to Sections 8.07(A) and 8.07(B).

(D) *Retirement System.* The laws of the State of Ohio governing the retirement of employees of municipalities shall be applicable to Village employees under this Charter.

ARTICLE IX. TAXATION, BORROWING, BUDGETING, AND CONTRACTING PROCEDURES**9.01 Taxation, borrowing, budgeting, and contracting procedures.**

The laws of the State of Ohio relating generally to budgets, appropriations, taxation, debt, bonds, assessments, deposits and investment of funds, and other fiscal matters of the Village shall be applicable, except as otherwise provided in this Charter or by Council.

9.02 Fiscal year.

The fiscal year for the Village for budgeting, accounting, and all other similar purposes shall be the calendar year.

9.03 Operating budget and appropriation ordinance.

In addition to the annual tax budget required by the Ohio Revised Code, the Administrator, in consultation with the Director of Finance, shall by the first scheduled Council meeting in November submit to Council a proposed operating budget for the ensuing fiscal year. The Administrator shall prepare, revise, and adjust the budget estimates for submission to Council. Council shall adopt a balanced budget.

The proposed operating budget shall contain a recommended appropriation ordinance. Council shall, by December 21st of every year, adopt both the operating budget and appropriation ordinance as submitted or amended. Should Council fail to enact the proposed or amended operating budget and appropriation ordinance by December 21st, both shall be deemed to have been adopted finally by Council as submitted by the Administrator.

(Amended 11-3-09, eff. 1-1-10)

9.04 Contracting procedures.

(A) *Award and Execution of Contracts.* Consistent with Section 7.02(B)(10) and except as otherwise provided in this Section, the Administrator or designee shall award and execute all contracts on behalf of the Village.

(B) *Competitive Bidding.* Council, by ordinance, shall establish a threshold amount, notice provisions, and other procedures for competitive bidding. When any contract for the construction of a public improvement or the purchase of equipment, supplies, or materials is estimated to exceed the threshold established by Council, the contract shall be competitively bid. Council shall award a contract to the lowest and best bidder, provided that Council may reject any and all bids in whole or by items. No contract shall be divided to avoid the requirements of competitive bidding.

(C) *Waiver of Competitive Bidding.* By a vote of no less than five members, Council may waive the competitive bidding requirement if the statutory or common law of the State of Ohio does not require competitive bidding; if Council determines that an item is available and can be acquired only from a single source; or if Council determines that a waiver of the competitive bidding requirement is in the best interest of the Village.

(D) *Professional Services.* Contracts for professional services shall not be subject to the competitive bidding requirements of this Section and shall not require authorization by Council if the current operating budget provides sufficient funding for the scope of services in any such contract.

(E) *Alteration or Modification of Contracts.* Council shall establish procedures for alterations or modifications of contracts. Alterations or modifications of contracts shall not require competitive bidding.

(F) *Certification of Funds.* No contract involving the expenditure of money shall be entered into or authorized by the Administrator unless the Director of Finance or designee shall first certify that:

- (1) Funds required for the contract are in the Village's treasury or in the process of collection; and
- (2) Funds have been appropriated by Council for the specified purpose and remain unencumbered.

The Director of Finance shall file and record the certification of availability and appropriation of funds in the accounting records of the Village and shall furnish a copy to the vendor or contractor. Without the certification, a contractual obligation shall be void and unenforceable against the Village unless recognized by Council as a moral obligation.

ARTICLE X. BOARDS AND COMMISSIONS

10.01 Creation and general rules.

(A) *Creation of Boards and Commissions.* This Village shall have a Planning Commission, a Board of Zoning Appeals, a Personnel Appeals Board, and such other boards and commissions as may be created by Council.

(B) *General Rules for Boards and Commissions.* The following general rules shall govern Boards and Commissions:

- (1) Each board or commission created by Council shall consist of at least three (3) members;
- (2) Compensation, terms, appointments, and removals shall be determined by Council unless otherwise provided in this Charter;
- (3) Each member of a board or commission shall be and shall remain an elector of the Village during the term of appointment, unless otherwise provided by Council;
- (4) A vacancy occurring during the term of any member of a board or commission shall be filled for the unexpired term in the same manner as the original appointment;
- (5) Each vacancy shall be filled within sixty (60) days;
- (6) Each board and commission shall establish its own rules of order to be approved by Council;
- (7) Members of boards and commission shall serve without compensation unless otherwise provided by Council; and

- (8) All meetings of boards and commissions shall be open to the public, except as allowed by the laws of the State of Ohio.

(Amended 11-3-09, eff. 1-1-10)

10.02 Planning commission.

(A) *Composition and Terms.* The Planning Commission shall consist of six (6) members. Five (5) of these members shall be voting members and shall serve overlapping three (3) year terms. The sixth shall be a Council member appointed by Council. This Council member shall be a nonvoting member of the Planning Commission. Three voting members shall constitute a quorum.

(B) *Powers and Duties.* The Planning Commission shall have the power and duty to hear applications for land use, zoning classifications, or districts and, as merited, to submit written recommendations for legislative action or to render final determinations for administrative action; to initiate, review, and recommend legislation, rules, and regulations on all matters of Village planning, land use, and zoning classification; and to exercise such other powers, duties, and functions as provided by Council.

(Amended 11-3-09, eff. 1-1-10)

10.03 Board of zoning appeals.

(A) *Composition and Terms.* The Board of Zoning Appeals shall consist of five (5) voting members. Four (4) of these members shall serve overlapping three (3) year terms and the fifth member shall be a Planning Commission member designated annually, the Planning Commission.

(B) *Powers and Duties.* The Board of Zoning Appeals shall have the power and duty to hear and decide appeals regarding legislative measures and administrative determinations relating to zoning and land use. The Board of Zoning Appeals may make advisory recommendations to Council and the Planning Commission concerning zoning matters; and shall exercise such other powers, duties, and functions as provided by Council. The Board of Zoning Appeals shall also have the power and duty to hear variances from zoning area regulations and general development standards.

10.04 Personnel appeals board.

(A) *Composition and Terms.* The Personnel Board of Appeals shall consist of three (3) members who shall serve overlapping three (3) year terms.

(B) *Powers and Duties.* The Personnel Board of Appeals shall have the power and duty to hear appeals from administrative determinations made pursuant to the Administrative Code, and such other powers, duties, and functions as provided by Council.

ARTICLE XI. ELECTIONS, RECALL, INITIATIVE, AND REFERENDUM

11.01 Elections.

(A) *Regular Elections.* Regular municipal elections shall be held on the dates and times fixed by the election laws of the State of Ohio.

(B) *Special Elections.* Council may, at any time, order a special election by legislation which shall set forth the date and purpose of the election, including but not limited to the referral of pending legislation to the electors for their approval or rejection. Special elections may be held on any date.

(C) *Conduct of Elections.* All regular and special elections shall be conducted by the election officials of the State of Ohio. Elections shall be held in conformity with the provisions of this Charter or as otherwise provided by Council. Where not addressed by this Charter or by Council, the provisions of the election laws of the State of Ohio shall be followed.

(D) *Public Information Expenditure.* Council shall have the power to appropriate and expend public funds to pay the cost of providing information to the public in connection with tax, bond, and other non-partisan public issues, but not in connection with the election of any candidate for public office.

11.02 Recall.

(A) *Power to Recall.* The electors shall have the power to remove from office by a recall election any elected official of the Village in the manner provided in this Section.

(B) *Recall Petition Prerequisites.* As to any elected official who has served at least six (6) months of a term of office, an elector or electors of the Village may serve written notice upon the Clerk of Council of their intent to circulate petitions for the recall of the elected official. Petitions for the recall of the elected official may not be circulated until the written notice of intent is served upon the Clerk of Council.

(C) *Recall Petition Form.* The petition shall contain a verified statement of not more than one hundred words setting forth specific grounds upon which the removal of the elected official is sought. The petition may be circulated in separate parts, but the separate parts shall be bound together and filed as one instrument. Each part shall contain the name of the elected official whose removal is sought. Separate petitions are necessary for each elected official whose removal is sought. The petition shall be signed by at least that number of electors equal to twenty-five percent (25%) of the electors voting at the last preceding regular municipal election.

(D) *Filing, Examination, and Amendment of Petition.* No later than thirty (30) days after service of the notice of intent on the Clerk of Council, the petition demanding the removal of an elected official shall be filed with the Clerk of Council. Within twenty (20) days after the day on which the petition is filed, the Clerk of Council shall determine, subject to verification from the Board of Elections, whether or not it meets the requirements of this Section. If the Clerk finds the petition insufficient, the Clerk shall promptly certify the particulars in which the petition is insufficient, deliver a copy of the certificate to the person who filed the petition, and make a record of delivery. The petition may be amended within ten (10) days after the date of the delivery. The Clerk shall, within five (5) days after such an amendment has been filed, reexamine the petition, and if still insufficient, the petition shall be rejected and no further action taken thereon.

(E) *Recall Election.* Unless the elected official whose removal is sought resigns within five days after delivery of the Clerk's certificate, Council shall fix a day for holding a recall election, to be placed on the ballot at the succeeding general or primary election occurring not less than ninety (90) days after the date of the Clerk's certification of sufficiency to Council, and shall cause notice of the recall election to be published on the same day of each week for two consecutive weeks in a newspaper of general circulation in the Village. At the recall election, this question shall be placed upon the ballot: "Shall (name of elected official whose removal is sought) be allowed to continue as (elected official's position)?", with the provisions on the ballot for voting affirmatively or negatively. If a majority of the vote is negative, the elected official shall be removed, the office shall be vacant, and the vacancy shall be filled as provided in Section 5.04. If the elected official is not removed at such recall election, no further recall petitions shall be filed against the elected official for a period of one year following the recall election.
(Amended 11-3-09, eff. 1-1-10)

11.03 Initiative and referendum.

Legislation, issues, and other measures may be proposed by initiative petition and adopted by election as provided by the Constitution and laws of the State of Ohio. Legislation adopted by Council shall be subject to referendum, as provided by the Constitution and laws of the State of Ohio, except that legislation calling for elections under this Charter shall not be subject to referendum and as otherwise provided in Section 4.05.

ARTICLE XII. GENERAL PROVISIONS

12.01 Conflicts of interest, ethics, and campaign financing.

Unless otherwise provided in this Charter or by Council, the laws of the State of Ohio pertaining to conflict of interest, criminal misbehavior, ethics, and financial disclosure by municipal officials and employees, campaign financing and other election practices of candidates for municipal office shall apply under this Charter.

12.02 Effect of partial invalidity.

A determination that any provision of this Charter is invalid shall not invalidate or impair the force and effect of any other provision, except to the extent that the other provision is wholly dependent for its operation upon the provision declared invalid.

12.03 Amendments of Charter.

This Charter may be amended or revised by the electors as provided by this Charter or the Constitution and laws of the State of Ohio.

ARTICLE XIII. CHARTER REVIEW COMMISSION**13.01 Composition and term.**

During the month of July 2008 and each ten (10) years thereafter, the Council shall appoint seven (7) electors of the Village, holding no other office or employment with the Village, as members of a Charter Review Commission to serve until their duties as provided herein are completed. The members shall serve without compensation.

13.02 Duties.

The Charter Review Commission shall review this Charter and no later than twelve (12) months after appointment report the Commission's findings and conclusions to Council. This report shall transmit recommended amendments, if any.

ARTICLE XIV. TRANSITIONAL PROVISIONS**14.01 Effective date of revised Charter.**

This revised Charter adopted on July 12, 1999, became effective on March 1, 2000, and was subsequently amended effective 1/1/10.
(Amended 11-3-09, eff. 1-1-10)

14.02 Succession.

The municipal corporation existing as the Village of New Albany under the laws of the State of Ohio and the Charter approved by the electorate on November 3, 1992 and effective on January 1, 1993, shall continue to be a body politic and corporate under the same name under this Charter or until such time as it becomes a City in the manner provided by the Constitution and laws of the State of Ohio. At such time, it shall then be known as the "City of New Albany", unless otherwise provided by Council.

Upon becoming a City, the position name of "Village Administrator" shall become "City Manager". The City Manager shall have all the powers conferred upon the Village Administrator contained within this Charter, by the Constitution and laws of the State of Ohio, and as provided by Council.

Upon advancing to City status, the provisions of this Charter shall apply.

PART ONE - ADMINISTRATIVE CODE

TITLE ONE - GENERAL PROVISIONS

- Chapter 101 Codified Ordinances
- Chapter 103 Administrative Code

TITLE THREE - LEGISLATIVE

- Chapter 113 Council
- Chapter 115 Legislation

TITLE FIVE - ADMINISTRATIVE

- Chapter 123 Department of Finance
- Chapter 133 Solicitor
- Chapter 135 Code Enforcement Officers
- Chapter 139 Parks and Trails Advisory Board
- Chapter 140 Municipal Parks
- Chapter 141 Records Commission
- Chapter 143 Joint Dispatching Board
- Chapter 145 Joint Economic Committee
- Chapter 147 Community Events Board (Repealed)
- Chapter 155 Personnel Policies
- Chapter 157 Investment Policy
- Chapter 159 Rules of Procedure for Boards and Commissions
- Chapter 161 Indigent Burial Expenses.
- Chapter 171 Mayor's Court
- Chapter 181 Income Tax
- Chapter 183 Income Tax Prior to 2016
- Chapter 184 Transient Occupancy Tax
- Chapter 185 Motor Vehicle License Tax
- Chapter 187 Funds

TITLE ONE

GENERAL PROVISIONS

Chapter 101	Codified Ordinances
Chapter 103	Administrative Code

PROOFS

CHAPTER 101 CODIFIED ORDINANCES*

101.01	DESIGNATION; CITATION; HEADINGS.
101.02	GENERAL DEFINITIONS.
101.03	RULES OF CONSTRUCTION.
101.04	REVIVOR; EFFECT OF AMENDMENT OR REPEAL.
101.05	CONSTRUCTION OF SECTION REFERENCES.
101.06	CONFLICTING PROVISIONS.
101.07	DETERMINATION OF LEGISLATIVE INTENT.
101.08	SEVERABILITY.
101.99	GENERAL PENALTY.

101.01 Designation; citation; headings.

(a) All ordinances of a permanent and general nature of the Municipality as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections shall be known and designated as the Codified Ordinances of New Albany, Ohio, 1997, for which designation "Codified Ordinances" may be substituted. Code, title, chapter and section headings do not constitute any part of the law as contained in the Codified Ordinances.

(b) All references to codes, titles, chapters and sections are to such components of the Codified Ordinances unless otherwise specified. Any component code may be referred to and cited by its name, such as the "Traffic Code". Sections may be referred to and cited by the designation "Section" followed by the number, such as "Section 101.01".

State law reference—ORC 1.01

101.02 General definitions.

As used in the Codified Ordinances, unless another definition is provided or the context otherwise requires:

- (a) "And" may be read "or", and "or" may be read "and", if the sense requires it.
- (b) "Another" when used to designate the owner of property which is the subject of an offense, includes not only natural persons but also every other owner of property.
- (c) "Bond" includes an undertaking and "undertaking" includes a bond.
- (d) "Council" means the legislative authority of the Municipality.
- (e) "County" means Franklin County, Ohio.

*Cross references—See sectional histories for similar State law

Statute of limitations on prosecutions - see ORC 718.06; GEN. OFF. 501.06

Codification in book form - see CHTR. 6.11

Imprisonment until fine and costs are paid - see ORC 1905.30, 2947.14

Citation issuance for minor misdemeanors - see ORC 2935.26 et seq.

Ordinances and resolutions - see ADM. Ch. 115

Rules of construction for offenses and penalties - see GEN. OFF. 501.04

- (f) "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.
- (g) "Keeper" or "proprietor" includes all persons, whether acting by themselves or as a servant, agent or employee.
- (h) "Land" or "real estate" includes rights and easements of an incorporeal nature.
- (i) "Municipality" or "Village" means the Municipality of New Albany, Ohio.
- (j) "Oath" includes affirmation and "swear" includes affirm.
- (k) "Owner", when applied to property, includes any part owner, joint owner or tenant in common of the whole or part of such property.
- (l) "Person" includes an individual, corporation, business trust, estate, trust, partnership and association.
- (m) "Personal property" includes all property except real.
- (n) "Premises", as applied to property, includes land and buildings.
- (o) "Property" means real and personal property.
- (p) "Public authority" includes boards of education; the Municipal, County, State or Federal government, its officers or an agency thereof; or any duly authorized public official.
- (q) "Public place" includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance, or any other place for the sale of merchandise, public accommodation or amusement.
- (r) "Real property" includes lands, tenements and hereditaments.
- (s) "Registered mail" includes certified mail and "certified mail" includes registered mail.
- (t) "Rule" includes regulation.
- (u) "Sidewalk" means that portion of the street between the curb line and the adjacent property line intended for the use of pedestrians.
- (v) "This State" or "the State" means the State of Ohio.
- (w) "Street" includes alleys, avenues, boulevards, lanes, roads, highways, viaducts and all other public thoroughfares within the Municipality.
- (x) "Tenant" or "occupant", as applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises, alone or with others.
- (y) "Whoever" includes all persons, natural and artificial; partners; principals, agents and employees; and all officials, public or private.

- (z) "Written" or "in writing" includes any representation of words, letters, symbols or figures.

This provision does not affect any law relating to signatures.

State law references—ORC 1.02(A), (B), (D)—(G); ORC 1.59(B), (C), (E)—(G), (J); ORC 701.01(F)

101.03 Rules of construction.

(a) Common and Technical Usage. Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

(b) Singular and Plural; Gender; Tense. As used in the Codified Ordinances, unless the context otherwise requires:

- (1) The singular includes the plural, and the plural includes the singular.
- (2) Words of one gender include the other genders.
- (3) Words in the present tense include the future tense.

(c) Calendar; Computation of Time.

(1) Definitions.

- A. "Week" means seven (7) consecutive days.
- B. "Year" means twelve (12) consecutive months.

(2) The time within which an act is required by law 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 that is not a Sunday or a legal holiday.

(3) When a public office, in which an act required by law is to be performed, is closed to the public for the entire day that constitutes the last day for doing the act or before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Sunday or a legal holiday.

(4) "Legal holiday," as used in divisions (c)(1) and (c)(2) of this section, means the following days:

- A. The first day of January, known as New Year's day;
- B. The third Monday in January, known as Martin Luther King day;
- C. The third Monday in February, known as Washington-Lincoln day;
- D. The day designated in the "Act of June 28, 1968," 82 Stat. 250, 5 U.S.C. 6103, as amended, for the commemoration of Memorial day;
- E. The fourth day of July, known as Independence day;
- F. The first Monday in September, known as Labor day;
- G. The second Monday in October, known as Columbus day;

- H. The eleventh day of November, known as Veteran's day;
- I. The fourth Thursday in November, known as Thanksgiving day;
- J. The twenty-fifth (25th) day of December, known as Christmas day;
- K. Any day appointed and recommended by the Governor of this State or the President of the United States as a holiday.

- (5) If any day designated in this section as a legal holiday falls on a Sunday, the next succeeding day is a legal holiday.
- (6) When an act is to take effect or become operative from and after a day named, no part of that day shall be included. If priority of legal rights depends upon the order of events on the same day, such priority shall be determined by the times in the day at which they respectively occurred.
- (7) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.
- (8) In all cases where the law shall require any act to be done in a reasonable time or reasonable notice to be given, such reasonable time or notice shall mean such time only as may be necessary for the prompt performance of such duty or compliance with such notice.

(d) Authority. When the law requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

(e) Joint Authority. All words purporting to give joint authority to three (3) or more municipal officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority or inconsistent with State statute or Charter provisions.

(f) Exceptions. The rules of construction shall not apply to any law which shall contain any express provision excluding such construction, or when the subject matter or context of such law may be repugnant thereto.

State law references—ORC 1.14; ORC 1.15; ORC 1.42—ORC 1.45

101.04 Revivor; effect of amendment or repeal.

(a) The repeal of a repealing ordinance does not revive the ordinance originally repealed nor impair the effect of any saving clause therein.

(b) An ordinance which is re-enacted or amended is intended to be a continuation of the prior ordinance and not a new enactment, so far as it is the same as the prior ordinance.

(c) The re-enactment, amendment or repeal of an ordinance does not, except as provided in subsection (d) hereof:

- (1) Affect the prior operation of the ordinance or any prior action taken thereunder;
- (2) Affect any validation, cure, right, privilege, obligation or liability previously acquired, accrued, accorded or incurred thereunder;
- (3) Affect any violation thereof or penalty, forfeiture or punishment incurred in respect thereto, prior to the amendment or repeal;
- (4) Affect any investigation, proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment; and the investigation, proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment imposed, as if the ordinance had not been repealed or amended.

(d) If the penalty, forfeiture or punishment for any offense is reduced by a re-enactment or amendment of an ordinance, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the ordinance as amended.

State law references—ORC 1.54; ORC 1.57; ORC 1.58

101.05 Construction of section references.

(a) A reference to any portion of the Codified Ordinances applies to all re-enactments or amendments thereof.

(b) If a section refers to a series of numbers or letters, the first and the last numbers or letters are included.

(c) Wherever in a penalty section reference is made to a violation of a series of sections or of subsections of a section, such reference shall be construed to mean a violation of any section or subsection included in such reference.

References in the Codified Ordinances to action taken or authorized under designated sections of the Codified Ordinances include, in every case, action taken or authorized under the applicable legislative provision which is superseded by the Codified Ordinances.

State law references—ORC 1.23; ORC 1.55; ORC 1.56

101.06 Conflicting provisions.

(a) If there is a conflict between figures and words in expressing a number, the words govern.

(b) If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

- (c) (1) If ordinances enacted at different meetings of Council are irreconcilable, the ordinance latest in date of enactment prevails.
- (2) If amendments to the same ordinance are enacted at different meetings of Council, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are substantively irreconcilable, the latest in date of enactment prevails. The fact that a later amendment restates language deleted by an earlier amendment, or fails to include language inserted by an earlier amendment, does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.

State law references—ORC 1.46; ORC 1.51; ORC 1.52

101.07 Determination of legislative intent.

- (a) In enacting an ordinance, it is presumed that:

- (1) Compliance with the constitutions of the State and of the United States is intended;
- (2) The entire ordinance is intended to be effective;
- (3) A just and reasonable result is intended;
- (4) A result feasible of execution is intended.

(b) An ordinance is presumed to be prospective in its operation unless expressly made retrospective.

(c) If an ordinance is ambiguous, the court, in determining the intention of Council may consider among other matters:

- (1) The object sought to be attained;
- (2) The circumstances under which the ordinance was enacted;
- (3) The legislative history;
- (4) The common law or former legislative provisions, including laws upon the same or similar subjects;
- (5) The consequences of a particular construction;
- (6) The administrative construction of the ordinance.

State law references—ORC 1.47; ORC 1.48; ORC 1.49

101.08 Severability.

If any provision of a section of the Codified Ordinances or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable.

State law reference—ORC 1.50

101.99 General penalty.

Whenever, in the Codified Ordinances or in any ordinance of the Municipality, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided, whoever violates any such provision shall be punished by a fine not exceeding one hundred dollars (\$100.00). A separate offense shall be deemed committed each day during or on which a violation continues or occurs.

CHAPTER 103 ADMINISTRATIVE CODE*

103.01 ADMINISTRATIVE CODE ADOPTED.

103.01 Administrative Code adopted.

The provisions of Part One of the Codified Ordinances shall be known and designated as the "Administrative Code" of the Municipality of New Albany. The Administrative Code shall implement the Charter of the Municipality of New Albany, and the provisions thereof shall be so construed. Should any provision of this Administrative Code be found to be in conflict with the Charter, the Charter provisions shall control. Any such conflict with the Charter shall render only the conflicting provisions of the Administrative Code invalid, and all other provisions of the Administrative Code shall remain in full force and effect.

Administrative procedures shall be exercised in the manner prescribed in the Charter, or if not prescribed therein, in such manner as shall be provided by ordinance of Council, and when not prescribed in the Charter or provided by ordinance of Council, then such powers shall be exercised in the manner provided by the general laws of the State of Ohio until Council shall provide a different manner of exercising such powers.

*Cross reference—Administrative Code - see CHTR. 8.06

TITLE THREE

LEGISLATIVE

Chapter 113 COUNCIL
Chapter 115 LEGISLATION

PROOFS

CHAPTER 113 COUNCIL*

- 113.01 SALARY OF THE MAYOR.
 113.02 SALARY FOR MEMBERS OF COUNCIL.

113.01 Salary of the Mayor.

The salary of the Mayor shall be twenty two thousand, three hundred forty-five dollars (\$22,345.00) annually paid bi-weekly. Mayors who are regularly scheduled to preside in Mayor's Court, at least two (2) court sessions per month, shall receive five thousand one hundred twenty-five dollars (\$5,125.00) per year in additional salary.
 (Ord. 56-2004. Passed 12-7-04; Ord. O-37-2013. Passed 12-3-13.)

113.02 Salary for members of Council.

The salary of each Council Member shall be ten thousand two hundred forty dollars (\$10,240.00) annually paid bi-weekly. The salary of the President Pro Tem shall be ten thousand two hundred forty dollars (\$10,240.00) annually paid bi-weekly.
 (Ord. 56-2004. Passed 12-7-04; Ord. O-37-2013. Passed 12-3-13.)

***Cross reference**—Mayor - see CHTR. 3.01
 Number, selection, and term - see CHTR. 4.01
 Member qualifications - see CHTR. 5.01
 Filling of vacancies - see CHTR. 5.04
 Beginning of term of office - see CHTR. 4.01
 Organization and meetings - see CHTR. 4.03
 Powers of Council - see CHTR. 4.02
 Compensation - see CHTR. 4.04
 Clerk of Council - see CHTR. 4.06
 Rules and journal - see CHTR. 4.05
 Relations with Administrator - see CHTR. 5.02
 Statutory powers and duties - see ORC 715.03, 731.47
 Open meeting law - see ORC 121.22

CHAPTER 115 LEGISLATION*

PROOFS

***Editor's note**—There are no sections in Chapter 115. This chapter has been established as a place for cross references and any future legislation.

TITLE FIVE

ADMINISTRATIVE

Chapter 123	Department of Finance
Chapter 133	Solicitor
Chapter 135	Code Enforcement Officers
Chapter 139	Parks and Trails Advisory Board
Chapter 140	Municipal Parks
Chapter 141	Records Commission
Chapter 143	Joint Dispatching Board
Chapter 145	Joint Economic Committee
Chapter 147	Community Events Board (Repealed)
Chapter 155	Personnel Policies
Chapter 157	Investment Policy
Chapter 159	Rules of Procedure for Boards and Commissions
Chapter 161	Indigent Burial Expenses.

CHAPTER 123 DEPARTMENT OF FINANCE*

123.01	DUTIES OF DIRECTOR.
123.02	DIRECTOR AS FISCAL AGENT.
123.03	SIGNATURE ON NOTES AND BONDS.
123.04	PAYMENTS ON CONTRACTS.
123.05	SALE OR OTHER DISPOSITION OF SURPLUS PROPERTY.
123.06	RETURNED CHECK POLICY.
123.07	EXPENDITURE APPROVAL SYSTEM.
123.08	MUNICIPAL PAYROLL.
123.09	COLLECTION OF PUBLIC MONEYS.
123.10	APPROPRIATION REQUIRED FOR EXPENDITURE.
123.11	PROCESSING INVOICES.
123.12	COMPETITIVE BIDDING REQUIREMENT.
123.121	EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENT.
123.13	LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.
123.14	BID GUARANTEES FOR PUBLIC IMPROVEMENTS.
123.15	WITHDRAWING A BID.
123.16	CONTRACTS FOR PUBLIC IMPROVEMENTS.
123.17	RETAINAGE.

123.01 DUTIES OF DIRECTOR.

The Department of Finance shall be under the direction of the Director of Finance who shall be appointed by the Administrator with consent of Council. The Director of Finance shall be the Chief Fiscal Officer of the Municipality and shall perform the following duties:

- (a) Keep a full and accurate account of all the moneys received and disbursed by him on behalf of the Municipality as well as all outstanding sums due the Municipality and all orders and contracts for which the Municipality is obligated.
- (b) Receive and have custody of all moneys paid to the Municipality and disburse moneys in accordance with the Charter and ordinances.
- (c) Render regular reports to the Administrator and Council reflecting the financial condition of the Municipality.
- (d) Determine that funds are available to pay all contracts, agreements or other obligations for the expenditure of public funds entered into by any official of the municipal government.
- (e) Keep an accurate account of the bonded debt of the Municipality and of the payment of interest and principal thereon.
- (f) Prepare the municipal payroll.
- (g) Prepare and submit such reports as may be required by law.
- (h) Assist the Administrator in preparing the annual budget.
- (i) Compile bond transcripts and notes.

*Cross reference—Department of Finance - see CHTR. 8.01
Director of Finance - see CHTR. 8.05

(j) Perform such other duties as may be required by the Administrator.
(Ord. 49-97. Passed 12-16-97.)

123.02 DIRECTOR AS FISCAL AGENT.

The Director of Finance shall be the fiscal agent of the Municipality in all transactions under the Uniform Bond Law.
(Ord. 49-97. Passed 12-16-97.)

123.03 SIGNATURE ON NOTES AND BONDS.

The Administrator and the Director of Finance are designated as officials to sign all notes and/or bonds issued by the City, except as otherwise provided by law.
(Ord. 49-97. Passed 12-16-97.)

123.04 PAYMENTS ON CONTRACTS.

Payments on signed contracts shall be made in accordance with the terms of such contracts when the conditions laid down in such contracts have been faithfully complied with by the contractor.
(Ord. 49-97. Passed 12-16-97.)

123.05 SALE OR OTHER DISPOSITION OF SURPLUS PROPERTY.

The Finance Director is authorized and directed to provide for the sale or disposition of surplus equipment and supplies, including motor vehicles, in the following manner:

- (a) At such time as equipment, including motor vehicles, and supplies of the Municipality serve no useful municipal purpose, the Finance Director shall provide for the sale or disposition of such equipment or supplies as provided in this section.
- (b) The sale of surplus equipment shall be by one or more of the following methods:
 - (1) The acceptance of sealed bids, after advertising not less than one time in a newspaper of general circulation in the Municipality.
 - (2) Public auction, after advertisement for not less than one time in a newspaper of general circulation in the Municipality.
 - (3) Internet/on-line auction, without formal advertising or notice.
 - (4) Trade in, when advantageous to the Municipality, without formal advertising or notice.
- (c) Assets that are deemed by the Finance Director to have nominal or no marketable value may be disposed of as directed by the Finance Director with the consent and approval of the Village Administrator.

- (d) The Finance Director shall use generally acceptable methods to estimate the value of assets to be sold or traded in under the provisions of this section.
 - (1) The sale or trade-in of any asset having an estimated value greater than ten thousand dollars (\$10,000.00) shall require Council authorization prior to any sale or trade-in as provided in subsection (b) hereof. Council may waive, by Resolution, the advertisement requirement in subsection (b)(1) and (b)(2).
 - (2) The sale or trade-in of any asset having an estimated value of ten thousand dollars (\$10,000.00) or less may be sold or traded in as provided in subsection (b) hereof by the Finance Director with the consent and approval of the Village Administrator.
 - (e) The proceeds for the sale of surplus property shall be deposited in the Municipal Treasury to the credit of the General Fund.
 - (f) The Finance Director shall estimate the value of assets to be sold under the provisions of this section.
 - (g) The proceeds from surplus equipment may be credited against the purchase price of other vehicles, equipment or machinery.
 - (h) Vehicles or equipment may be used as a trade-in on replacement equipment without requiring competitive bids.
- (Ord. 49-97. Passed 12-16-97; Ord. 10-2010. Passed 3-23-10.)

State law reference—ORC 721.15

123.06 RETURNED CHECK POLICY.

The Finance Director is hereby authorized to establish and maintain an approved returned check policy and procedures.

(Ord. 49-97. Passed 12-16-97.)

123.07 EXPENDITURE APPROVAL SYSTEM.

Any person who expends funds on behalf of the Municipality over the sum of five thousand dollars (\$5,000.00) shall obtain the approval of the department head, Finance Director or designee, and the City Manager prior to the expenditure. Any expenditure below the sum of five thousand dollars (\$5,000.00) requires the approval of the department head and Finance Director or designee. Any expenditure that does not have the required approval may be void. The unauthorized expenditure may become the responsibility of the person making the expenditure.

(Ord. 49-97. Passed 12-16-97; ; Ord. O-19-2015. Passed 5-19-15)

123.08 MUNICIPAL PAYROLL.

The municipal payroll shall be prepared by the Department of Finance and shall include the name and pay rate of each person. The expenditure for the payment of current payrolls shall be charged to an appropriation for such purpose, provided that the positions of each employee and their compensation have been determined prior thereto by resolution or ordinance. The Admin-

istrator shall finally approve the payroll, and the Director of Finance shall prepare payments for the amounts shown to the employees named. It shall not be necessary to encumber payrolls before payment is made.

(Ord. 49-97. Passed 12-16-97.)

State law reference—ORC 9.41, 5705.46

123.09 COLLECTION OF PUBLIC MONEYS.

All officials and employees are liable for all public money received or collected by them or their subordinates under color of office. All money received or collected by an official or employee and not otherwise paid out according to law shall be paid to the Department of Finance for deposit in the Municipal Treasury within two (2) working days after receipt. Money held on deposit shall be retained until claimed by its lawful owner. If not claimed within a period of five (5) years, the money shall revert to the General Fund.

(Ord. 49-97. Passed 12-16-97.)

State law reference—ORC 9.38, 9.39

123.10 APPROPRIATION REQUIRED FOR EXPENDITURE.

No contract or purchase order involving the expenditure of money for one thousand dollars (\$1,000.00) or more shall be entered into until the Director of Finance first determines that the amount required to meet the obligation has been lawfully appropriated for such purpose. In the case of a continuing contract or lease to be performed in part in a continuing year, the amount to be appropriated is limited to the amount to be spent in the current fiscal year. The amount of the obligation under such contract or lease remaining unfulfilled at the end of the fiscal year shall be included in the annual appropriation measure for the next year.

(Ord. 49-97. Passed 12-16-97.)

State law reference—ORC 5705.41, 5705.44

123.11 PROCESSING INVOICES.

Vendors supplying goods and services to the Municipality shall render invoices therefor. Invoices shall be delivered to the Department of Finance for processing. Prior to processing payment, the Department of Finance shall receive from the official or employee ordering the goods or services an assurance that the goods were received or the services rendered. The Director of Finance shall establish procedures for providing the assurance.

(Ord. 49-97. Passed 12-16-97.)

123.12 COMPETITIVE BIDDING REQUIREMENT.

(a) The Administrator shall make contracts, purchase supplies and materials, and provide labor for any work under the Administrator's supervision involving not more than fifty thousand dollars (\$50,000.00) without requiring competitive bidding. When an expenditure, other than the compensation of persons employed by the Municipality, exceeds fifty thousand dollars (\$50,000.00), the expenditure shall first be authorized and directed by ordinance of the Council. When so

authorized and directed, except where the contract is for equipment, services, materials, or supplies to be purchased under ORC 125.04, 713.23(D), or 5513.01 or available from a qualified nonprofit agency pursuant to ORC 4115.31 through 4115.35, or required to be purchased from a qualified nonprofit agency under ORC 125.60 through 125.6012, the Administrator shall make a written contract with the lowest and best bidder after advertisement for not less than two (2) nor more than four (4) consecutive weeks in a newspaper of general circulation within the Municipality. The bids shall be opened and shall be publicly read by the Administrator or a person designated by the Administrator at the time, date and place specified in the advertisement to bidders or specifications. The time, date and place of bid openings may be extended to a later date by the Administrator, provided that written or oral notice of the change shall be given to all persons who have received or requested specifications no later than ninety-six (96) hours prior to the original time and date fixed for the opening. All contracts shall be executed in the name of the Municipality and signed on its behalf by the Administrator and the Clerk.

(b) The Council may provide, by ordinance, for central purchasing for all offices, departments, divisions, boards, and commissions of the Municipality, under the direction of the Administrator who shall make contracts, purchase supplies or materials, and provide labor for any work of the Municipality in the manner provided by this section.

(c) Each bid shall contain the full name of every person interested in the bid. If the bid is for a contract for construction, demolition, alteration, repair, or reconstruction of an improvement, it shall meet the requirements of Section 123.14. The Administrator may reject any and all bids. The contract shall be between the Municipality and the bidder.

(d) If it is necessary to make alterations or modifications to the contract, the alterations or modifications shall be made in writing. The Administrator and the contractor shall sign the alteration or modification.

(e) Bids for the erection, repair, alteration, construction, reconstruction, improvement, enlargement, alteration or rebuilding of a public building, culvert, or improvement may require separate and distinct proposals to be made for furnishing materials or doing work for each of the following classes of work to be performed:

- (1) Plumbing and gas fitting;
- (2) Steam and hot-water heating, ventilating apparatus, and steam-power plant;
- (3) Electrical equipment.

If the architect designing a public improvement believes that the cost would be lower if bids are aggregated, then a single bid and contract award may be made for the entire project. The award shall be made to the lowest responsive and responsible bidder.

(Ord. 49-97. Passed 12-16-97; Ord. 25-98. Passed 8-18-98; Ord. 37-2001. Passed 8-21-01; Ord. O-25-2012. Passed 10-16-12)

State law references—ORC 153.50, 153.51; ORC 731.15; ORC 731.16; ORC 731.141

123.121 EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENT.

Professional services, including but not limited to architectural services, engineering services, accounting services, bond counsel services, legal services, underwriting services, and construction management services shall be exempt from the requirement for competitive bidding. In obtaining such services, the Administrator may use requests for qualifications or requests for proposals. If possible, a minimum of three (3) persons or firms shall be interviewed. If the Village has acquired professional services from a vendor and those services have been acceptable, and the services are of a continuing nature, there is no need to interview other vendors.
(Ord. 28-98. Passed 9-15-98.)

123.13 LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.

Editor's note—Former Section 123.13 was repealed by Ordinance 37-2001, passed August 21, 2001.

123.14 BID GUARANTEES FOR PUBLIC IMPROVEMENTS.

Each person bidding for a contract for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement shall file a bid guarantee with the bid in the form of either:

- (a) A bond for the full amount of the bid;
- (b) A certified check, cashier's check, or letter of credit equal to ten percent (10%) of the bid.

The bid guarantee shall be conditioned to provide that, if the bid is accepted, the bidder will enter into a contract in accordance with the bid. If for any reason, other than as authorized by Section 123.15, the bidder fails to enter into a contract and the award is made to the next lowest bidder, the bidder is liable for the difference between the bid and the next lowest bidder, or for a sum not to exceed ten percent (10%) of the amount bid, whichever is less.

All bid guarantees filed pursuant to this section shall be deposited with the Finance Director. A surety company authorized to do business in Ohio shall issue all bonds filed pursuant to this section.

Bid guarantees shall be returned to all unsuccessful bidders immediately after the contract is executed.

If the bidder enters into the contract, at the time the contract is entered into, a bond shall be filed for the amount of the contract to indemnify the Municipality against all damage suffered by failure to perform the contract. The bond shall be used to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract. The bid guarantee shall be returned upon the filing of the bond.

(Ord. 49-97. Passed 12-16-97.)

State law reference—ORC 153.54

123.15 WITHDRAWING A BID.

A bidder for a contract for a public improvement may withdraw his bid from consideration if the price bid was substantially lower than other bids. To be withdrawn, the reason has to involve a clerical mistake as opposed to a judgment mistake and has to be due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor or material. Notice of a claim of right to withdraw the bid must be made in writing within two (2) business days after the conclusion of the bid opening procedure. The notice is to be sent to the Finance Director.

No bid may be withdrawn when the result would be awarding of the contract on another bid to the same bidder.

No bidder who is permitted to withdraw a bid shall supply any material or labor to the person to whom the contract is awarded.

If a bid is withdrawn, the Finance Director may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding.

If the Finance Director contests the right of the bidder to withdraw a bid, a hearing shall be held within ten (10) days after the opening of the bids. The Finance Director shall give the withdrawing bidder timely and reasonable notice of the time and place of the hearing.

A record of the testimony and other evidence shall be taken. The bidder shall pay the costs of the hearing. A decision shall be rendered within five (5) days after the hearing.

If the claim for withdrawal is denied and the bidder elects to appeal or otherwise refuses to perform, the Finance Director may reject all bids or award to the next lowest bidder.

(Ord. 49-97. Passed 12-16-97.)

State law reference—ORC 9.31

123.16 CONTRACTS FOR PUBLIC IMPROVEMENTS.

With respect to a contract for a public improvement, the award and execution of the contract shall be made within sixty (60) days after the date on which the bids are open unless the Finance Director extends the time. If the price of the contract exceeds the estimate by ten percent (10%) or more, the project may be rebid.

The price stated on the contract shall be used in determining the amount to be paid and shall constitute full and final compensation for all the work.

Partial payment to the contractor for work performed under the lump sum price shall be based on a schedule prepared by the contractor and approved by the architect or engineer and the Finance Director.

(Ord. 49-97. Passed 12-16-97.)

State law reference—ORC 153.12

123.17 RETAINAGE.

The Finance Director shall withhold ten percent (10%) from each payment to the contract as retainage. The money from retainage shall be returned to the contractor after the project is completed and accepted. The retainage may be used to complete the project if the contractor fails to perform.

(Ord. 49-97. Passed 12-16-97.)

State law reference—ORC 153.13

CHAPTER 133 SOLICITOR*

***Editor's note**—There are no sections in Chapter 133. This chapter has been established as a place for cross references and future legislation.

Cross reference—Department of Law - see CHTR. 8.01, 8.04

Legal counsel - see ORC 733.70

Appointment of assistants - see ORC 733.621.

CHAPTER 135 CODE ENFORCEMENT OFFICERS

- 135.01 OFFICERS COMMISSIONED; RESPONSIBILITIES.
135.02 OTHER EMPLOYEES COMMISSIONED.

135.01 Officers Commissioned; Responsibilities.

Code Enforcement Officers may be commissioned by the Village Administrator. Code Enforcement Officers are responsible for the enforcement of the Village's Codified Ordinances including but not limited to the Planning and Zoning Code, Building Code, Property Maintenance Code, General Offenses Code, Streets, Utilities and Public Services Code and Business Regulation Code. Code Enforcement Officers may issue citations. Code Enforcement Officers do not have arrest powers or the right to carry weapons. Any such commission may be terminated by the Village Administrator.

(Ord. 08-2004. Passed 3-3-04.)

135.02 OTHER EMPLOYEES COMMISSIONED.

The Village Administrator may commission other employees as deemed necessary to effectively administer this chapter.

(Ord. 08-2004. Passed 3-3-04.)

CHAPTER 139 PARKS AND TRAILS ADVISORY BOARD*

139.01	MEMBERSHIP; TERM AND VACANCY.
139.02	COMPENSATION.
139.03	MEETINGS; REPORTING; ABSENCES.
139.04	ADVISORY CAPACITY ONLY.
139.05	POWERS AND DUTIES.
139.06	DEPARTMENTAL ASSISTANCE.

139.01 MEMBERSHIP; TERM AND VACANCY.

(a) There is hereby created and established a New Albany Parks and Trails Advisory Board to be composed of six (6) members, which shall be appointed by Council. The New Albany Council Member who is chair of the Council Service Committee shall hold ex officio membership on the Advisory Board. The term of this ex officio member shall depend upon the discretion of Council. The remaining five (5) Advisory Board members shall be appointed for three (3) year terms commencing on January 1, with the exception of those initially appointed, whose terms shall be staggered as follows:

One year term	two members
Two year term	two members
Three year term	one member.

Council shall request from the Board of Education of Plain Local Schools written recommendation for one appointment to the Board. Said recommendation from the School Board shall be received by Council within thirty (30) days of the request in order to be considered for approval.

(b) In the event of a vacancy on the Parks and Trails Advisory Board, Council shall appoint a replacement to fill the un-expired term. If the vacancy is the seat of the member recommended by the Board of Education, Council shall seek a recommendation for that member's replacement. (Ord. 61-94. Passed 12-6-94; Ord. 1-95. Passed 2-7-95; Ord. 22-2000. Passed 8-15-00; Ord. 15-2007. Passed 4-17-07.)

139.02 COMPENSATION.

Members of the Parks and Trails Advisory Board shall serve without compensation. (Ord. 61-94. Passed 12-6-94; Ord. 22-2000. Passed 8-15-00; Ord. 15-2007. Passed 4-17-07.)

139.03 MEETINGS; REPORTING; ABSENCES.

(a) The Parks and Trails Advisory Board shall meet not less than once each month, or as needed. Minutes of all meetings shall be kept and forwarded to the Liaison Department. The "Liaison Department" shall be the department and staff designated by the Village Administrator to facilitate the Board's activities.

*Cross reference—Authority to establish - see CHTR. 4.02
General rules - see CHTR. 10.01

(b) Any member of the Board who has been absent from four (4) consecutive regular meetings during any 12-month period, whether excused or not, is removed from membership.
(Ord. 61-94. Passed 12-6-94; Ord. 22-2000. Passed 8-15-00; Ord. 15-2007. Passed 4-17-07.)

139.04 ADVISORY CAPACITY ONLY.

The Parks and Trails Advisory Board shall act solely in an advisory capacity, making recommendations to Council and the Administration.
(Ord. 61-94. Passed 12-6-94; Ord. 22-2000. Passed 8-15-00; Ord. 15-2007. Passed 4-17-07.)

139.05 POWERS AND DUTIES.

The Parks and Trails Advisory Board shall assist the Village in meeting goals related to open space preservation; and acquisition and development of active and passive parks, leisure trails and other leisure time facilities.

The Board shall not become an advocacy forum for any one recreational group or organization. The Board's role shall be that of facilitator for all recreational groups and organizations, in order to assist Council and Administration in efforts to provide suitable physical facilities to serve all leisure time needs and activities.

To meet these objectives, the Parks and Trails Advisory Board shall have the following powers and duties:

- (a) Recommend to Council for its approval a master plan for the location, acquisition and development of leisure time facilities and open space preservation, including, but not limited to, capital budgetary needs and recommended priorities; and submit annual recommendations for revisions to the plan.
- (b) Study and report to Council and/or the Administration the problems and needs of the Municipality regarding, but not limited to, maintenance and operating budgetary needs for leisure time facilities.
- (c) Advise the Administration and Council concerning rules, regulations and policies for operation of leisure time facilities.
- (d) Provide to the Administrator recommendations for budgetary and operating programs for public open space and leisure time facilities.
- (e) Provide the Planning Commission, prior to its action on each final development plan, or if a final development plan is not required, on each final plat, a recommendation regarding the suitability of park land, or fee in lieu thereof, being provided to the Municipality, Subdivision Standards, Public Areas, of Chapter 1187, Subdivision Regulations and Chapter 1159, Planned Unit Development.
- (f) Advise Council on the suitability of accepting donations and bequests of money or property, in trust or otherwise, for parks and leisure time facilities, which may be made from time to time.

- (g) Provide liaison to Council by attendance at a Council meeting as required by Council or deemed appropriate by the chairman or the chairman's designate, who shall report on Board activities.
- (h) Undertake such other assignments or studies on open space and leisure time facilities as may be requested by the Council and/or Administration.

(Ord. 61-94. Passed 12-6-94; Ord. 22-2000. Passed 8-15-00; Ord. 15-2007. Passed 4-17-07.)

139.06 DEPARTMENTAL ASSISTANCE.

The Parks and Trails Advisory Board may call upon the Administrator, and, through the Administrator, any department of the Municipality to render such assistance to the Board as may reasonably be required.

(Ord. 61-94. Passed 12-6-94; Ord. 22-2000. Passed 8-15-00; Ord. 15-2007. Passed 4-17-07.)

CHAPTER 140 MUNICIPAL PARKS*

140.01	DEFINITIONS.
140.02	HOURS OF OPERATION.
140.03	FEES FOR USE OF SHELTER OR PARK.
140.04	TRAFFIC.
140.05	INTOXICANTS; DRUGS.
140.06	PETS; ANIMALS.
140.07	HORSEBACK RIDING.
140.08	CAMPING.
140.09	SWIMMING.
140.10	GOLF.
140.11	PUBLIC ADDRESS DEVICES, RADIOS, C.D. PLAYERS, TAPE PLAYERS AND MUSICAL INSTRUMENTS.
140.12	RECREATIONAL ACTIVITIES.
140.13	FIRES.
140.14	INDECENT LANGUAGE; LEWD CONDUCT.
140.15	ENTERTAINMENT AND EXHIBITIONS.
140.16	FIREWORKS, FIREARMS, AND WEAPONS.
140.17	DEFACEMENT, DESTRUCTION, REMOVAL OR DISTURBANCE OF PROPERTY, EQUIPMENT, OR NATURAL FEATURES.
140.18	GAMBLING.
140.19	CLIMBING ON FENCES, SHELTERS AND OTHER STRUCTURES.
140.20	HUNTING, TRAPPING, COLLECTING OR MOLESTING WILDLIFE.
140.21	SOLICITATION.
140.22	ENFORCEMENT.
140.23	ADDITIONAL RULES AND REGULATIONS.
140.99	PENALTY.

140.01 DEFINITIONS.

As used in this Chapter:

- (a) "Park" means any land or water area owned, leased or otherwise controlled by the Village of New Albany for recreational use, open space or similar related purposes excluding leisure paths located within public rights-of-way or easements.
- (b) "Administrator" means the Administrator of the Village of New Albany as defined in Article VII of the New Albany Charter.

(Ord. 32-2000. Passed 10-17-00.)

140.02 HOURS OF OPERATION.

No person, except in an emergency or with a special permit issued by the Administrator, shall enter or remain in the park except during the hours of a legally permitted activity, those hours in New Albany, Ohio, being from one-half hour before sunrise to one-half hour after sunset, except by approval of the Administrator and Resolution passed by Council.

(Ord. 32-2000. Passed 10-17-00.)

*Cross reference—Parks Advisory Board - see ADM. Ch. 139

Vandalism - see GEN. OFF. 541.04

Destruction of shrubs, trees, etc. - see GEN. OFF. 541.06

140.03 FEES FOR USE OF SHELTER OR PARK.

Editor's note—(RESERVED)

140.04 TRAFFIC.

(a) No person shall operate any vehicle within a park except on and within the streets, roadways and paths provided for such vehicles.

(b) No persons shall operate a vehicle in excess of five (5) miles per hour.

(c) No persons shall operate or park farm machinery or construction equipment, drive a truck, tractor or other vehicle which is at the time used for transportation of goods or materials, over any park street, roadway or path without a permit from the Administrator.

(d) No person shall clean, wash or repair any automobile or other vehicle in or upon a park, except for emergency repair.

(e) No persons shall operate a snowmobile or an unlicensed motor vehicle of any kind within a park.

(Ord. 32-2000. Passed 10-17-00.)

140.05 INTOXICANTS; DRUGS.

(a) No person, while voluntarily intoxicated or under the influence of any intoxicating liquor, alcoholic beverage, or controlled substance shall enter or remain in any park.

(b) No person shall use, consume, carry or bring any intoxicating liquor, alcoholic beverage, or any controlled substance in or upon any park.

(Ord. 32-2000. Passed 10-17-00.)

140.06 PETS; ANIMALS.

(a) Domestic dogs or cats are permitted in Village parks provided that they are controlled at all times, restrained by a leash not more than six (6) feet in length or suitably caged, except where permission has been obtained in advance, by the Administrator.

(b) Exotic pets are prohibited from the park unless prior permission has been obtained from the Administrator.

(c) No person being the owner or having charge of any animal on any public or private property, shall fail to have in his/her possession a wooden, plastic, or metal device or container for the purpose of picking up and properly disposing of any fecal matter left by his/her animal; and no person shall fail to properly dispose of fecal matter left by his/her animal. Failure of any such person to have in his/her possession and use such suitable device or container is prima-facie evidence of a violation of this section.

(Ord. 32-2000. Passed 10-17-00.)

140.07 HORSEBACK RIDING.

No person shall ride or have under his control a horse, mule, pony, or similar animal, except by permission of the Administrator.

(Ord. 32-2000. Passed 10-17-00.)

140.08 CAMPING.

No person shall maintain a tent, camper or other temporary sleeping place within a park without a specific written permit from the Administrator.

(Ord. 32-2000. Passed 10-17-00.)

140.09 SWIMMING.

Swimming is prohibited except in areas designated for that purpose by the Administrator.

(Ord. 32-2000. Passed 10-17-00.)

140.10 GOLF.

No person shall hit a golf ball or practice golf except in areas designated by the Administrator.

(Ord. 32-2000. Passed 10-17-00.)

140.11 PUBLIC ADDRESS DEVICES, RADIOS, C.D. PLAYERS, TAPE PLAYERS AND MUSICAL INSTRUMENTS.

No person shall cause a public address device, radio, C.D. player, tape player, or any musical instrument or device to be used in a park at a volume audible beyond his or her immediate area (fifty (50) feet).

(Ord. 32-2000. Passed 10-17-00.)

140.12 RECREATIONAL ACTIVITIES.

The Administrator may prohibit such recreational activities, and any or all other park uses including, but not limited to sledding, skiing, cycling, skateboarding and riding of scooters, if necessary to protect the public health, safety and welfare. Notice of such prohibitions will appear on clearly marked and visible posted signs in the park if the need to protect the public from such recreational activities should arise.

(Ord. 32-2000. Passed 10-17-00.)

140.13 FIRES.

No person shall start a fire in a park except for cooking in park grills, privately owned grills, or fires in designated areas approved by the Administrator. All fires must be attended to and must be extinguished before leaving the park.

(Ord. 32-2000. Passed 10-17-00.)

140.14 INDECENT LANGUAGE; LEWD CONDUCT.

No person shall use any abusive, profane, threatening or indecent language, or engage in lewd or obscene conduct in a park.

(Ord. 32-2000. Passed 10-17-00.)

140.15 ENTERTAINMENT AND EXHIBITIONS.

No entertainment or exhibition shall be given in the park except under the direction of or by written permission of the Administrator.

(Ord. 32-2000. Passed 10-17-00.)

140.16 FIREWORKS, FIREARMS, AND WEAPONS.

(a) No person, other than law enforcement officials, shall carry an air or gas gun, a bow, crossbow or any other missile throwing device within a park, or discharge any firearms, explosive substances, or air or gas guns into or over a park, or bring into a park any switchblade or hunting knife, dagger, metal knuckles, slingshot, or other weapon, excluding firearms as determined in ORC 2923.124 and pursuant to 2923.11 in the possession and control of a valid license as defined in ORC 2923.124.

(b) No person in a park shall have in his or her possession any fireworks, or explosives or shall cause any fireworks or explosives to ignite or detonate, except provided by a permit approved by the Administrator.

(c) Nothing in this section shall be construed as a limitation on an individual's right to keep and bear arms under federal or state law.

(Ord. 32-2000. Passed 10-17-00; ; Ord. O-07-2014. Passed 3-18-14.)

140.17 DEFACEMENT, DESTRUCTION, REMOVAL OR DISTURBANCE OF PROPERTY, EQUIPMENT, OR NATURAL FEATURES.

No person shall injure, deface, destroy, disturb, or remove any part of a building, sign, equipment or other property of a park, nor shall any tree, flower, shrub or other vegetation or fruit or seed thereof, or rock or mineral be removed, injured, destroyed or disturbed.

(Ord. 32-2000. Passed 10-17-00.)

140.18 GAMBLING.

No person in a park shall engage in, promote, solicit or procure participants for any game which is played for money or other thing of value, or engage in any form of gambling.

(Ord. 32-2000. Passed 10-17-00.)

140.19 CLIMBING ON FENCES, SHELTERS AND OTHER STRUCTURES.

No person shall climb, walk, stand or sit upon any fences, shelters, poles, fountains, walls or other structures not specifically designed for climbing, within a park.

(Ord. 32-2000. Passed 10-17-00.)

140.20 HUNTING, TRAPPING, COLLECTING OR MOLESTING WILDLIFE.

No person shall hunt, collect, pursue with dogs, trap or in any way molest any wild bird or other animal, or rob or molest any nest or den, or take the eggs or young of any bird or other animal found within the confines of a park.

(Ord. 32-2000. Passed 10-17-00.)

140.21 SOLICITATION.

No person shall distribute, beg, sell, hock, peddle, or offer or solicit for sale any goods or merchandise within a park without the written permission of the Administrator.

(Ord. 32-2000. Passed 10-17-00.)

140.22 ENFORCEMENT.

(a) No person shall fail or refuse to comply with any posted restrictions or directives or with any reasonable order relating to Chapter 140, or with any other order lawfully given by any Village personnel or law enforcement officer.

(b) Police officers and Village personnel may order any person violating any provisions of these rules and regulations to leave the park. No person shall fail to obey such an order.

(Ord. 32-2000. Passed 10-17-00.)

140.23 ADDITIONAL RULES AND REGULATIONS.

The Administrator shall make and enforce such additional rules and regulations as are necessary for the proper management of parks and their facilities.

(Ord. 32-2000. Passed 10-17-00.)

140.99 PENALTY.

(a) Whoever violates Section 140.02, 140.04, 140.06, 140.07, 140.08, 140.09, 140.10, 140.11, 140.12, 140.14, 140.15, 140.18, 140.19, or 140.23 is guilty of a minor misdemeanor.

(b) Whoever violates Section 140.05, 140.13, 140.16, 140.17, 140.20, 140.21, or 140.22 is guilty of a first degree misdemeanor.

(Ord. 32-2000. Passed 10-17-00.)

CHAPTER 141 RECORDS COMMISSION*

141.01 ESTABLISHED; MEMBERS; POWERS AND DUTIES.

141.01 ESTABLISHED; MEMBERS; POWERS AND DUTIES.

(a) A Records Commission is hereby created to provide rules for retention and disposal of records of the Municipality. The rules provided for shall be in accordance with ORC 149.39. The Records Commission hereby created will have such powers and duties as are provided for in ORC 149.39.

(b) The Records Commission hereby created shall be composed of the Mayor or his/her appointed representative, who shall serve as chairman; the Finance Director; the Solicitor; and a citizen appointed by the Mayor. Terms of the Mayor's representative and the citizen appointee shall be indefinite, subject to annual approval of the Mayor. Except as prohibited by the Charter, members of the Records Commission may hold other public offices or be employed by the Municipality.

(c) The Administrator is hereby directed to appoint a records officer within each department of the Municipality to inventory, appraise and oversee retention of records of the department according to criteria set by the Ohio Municipal Records Manual and the records retention schedule adopted herein; and to inform the New Albany Records Commission in writing annually by January 31 as to when records held by the department have reached the end of their assigned retention period. The records officer shall receive written permission from the New Albany Records Commission prior to the disposal of any record subject to the retention schedule herein established.

(d) As each section governs municipal records requirements pursuant to ORC 149.40, the Ohio Municipal Records Manual records retention schedule sections listed in this section or as amended herein pursuant to the powers granted in ORC 149.39, are hereby adopted as the official records retention schedule of the Municipality:

SECTIONS

- | | |
|----------|------------------------------------------------|
| 2. | Building Records |
| 4B. | Mayor's Court Records |
| 5. | Engineering & Street Records |
| 6. | Executive and General Administration Records |
| 7. | Financial Records |
| 8B. | Police Records |
| 10. | Legal & Legislative Records |
| 11. | Parks & Recreation Records |
| 12A & B. | Personnel Records, with amendments as follows: |

*Cross reference—Authority to establish - see CHTR. 4.02

General rules - see CHTR. 10.01

Records commissions - see ORC 149.39

SECTIONS

- 12B.12. "Record of Disciplinary Action." Records of disciplinary action shall be retained as follows:
- a. Oral reprimands. Oral reprimands shall remain in the disciplined employee's file for a minimum of 180 days, and shall be removed only upon request in writing from the employee; provided that no additional discipline(s) for the same offense has occurred within the same 180-day period. Should an additional discipline for the same offense occur within the 180-day period, the original discipline shall not be removed until the period of retention of the additional discipline(s) has elapsed.
 - b. Written reprimands. Written reprimands shall be removed from the disciplined employee's file after twenty-four (24) months, and shall be removed only upon request in writing from the employee, provided that no additional discipline(s) for the same offense has occurred within the same 24-month period. Should an additional discipline(s) for the same offense occur within the 24-month period, the original discipline shall not be removed until the period of retention of the additional discipline(s) has elapsed.
 - c. Notice of Suspension. Written documentation of suspension shall remain in the disciplined employee's file for sixty (60) months, and shall be removed upon request in writing from the employee, provided that no additional discipline(s) for the same offense has occurred within the 60-month time period. If additional discipline(s) has occurred for the same offense within the 60-month time period, the original discipline(s) shall not be removed until the period of retention of the additional discipline(s) has elapsed.

Add to 12B:

20. Personnel Appeals Board case files — permanent
21. Personnel Appeals Board minutes — permanent
22. Personnel Appeals Board correspondence — until no longer of administrative value; generally 1—5 years.
13. Planning & Zoning Records
- 14A. Water & Sewer Records.

(Ord. 25-90. Passed 5-15-90; Ord. 12-96. Passed 2-20-96.)

CHAPTER 143 JOINT DISPATCHING BOARD*

***Editor's note**—Former Chapter 143 was repealed by Ordinance 05-2004, passed February 3, 2004.

CHAPTER 145 JOINT ECONOMIC COMMITTEE*

145.01	MEMBERSHIP; TERM AND VACANCY.
145.02	COMPENSATION.
145.03	MEETINGS; RULES.
145.04	POWERS AND DUTIES.

145.01 MEMBERSHIP; TERM AND VACANCY.

There is hereby created and established a Joint Economic Committee, as successor to the Local Government Projects Committee and the Joint Committee on Economic Development, three (3) members of which will be appointed by Council and three (3) members of which shall be appointed by the New Albany-Plain Local Board of Education and one which shall be appointed by the Plain Township Board of Trustees. These members shall serve at the pleasure of their appointing authority. The local government representative to the New Albany Community Authority shall be a nonvoting, ex-officio member of the Committee.

(Ord. 7-99. Passed 5-4-99.)

145.02 COMPENSATION.

Members of the Joint Economic Committee shall serve without compensation.

(Ord. 7-98. Passed 3-17-98.)

145.03 MEETINGS; RULES.

The Joint Economic Committee shall have a statement of purpose and rules of procedure, except that such rules shall not be in conflict with state laws regarding open meetings and records, or the Charter and ordinances of the Municipality, or the policies and administrative regulations of the Board of Education, or the rules or regulations of the Plain Township Board of Trustees.

(Ord. 7-99. Passed 5-4-99.)

145.04 POWERS AND DUTIES.

Working with the New Albany Community Authority's funding limitations, the Joint Economic Committee shall recommend to the Authority, capital projects which serve the common good of the Municipality, the School District and Plain Township.

Recognizing the common interests of the Municipality, the School District, and the Township, the Joint Economic Committee will work towards and make recommendations concerning the enhancement and diversification of the community's tax base, tax incentive programs, and the commercial development of suitable sites within the Village, the New Albany-Plain Local School District and Plain Township.

(Ord. 7-99. Passed 5-4-99.)

*Cross reference—Authority to establish - see CHTR. 4.02

CHAPTER 147 COMMUNITY EVENTS BOARD (Repealed)*

PROOFS

***Editor's note**—Chapter 147 was repealed by Ordinance 10-2008, passed April 22, 2008.

CHAPTER 155 PERSONNEL POLICIES*

155.01	DEFINITIONS.
155.02	ADMINISTRATION.
155.03	COMPENSATION.
155.04	PROBATIONARY PERIOD.
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155.01 DEFINITIONS.

(a) "Applicant" means a person requesting consideration for employment in the unclassified or classified service.

(b) "Appointing Authority" means the City Manager or body having the power of appointment to, or removal from a position in the classified service and unclassified service.

(c) "Class or (Classification)" means a group of positions with the same descriptive title having equivalent duties and responsibilities and requiring equivalent qualifications, which can be distinguished from other groups of positions. There may be only one position in a particular class (e.g. Deputy City Manager).

(d) "Class Series" means two (2) or more classes which are similar as to type of work but which differ as to degree of responsibility, difficulty, complexity, skill and/or technical knowledge and which have been arranged in a ladder of steps in a normal line of promotion.

*Cross reference—Powers of Council - see CHTR. 4.02

Conflict of interest - see CHTR. 12.01

Personnel Appeals Board - see CHTR. 10.04

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(e) "Classified Service" means all employees of the City of New Albany unless the positions which they occupy have been exempted from "classified service" pursuant to Section 8.07, personnel systems, of the City Charter and Section 155.02 of these Codified Ordinances; and who, after completion of the original probationary period, or the probationary period following a promotion, may only be disciplined, dismissed or reduced in pay or position for just cause in accordance with the procedures contained within these Codified Ordinances.

(f) "Continuous Service" means the length of service as a full-time employee uninterrupted by resignation, retirement, discharge for cause or any other separation from municipal employment. Military leave, leave resulting from injury in the line of duty, leave for approved disability coverage, authorized leave without pay or administrative leave without pay for periods of six (6) weeks or less is not considered separation from municipal service.

(g) "Demotion" means a change in employment status from a position of one classification to a position in another classification or a change in employment status from one position to a position with lesser duties, having a lower maximum salary limit than the original classification.

(h) "Department" means any department, office, commission, board or other body as defined under the Charter or Codified Ordinances.

(i) "Discipline" means positive corrective action taken by supervisory personnel to change or control the behavior of subordinate employees to conform with prescribed policy.

(j) "Eligible" means a person who has satisfactorily met all qualifications and requirements for employment in the job class for which the person has made application and whose name should appear on an eligible list.

(k) "Full-time Employee" means an employee that is regularly scheduled to work not less than forty (40) hours within seven (7) consecutive calendar days.

(l) "Grievance" is any dispute, regarding the meaning, interpretation, application, or alleged violation in the administration of discipline.

(m) "Immediate Family" means parents, parents-in-law, step-parents, in loco parentis, legal guardian, brother-in-law, sister-in-law, spouse, children, step-children, brothers, sisters, grandchildren, grandparents, and grandparents-in-law unless otherwise specified.

(n) "Intermittent" means an employee working an irregular schedule less than one thousand (1,000) hours per fiscal year.

(o) "Official" means a person appointed by City Council or the City Manager who directs the functions of government.

(p) "Part-time Employee" means any employee regularly working less than forty (40) hours per week and having been hired with the intention of working on an ongoing basis until an appropriate reason for termination of employment arises.

(q) "Personnel Officer" means the position duly designated by the City Manager to coordinate the administration of this chapter.

(r) "Position" means any office, employment or job calling for the performance of certain duties and the exercise of certain responsibilities by one individual. A position may be vacant or occupied (part-time or full-time) and it may be designated regular, part-time, intermittent, temporary or seasonal.

(s) "Probationary Period" means a working test period during which an employee is required to demonstrate fitness for the duties to which appointed by actual performance of the duties of the position.

(t) "Promotion" means the change of an employee from a position in one classification to a position in another classification having a higher maximum salary.

(u) "Seasonal Employee" means any employee hired for a specified short term or interim period of time to perform work or activity limited to a season or period of year.

(v) "Temporary Position" means a position of non-permanent character not to exceed one hundred twenty (120) days, unless for sickness, illness or disability.

(w) "Transfer" is a change of classification created by an employment need as determined by the City Manager.

(x) "Unclassified Service" means all employees of the City who occupy positions which have been exempted from the "classified service" and who serve at the pleasure of the City and employees serving in a fiduciary capacity, do not serve a probationary period, and may be dismissed, disciplined or reduced in pay or position at any time without regard to the procedures contained within these Codified Ordinances without a right of appeal.

(y) "Workday" means a regularly scheduled working time assigned by a supervisor or manager.

(z) "Workweek" means a regularly recurring period of seven (7), twenty-four (24) hour days. (Ord. O-30-2012. Passed 11-27-12.)

155.02 ADMINISTRATION.

(a) The City Manager shall appoint a Personnel Officer, to serve part-time or full- time, to administer the personnel system of the Municipality. The Personnel Officer shall:

- (1) Prepare and recommend to the City Manager for approval rules to establish and maintain the merit system of the Municipality. When approved by the City Manager, the rules shall be proposed to the City Council for adoption by ordinance, with or without amendment.
- (2) Classify positions, establish job standards with adequate provisions for reclassification, and establish the probation period. Conduct recruitment, examinations, in- service training programs, and other such duties in relation to personnel as the City Manager may direct.

- (3) Maintain a personnel file for each employee and official and keep all personnel information and necessary records.
- (b) All positions shall be filled pursuant to a competitive selection process.
- (c) City Council shall establish a classified and unclassified service for employees of the City. The classified and unclassified service is hereby established as follows:
 - (1) All employees of the City are presumed to be classified employees unless the positions which they occupy have been exempted from the classified service pursuant to Section 8.07, Personnel Systems, New Albany Charter. After completion of the original probationary period, or the probationary period following a promotion, classified employees may only be disciplined for just cause and in accordance with the procedures contained within these Codified Ordinances.
 - (2) Some employees of the City serve in the unclassified service, or occupy positions which have been exempted from the classified service. Such employees serve at the pleasure of the City, do not serve a probationary period, and may be dismissed, disciplined or reduced in pay or position at any time without regard to the procedures contained within these Codified Ordinances. The following positions/personnel are hereby designated as unclassified:
 - A. All seasonal, intermittent, temporary, and part-time personnel.
 - B. Other positions/personnel identified as follows:
 - 1. City Manager.
 - 2. Deputy City Manager.
 - 3. Department heads.
 - 4. Deputy Directors.
 - 5. Clerk of Council.
 - 6. Public Information Officer.
 - 7. Engineering Manager.
 - 8. Fiscal Manager.
 - 9. Any employee serving in a fiduciary capacity.

(Ord. O-30-2012. Passed 11-27-12.)

155.03 COMPENSATION.

- (a) A compensation plan consisting of pay grades and step schedules for all authorized positions shall establish minimum and maximum rates of pay defined on an hourly, biweekly and/or annual basis.
- (b) The following are the categories of compensation: Administrative, Professional/Mid-management, Clerical, and Technical/Service.

(c) The entry level of pay for all positions shall be the minimum rate established for the classification, except that appointment rates above the minimum may be authorized if the department head and the Personnel Officer submit adequate reasons in writing and the action is approved by the City Manager. Approval will be based upon the exceptional qualification of the appointee or the inability to employ adequately qualified personnel at the minimum rate.

(d) It shall be the responsibility of the City Manager to implement the performance appraisal process by conducting or having conducted an appraisal of the performance of officials and employees.

(e) The pay schedule of all employees, including City Council members, shall be on a biweekly basis.

(f) Full-time and part-time employees are eligible for merit-based performance adjustments in accordance with the procedures established by the City Manager. Employees shall be evaluated at or upon their anniversary date. The anniversary date shall be the effective date of appointment to the current classification or date of employment. An employee placed on probationary status as set forth in Section 155.04(e) shall be ineligible to move to the next succeeding step in the classification during that probationary period.

(g) Any employee assigned temporarily to a position of higher classification shall be compensated at the minimum of that class or seven percent (7%) above the employee's present rate, whichever is higher, for all hours worked at the higher classification, provided a minimum of eight (8) hours are worked in the higher class. When an employee does not possess the necessary minimum training, experience and/or special requirements to independently perform the essential duties and responsibilities of a position, the City Manager shall have the discretion to establish a training wage. Such wage shall be agreed upon, in writing, by the affected employee and the City Manager.

(Ord. O-30-2012. Passed 11-27-12.)

155.04 PROBATIONARY PERIOD.

(a) An employee entering the service of the Municipality on a full-time or part-time basis shall be considered a probationary employee for a period of one year. Probationers may be removed or demoted any time during the probationary period by a written notice to the employee from the City Manager indicating that his or her services and performance are not satisfactory. Such removals and demotions are not subject to appeal. At the end of the one year probationary period, the employee shall be evaluated. If the employee is adequately performing the duties and responsibilities required for the position and is complying with City policies, he or she shall be considered a permanent employee in the classification to which he or she is assigned. If the employee has failed to adequately perform the duties and responsibilities required for the position and/or has failed to comply with City policies, the employee shall:

- (1) Be dismissed; or

- (2) Have his or her probationary period extended for an additional six (6) months. A probationary period may only be extended for an additional six (6) months if the department head and City Manager agree after a conference with the employee.

(b) A probationary employee shall accrue vacation leave and sick leave. Vacation leave and sick leave may be used during the probationary period in accordance with Section 155.09 and Section 155.10.

(c) Leave without pay during the probationary period shall not be counted as part of the probationary period.

(d) An employee promoted to a higher position or transferred to another classification shall be classified as a probationary employee in that position for a period of six (6) months. If the employee does not perform satisfactorily during the six (6) month probationary period, he or she shall be returned to his or her previous position and his or her seniority in that position shall be maintained.

(e) An employee who is changing his status from part-time or seasonal status to full-time status, even if he or she is performing the same tasks as performed in the part-time or seasonal status, shall be considered a probationary employee for a period of six (6) months.

(f) An employee who fails to achieve a satisfactory level of performance as documented through the annual performance evaluation process may be placed on probationary status for a six (6) month period. After the six (6) month period a performance evaluation shall be made. The employee shall either;

- (1) Be dismissed by reason of failing to adequately perform the duties and responsibilities required for the position;
- (2) Have his or her probationary period extended for an additional six (6) months; or
- (3) Be returned to regular status.

(Ord. O-30-2012. Passed 11-27-12.)

155.05 PROMOTIONS, TRANSFERS AND DEMOTIONS.

(a) If an employee is transferred, promoted or demoted, the rate of pay for the new position shall be determined as follows:

- (1) If the rate of pay in the former classification is less than the minimum rate established for the classification of the new position, the rate of pay shall be advanced to the minimum for the classification.
- (2) If the rate of pay in the former classification is more than the maximum rate established for the new classification, the pay range shall be reduced to the maximum rate or an intermediate rate within the new range, as recommended by the department head and approved by the City Manager.

- (3) If the rate of pay of the former classification falls within the new range of pay, the rate shall remain the same in the case of a transfer; increase in the case of a promotion; or remain the same or be lowered in the case of demotion as determined by the City Manager.

(b) All promotions of employees shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations, unless the promotion is to a position exempted from competitive examinations under Section 8.07 of the Charter. The City Manager in consultation with the department head shall determine the practicality of competitive examinations where the vacancy exists. An examination may include an evaluation of such factors as education, training, capacity, knowledge, manual dexterity, and physical or psychological fitness. An examination shall consist of one or more tests in any combination. Tests may be written, oral, physical, demonstration of skill, or an evaluation of training and experiences and shall be designed to fairly test the relative capacity of the persons examined to discharge the particular duties of the position for which appointment is sought. Tests may include structured interviews, assessment centers, work simulations, examinations of knowledge, skills, and abilities, and any other acceptable testing methods.

(Ord. O-30-2012. Passed 11-27-12.)

155.06 OVERTIME.

(a) The use of overtime may be authorized by the department head in order to meet emergency service requirements or to maintain existing services.

(b) The City shall use a forty (40) hour workweek as the basis for making any Fair Labor Standards Act (FLSA) related overtime determinations.

(c) The calculation of an employee's "paid status" shall include all hours permitted or suffered to be worked, as well as all hours in other paid status while on any approved leave, including holiday, vacation, personal, injury, paid military leave, sick, call out, training or other paid leave accrued to an employee on an hour-for-hour basis. The use of compensatory time is specifically excluded from the calculation of paid status.

(d) Employees who are not overtime-exempt based on FLSA regulations and who work a forty (40) hour workweek shall be compensated at a rate of one and one-half (1.5) times their regular hourly rate for hours in paid status in excess of forty (40). Pursuant to Section 155.06, the use of previously earned compensatory time shall not be considered "hours worked" for the purpose of calculating any overtime hours worked in accordance with FLSA requirements.

(e) An employee may elect to take compensatory time in lieu of the compensation provided herein. An employee's election to take compensatory time is the sole decision of the employee and no one should coerce or pressure the employee to take compensatory time. Such compensatory time shall not exceed a total accumulation over eighty (80) hours. In the event of exigent circumstances in the Public Service Department, the City Manager may allow a Public Service Department employee to accumulate in excess of eighty (80) hours, provided that any approved hours in excess of the eighty (80) hour limit shall be taken by the last pay period in the month of

June. Any remaining compensatory time in excess of eighty (80) hours remaining at the last pay period in June shall be paid out. In no case shall the total hours accrued be in excess of one hundred twenty (120) hours. Compensatory time may be taken at a time that is convenient to both the employee and employer. The balance remaining at the conclusion of the first pay period ending in December shall be paid out in full.

(Ord. O-30-2012. Passed 11-27-12.)

155.07 HOLIDAYS.

(a) The following days are declared paid holidays from which the full-time employees and officials will be excused from work and shall receive eight (8) hours of compensation at their base rate.

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	The day following Thanksgiving
Christmas Eve	Second half of the last work day before Christmas Day observed, four (4) hours
Christmas Day	December 25

(b) For employees whose normal work week is Monday through Friday, when any holiday listed above falls on Saturday, the preceding workday shall be considered the holiday. When the holiday falls on a Sunday, the following workday shall be considered the holiday. For employees (essential safety services) whose normal work week includes the weekend, the holiday shall be observed on the actual holiday.

(c) In order for an employee to be entitled to a holiday, he or she must have actually worked on the day before and the day after the holiday unless utilizing permissible leave time such as vacation, sick leave, bereavement leave, jury duty, personal day(s) or other paid leave approved by the City Manager.

(d) When any holiday listed above falls while an employee or official is on approved vacation time, such holiday shall not be charged against vacation leave.

(e) In the event the Federal and State governments shall designate a day of the week for any of the holidays specified above, then said day shall be observed in accordance with said designation.

(f) Each full-time employee who is required to work on a day designated as a holiday shall, in addition to receiving eight (8) hours pay for the holiday, be compensated in either of the following ways:

- (1) The employee shall be paid at the rate of one and one half (1.5) times their hourly rate of pay for all hours worked on the holiday.

- (2) The employee shall be credited with one and one half (1.5) hours of personal leave at their regular, hourly rate of pay, for all hours worked on the holiday. Personal leave may be taken as time off, with the approval of their supervisor, at any time during the calendar year in which it is credited. Any balance of unused time remaining at the end of the calendar year will be paid in cash at the employee's base rate of pay.

(g) Each full-time employee shall be paid eight (8) hours pay for a holiday.

(h) Employees who begin a shift on the day prior to the designated holiday, but work more than fifty percent (50%) of their hours on the holiday shall be credited for the holiday on the date that their shift begins.

(Ord. O-30-2012. Passed 11-27-12.)

155.08 PERSONAL DAYS.

(a) In addition to the observed holidays set forth in Section 155.07(a), all full-time employees shall be authorized to observe two (2) additional paid days off (sixteen (16) hours), designated as "personal days". Such time shall be scheduled as far in advance as possible and approved by the supervisor, except that no reasonable request shall be denied. Wages shall be computed on the basis of an eight (8) hour day at the employee's existing rate of compensation. Any unused personal days remaining after the last pay period of the same year or when an employee terminates his/her employment shall be forfeited.

(b) New employees hired before June 30 will be authorized to observe both personal days. New employees hired between July 1 and November 30 will be authorized to observe one (1) personal day. New employees hired December 1 or after will not be eligible for any personal days that year. (Ord. O-30-2012. Passed 11-27-12.)

155.09 VACATION.

(a) Full-time, non-exempt employees shall accrue vacation on the following schedule:

- (1) At employment up to the completion of the fourth (4th) year of employment - 3.077 hours per pay period.
- (2) Upon completion of the fourth (4th) year of employment up to the completion of the ninth (9th) year of employment - 4.615 hours per pay period.
- (3) Upon completion of the ninth (9th) year of employment up to the completion of the fourteenth (14th) year of employment - 6.154 hours per pay period.
- (4) Upon completion of the fourteenth (14th) year of employment and beyond - 7.70 hours per pay period.

(b) The annual vacation schedule for full-time, exempt employees shall be as follows:

- (1) At appointment - three (3) weeks.

- (2) Upon completion of the first (1st) year of employment up to the completion of the fourth (4th) year of employment - 4.615 hours per pay period.
- (3) Upon completion of the fourth (4th) year of employment up to the completion of the seventh (7th) year of employment - 6.154 hours per pay period.
- (4) Upon completion of the seventh (7th) year of employment and beyond - 7.70 hours per pay period.

(c) Vacations shall be at full pay at the current salary rate.

(d) Each full-time employee and official shall be permitted an annual standard maximum carryover of three (3) times the annual vacation accrual rate. Any accrued vacation leave in excess of the appropriate above maximum carryover limits standing to the credit of the employee on December 1 shall become void on December 31 unless used by the employee or carried over to the subsequent calendar year following the submission to and approval of such request by the City Manager on December 1. Approval of such requests will be limited to instances where factors beyond the employee's control or directly related to the operational needs of the Municipality prevented the employee from using the accrued vacation.

(e) No advance of vacation is permitted. Only requests for vacation less than or equal to the accrued balance will be approved.

(f) Compensation for vacation leave in lieu of time off shall not be granted.

(g) Vacation leave shall be scheduled as far in advance as possible and at the discretion of the supervisor. In the event of conflicting requests, the department head shall resolve the conflict based on the operating needs of the department/division.

(h) Where an employee becomes deceased while in paid status in municipal employment, any accrued vacation leave to his or her credit shall be paid in a lump sum first to the surviving spouse, then to the deceased's estate.

(i) Upon retirement or termination, unused accrued vacation leave will be cashed out in the form of a lump sum monetary payment.

(Ord. O-30-2012. Passed 11-27-12.)

155.10 SICK LEAVE.

(a) All full-time employees and officials shall be credited sick leave at the rate of 4.615 hours for each pay period.

(b) Sick leave may be accumulated without limit.

(c) When used, sick leave shall be deducted from the cumulative total on an hour-for- hour basis.

(d) Employees may use leave for absence due to personal illness, pregnancy, injury, exposure of contagious disease which could be communicated to other employees, and to illness or injury of the employee's spouse, child, mother, father, or other relative residing in the employee's household. Sick leave may also be used for medical, vision or dental related examination and care.

(e) Employees may be required to furnish proof of illness by furnishing a doctor's statement if the duration of the illness exceeds three (3) working days.

(f) Absence due to sickness in the immediate family not residing in the employee's household, and requiring the continuing presence of the employee to make arrangements for hospitalization or other care shall not exceed three (3) consecutive workdays. The City Manager may approve additional absences for this purpose.

(g) Excessive use, abuse of, or misuse of sick leave may be cause for disciplinary action or dismissal.

(h) Employees for whom a replacement must be found and who are unable to report to work for any reason listed herein must report their anticipated absence to their supervisor at least one hour prior to the start of their shift on the first day of their absence. Other employees must report their anticipated absence before the expiration of the first half-hour of the start of their shift. All employees shall report accordingly on each succeeding day of their absence unless other arrangements are authorized.

(i) Sick leave may be transferable between employees due to exigent circumstances, with the approval of the City Manager.

(j) Use of sick leave is limited to employee absence due to illness or non-work related injury and quarantine of the employee by health authorities. For family medical incidents, an employee may use up to four (4) days for each discrete incident.

(k) Following the fourth (4th) occurrence of sick leave absence of one day or more in a twelve (12) month period of time, the employee may be required to secure and present a certificate from a doctor giving information as to the circumstances involved or nature of the illness to receive pay for each subsequent absence involving sick leave in the remainder of that twelve (12) month period. The documentation shall be sent to the Personnel Officer to be placed in the individual's personnel file.

(l) Sick leave accumulated during former employment with the City or with another public agency may be credited to the employee upon his or her re-employment or hire with the City provided such re-employment/employment takes place within ten (10) years of the former termination date.

(1) Up to one thousand nine hundred twenty (1,920) hours of previously accumulated sick leave from another public agency may be transferred to the employee's credit at a rate of two (2) to one for each hour accrued as an employee of the City of New Albany.

(2) Rate of accrual shall be in conformance with Section 155.10(a).

(m) Upon retirement or separation in good standing, full-time employees may convert unused accrued sick leave to a lump sum monetary payment on the following conditions:

- (1) For the first one hundred twenty (120) hours (fifteen (15) days) of sick leave accrued, payment shall be hour for hour. Accumulated sick leave above one hundred twenty (120) hours shall be paid at the rate of eight (8) hours pay for every twenty-four (24) hours accumulated.
- (2) Payment will be at the hourly rate in effect at the time of retirement or termination.
- (3) Employees terminated for cause or who fail to give two (2) weeks written notice of intent to terminate are not eligible for the sick leave conversion benefit.

155.11 SICK LEAVE RECIPROCITY

(a) During January, each permanent full-time non-union employee may receive payment in cash for a portion of unused accrued sick leave hours at the end of the preceding fiscal year, provided such employee was entitled to sick leave benefits during all of the twenty- six (26) pay periods of the previous year and did not use more than forty (40) hours of paid sick leave or injury leave during the calendar year. Conversion of sick leave shall be based on the following table:

<i>Hours of Sick Leave or Injury Leave Taken</i>	<i>Maximum Cash Benefit Sick Leave Hours Allowed</i>
0—8 hours	48 hours
9—16 hours	32 hours
17—24 hours	24 hours
25—32 hours	16 hours
33—40 hours	8 hours
40 hours	0 hours

(b) The number of reciprocity hours paid each employee will be subtracted from the total accrued unused sick leave. The balance of unused sick leave will be carried forward each year as the current sick leave account.

(c) Employee elections to participate in the program will be made during the December preceding the year of participation. If the employee remains eligible at the conclusion of the participation year and still opts to participate in the program based upon the chart above, the sick leave reciprocity payments will be made in January of the year following the year of participation. Payment will be calculated at the employee's hourly rate in effect as of the final pay period of the fiscal year preceding payment. The participating employee can opt to convert sick leave hours at any level up to the maximum amount described.

(d) Cash benefit hours taken cannot reduce eligible employee's year-end sick balance below four hundred eighty (480) hours.

(Ord. O-30-2012. Passed 11-27-12.)

155.12 INJURY LEAVE.

When a full-time non-union employee's absence from work is necessitated because of an illness or injury incurred while on the job with the Municipality and the illness or injury is compensable under Ohio Workers' Compensation Law, injury leave may be granted at the discretion of the City Manager for a period of time not to exceed one hundred eighty (180) calendar days. Such leave may be granted by the City Manager based upon the recommendation of the employee's department head and upon submittal by the employee or a statement from a licensed physician justifying that the employee is unable to return to full work status due to the illness/injury. Such leave shall not be charged against the employee's sick leave balance unless it is determined that the illness or injury is a non-work related illness or injury and is not compensable under Ohio Workers' Compensation Law. In order to be eligible for injury leave, the employee must report the illness/injury to his supervisor within three (3) workdays of the incident giving rise to the illness/injury. Simultaneously with the request for injury leave, the employee shall make application and actively prosecute a claim for lost wage benefits under Ohio Workers' Compensation Law. If the application is favorably considered, the Municipality's obligation under the continued use of injury leave shall be the monetary difference between the employee's regular rate of pay and the benefits received under Workers' Compensation.

(Ord. O-30-2012. Passed 11-27-12.)

155.13 FAMILY MEDICAL LEAVE.

The Municipality offers family medical leave in compliance with all federal provisions of the Family and Medical Leave Act (FMLA).

(Ord. O-30-2012. Passed 11-27-12.)

155.14 BEREAVEMENT LEAVE.

(a) A full-time employee may be granted up to five (5) regularly scheduled workdays without loss of pay in case of a death in the immediate family.

(b) Sick leave, vacation leave, personal day(s) or compensatory time may be used for bereavement leave for additional days for immediate family, with the approval of the City Manager.

(c) Up to three (3) days of leave is permissible for deaths other than the immediate family, but such leave shall be charged to vacation leave, compensatory time or personal day(s).

(Ord. O-30-2012. Passed 11-27-12.)

155.15 LEAVES OF ABSENCE.

(a) In an effort to be flexible and provide latitude to employees in unique or special circumstances, leaves of absence may be granted to employees under special circumstances. Eligibility for a leave of absence will be reviewed on a case-by-case basis and will be limited to full-time, regular employees with at least two (2) consecutive years of service.

(b) Leaves of absence for the following situations or emergencies will be considered:

- (1) To allow employees to attend courses at recognized colleges or universities, if the courses are deemed to be of benefit to the Municipality.
- (2) Family leave of absence. Female employees (not disabled by childbirth or pregnancy) and male employees may be granted a leave for the purpose of caring for a newborn child, adopted child, or a seriously ill child or other member of the family.
- (3) Personal leave of absence may be granted to an employee to attend to personal matters in cases in which the City Manager determines that an extended period of time off would be in the best interest of the employee and the Municipality, including but not limited to inpatient substance abuse treatment.
- (4) For other purposes deemed beneficial to the Municipality and the employee.

(c) Leaves of absence are granted without pay except in special and unusual circumstances. Insurance benefits may be continued during leaves of absence, based on a determination by the City Manager.

(d) A request for a leave of absence must be made in writing by the employee. All leaves must be approved by the City Manager and department head. Permitted leaves are limited to six (6) weeks at which time any request for additional leave must be made.

(e) An employee returning to work from leave shall be reinstated to the employee's former position or a comparable position.

(f) If an employee fails to return to work at the conclusion of a permitted leave, the employee will be terminated from employment, unless the City Manager, in consultation with the department head, grants an extension.
(Ord. O-30-2012. Passed 11-27-12.)

155.16 MILITARY LEAVE.

The Municipality will adhere to all applicable state and federal provisions for military leave.
(Ord. O-30-2012. Passed 11-27-12.)

155.17 JURY SERVICE.

The City of New Albany encourages employees to fulfill their civic responsibilities by serving jury duty when required.

- (a) Full-time employees may request jury duty leave. Jury duty pay will be calculated on the employee's regular pay rate times the number of hours the employee would otherwise have worked on the day of the absence.
- (b) The employee, upon notice of jury service, shall present such notice to his or her immediate supervisor. A copy of such notice shall be filed in the employee's personnel file.

- (c) Jury service requiring less than four (4) hours of the employee's regular work day as verified by the time report shall require the employee to report to his or her supervisor for completion of his or her regular work day with the Municipality.
 - (d) Either the City or the employee may request that an employee be excused from jury duty if, in the City's judgment, the employee's absence would create serious operational difficulties.
- (Ord. O-30-2012. Passed 11-27-12.)

155.18 PRECINCT ELECTION OFFICE LEAVE.

The City of New Albany encourages employees to fulfill their civic responsibility by working on Election Day at the polls.

- (a) Any employee who is a registered voter and meets the other requirements established by law and the Board of Elections may request Precinct Election Official leave with pay for the purposes of being a judge of an election engaged by the Board of Elections. Precinct Election Official leave will be calculated on the employee's regular pay times the number of hours the employee would otherwise have worked on the day of the absence.
 - (b) If the employee must attend the Precinct Election Official training courses, as mandated by Ohio Law and conducted by the Board of Elections, the employee must request leave with vacation, personal day(s) or compensatory time if the training is during regular work hours. Leave without pay will not be permitted to attend the training session(s).
 - (c) This leave with pay is not considered "hours worked" for the purpose of computing overtime.
 - (d) The employee must provide the City with a copy of the employee's poll worker pay stub provided by the Board of Elections.
- (Ord. O-30-2012. Passed 11-27-12.)

155.19 INSURANCE BENEFITS.

(a) The Municipality shall make available group medical, prescription drug, dental, and vision benefits to all full-time non-union employees and their dependents as well as to all currently serving, elected members of City Council and Mayor. The benefits shall be based on the benefits of the carrier or carriers.

(b) All full-time non-union employees shall be entitled to group term life and accidental death and dismemberment insurance coverage. The Municipality shall provide coverage in the amount equal to the employee's annual salary, rounded up to the nearest thousand dollars. The maximum coverage shall be one and one half (1.5) times their annual base wages, up to a maximum of one hundred and fifty thousand dollars (\$150,000.00).

(Ord. O-30-2012. Passed 11-27-12.)

155.20 MERIT COMPENSATION.

Non-Exempt and Exempt Employees. In recognition of exceptional City service, each non-union employee shall be eligible for additional compensation as prescribed in the City's merit bonus program. An employee becomes eligible for merit bonus program compensation in the year following their attainment of the maximum rate of compensation on the City's merit based compensation program. The merit bonus program consists of two (2) parts. The first part will be based on the individual's job performance. The second part is based on the individual's voluntary participation in an objective setting program and the individual's attainment of agreed upon objectives. Performance standards and the schedule of merit compensation shall be established by the City Manager.

(Ord. O-30-2012. Passed 11-27-12.)

155.21 MISCELLANEOUS COMPENSATION PROVISIONS.

(a) Call Out Pay. A full-time non-exempt non-union employee who is called out will be guaranteed a minimum of three (3) hours when called to duty, after normal working hours not abutting the employee's regular work hours, at a rate of compensation of time and one-half (1.5).

(b) A full-time non-exempt non-union employee who is required to attend a court session due to professional obligations while not on regular duty shall be entitled to a minimum of three (3) hours pay at time and one-half (1.5) for the actual hours spent in court.

(c) Municipal employees who use a personal automobile for municipal use shall be reimbursed for such at the rate set annually by the Internal Revenue Service as tax-deductible mileage rate.

(d) The Municipality shall have the right to require a physical examination of all new employees, and to require periodic physical examinations of all employees. All required physical examinations shall be at the expense of the Municipality.

(e) The Municipality shall provide uniforms and/or a uniform allowance for the mechanic, Maintenance Superintendent, maintenance workers, maintenance supervisors, community development inspectors and all non-union police staff. Such benefits shall be processed in compliance with any and all applicable Internal Revenue Service regulations.

(f) Tuition Reimbursement Program.

(1) All full-time employees and officials with twelve (12) or more months of satisfactory service shall be eligible to participate in a tuition reimbursement program.

(2) An employee or official shall provide a written request to the department head indicating the course of instruction that is to be followed and how the course of instruction will benefit both the employee and the Municipality. The department head shall make a recommendation and shall forward the request to the Personnel Officer. The Personnel Officer shall evaluate the course work or degree program for job-relatedness and shall notify the employee in writing regarding approval or disapproval. The approval may be for the entire course of study for an entire degree program, and the employee or official need

not reapply for each course within the overall program. If the request is disapproved, a request may be made to the City Manager for reconsideration. The City Manager's decision shall be final.

- (3) Courses are to be taken on other than scheduled working hours, unless approval is obtained from the department head, Personnel Officer and City Manager.
- (4) Reimbursement shall be made upon successful completion of the course with a grade of B (3.0) or better. The employee/official shall submit an official transcript or certificate demonstrating successful completion of the course and a receipt from the institution confirming the amount paid for tuition and textbooks.
- (5) In the event that the employee/official receiving reimbursement separates from the Municipality following any reimbursement, he or she shall pay one hundred percent (100%) of the reimbursement amount made during the twenty-four (24) previous months back to the Municipality.
- (6) Employees shall be eligible for up to a maximum of three thousand five hundred dollars (\$3,500.00) per calendar year for tuition and textbooks. The total amount for tuition and textbooks paid to any individual without special consideration from City Council shall be seven thousand dollars (\$7,000.00).
- (7) Courses of instruction eligible for reimbursement under this program shall be provided by a recognized institution (e.g., college, university, community college, post-secondary technical school, etc.). No reimbursement shall be provided for correspondence courses.

(g) Police officers shall be eligible to receive special duty pay directly from the contractor of special duty services in accordance with such rules, regulations and procedures in effect with the New Albany Police Department. The rates for special duty shall be established by the City Manager.

(h) A shift differential of one dollar (\$1.00) per hour shall be provided to non-union police sergeants and non-union dispatch personnel (excluding hours in paid status while on approved leaves, restricted duty, and off-duty court time hours) for those who are regularly assigned to work second shift, third shift, or any shift that commences after the starting time of second shift and ends prior to the ending time of third shift. Shift differential will be paid for actual hours worked. Shift differential shall not be paid in addition to regular pay for any hours spent on approved paid leave. Time spent in optional training programs shall not qualify for shift differential pay. If shift differential pay is applicable, and overtime occurs, the shift differential pay shall be added to the base hourly rate prior to computing the overtime rate.

(i) The City Manager shall have the authority to establish monetary and non-monetary compensation programs that recognize the special efforts of employees that benefit the community and/or the organization.

(j) The City Manager shall have the authority to establish an employee recognition program and may, at his or her discretion, provide awards in recognition of service such as plaques, trophies, service pins, etc.; and any other type of non-monetary remuneration. The City Manager may expend City funds for such items including recognition luncheons, dinners, or other such expenditure in keeping with the objective of an employee recognition program. The City Manager may establish a monetary, performance-based merit program in addition to the merit compensation under the provisions of Section 155.20.

(Ord. O-30-2012. Passed 11-27-12.)

155.22 OPERS AND OPFPF.

(a) The full amount of the statutorily required employee contributions to the Ohio Public Employees Retirement System of Ohio (OPERS) and to the Ohio Police and Fire Pension Fund (OPFPF) shall be withheld from the gross pay of each employee and shall be paid to OPERS and to OPFPF by the Municipality on the employee's behalf. This withholding shall be in lieu of direct contributions to OPERS and OPFPF by each employee. No person subject to this withholding shall have the option of choosing to receive the statutorily required contribution to OPERS or to OPFPF directly. The Municipality shall, in reporting and making remittance to OPERS and OPFPF, report that the public employee's contribution for each person subject to this payment has been made as provided by the statute.

(b) The payment by the Municipality provided by this section shall apply to all persons that are employees of the Municipality who are or become contributing members of OPERS or OPFPF.

(c) The total salary for each employee shall be the salary otherwise payable under the Municipality's Policies. Such total salary of each employee shall be payable by the Municipality in two (2) parts:

- (1) Deferred salary; and
- (2) Cash salary.

An employee's deferred salary shall be equal to that percentage of that employee's total salary which is required from time to time by OPERS and OPFPF to be paid as an employee contribution by that employee, and shall be paid by the Municipality to OPERS and OPFPF on behalf of that employee as a pickup and in lieu of the OPERS and OPFPF employee contribution otherwise payable by that employee.

An employee's cash salary shall be equal to that employee's total salary less the amount of the pickup for that employee, and shall be payable, subject to applicable payroll deductions, to that employee. The Municipality shall compute and remit its employer contributions to OPERS and OPFPF based upon an employee's total salary. The total combined expenditures of the Municipality

pality for such employees' total salaries payable under applicable municipal policies and the pickup provisions of this chapter shall not be greater than the amounts it would have paid for those items had this provision not been in effect.

(Ord. O-30-2012. Passed 11-27-12.)

155.23 LICENSING; CERTIFICATION.

(a) Certain job classifications within the Municipality require the employee to maintain current licenses and/or certifications pursuant to the performance of the job. It is the responsibility of the employee who holds a position that mandates special licensing or certification to keep same in full force and effect while in the employ of the Municipality. A complete and updated training record shall be forwarded to the Personnel Officer to be kept in the employee's personnel file.

(b) The Municipality may pay for training required to maintain certification and/or special licenses of employees. However, failure of the employee to notify the Municipality of needed training in such a manner so as to avoid loss of certification and/or license shall result in disciplinary action, including, but not limited to, requiring the employee, at his or her own expense and on his or her own time, to take the necessary training or tests to regain his or her license and/or certification.

(Ord. O-30-2012. Passed 11-27-12.)

155.24 PERSONNEL RECORDS.

(a) Personnel File. One, and only one, personnel file shall be maintained for each employee and shall be in the custody of the Personnel Officer. The personnel file shall contain all the official records of the Municipality regarding an individual employee. An employee may review his personnel file at reasonable times in the presence of the Personnel Officer upon written request to the Personnel Officer. Copies of documents shall be made available to the employee at a cost as established in the City's Schedule of Fees and Service Charges. All such copies shall be marked "copy". The confidentiality of matters contained in the personnel files shall be the responsibility of the Personnel Officer who shall release only such information permitted by law.

(b) Retention of Records. All actions of records, including appointment, evaluations, promotions, transfers, demotions, written reprimands, dismissals, suspensions, will be maintained in each employee's personnel file throughout his or her period of employment with the following exceptions: records of oral appeals will be removed from the file upon the written request of the employee twelve (12) months after such reprimand was issued, provided no further disciplinary action has occurred within that twelve (12) month period of time. Records of written reprimands will be removed from the file upon the written request of the employee two (2) years after such was given, provided no further disciplinary action has occurred within that two (2) year period of time.

Records of suspensions of three (3) days or less will be removed from the file upon the written request of the employee five (5) years after such was given, provided no further disciplinary action has occurred within that five (5) year period of time. In any case in which a written suspension,

demotion or dismissal is disaffirmed through the appeal procedure, the personnel record shall clearly indicate such disaffirmance. Copies of commendations, letters of appreciation, and training certificates or records, shall also be maintained in the personnel file.

(c) Inaccurate Documents. If an employee has reason to believe that there are inaccuracies in documents contained in their personnel file, the employee may write a memorandum to the Personnel Officer explaining the alleged inaccuracy. If the Personnel Officer concurs with the employee's contentions, the Personnel Officer shall either correct or remove the faulty document or attach the employee's memorandum to the document and note thereon concurrence with the memorandum. The Personnel Officer may also attach the memorandum to the document and note disagreement with memorandum's contents. The decision of the Personnel Officer with regard to inaccurate documents shall be final.

(Ord. O-30-2012. Passed 11-27-12.)

155.25 INDIVIDUALS WITH DISABILITIES.

The Municipality will adhere to all applicable state and federal provisions including the American with Disabilities Act.

(Ord. O-30-2012. Passed 11-27-12.)

155.26 DISCIPLINARY ACTIONS.

It shall be the responsibility of each department head to maintain control and discipline in his or her department. This responsibility involves dealing promptly with violations of this chapter, municipal ordinances, the Charter, administrative orders of the City Manager, and federal and state laws by employees in their department.

(a) Just Cause. No employee shall be reduced in pay or position, suspended (paid or unpaid), removed or reprimanded except for just cause, including incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy, work rule, or codified ordinance of New Albany, any other failure of good behavior, unbecoming conduct, any act of misfeasance, malfeasance or nonfeasance or the conviction of a felony. The denial of a one-time pay supplement or bonus is not a reduction in pay.

(b) Progressive Discipline.

(1) The principles of progressive disciplinary action will be followed with respect to minor offenses. For minor offenses, an oral reprimand, a written reprimand and a suspension shall be given prior to demotion or dismissal. However, more serious discipline may be imposed for more serious offenses consistent with "just cause".

(2) Disciplinary action may consist of any action which is appropriate to the offense, including:

A. Informal (oral) reprimand;

- B. Formal, written reprimand which becomes part of the employee's personnel file;
 - C. Suspension from duty with or without pay;
 - D. Demotion in rank or reduction in salary; or
 - E. Dismissal.
- (3) Disciplinary action taken against an employee, which is other than in the nature of a minor first offense warning, shall be in writing and made a part of the employee's permanent personnel file.
- (4) A suspension from duty without pay for a period exceeding three (3) days must be reviewed and approved by the City Manager prior to becoming effective. Informal reprimands, formal reprimands and suspensions from duty without pay for three (3) days or less shall not require prior approval by the City Manager. However, it is suggested that the department head notify the City Manager whenever an employee is suspended for three (3) days or less. All demotions in rank, reductions in salary and dismissals must be reviewed and approved by the City Manager prior to becoming effective. Nothing in this section shall be deemed to preclude an employee from being relieved of duty if in the judgment of his or her supervisor such action is necessary. In all cases of discipline, the grievance procedure set forth in Section 155.27 shall control. Disciplinary actions shall in all cases be dealt with in a confidential manner. Specifically, employees who are or who may be the subject of any disciplinary action and supervisors/superiors who take or are considering taking any disciplinary action shall refrain from discussing or otherwise disclosing such action to any persons except those who by this chapter or other law are entitled to such information. Whenever a written communication is transmitted to a higher supervisory authority in which matters are discussed which, if true, could become the basis of disciplinary action against an employee, whether or not such disciplinary action is subsequently taken, the employee who is the subject of such communication shall be given a copy of it at the time of its transmittal. This subsection does not apply to communications regarding a criminal investigation into activities of any employee.
- (c) Responsibility for Discipline. The duty of maintaining discipline among employees shall rest initially with the immediate supervisor and finally with the City Manager. The City Manager has the power and duty, when he or she deems it necessary for the good of the service, to suspend, remove, or otherwise discipline all municipal employees and appointive administrative officers.
- (d) Copy of Discipline Record. Whenever a disciplinary action is taken which results in a disciplinary action of record, the employee shall be given a written copy of such record at the time it is placed in the employee's personnel file. No public statement regarding the final decision shall be made until the written decision has been distributed to the employee.
- (Ord. O-30-2012. Passed 11-27-12.)

155.27 PROCEDURE FOR APPEAL OF DISCIPLINARY ACTION.

(a) An employee of the Municipality who feels aggrieved by the action of his or her supervisor in the administration of discipline may appeal such disciplinary action according to the step(s) set forth in Table I herein. For a particular disciplinary action, the employee shall follow the procedural steps in the order established, and the last step listed is the final point of appeal. The City Manager shall discipline employees and the Personnel Appeals Board has the power to hear appeals from administrative determinations made pursuant to this chapter and as may be authorized by this chapter.

(b) In accordance with the provisions of Section 155.02, employees serving in the unclassified service, or occupying positions which have been exempted from the classified service, serve at the pleasure of the City and may be dismissed, disciplined or reduced in pay or position at any time without regard to the procedures contained within these Codified Ordinances.

(c) Disciplinary actions and the associated appeal steps are as follows:

**TABLE I
DISCIPLINE APPEAL PROCEDURE**

<i>Disciplinary Action</i>	<i>Appeal Steps</i>
Informal (oral) reprimand	(1)*
Formal (written) reprimand	(1), (2)
Suspension from duty without pay for 5 or less working days	(1), (2), (3)
Suspension from duty without pay for 6 or more working days	(1), (2), (3), (4)
Demotion in rank or reduction in salary	(1), (2), (3), (4)
Dismissal	(1), (2), (3), (4)
*If the department head issues the initial discipline, the employee has the right to appeal directly to the Personnel Officer. The appeal procedures shall follow those outlined in subsection (d)(1).	

(d) Appeal Steps.

- (1) Department/Division Head Review. The aggrieved employee may present a written statement of his or her appeal to the department/division head within fourteen (14) calendar days of the effective date of the disciplinary action being appealed and shall ask for a review and modification or reversal of the action. The department/division head shall issue a written response within fourteen (14) calendar days of receipt of the written appeal.
- (2) Personnel Officer Hearing. If an appeal is not resolved to the satisfaction of the employee under step (1) and the action being appealed is allowed to proceed to step (2), the employee may request in writing a review by the Personnel Officer. The written appeal must be presented to the Personnel Officer within seven (7) calendar days of receipt of the department/division head response. The Personnel Officer shall hold a hearing within

fourteen (14) calendar days of the receipt of such written statement. At such hearing the department/division head shall present the facts and circumstances upon which the disciplinary action was taken. Prior to such hearing the Personnel Officer shall notify the employee, in writing as soon as is practicable, of the time and place of the hearing and the specific matters or charges which will be considered. At the hearing, the employee may be represented by an individual of his or her choosing, and will be permitted to present witnesses. The employee's personnel file shall be made available for him or her to review prior to the hearing upon written request to the Personnel Officer. The Personnel Officer, after the close of the hearing, shall issue a written decision within fourteen (14) calendar days from the close of the hearing that shall be forwarded to the employee. A copy of the written decision shall be provided to the employee and his or her representative at the time it is placed in the employee's personnel file. No public statements shall be made by the employee or employer regarding the final decision, until the written decision has been given to the employee. The written decision of the Personnel Officer shall be a prerequisite to a request for a hearing before the City Manager.

- (3) City Manager Hearing. If an appeal is not resolved to the satisfaction of the employee by the Personnel Officer under step (2) and the action being appealed is allowed to proceed to step (3), the employee may request in writing within seven (7) calendar days of the issuance of the Personnel Officer's written decision, a hearing before the City Manager. If such request is not made within seven (7) calendar days, the matter shall be closed. At such hearing, which shall occur within fourteen (14) calendar days, the department/division shall present the facts and circumstances upon which the disciplinary action was taken. Prior to the hearing, the City Manager shall notify the employee in writing, as soon as is practicable, of the time and place of the hearing and the specific matters or charges which will be considered. At the hearing, the employee may be represented by an individual of his or her choosing; he or she will be permitted to present witnesses. The employee's personnel file shall be made available to him or her for review prior to the hearing upon written request to the Personnel Officer. The City Manager shall issue a written decision, after the close of the hearing, which shall be forwarded to the employee within twenty-one (21) calendar days. A copy of the written decision shall be provided to the employee and his or her representative at the time it is placed in the employee's personnel file. No public statements shall be made by the employee or employer regarding the final decision, until the written decision has been given to the employee. The written decision of the City Manager shall be a prerequisite to a request for a hearing before the Personnel Appeals Board.
- (4) Personnel Appeals Board Hearing. The Charter provides for a three (3) member Personnel Appeals Board. An aggrieved non-exempt classified employee may request in writing a hearing before the Personnel Appeals Board. Such request must be submitted within fourteen (14) calendar days of receipt by the employee of the City Manager's decision under step (3). Such request shall be submitted to the Personnel Officer, who will notify the Personnel Appeals Board. The Board shall set a time, date and location to hear such appeal

and notify the Personnel Officer as well as the employee, or designated representative, if any/known. The notice of the hearing will be either hand-delivered upon the employee or known representative or mailed to the employee's last known post office address. Alternate methods of notice may also be provided, such as pursuant to electronic means, upon the request of the employee, or the employee's designated representative, if any. Such notice of the hearing will be provided as outlined above at least fourteen (14) calendar days prior to the date of the hearing, unless an extension of time is requested or waived by the employee. During the hearing, all witnesses must testify under oath or affirmation. Any Board member shall have power to administer oaths and affirmations to witnesses and to take testimony concerning any matter which the Board has the authority to hear.

The Board shall have the power to issue a subpoena and require the attendance of witnesses and the production of documents pertinent to any hearing. Either party may request that a subpoena be issued by the Board. Such requests for a subpoena or a request for production of documents shall be submitted no later than seven (7) days prior to the hearing. It is the responsibility of the requesting party to ensure proper service of the subpoena.

Amendments or modifications to the orders of dismissal, discipline or reduction in pay or position may be made by the appointing authority at any time prior to the start of the hearing, provided the employee and his/her attorney, if any, receive copies of the amended order prior to the time set for the hearing as provided herein.

Hearings before the Board shall be conducted in an orderly manner. The Board is not required to strictly follow the rules of evidence as applied by the courts in civil cases. The parties may be represented by counsel or other representative. The Board may also be represented by independent legal counsel when, in the Board's opinion, such independent legal counsel is needed and the cost of such representation shall be paid by the City.

In a hearing on an appeal before the Board, the following procedure shall be followed:

- A. Hearings may be public as required by Ohio law; however, upon the request of either party, witnesses may be separated during the hearing.
- B. The appointing authority taking the action affecting the employee shall proceed first with the burden of supporting the charges and specifications.
- C. The affected employee shall then produce such evidence as they wish to rebut the charges and specifications brought against the employee.
- D. The appointing authority will have the opportunity to offer rebuttal evidence,
- E. The burden of proof to be utilized by the Board shall be by a preponderance of the evidence.
- F. Each party may call witnesses to testify on their behalf. The Board on its own initiative may call witnesses other than those called by either party if in its judgment the merits of the case so require. In no instance shall more than five (5) witnesses be called by each party without the consent of the Board.

- G. The Board may, in its discretion, hear final arguments or allow post-hearing briefs.
- H. Hearings may be recorded by the Board in a manner it deems appropriate. Copies of any transcript may be provided to any parties upon written request.
- I. The Board will render its decision within a reasonable time from the date of the hearing. Upon the completion of all evidence introduced, the Board may render its final order immediately, or may take the matter under advisement and render its final order within a reasonable time thereafter.
- J. A written copy of the final order shall be transmitted to the appointing authority and the employee or their designated representative, if any.
- K. If the employee fails to appear at the hearing, the Board may hear the evidence offered by the appointing authority and render judgment thereon. If the appointing authority, or its designated representative fails to appear at the time fixed for the hearing, and if no evidence is offered in support of the charges against the employee, the Board may render judgment as by default or may hear evidence offered by the employee and render judgment thereon.

The acceptance by an appointing authority of the resignation of a person discharged, before the final action by the Board, will terminate the appeal process. Notice of the employee's resignation shall be submitted immediately to the Board and shall be entered into the Board's records.

The decision of the Personnel Appeals Board is final.

(Ord. O-30-2012. Passed 11-27-12.)

155.28 INVESTIGATIVE PROCEDURES.

With the approval of the City Manager, investigative procedures shall be undertaken any time an employee is suspected of or charged with an act which could result in criminal and/or administrative charges being filed against such employee. The investigative procedure for an administrative investigation shall be determined by the City Manager. The investigative procedure for a criminal investigation shall be as set forth hereinafter.

- (a) When any anonymous complaint is made against an employee and there is no corroborative evidence of any kind, then the complaint shall be classified as unfounded and the accused employee shall not be required to submit a written report.
- (b) An employee shall be informed of the nature of an investigation prior to any questioning.
- (c) An employee who is to be questioned as a suspect in an investigation that may lead to criminal charges shall be advised of his or her constitutional rights in accordance with law and shall then and continually thereafter have a right to counsel or other representative of his or her choosing.
- (d) The use of administrative pressures, threats, coercion or promises shall not be employed for any purpose during the course of an investigation regarding any employee.

- (e) An employee who declines or refuses to answer questions or to otherwise participate in an investigation may be charged with insubordination or a like offense except where such refusal is based on an exercise of his or her constitutional rights as referenced in subsection (c) hereof.
- (f) The interrogation of an employee in connection with an investigation shall be conducted at reasonable times and for reasonable periods of time that shall include rest periods and time to attend to physical necessities.
- (g) Commencing at the time during an investigation when an employee is advised of his or her constitutional rights as provided in subsection (c) hereof, an interrogation shall be recorded at the request of either party.
- (h) In the course of an investigation, an employee may be given a polygraph examination, in compliance with applicable laws.
- (i) During the course of an investigation, interviews of employees not the subject of such investigation may be conducted. Where appropriate, the procedures set forth herein shall be followed with respect to such other employees.
- (j) Upon request, an employee shall be afforded reasonable access to written documents and to taped interviews made in accordance with subsection (g) hereof during which time he or she may listen to and make personal notes. If a written transcript of a recorded interview is made, the employee will be provided a copy of such transcript upon written request to the City Manager.
- (k) If in lieu of the filing of criminal charges an investigation results in the necessity of disciplinary action in accordance with Section 155.26, disciplinary actions shall be taken. An employee whose conduct is the subject of such disciplinary action shall be afforded access to evidentiary matters expected to be presented in the course of any appeal process hearing associated with the disciplinary action.
- (l) If any of these procedures are alleged to have been violated, such allegations shall be subject to the appeal procedure provided in Section 155.27 beginning at the level of the Personnel Officer.

(Ord. O-30-2012. Passed 11-27-12.)

CHAPTER 157 INVESTMENT POLICY*

157.01	SCOPE.
157.02	GENERAL OBJECTIVES.
157.03	STANDARDS OF CARE.
157.04	AUTHORIZED FINANCIAL INSTITUTIONS, DEPOSITORIES AND BROKER/DEALERS.
157.05	SAFEKEEPING AND CUSTODY.
157.06	PERMITTED INVESTMENTS.
157.07	DERIVATIVES.
157.08	COLLATERAL.
157.09	REPORTING.
157.10	COMMITTEE MEETINGS.
157.11	ACKNOWLEDGMENT.

157.01 SCOPE.

(a) The Council hereby directs that the investing authority of this public entity shall reside with the Director of Finance in accordance with this Investment Policy. This Policy is designed to cover all moneys under the control of the Director of Finance and those that comprise the core investment portfolio.

(b) This policy applies to the investment of all funds, excluding the investment of employees' retirement funds. Except for cash in certain restricted and special funds, the Village will consolidate cash and reserve balances from all funds to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping and administration. Notwithstanding the policies detailed below, ORC Ch. 135 will be adhered to at all times.

(Res. 26-96. Passed 9-17-96; Ord. 43-2007. Passed 11-6-07.)

157.02 GENERAL OBJECTIVES.

The primary objectives, in priority order, of investment activities shall be safety, liquidity and yield:

- (a) Safety. Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.
 - (1) Credit risk. The Village will minimize credit risk, which is the risk of loss due to the failure of the security issuer or backer, by:
 - A. Limiting investments to the types of securities permitted by Section 157.06.
 - B. Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with which the Village will do business in accordance with Section 157.04.
 - C. Diversifying the investment portfolio so that the impact of potential losses from any one type of security or from any one individual issuer will be minimized.

*Cross reference—Uniform Depository Act - see ORC Chap. 135

- (2) Interest Rate Risk. The Village will minimize interest rate risk, which is the risk that the market value of securities in the portfolio will fall due to changes in market interest rates, by:
- A. Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity.
 - B. Investing operating funds primarily in shorter-term securities, money market mutual funds, or similar investment pools and limiting the average maturity of the portfolio in accordance with this policy.
- (b) Liquidity. The investment portfolios shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be reasonable be anticipated, the portfolio should consist largely of securities with an active secondary, or resale, markets (dynamic liquidity). Alternatively, a portion of the portfolio may be placed in money market mutual funds or local government investment pools which offer same-day liquidity for short-term funds.
- (c) Yield. The investment portfolio shall be designed with the objectives of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments are limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall generally be held until maturity with the following exceptions:
- (1) A security with declining credit may be sold early to minimize loss of principal.
 - (2) A security may be sold in order to realize a capital gain.
 - (3) A security swap would improve the quality, yield or target duration in the portfolio.
 - (4) Liquidity needs of the portfolio require that the security be sold.

Such transactions may be referred to as a "sale and purchase" or a "swap." For purposes of this section, "redeemed" shall also mean "called" in the case of a callable security.

(Ord. 43-2007. Passed 11-6-07.)

157.03 STANDARDS OF CARE.

(a) Prudence.

- (1) The standard of prudence to be used by the investment officials in managing the Village's investment portfolio shall be the 'prudent person' standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy, and exercising due

diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and sale of securities are carried out in accordance with the terms of this policy.

- (2) The 'prudent person' standard states that, "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

(b) Ethics and Conflicts of Interest. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the Village.

(c) Delegation of Authority. Authority to manage the investment program is granted to the Director of Finance, hereinafter referred to as Investment Officer, and derived from ORC 153.14. Responsibility for the operation of the investment program is hereby delegated to the Investment Officer, who shall act in accordance with established written procedures and internal controls for the operation of the investment program consistent with this investment policy. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the investment officer. The investment officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials

(Ord. 43-2007. Passed 11-6-07.)

157.04 AUTHORIZED FINANCIAL INSTITUTIONS, DEPOSITORIES AND BROKER/DEALERS.

(a) Authorized Financial Institutions, Depositories and Broker/Dealers. A list of authorized institutions and dealers shall be maintained by the investing authority. Additions and deletions to this list shall be made when deemed in the best interest of the investing authority. All investments, except for investments in securities described in ORC 135.14(B)(5) and (6) and for investments by a municipal corporation in the issues of such municipal corporation, shall be made only through a member of the National Association of Securities Dealers, through a bank, savings bank, or savings and loan association regulated by the Superintendent of Financial Institutions, or through an institution regulated by the Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

(b) Repurchase Agreements. Repurchase agreements shall be transacted only through banks located within the State of Ohio with which the Director of Finance has signed a Master Repurchase Agreement as required in ORC Ch. 135.

(c) Certificates of Deposit. Certificates of deposit shall be transacted through commercial banks or savings and loans with FDIC coverage which are located within the State of Ohio and qualify as eligible financial institutions under ORC Ch. 135.

(Res. 26-96. Passed 9-17-96; Ord. 43-2007. Passed 11-6-07.)

157.05 SAFEKEEPING AND CUSTODY.

(a) Delivery Versus Payment. All trades of marketable securities will be executed by delivery versus payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to the release of funds.

(b) Safekeeping. The investing authority shall be responsible for the safekeeping of investment assets. Securities purchased for the Municipality will be held in safekeeping by a qualified trustee (hereinafter referred to as the "Custodian"), as provided in ORC 135.37. Securities held in safekeeping by the Custodian shall be evidenced by a monthly statement describing such securities. The Custodian may safe keep securities in Federal Reserve Bank book entry form, Depository Trust Company book entry form in the account of the Custodian or the Custodian's correspondent bank, or non-book entry (physical) securities held by the Custodian or the Custodian's correspondent bank. The Custodian shall annually provide a copy of their most recent report on internal controls (Statement of Auditing Standards No. 70, or SAS 70).

(c) Internal Controls. The investment officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the Village are protected from loss, theft or misuse. Details of the internal controls system shall be documented in an investment procedures manual and shall be reviewed and updated annually. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived, and (2) the valuation of costs and benefits requires estimates and judgment of management. The internal controls structure shall address the following points:

- (1) Control of collusion.
- (2) Separation of transaction authority from accounting and record keeping.
- (3) Custodial safekeeping.
- (4) Avoidance of physical delivery of securities.
- (5) Clear delegation of authority to subordinate staff members.

- (6) Written confirmation of transactions for investments and wire transfers.

(Ord. 43-2007. Passed 11-6-07.)

157.06 PERMITTED INVESTMENTS.

The Director of Finance may invest in any instrument or security authorized in ORC Ch. 135, as amended. A copy of the appropriate Ohio Revised Code section will be kept with this policy. (Res. 26-96. Passed 9-17-96; Ord. 43-2007. Passed 11-6-07.)

157.07 DERIVATIVES.

Investments in derivatives and in stripped principal or interest obligations, of eligible obligations are strictly prohibited. A "derivative" means a financial instrument or contract or obligation whose value or return is based upon or linked to another asset or index, or both, separate from the financial instrument, contract, or obligation itself. Additionally, any security, obligation, trust account or instrument that is created from an obligation of a federal agency or instrumentality or is created from both is considered a derivative instrument. (Res. 26-96. Passed 9-17-96; Ord. 43-2007. Passed 11-6-07.)

157.08 COLLATERAL.

All investments and deposits shall be collateralized pursuant to ORC Ch. 135. (Res. 26-96. Passed 9-17-96; Ord. 43-2007. Passed 11-6-07.)

157.09 REPORTING.

(a) Inventory. The investing authority shall maintain an inventory of all obligations and securities acquired by the investing authority. The inventory shall include the following:

- (1) Description of the security;
- (2) Type;
- (3) Security cost;
- (4) Par, or face value, of the security;
- (5) Maturity date;
- (6) Settlement date; and
- (7) Coupon rate.

(b) Reporting. The investing authority shall maintain a monthly portfolio report and issue a portfolio report at least quarterly which details the following:

- (1) All transactions during the period;
- (2) Income received and expenses paid;
- (3) Unrealized gain or loss;
- (4) Security purchases and sales;
- (5) Purchase yield of each security; and

(6) The average-weighted yield and average-weighted maturity of the portfolio.

(c) Authority. The portfolio report shall state the names of any persons or entity effecting transactions on behalf of the investing authority.

(Ord. 15-98. Passed 5-5-98; Ord. 43-2007. Passed 11-6-07.)

157.10 COMMITTEE MEETINGS.

The Council or a designated Investment Advisory Committee will meet at least once every quarter to review the portfolio in terms of security, type, risk and investment return. The Director of Finance shall be responsible for maintaining records of all investments and deposits and preparing reports that summarize recent market conditions, economic conditions, economic developments and anticipated investments for the Council.

(Res. 26-96. Passed 9-17-96; Ord. 43-2007. Passed 11-6-07.)

157.11 ACKNOWLEDGMENT.

Pursuant to ORC Ch. 135, all entities conducting business and all brokers, dealers, and financial institutions initiating transactions with the Municipality by giving advice or making investment policy, or executing transactions initiated by the Municipality, must acknowledge their agreement to abide by this investment policy's content.

(Res. 26-96. Passed 9-17-96; Ord. 43-2007. Passed 11-6-07.)

CHAPTER 159 RULES OF PROCEDURE FOR BOARDS AND COMMISSIONS*

159.01	PREAMBLE.
159.02	MEETINGS.
159.03	POWER AND DUTIES OF CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY.
159.04	ORDER AND CONDUCT OF MEETINGS.
159.05	PROCEDURE FOR PUBLIC HEARINGS.
159.06	ACTIONS.
159.07	VOTING.
159.08	APPLICATIONS.
159.09	CONFLICT OF INTEREST AND ETHICS.
159.10	EX PARTE CONTACT.

159.01 PREAMBLE.

The Commission/Board is established in accordance with the authority of the New Albany Charter and/or ordinances passed by the New Albany Village Council. No provision or section of these rules which conflicts with, or restricts those rights provided by the Constitution of the United States, the Ohio Constitution or the New Albany Charter shall have any force or effect.

These rules and regulations shall control the conduct of all New Albany Commission/Board meetings. The latest revised edition of Robert's Rules of Order shall control where no provision is made in these rules and regulations. Technical violations of these rules or parliamentary procedure shall not invalidate Board/Commission actions.

These rules and regulations may be temporarily suspended in whole or in part at any meeting of the Commission/Board by a two-thirds (2/3) vote of those members in attendance, provided a quorum exists.

(Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.02 MEETINGS.

(a) Organizational Meeting/Officers. An organizational meeting shall be held annually in March for the purpose of:

- (1) Swearing in all members;
- (2) Electing from its current membership a chairperson, vice-chairperson and secretary;
- (3) To establish the date, time and place of a regular meeting; and
- (4) To conduct such other business as shall come before the Commission/Board.

Should the office of chairperson, vice-chairperson or secretary become vacant, the Commission/Board shall elect a successor from its membership within the next two (2) regular meetings when all Commission/Board members are present. The Commission/Board may elect an interim officer, if necessary.

*Cross reference—Boards and Commissions generally - see CHTR. Art. X

(b) Regular and Special Meetings. The Commission/Board shall hold regular meetings as established by subsection (a) hereof. Special meetings, informal reviews and work sessions may be called as needed by the chairperson, provided written notice is given to all members at least seventy-two (72) hours prior thereto, which notice shall set forth the time, place and purpose of the meeting.

The regular meeting schedule of the Commission/Board shall be provided to the Village Council Clerk or applicable department designee immediately after the organizational meeting. The regular meeting schedule shall be posted at the Village Administrative offices and the New Albany Village website. Notice of the time, place and purpose of any special meeting, shall be provided (written or personal contact), at least twenty-four (24) hours in advance to each member of the Commission/Board. The same shall be posted, in accordance with ORC Ch. 121, in the Village Administrative office and the New Albany Village website as soon as practical.

Pursuant to Section 10.01 of the New Albany Village Charter and ORC Ch. 121, except as otherwise authorized by the laws of the State of Ohio, all meetings of the Commission/Board shall be open to the public.

(c) Quorum. A majority of the members of the Commission/Board shall constitute a quorum for the transaction of business.

(d) Attendance of Members. Attendance of all current serving members of the Commission/Board is encouraged, and three (3) consecutive absences by any member or four (4) absences in any year shall be considered a forfeiture of the membership to the Commission/Board. The forfeiture would occur regardless of the reason for the absences. Attendance would be defined as presence during the hearing and consideration of all applications without a conflict of interest before that Commission/Board at that meeting. The applicable department designee would then notify the Clerk of Council so that she can inform Council that a new appointment needs to be made.

(e) Attendance of Staff. The Village Administrator or designee shall determine, in conjunction with the chairperson, whether Village Staff representatives or employees are necessary to provide support and guidance to the Commission/Board at the meetings. The appointed staff representative or employee shall provide professional and clerical assistance as needed and shall prepare a report prior to hearing as required by the Commission/Board.

The Village Attorney may attend meetings upon a request of the chairperson to the Village Administrator or designee, or as deemed necessary solely by the Administrator, for purposes of providing guidance and advice on legal issues which may arise.

(f) Attendance of Applicant. The applicant, or person empowered to act on behalf of the applicant with authority to bind the applicant to conditions, shall be notified and invited to attend meetings at which the applicant's case is to be heard or discussed. The Commission/Board may

dismiss without a hearing, or table action on an application before it at which the applicant or applicant's representative is not present at the time the matter is called pursuant to the agenda and order of business.

(Ord. 43-97. Passed 10-21-97; Ord. 6-99. Passed 1-26-99; Ord. 52-2004. Passed 11-23-04; Ord. 16-2007. Passed 4-17-07)

159.03 POWER AND DUTIES OF CHAIRPERSON, VICE- CHAIRPERSON, AND SECRETARY.

Nothing in these rules shall deprive the chairperson, vice-chairperson or secretary of their duties and obligations as a voting member of the Commission/Board.

- (a) Chairperson. The chairperson shall preside over the Commission/Board and control the conduct and order of meetings, and sign on behalf of the Commission/Board all recommendations, approvals and other official actions arising from matters coming before the Commission/Board.
- (b) Vice-Chairperson. The vice-chairperson shall preside over the Commission/Board and carry out the duties of the chairperson in the absence of the chairperson.
- (c) Secretary. The secretary or when a staff/consultant clerk is not provided shall prepare the minutes of each meeting/work session of the Commission/Board. Minutes shall contain sufficient facts and information of the meeting to properly inform the public of matters discussed and action taken, which may include a complete restatement of all motions and recording of votes, complete statement of the conditions or recommendations made on any action, and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records for each meeting/work session shall be filed in the Clerk of Council's office or in the applicable liaison department promptly after each meeting/work session. The "liaison department" shall be the department and staff designated by the Village Administrator to facilitate the Board's activities.

(Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.04 ORDER AND CONDUCT OF MEETINGS.

- (a) Agenda. Staff shall prepare and distribute an agenda for each meeting which shall be available to each member for pick-up at the Village Hall during business hours at least forty-eight (48) hours prior to each regular meeting of the Commission/Board, or five (5) days for the Board of Zoning Appeals, and twenty-four (24) hours prior to any special meeting.

The agenda for all meetings shall contain:

- (1) A listing, by descriptive words and case number, if any, of each public hearing to be considered.
- (2) A listing, by descriptive words and case number, if any, of each appeal to be considered.
- (3) A listing of any other item of known business.

(b) Order of Business. The presiding officer shall conduct Commission/Board meetings in the order outlined in the agenda, which order shall be as follows:

- (1) Call meeting to order.
- (2) Roll Call.
- (3) Approve minutes of prior meeting.
- (4) Additions or corrections to agenda.
- (5) Hearing of Visitors.
- (6) Acceptance of staff reports and related documents into the record.
- (7) Public Hearings, including presentation of staff report and recommendations.
- (8) Other Business.
- (9) Poll members for comment.
- (10) Adjournment.

(Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.05 PROCEDURE FOR PUBLIC HEARINGS.

(a) Hearings Informal. All hearings conducted by the Commission/Board, with the exception of the Board of Zoning Appeals, Board of Construction Appeals, and the Personnel Appeals Board are intended to be informal. Strict rules of evidence shall not apply and procedures may vary as necessary to help insure the applicant a fair hearing. The purpose of a hearing is to bring out sufficient information to permit the Commission/Board to arrive at a just decision.

(b) Procedures for Public Hearings. All hearings shall be conducted in the following manner:

- (1) The presiding officer shall call each case set for hearing separately.
- (2) The presiding officer, or a designated Commission/Board member or Village staff representative or employee, shall briefly describe the background of the item(s) under consideration pursuant to the application and the particular relief sought by the applicant.
- (3) At hearings before the Board of Zoning Appeals, Personnel Appeals Board, or at any other board or commission where such board or commission is acting in a quasi-judicial capacity, any person who intends to present evidence in favor of or against the matter under consideration shall be administered the following oath by the presiding officer:

"Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?"

- (4) The applicant shall make an initial presentation, not to exceed fifteen (15) minutes, of evidence which may include oral testimony, affidavits, maps, drawings or photographs, and any other documents or material relevant to the purpose of the hearing. Applicants shall be expected to present evidence sufficient for the Commission/Board to grant the particular relief requested.

- (5) Other persons in attendance may offer similar counter-testimony if it is relevant to the issue at hand. All persons presenting evidence or speaking against the application shall identify themselves by name and address. The chairperson may set time limitations for speakers, which collectively shall not exceed twenty (20) minutes.
 - (6) The applicant shall be given five (5) minutes to rebut evidence offered in opposition to the applicant's case and to give a final presentation to the Commission/Board.
 - (7) After the presentation of evidence and opinions by the applicant and others in attendance, the Commission/Board may ask questions of any person in attendance that may assist them.
 - (8) In all instances where the Commission/Board seeks to impose reasonable conditions and/or restrictions upon an application and such conditions/restrictions are permitted by law, the presiding officer shall inquire of the applicant or their designee as to whether or not said conditions and/or restrictions are acceptable. Should the condition and/or restriction not be acceptable by the applicant, or their designee, the application, as originally submitted, shall be voted upon by the Commission/Board.
- (Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.06 ACTIONS.

- (a) Form. All decisions, findings or recommendations by the Commission/Board shall be in written entry form.
- (b) Consideration of Application by Commission/Board. After receiving the application, staff report and any additional information and testimony at the meeting, the Commission/Board shall make its findings, which action shall be final except as provided in subsection (c) hereof. The Commission/Board may table an application if there is insufficient time in which to review new information, or with the consent of the applicant or its designee.
- (c) Reconsideration of Commission/Board Action. The Commission/Board may reconsider any action it has taken upon its own motion for good cause shown.

Any action denying or disapproving an application, other than one involving an incomplete application, may be reconsidered no later than the second regular meeting after the original action from which reconsideration is being requested was taken, only if the applicant or its designee clearly demonstrates one of the following:

- (1) Circumstances affecting the subject property or item under consideration have substantially changed; or
 - (2) New information is available that could not with reasonable diligence have been presented at a previous hearing.
- (Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.07 VOTING.

A simple majority vote of a quorum of the Commission/Board is required to take action on any issue. Voting shall ordinarily be by voice vote, provided however that a roll call vote shall be required if requested by any voting member present. A member voting "no" shall indicate their reasons for dissent.

(Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.08 APPLICATIONS.

Submittal requirements and fees are as outlined in the Zoning Code, the Codified Ordinances of the Village, and policies set by the administration. Applications not deemed to be complete in accordance with the Zoning Code, Village Codified Ordinances and administrative policies or for which all fees have not been paid in full shall not be considered.

An applicant may, in writing or during a meeting, withdraw an application at any time or may request to table or postpone further action. Such requests shall require approval by a majority of the Commission/Board members in attendance at the meeting. If the request is made verbally during a meeting, the applicant shall submit the request in writing to the liaison department within seven (7) days.

(Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.09 CONFLICT OF INTEREST AND ETHICS.

Unless otherwise provided in the New Albany Charter or by Council, the laws of the State of Ohio, pertaining to conflicts of interest, criminal misbehavior and ethics shall apply to all Commission/Board members. Any member of a Commission/Board who feels that they have a conflict of interest on any matter that is on the agenda shall voluntarily excuse himself or herself and refrain from discussion on that matter.

(Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

159.10 EX PARTE CONTACT.

Commission and Board members should avoid ex-parte contact with the applicant or representative. However, if the Village Administrator or his designee deems that such contacts are reasonable and necessary, any such contacts and communications shall take place with a staff member present. If the applicant persists in offering ex-parte contact except in the circumstances under which the Village Administrator has authorized such contact, the member should report these contacts.

(Ord. 43-97. Passed 10-21-97; Ord. 16-2007. Passed 4-17-07.)

CHAPTER 161 INDIGENT BURIAL EXPENSES.

161.01 FUNERAL DIRECTOR'S STATEMENT.
161.02 PAYMENT OF EXPENSES.

161.01 FUNERAL DIRECTOR'S STATEMENT.

Any funeral director burying and/or cremating the dead body of any indigent person whereby payment is required by any state statute providing for payment by the City, shall submit to the City Manager or designee a sworn statement documenting contributions received from the decedent's friends, relatives or from any other sources, including but not limited to insurance, real or personal property or of anything of value, which may be applied to the burial expense of such person, and containing an itemized statement of the burial expense of such person.

(Ord. O-19-2011. Passed 9-20-11.)

161.02 PAYMENT OF EXPENSES.

Upon the submission of such sworn statement and appropriate application for payment, to and approved by the City Manager or designee, as being in compliance with the requirements of this chapter, there shall be paid to such funeral director for the burial and/or cremation of such person an amount not to exceed seven hundred fifty dollars (\$750.00). Such payment shall include the cemetery and/or crematory charges, less the amount of anything of value which may be applied to such funeral expense as shown on the sworn statement referenced in Section 161.01 herein.

(Ord. O-19-2011. Passed 9-20-11.)

TITLE SEVEN

JUDICIAL

Chapter 171 Mayor's Court

PROOFS

CHAPTER 171 MAYOR'S COURT*

171.01	POSITION OF MAGISTRATE CREATED.
171.02	COMPENSATION OF ACTING MAYOR.
171.03	CLERK OF COURTS.
171.04	DEPARTMENT OF PROBATION/CRISIS INTERVENTION.

***Editor's note**—The Mayor has jurisdiction to hear and determine any prosecution for the violation of a Municipal ordinance, and has jurisdiction in all criminal causes involving moving traffic violations occurring on State highways located within the corporate limits, subject to the right of the defendant to trial by jury and before an impartial magistrate.

ORC 2945.17 provides that an accused has a right to be tried by a jury at any trial in any court for the violation of any Ohio statute or of any Municipal ordinance, except in cases in which the penalty involved does not exceed a fine of one hundred dollars (\$100.00). ORC 2937.08 and Criminal Rule 23(A) provide that if the court in which a defendant is charged with an offense is not a court of record (the Mayor's Court), and the charge is such that a right to a jury trial exists, such matter shall not be tried before him and shall be transferred to a court of record in the County if the defendant:

- (a) Does not waive his right to trial by jury in a serious offense case for which the penalty established by laws includes confinement for more than six (6) months, or
- (b) Demands a jury trial in a petty offense case in which the penalty prescribed is a fine greater than one hundred dollars (\$100.00) and/or imprisonment for not more than six (6) months. "Such demand must be in writing and filed with the clerk of court not less than ten (10) days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as provided in this subdivision is a complete waiver of the right thereto."

In *Ward v. Village of Monroeville, Ohio*, 93 S. Ct. 80 (1972), the United States Supreme Court held that where the mayor before whom the defendant was compelled to stand trial was responsible for municipal finances and the mayor's court provided a substantial portion of municipal revenues, defendant was denied a trial before a disinterested and impartial magistrate as guaranteed by the due process clause of the United States Constitution.

The Supreme Court of Ohio has adopted the "Ohio Traffic Rules" which prescribe the procedure to be followed in the Mayor's Court in traffic cases. Rule 9(A) thereof states the jury demand shall be made pursuant to Criminal Rule 23 referred to above. Rule 9(B) sets forth the conditions under which the Mayor may hear a traffic case incorporating therein the holding in *Ward v. Village of Monroeville* as further interpreted in *i*, 35 Ohio St. 2d 79 (1973): "Where, in a mayor's court, a defendant is entitled to a jury trial and a jury demand is made pursuant to Criminal Rule 23, the Mayor shall transfer the case pursuant to subdivision (C). If a jury demand is not made pursuant to Criminal Rule 23, and (or?) the defendant waives his right to jury trial in writing, a mayor may try the case if (1) his compensation as a judge is not directly dependent upon criminal case convictions, or (2) he is not the chief executive and administrative officer of the municipality and as such responsible for the financial condition of the municipality. Guilty and no contest pleas may be taken by any mayor including mayors whose compensation as a judge is directly dependent upon criminal case convictions and mayors who as chief executive and administrative officer of the municipality are responsible for the financial condition of the municipality."

The procedure for transferring a case to a court of record is set forth in Rule 9(C): "Where a transfer is required, the mayor's court shall make a written order directing the defendant to appear at the transferee court, continuing the same bail, if any, and making appearance before the transferee court a condition of bail, if any. Upon transfer, the mayor's court shall transmit to the clerk of the transferee court the ticket and all other papers in the case, and any bail taken in the case. Upon receipt of such papers the clerk of the transferee court shall set the case for trial and shall notify the defendant by ordinary mail of his trial date."

Rule 13 provides that a court shall establish a traffic violation bureau and specifies certain restrictions as to the designated offenses and schedule of fines to be accepted as waiver payment in lieu of court appearance.

Cross reference—Disposition of fines and costs - see ORC 733.40

Mayor's powers and duties - see ORC 1905.20 et seq.

Trial - see ORC Ch. 2938

Notification to Director of liquor law convictions - see ORC 4301.991

Record of traffic violations - see ORC 4513.37

171.01 POSITION OF MAGISTRATE CREATED.

The position of Magistrate is hereby created pursuant to ORC 1905.05. Such Magistrate shall meet all the qualifications of ORC 1905.05 and have such power and duties as is authorized by that section.

(Ord. 87-90. Passed 1-22-91.)

171.02 COMPENSATION OF ACTING MAYOR.

The Finance Director is hereby authorized to pay the Council President Pro Tempore for presiding over Mayor's Court, in the same amount as he receives for attending Council meetings.

(Ord. 26-90. Passed 5-15-90.)

171.03 CLERK OF COURTS.

(a) The Clerk of Courts and Deputy Clerk of Courts shall carry out their duties associated with Mayor's Court under the general direction of the Mayor in his/her jurisdiction as chief official of Mayor's Court and the direct supervision of the Administrator.

(b) Persons filling the Clerk of Courts and Deputy Clerk of Courts positions who also work in other departments carrying out duties not related to Mayor's Court while in the performance of their jobs shall be supervised by the department head of the department to which they are assigned.

(Ord. 51-92. Passed 9-15-92.)

171.04 DEPARTMENT OF PROBATION/CRISIS INTERVENTION.

(a) The Department of Probation/Crisis Intervention shall carry out all its duties associated with Mayor's Court under general direction of the Mayor in his/her jurisdiction as chief judicial official of Mayor's Court and the direct supervision of the Administrator.

(b) Persons filling the Probation/Crisis Intervention positions who also work in other departments carrying out duties not related to Mayor's Court while in the performance of their jobs shall be supervised by the department head of the department to which they are assigned.

(Ord. 25-96. Passed 4-16-96.)

TITLE NINE

TAXATION

Chapter 181	Income Tax
Chapter 183	Income Tax Prior to 2016
Chapter 184	Transient Occupancy Tax
Chapter 185	Motor Vehicle License Tax
Chapter 187	Funds

PROOFS

CHAPTER 181 INCOME TAX*

181.01	AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.
181.02	EFFECTIVE DATE.
181.03	DEFINITIONS.
181.04	INCOME SUBJECT TO TAX FOR INDIVIDUALS.
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181.98	SAVINGS CLAUSE.
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181.01 AUTHORITY TO LEVY TAX; PURPOSES OF TAX; RATE.

(a) Authority to Levy Tax.

- (1) The tax on income and the withholding tax established by this Chapter 181 are authorized by Article XVIII, Section 3 of the Ohio Constitution. The tax on income and the withholding tax established by this Chapter 181 are deemed to be levied in accordance with, and to be consistent with, the provisions and limitations of ORC 718. This Chapter is deemed to incorporate the provisions of ORC 718.
- (2) 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 City of New Albany (City) shall tax income at a uniform rate. The tax is levied on Municipal Taxable Income, as defined herein.

(b) Purposes of Tax; Rate.

- (1) To provide funds for the purposes of general municipal operations, maintenance, new equipment, service and facilities, capital improvements and payment of principal and interest on municipal debt.
- (2) The annual tax is levied at a rate of two percent (2.0%) per annum. The tax is levied at a uniform rate on all persons residing in and/or earning and/or receiving income in the City.

***Editor's note**—Ord. O-35-2015, § 1(Exh. A), adopted Nov. 3, 2015, applies to municipal taxable years beginning on or after Jan. 1, 2016. For taxable years prior to Jan. 1, 2016, the provisions of Ch. 183 shall apply.

The tax is levied on Municipal Taxable Income including qualifying wages, commissions and other compensation, and on net profits as hereinafter provided in Chapter 181.03 of this Ordinance, and other sections as they may apply.

(c) Allocation of Funds. Unless otherwise provided by Council, the funds collected under the provisions of this chapter shall be applied for the following purpose and in the following order, to wit:

- (1) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this chapter and enforcing the provisions hereof;
- (2) Allocations required by Chapter 187;
- (3) Two percent (2%) to the Parks Improvement Fund;
- (4) Ten percent (10%) to the Capital Improvement Fund;
- (5) The remainder to be deposited into the General Fund for the purpose of paying the cost of General Municipal Operations.

(d) Statement of Procedural History; State Mandated Changes to Municipal Income Tax.

- (1) Significant and wide-ranging amendments to ORC 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 ORC 718 in order to have the authority to impose, enforce, administer and collect a municipal income tax.
- (2) As mandated by H.B. 5, municipal income tax Ordinance 2015-35, effective January 1, 2016, comprehensively amends Chapter 183 in accordance with the provisions of ORC 718 to allow the City to continue the income tax and withholding tax administration and collection efforts on behalf of the City.

(Ord. O-35-2015. Passed 11-3-15.)

181.02 EFFECTIVE DATE.

(a) Ordinance 2015-35, effective January 1, 2016, and corresponding changes to ORC 718, apply to municipal taxable years beginning on or after January 1, 2016. All provisions of this Chapter 181 apply to taxable years beginning 2016 and succeeding taxable years.

(b) Ordinance 2015-35 does not repeal the existing sections of Chapter 183 for any taxable year prior to 2016, but rather amends Chapter 183 effective January 1, 2016. For municipal taxable years beginning before January 1, 2016, the City shall continue to administer, audit, and enforce the income tax of the City under ORC 718 and ordinances and resolutions of the City as that chapter and those ordinances and resolutions existed before January 1, 2016.

(Ord. O-35-2015. Passed 11-3-15.)

State law references—Uncodified Section 2 of Am Sub HB 5, passed Dec 2014; ORC 718.04.

181.03 DEFINITIONS.

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 ORC 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 ORC 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 ORC Title LVII.

For purposes of this Section, the singular shall include the plural, and the masculine shall include the feminine and the gender-neutral.

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 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 five percent (5%) of intangible income deducted under division (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 (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 (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 ORC 4313.02;
- H. 1. Except as limited by divisions (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 (5) 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 (1)H. of this section to offset qualifying wages.
- 3. (i) 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 fifty percent (50%) of the amount of the deduction otherwise allowed by division (1)H.1. of this section.
(ii) 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 (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 (1)H. of this section.
- 5. Nothing in division (1)H.3.(i) 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 (1)H.3.(i) 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 (1)H.3.(i) 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 (1)H.3.(i) 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 Section 181.06(c)(4)C.2. 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 Section 181.06(c)(5)C.2. of this Chapter.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (47)B. of this section, is not a publicly traded partnership that has made the election described in division (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 (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 Section 181.09(f)(2)B. of this Chapter;
3. A Tax Administrator's denial of a taxpayer's request for use of an alternative apportionment method, issued under Section 181.06(b)(2)B. of this Chapter; or
4. A Tax Administrator's requirement for a taxpayer to use an alternative apportionment method, issued under Section 181.06(b)(2)C. of this Chapter.
5. For purposes of division (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 Section 181.18 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 Section 181.09(f)(2)C. of this Chapter, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a Tax Administra-

tor'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 (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 (3) 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 ORC 3772.01.
- (7) "CERTIFIED MAIL," "EXPRESS MAIL," "UNITED STATES MAIL," "POSTAL SERVICE," and similar terms include any delivery service authorized pursuant to ORC 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 (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

- (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 ORC 3501.28 or 3501.36 to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) for the taxable year. Such compensation in excess of one thousand dollars (\$1,000.00) 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 ORC 5727.24 or 5727.30. Division (11)I. of this section does not apply for purposes of ORC Ch. 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 (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 eighteen (18) years of age.
- P.
1. Except as provided in divisions (11)P.2., 3., and 4. of this section, qualifying wages described in Section 181.05(b)(2)A. or (5) of this Chapter to the extent the qualifying wages are not subject to withholding for the City under either of those divisions.
 2. The exemption provided in division (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 (11)P.1. of this section does not apply to qualifying wages that an employer elects to withhold under Section 181.05(b)(4)B. of this Chapter
 4. The exemption provided in division (11)P.1. of this section does not apply to qualifying wages if both of the following conditions apply:
 - (i) For qualifying wages described in Section 181.05(b)(2)A. 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 Section 181.05(b)(5) 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;
 - (ii) The employee receives a refund of the tax described in division (11)P.4.(i) of this section on the basis of the employee not performing services in that municipal corporation.
- Q.
1. Except as provided in division (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 City on not more than twenty (20) days in a taxable year.
 2. The exemption provided in division (11)Q.1. of this section does not apply under either of the following circumstances:
 - (i) The individual's base of operation is located in the City.
 - (ii) 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 (11)Q.2.(ii) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in Section 181.05(b) of this Chapter.
 3. Compensation to which division (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 (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 ORC 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 (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 (23)D. of this section.
2. For the purposes of division (14)A.1. of this section:
- (i) 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 (5) 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 (14)A.4. of this section;

- (ii) 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 (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 11N. or division 14E. 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 City, 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 Section 181.08(a) 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 ORC Ch. 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 ORC Ch. 1705 or under the laws of another state.
- (18) "LOCAL BOARD OF TAX REVIEW" and "BOARD OF TAX REVIEW" means the entity created under Section 181.18 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 ORC 71 5.691, 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 situated to the City under Section 181.06(b) of this Chapter, and further reduced by any pre-2017 net operating loss carryforward available to the person for the City.
 2. (i) For an individual who is a resident of a City other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (20)B. of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.

(ii) 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 ORC 718.03.
 3. For an individual who is a nonresident of the City, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situated to the City under Section 181.06(b) of this Chapter, then reduced as provided in division (20)B. of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the City.

- B. In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (20)A.2(1) or 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) "CITY" means the City of New Albany. If this term is capitalized in the Ordinance it is referring to the City of New Albany. If not capitalized it refers to a municipal corporation other than the City of New Albany.
- (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 this division, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (1)H. of this section.
- C. For the purposes of this chapter, and notwithstanding division (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 notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (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 (5) period beginning with the first taxable year of the initial election. The election continues to be binding for each subsequent five-year (5) period unless the taxpayer elects to discontinue filing municipal income tax returns as a C corporation for municipal purposes under division (D)(iv) 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 (5) election period in effect under division (D)(iii) of this section. The election to discontinue filing as a C corporation is binding for a five-year (5) period beginning with the first taxable year of the election and continues to be binding for each subsequent five-year (5) 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 (5) 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 (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 City.
- (25) "OHIO BUSINESS GATEWAY" means the online computer network system, created under ORC 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 of 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 City that was adopted by the City before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such City 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 ORC 5747.01, 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 (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 (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:
 - (i) 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;
 - (ii) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;
 - (iii) For no succeeding taxable year will the amount constitute wages; and
 - (iv) For any taxable year the amount has not otherwise been added to wages pursuant to either division (34)B. of this section or ORC 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 fifty percent (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 fifty percent (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 (35)D. of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty percent (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 (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, "twenty percent (20%)" shall be substituted for "5 percent (5%)" wherever "5 percent (5%)" appears in section 1563(e) of the Internal Revenue Code.
- (37) "RESIDENT" means an individual who is domiciled in the City as determined under Section 181.042 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 five hundred thousand dollars (\$500,000.00) 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 (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:
- (i) The limited liability company's single member is also a limited liability company.
 - (ii) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five (5) years before January 1, 2004.
 - (iii) 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 division (L) of ORC 718.01 as this section existed on December 31, 2004.
 - (iv) 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.

- (v) 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 (47)B.1.(iii) 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 four hundred thousand dollars (\$400,00.00).
- (48) "TAXPAYERS' RIGHTS AND RESPONSIBILITIES" means the rights provided to taxpayers in ORC 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 City, and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with ORC Ch. 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 ORC 3770.21.
- (50) "VIDEO LOTTERY TERMINAL SALES AGENT" means a lottery sales agent licensed under ORC Ch. 3770 to conduct video lottery terminals on behalf of the state pursuant to ORC 3770.21.

(Ord. O-35-2015. Passed 11-3-15.)

State law reference—Most definitions can be found in ORC 718.01

181.04 INCOME SUBJECT TO TAX FOR INDIVIDUALS.

(a) Determining Municipal Taxable Income for Individuals.

(1) "Municipal Taxable Income" for a resident of the City is calculated as follows:

- A. "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 division (20)B. of Section 181.03 of this Chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".
 - 1. "Income" is defined in Section 181.03 (14) of this Chapter.
 - (i) "Qualifying Wages" is defined in Section 181.03(34).
 - (ii) "Net profit" is included in "income", and is defined in Section 181.03 (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 division (1)(H) of Section 181.03. Treatment of net profits received by an individual taxpayer from rental real estate is provided in Section 181.06(b)(4).
 - (iii) Section 181.03(14) provides the following: offsetting and net operating loss carryforward treatment in (14)A.2.(i); resident's distributive share of net profit from pass through entity treatment in (14)A.2.(ii); treatment of S

Corporation distributive share of net profit in the hands of the shareholder in (14)A.3.; restriction of amount of loss permitted to be carried forward for use by taxpayer in a subsequent taxable year in (14)(A)(iv).

- (iv) "Pass Through Entity" is defined in Section 181.03(27).
 - 2. "Exempt Income" is defined in Section 181.03 (11) of this Chapter.
 - 3. Allowable employee business expense deduction is described in (20)B. of Section 181.03 of this Chapter, and is subject to the limitations provided in that section.
 - 4. "Pre-2017 Net Operating Loss Carryforward" is defined in Section 181.03 (32) of this Chapter
- (2) "Municipal Taxable Income" for a nonresident of the City is calculated as follows:
- A. "Income" reduced by "Exempt Income" to the extent such exempt income is otherwise included in income, as applicable, apportioned or sitused to the City as provided in Section 181.06(b) of this Chapter, reduced by allowable employee business expense deduction as found in (20)B. of Section 181.03 of this Chapter, further reduced by any "Pre-2017 Net Operating Loss Carryforward" equals "Municipal Taxable Income".
 - 1. "Income" is defined in Section 181.03(14) of this Chapter.
 - (i) "Qualifying Wages" is defined in Section 181.03(34).
 - (ii) "Net profit" is included in "income", and is defined in Section 181.03(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 division (1)H. of Section 181.03. "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.
 - (iii) "Pass Through Entity" is defined in Section 181.03(27).
- (2) "Exempt Income" is defined in Section 181.03(11) of this Chapter.
- (3) "Apportioned or sitused to the City as provided in Section 181.06(b) of this Chapter" includes the apportionment of net profit income attributable to work done or services performed in the City. Treatment of net profits received by an individual taxpayer from rental real estate is provided in Section 181.06(b)(4).
- (4) "Allowable employee business expense deduction" as described in (20)B. of Section 181.03 of this Chapter, is subject to the limitations provided in that section. For a nonresident of the City, the deduction is limited to the extent the expenses are related to the performance of personal services by the nonresident in the City.
- (5) "Pre-2017 Net Operating Loss Carryforward" is defined in Section 181.03(32) of this Chapter.

(b) Domicile.

(1) As used in this section:

- A. "Domicile" means the true, fixed and permanent home of the taxpayer to which whenever absent, the taxpayer intends to return.
- B. An individual is presumed to be domiciled in the City for all or part of a taxable year if the individual was domiciled in the City on the last day of the immediately preceding taxable year or if the tax administrator reasonably concludes that the individual is domiciled in the City for all or part of the taxable year.
- C. 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 City for all or part of the taxable year.

(2) For the purpose of determining whether an individual is domiciled in the City for all or part of a taxable year, factors that may be considered include, but are not limited to, the following:

- A. The individual's domicile in other taxable years;
- B. The location at which the individual is registered to vote;
- C. The address on the individual's driver's license;
- D. 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;
- E. The location and value of abodes owned or leased by the individual;
- F. Declarations, written or oral, made by the individual regarding the individual's residency;
- G. The primary location at which the individual is employed.
- H. 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;
- I. The number of contact periods the individual has with the City. For the purposes of this division, an individual has one "contact period" with the City if the individual is away overnight from the individual's abode located outside of the City and while away overnight from that abode spends at least some portion, however minimal, of each of two (2) consecutive days in the City. 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.

(3) All applicable factors are provided in ORC 718.012.

(c) Exemption for Member or Employee of General Assembly and Certain Judges.

- (1) 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.
- (2) 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. O-35-2015. Passed 11-3-15.)

State law references—ORC 718.012; ORC 718.50.

181.05 COLLECTION AT SOURCE.

(a) Collection at Source; Withholding from Qualifying Wages.

- (1) A. Each employer, agent of an employer, or other payer located or doing business in the City shall withhold from each employee an amount equal to the qualifying wages of the employee earned by the employee in the City multiplied by the applicable rate of the City's income tax, except for qualifying wages for which withholding is not required under Section 181.05(b) of this Chapter or division (a)(4) or (a)(5) 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.
B. In addition to withholding the amounts required under division (a)(1)A. 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.
- (2) A. An employer, agent of an employer, or other payer shall remit to the Tax Administrator of the City 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:
 1. Any employer, agent of an employer, or other payer not required to make payments under division (a)(2)A.2. or (a)(2)A.3. of this section of taxes required to be deducted and withheld shall make quarterly payments to the Tax Administrator not later than the fifteenth day of the month following the end of each calendar quarter.

2. 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 two thousand three hundred ninety-nine dollars (\$2,399.00), or if the total amount of taxes deducted and withheld or required to be deducted and withheld on behalf of the City in any month of the preceding calendar quarter exceeded two hundred dollars (\$200.00). Payment under division (a)(2)A.2. of this section shall be made so that the payment is received by the Tax Administrator not later than fifteen (15) days after the last day of each month.
 3. Intentionally Left Blank
- (3) 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 City 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 City requires all resident individual taxpayers to file a tax return under Section 181.09(a) of this Chapter.
 - (4) 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.
 - (5) A. 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.
B. The failure of an employer, agent of an employer, or other payer to remit to the City 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.
 - (6) 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.
 - (7) 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 City until such time as the withheld amount is remitted to the Tax Administrator.

- (8) 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 City 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (b) Collection at Source; Occasional Entrant.
- (1) The following terms as used in this section:
- A. "Employer" includes a person that is a related member to or of an employer.
 - B. "Professional athlete" means an athlete who performs services in a professional athletic event for wages or other remuneration.
 - C. "Professional entertainer" means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis.
 - D. "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.

- E. "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.
- F. "Worksite location" means a construction site or other temporary worksite in this state at which the employer provides services for more than twenty (20) days during the calendar year. "Worksite location" does not include the home of an employee.
- G. "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.

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 (2) 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)(2)A.1. of this section among those two (2) 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.

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)B. of this section, except that "location" shall be substituted for "municipal corporation" wherever "municipal corporation" appears in that division.

- (2) A. Subject to divisions (b)(3), (b)(5), (b)(6), and (b)(7) 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 twenty (20) or fewer days in a calendar year, unless one of the following conditions applies:
 - 1. The employee's principal place of work is located in the City.
 - 2. The employee performed services at one or more presumed worksite locations in the City. 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 twenty (20) days in a calendar year. Services can "reasonably be expected by the employer to last more than twenty (20) days" if either of the following applies at the time the services commence:

- (i) The nature of the services are such that it will require more than twenty (20) days of actual services to complete the services;
 - (ii) 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 twenty (20) days.
 3. The employee is a resident of the City and has requested that the employer withhold tax from the employee's qualifying wages as provided in Section 181.05(a) of this Chapter.
 4. 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 City.
- B. For the purposes of division (b)(2)A. 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:
1. Traveling to the location at which the employee will first perform services for the employer for the day;
 2. Traveling from a location at which the employee was performing services for the employer to any other location;
 3. 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;
 4. Transporting or delivering property described in division (b)(2)B.3. 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;
 5. 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.

- (3) 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)(2)A. 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.
- (4) A. Except as provided in division (b)(4)B. of this section, if, during a calendar year, the number of days an employee spends performing personal services in a municipal corporation exceeds the twenty-day (20) threshold described in division (b)(2)A. 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.
- B. An employer required to begin withholding tax for a municipal corporation under division (b)(4)A. of this section may elect to withhold tax for that municipal corporation for the first twenty (20) days on which the employer paid qualifying wages to the employee for personal services performed in that municipal corporation.
- C. If an employer makes the election described in division (b)(4)B. of this section, the taxes withheld and paid by such an employer during those first twenty (20) days to the municipal corporation in which the employee's principal place of work is located are refundable to the employee.
- (5) 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 Section 181.03 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.
- (6) Divisions (b)(2)A. and (4) 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 Section 181.05(a) of this Chapter.
- (7) 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 twelve (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.

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 twelve (12), the employer shall withhold tax for the municipal corporation for the first twelve (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.

(c) Collection at Source; Casino and VLT.

- (1) The City shall require a casino facility or a casino operator, as defined in Section 6(C)(9) of Article XV, Ohio Constitution, and ORC 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.
- (2) 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.
- (3) 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.
 - A. On or before the tenth day of each month, the casino operator shall file a return electronically with the Tax Administrator of the City, 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 City all amounts deducted and withheld during the preceding month.
 - B. 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.

- C. 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.
 - D. 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.
 - E. 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:
 - 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.
 - F. 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.
- (4) 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.
- (5) 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.
- A. 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.

- B. 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 City 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.
 - C. 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 ORC 5747.17 and any rules adopted pursuant thereto.
 - D. 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.
 - E. 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.
 - F. 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.
- (6) 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:

- A. A receipt from the Tax Administrator showing that the amounts deducted and withheld and penalties and interest thereon have been paid;
- 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.

- (7) 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.
- (8) 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:
 - A. For the late remittance of, or failure to remit, tax deducted and withheld under this section, a penalty equal to fifty percent (50%) of the tax deducted and withheld;
 - B. For the failure to file, or the late filing of, a monthly or annual return, a penalty of five hundred dollars (\$500.00) for each return not filed or filed late. Interest shall accrue on past due amounts deducted and withheld at the rate prescribed in ORC 5703.47.
- (9) 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 Section 181.07 of this Chapter. This division applies only to the person for whom the amount is deducted and withheld.
- (10) The Tax Administrator shall prescribe the forms of the receipts and returns required under this section.

(Ord. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.031

181.06 INCOME SUBJECT TO NET PROFIT TAX.

(a) Determining Municipal Taxable Income for Taxpayers who are not Individuals. "Municipal Taxable Income" for a taxpayer who is not an individual for the City is calculated as follows:

- (1) "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 Section 181.03(23).

2. "Adjusted Federal Taxable Income" is defined in Section 181.03(1) of this Chapter.
- B. "Exempt Income" is defined in Section 181.03(11) of this Chapter.
- C. "Apportionment" means the apportionment as determined by Section 181.06(b) of this Chapter.
- D. "Pre-2017 Net Operating Loss Carryforward" is defined in Section 181.03 (32) of this Chapter.

(b) Net Profit; Income Subject to Net Profit Tax; Alternative Apportionment. This section applies to any taxpayer engaged in a business or profession in the City unless the taxpayer is an individual who resides in the City or the taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under ORC Ch. 5745.

- (1) Net profit from a business or profession conducted both within and without the boundaries of the City shall be considered as having a taxable situs in the City for purposes of municipal income taxation in the same proportion as the average ratio of the following:
 - A. 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 City 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 (8);
 - B. Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the City 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 Section 181.05(b) of this Chapter;
 - C. Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the City to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.
- (2) A. 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 City, the taxpayer may request, or the Tax Administrator of the City 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:
 1. Separate accounting;

2. The exclusion of one or more of the factors;
 3. The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the City;
 4. A modification of one or more of the factors.
- B. 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 division (a) of Section 181.19 of this Chapter.
- C. A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (2)A. of this section only by issuing an assessment to the taxpayer within the period prescribed by division (a) of Section 181.19 of this Chapter.
- D. 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.
- (3) As used in division (1)B. 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:
- A. A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
 1. The employer;
 2. A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
 3. A vendor, customer, client, or patient of a person described in division (3)A.2. of this section, or a related member of such a vendor, customer, client, or patient.
 - B. 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;
 - C. 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 (3)A. or B. 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.

- (4) For the purposes of division (1)C. of this section, receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
- A. Gross receipts from the sale of tangible personal property shall be situated 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:
 - 1. The property is shipped to or delivered within the municipal corporation from a stock of goods located within the municipal corporation.
 - 2. 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.
 - 3. The property is shipped from a place within the municipal corporation to purchasers outside the municipal corporation, provided that the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.
 - B. Gross receipts from the sale of services shall be situated to the municipal corporation to the extent that such services are performed in the municipal corporation.
 - C. To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation.
 - D. To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be situated to the municipal corporation.
 - E. Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.
- (5) 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 situated under this division to the municipal corporation in which the property is located.
- (6) A. Except as provided in division (6)B. of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to 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 corpora-

tion 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.

- B. 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 Section 181.08(a) of this Chapter.
- (7) 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 divisions (11)L. and (34)A.4. of Section 181.03 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.

- (8) 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.

(c) Consolidated Federal Income Tax Return.

(1) As used in this section:

- A. "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.
- B. "Consolidated federal income tax return" means a consolidated return filed for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.
- C. "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 (1)A. of this section.

- D. "Incumbent local exchange carrier" has the same meaning as in ORC 4927.01.
 - E. "Local exchange telephone service" has the same meaning as in ORC 5727.01.
- (1) A. 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.
- 1. The election is binding for a five-year (5) period beginning with the first taxable year of the initial election unless a change in the reporting method is required under federal law.
 - 2. The election continues to be binding for each subsequent five-year (5) period unless the taxpayer elects to discontinue filing consolidated municipal income tax returns under division (2)B. of this section; or
 - 3. A taxpayer receives permission from the Tax Administrator. The Tax Administrator shall approve such a request for good cause shown.
- B. 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 (5) consolidated municipal income tax return election period in effect under division (2)A. of this section. The election to discontinue filing a consolidated municipal income tax return is binding for a five-year (5) period beginning with the first taxable year of the election.
- C. An election made under division (2)A. or B. of this section is binding on all members of the affiliated group of corporations subject to a municipal income tax.
- (3) 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.

- (4) 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.
- (5) A. Except as otherwise provided in divisions (5)A., C., and D. of this section, corporations that file a consolidated municipal income tax return shall compute adjusted federal taxable income, as defined in Section 181.03(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.
- B. No corporation filing a consolidated municipal income tax return shall make any adjustment otherwise required under division (1) of 181.03 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.
- C. If the net profit or loss of a pass-through entity having at least eighty percent (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:
1. 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 Section 181.06(b) 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 situated 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.
 2. 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 Section 181.06(b) 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 situated 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.

- D. If the net profit or loss of a pass-through entity having less than eighty percent (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:
1. 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 Section 181.06(b) 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 situated to a municipal corporation;
 2. 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.
- (6) Corporations filing a consolidated municipal income tax return shall make the computations required under Section 181.06(b) 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.
- (7) 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.
- (8) 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.
- (d) Tax Credit for Businesses that Foster New Jobs in Ohio. The City, by Ordinance, may grant a refundable or nonrefundable credit against its tax on income to a taxpayer to foster job creation in the City. If a credit is granted under this section, it shall be measured as a percentage of the new income tax revenue the City derives from new employees of the taxpayer and shall be for a term not exceeding fifteen (15) years. Before the City passes an ordinance granting a credit, the City and the taxpayer shall enter into an agreement specifying all the conditions of the credit.
- (e) Tax Credits to Foster Job Retention. The City, 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 City. If a credit is granted under this section, it shall be measured as a percentage of the income tax revenue the City derives from the retained employees of the taxpayer, and shall

be for a term not exceeding fifteen (15) years. Before the City passes an ordinance allowing such a credit, the City and the taxpayer shall enter into an agreement specifying all the conditions of the credit.

(Ord. O-35-2015. Passed 11-3-15.)

State law references—ORC 718.01; ORC 718.02; ORC 718.06; ORC 718.15; ORC 718.151.

181.07 DECLARATION OF ESTIMATED TAX.

(a) As used in this section:

- A. "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.
- B. "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 two hundred dollars (\$200.00). 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 twelve (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 ORC 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 division (G) of Section 181.09(a) 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 City 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, twenty-two and one-half percent (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, forty-five percent (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, sixty-seven and one-half percent (67.5%) of the tax liability for the taxable year;
 - D. On or before the fifteenth day of the twelfth month of the taxable year, ninety percent (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 Section 181.09(a) 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 division (G) of ORC 5747.08.
 - 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 Section 181.10 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, twenty-two and one-half percent (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, forty-five percent (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, sixty-seven and one-half percent (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, ninety percent (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 ninety percent (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 one hundred percent (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 twelve (12) months and the taxpayer filed a return with the municipal corporation under Section 181.09(a) of this Chapter for that year.
- (3) The taxpayer is an individual who resides in the City 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. O-35-2015. Passed 11-3-15.)

State law reference—718.08

181.08 CREDIT FOR TAX PAID.**(a) Credits and limitations.**

- (1) Every individual taxpayer domiciled in the City who is required to and does pay, or has acknowledged liability for, a municipal tax to another municipality on or measured by the same income, qualifying wages, commissions, net profits or other compensation taxable under this chapter/ordinance may claim a nonrefundable credit upon satisfactory evidence of the tax paid to the other municipality. Subject to division (B) of this Section, the credit shall not exceed the tax due the City under this Ordinance.
- (2) If the amount of tax withheld or paid to the other municipality is less than the amount of tax required to be withheld or paid to the other municipality, then for purposes of division (A) of this Section, "the income, qualifying wages, commissions, net profits or other compensation" subject to tax in the other municipality shall be limited to the amount computed by dividing the tax withheld or paid to the other municipality by the tax rate for that municipality.

(b) Refundable Credit for Qualifying Loss.**(1) As used in this section:**

- A. "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.
- B.
 1. Except as provided in division (1)B.2. 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.
 2. 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 (1)B.3. of this section computed without regard to division (1)B.2. 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.
 3. 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.

- C. "Qualifying tax rate" means the applicable tax rate for the taxable year for the 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.
- (2) A. 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.
- B. 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.
- C. 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.
- D. 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.
- (3) A. 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.
- B. 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.
- (4) The credit allowed under this section is allowed only to the extent the taxpayer's qualifying loss is attributable to:
- A. The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or
- B. The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.
- (c) Credit for Person Working in Joint Economic Development District or Zone. A City shall grant a credit against its tax on income to a resident of the City who works in a joint economic development zone created under section 715.691 or a joint economic development district created

under ORC 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 Section 181.08(a) of this Chapter.

(d) Credit for Tax Beyond Statute for Obtaining Refund.

- (1) Income tax that has been deposited or paid to the City, but should have been deposited or paid to another municipal corporation, is allowable by the City as a refund, but is subject to the three-year (3) limitation on refunds as provided in Section 181.09(f) of this Chapter.
- (2) Income tax that should have been deposited or paid to the City, but was deposited or paid to another municipal corporation, shall be subject to collection and recovery by the City. To the extent a refund of such tax or withholding is barred by the limitation on refunds as provided in Section 181.09(f), the City will allow a non-refundable credit equal to the tax or withholding paid to the other City against the income tax the City claims is due. If the City's tax rate is higher, the tax representing the net difference of the tax rates is also subject to collection by the City, along with any penalty and interest accruing during the period of nonpayment.
- (3) No carryforward of credit will be permitted when the overpayment is beyond the three-year (3) limitation for refunding of same as provided in Section 181.09(f) of this Chapter.
- (4) Nothing in this section requires a City to allow credit for tax paid to another municipal corporation if the City has reduced credit for tax paid to another municipal corporation. Section 181.08(a) of this Chapter regarding any limitation on credit shall prevail.

(Ord. O-35-2015. Passed 11-3-15.)

State law references—ORC 718.021; ORC 718.16; ORC 718.121

181.09 ANNUAL RETURN.

(a) Return and payment of tax.

- (1)
 - A. An annual return with respect to the income tax levied on Municipal Taxable Income by the City 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.
 - B. 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 City under subsection 181.05(a)(3) 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 City.
 - C. All resident individual taxpayers, 18 years of age and older, shall file an annual municipal income tax return with the City, regardless of income or liability.
- (2) 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.

- (3) If an individual is unable to complete and file a return or notice required by the City 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.
- (4) 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.
- (5) No municipal corporation shall deny spouses the ability to file a joint return.
- (6) A. 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.

B. 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.

C. 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.

- D. 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 City. 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.
- E. 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 City 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.
- F. 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.
- (7) A. 1. 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 division (G) of ORC 5747.08. 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 City or Tax Administrator. No remittance is required if the net amount due is ten dollars (\$10.00) or less.
2. 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 City or Tax Administrator. No remittance is required if the net amount due is ten dollars (\$10.00) or less.
3. 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 ten dollars (\$10.00) or less.

- B. If the Tax Administrator considers it necessary in order to ensure the payment of the tax imposed by the City 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.
 - C. With respect to taxpayers to whom Section 181.09(b) of this Chapter applies, to the extent that any provision in this division conflicts with any provision in Section 181.092 of this Chapter, the provision in Section 181.09(b) of this Chapter prevails.
- (7) A. For taxable years beginning after 2015, the City shall not require a taxpayer to remit tax with respect to net profits if the amount due is ten dollars (\$10.00) or less.
- B. Any taxpayer not required to remit tax to the City for a taxable year pursuant to division (7)A. of this section shall file with the City an annual net profit return under division (6)C. and D. of this section.
- (8) This division shall not apply to payments required to be made under division (2)A.2. or 3. of Section 181.05(a) of this Chapter.
- A. 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.
- B. If a payment is required to be made by electronic funds transfer, the payment is considered to be made when the payment is credited to an account designated by the Tax Administrator for the receipt of tax payments, except that, when a payment made by electronic funds transfer is delayed due to circumstances not under the control of the taxpayer, the payment is considered to be made when the taxpayer submitted the payment. For purposes of this section, "submitted the payment" means the date which the taxpayer has designated for the delivery of payment, which may or may not be the same date as the date the payment was initiated by the taxpayer.
- (9) The amounts withheld for the City by an employer, the agent of an employer, or other payer as described in Section 181.05(a) 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 City and the recipient colluded with the employer, agent, or other payer in connection with the failure to remit the amounts withheld.
- (10) Each return required by the City 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.

- (11) The Tax Administrator of the City shall accept for filing a generic form of any income tax return, report, or document required by the City 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 City 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 City's Ordinance or resolution governing the filing of returns, reports, or documents.
- (12) 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.
- (13) A. As used in this division, "worksite location" has the same meaning as in Section 181.05(b) of this chapter.
 - B. 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:
 - 1. 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.
 - 2. 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.

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. 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.

3. If a person submits an affidavit described in division (13)B. 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 City 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.

(b) Return and Payment of Tax; Individuals Serving in Combat Zone.

- (1) 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 City for both an extension of time for filing of the return and an extension of time for payment of taxes required by the City in accordance with this chapter during the period of the member's or civilian's duty service and for one hundred eighty (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.
- (2) A. 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 (2)C. of this section, the Tax Administrator may prescribe such contract terms as the Tax Administrator considers appropriate.

- B. 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 City before the one hundred eighty-first day after the applicant's active duty or service terminates.
 - C. Taxes paid pursuant to a contract entered into under division (2)A. 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.
- (3) A. Nothing in this division denies to any person described in this division the application of divisions (A) and (B) of this section.
- B.
 - 1. 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 City in accordance with this chapter. The length of any extension granted under division (3)B.1. 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.
 - 2. Taxes the payment of which is extended in accordance with division (3)B.1. 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 (3)B.1. of this section in calculating the penalty or interest due on any unpaid tax.
- (4) For each taxable year to which division (1), (2), or (3) of this section applies to a taxpayer, the provisions of divisions (2)B. and C. or (3) 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.
- (c) Use of Ohio Business Gateway; Types of Filings Authorized.
- (1) 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.

- (2) 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.
- (3) Nothing in this section affects the due dates for filing employer withholding tax returns or deposit of any required tax.
- (4) 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.
- (5) 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.

(d) Extension of Time to File.

- (1) Any taxpayer that has duly requested an automatic six-month (6) 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.
- (2) Any taxpayer that qualifies for an automatic federal extension for a period other than six-months (6) 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.
- (3) A taxpayer that has not requested or received a six-month (6) extension for filing the taxpayer's federal income tax return may request that the tax administrator grant the taxpayer a six-month (6) 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.
- (4) 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.
- (5) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of ORC 5747.08, 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.

(e) Amended Returns.

- (1)
 - A. 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 City in accordance with this chapter must be altered.
 - B. Within sixty (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 ten dollars (\$10.00) or less.
 - C. 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.
- (2)
 - A. 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 ten dollars (\$10.00) or less, such amount need not accompany the amended return. Except as provided under division (2)B. 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 Section 181.19 of this Chapter has not expired for a previously filed return.
 - B. 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.
- (3)
 - A. In the case of an overpayment, a request for refund may be filed under this division within the period prescribed by division (a)(2) of Section 181.19 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 ten dollars (\$10.00) or less, no refund need be paid by the City to the taxpayer. Except as set forth in division (3)B. 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

Section 181.09(f) of this Chapter. Except as set forth in division (3)B. 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.

- B. 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.

(f) Refunds.

- (1) Upon receipt of a request for a refund, the Tax Administrator of the City, 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 City:
 - A. Overpayments of more than ten dollars (\$10.00);
 - B. Amounts paid erroneously if the refund requested exceeds ten dollars (\$10.00).
- (2)
 - A. Except as otherwise provided in this chapter, returns setting forth a request for refund shall be filed with the Tax Administrator, within three (3) 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.
 - B. 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 (2)C. 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.
 - C. 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 Section 181.18 of this Chapter.
- (3) 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:
 - A. 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.

- B. 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 (7) days of such last day.
 - C. 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 (7) days of the last day for making the request.
- (4) 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 ninety (90) days after the final filing date of the annual return or ninety (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 division (a)(4) of Section 181.10 of this Chapter.
 - (5) As used in this section, "withholding tax" has the same meaning as in Section 181.10 of this Chapter.

(Ord. O-35-2015. Passed 11-3-15.)

State law references—ORC 718.05; ORC 718.051; ORC 718.052; ORC 718.12; ORC 718.19; ORC 718.41

181.10 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 City 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 (3) 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 percent, plus five percent (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 City 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 City.

(c) The City 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 City timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the City 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 fifteen percent (15%) of the amount not timely paid shall be imposed.

- (3) With respect to any unpaid withholding tax, a penalty equal to fifty percent (50%) of the amount not timely paid shall be imposed.
- (4) With respect to returns other than estimated income tax returns, the City shall impose a monthly penalty of twenty-five dollars (\$25.00) 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 one hundred fifty dollars (\$150.00) 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 City 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 City 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 City may impose on the taxpayer, employer, any agent of the employer, or any other payer the City's post-judgment collection costs and fees, including attorney's fees.
(Ord. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.27

181.11 AUDIT.

- (a) At or before the commencement of an audit, as defined in Section 181.03(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. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.36

181.12 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 fifty cents (\$0.50) shall be rounded to the next whole dollar, and any fractional part of a dollar that is less than fifty cents (\$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. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.25

181.13 AUTHORITY AND POWERS OF THE TAX ADMINISTRATOR.

(a) 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:

- (1) 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;

- (2) Appoint agents and prescribe their powers and duties;
 - (3) 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;
 - (4) 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;
 - (5) Exercise the authority provided by law relative to consenting to the compromise and settlement of tax claims;
 - (6) Exercise the authority provided by law relative to the use of alternative apportionment methods by taxpayers in accordance with Section 181.06(b) of this Chapter;
 - (7) 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;
 - (8) Destroy any or all returns or other tax documents in the manner authorized by law;
 - (9) Enter into an agreement with a taxpayer to simplify the withholding obligations described in Section 181.05(a) of this Chapter.
- (b) Authority of Tax Administrator; Compromise of Claim and Payment Over Time.
- (1) As used in this section, "claim" means a claim for an amount payable to the City that arises pursuant to the municipal income tax imposed in accordance with this chapter.

- (2) The Tax Administrator may do either of the following if such action is in the best interests of the City:
 - A. Compromise a claim;
 - B. 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.
 - (3) 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.
 - (4) 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.
 - (5)
 - A. 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.
 - B. 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.
 - (6) 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.
- (c) Authority of Tax Administrator; Right to Examine.
- (1) 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.
 - (2) 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 (6) 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 City or for the withholding of such tax.

- (3) 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.
- (4) 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.
- (d) Authority of Tax Administrator; Requiring Identifying Information.
 - (1) 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.
 - (2)
 - A. If the Tax Administrator makes a request for identifying information and the Tax Administrator does not receive valid identifying information within thirty (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 Section 181.10 of this Chapter, in addition to any applicable penalty described in Section 181.99 of this Chapter.
 - B. 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 thirty (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 Section 181.10 of this Chapter.

- C. 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 Section 181.99 of this Chapter for a violation of Section 181.15 of this chapter and any other penalties that may be imposed by the Tax Administrator by law.

(Ord. O-35-2015. Passed 11-3-15.)

State law references—ORC 718.23; ORC 718.24; ORC 718.26; ORC 718.28

181.14 CONFIDENTIALITY.

(a) Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by ORC 718 or by the charter or ordinance of the City 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 City as authorized by ORC 718 or the charter or ordinance authorizing the levy. The Tax Administrator of the City 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 City from publishing or disclosing statistics in a form that does not disclose information with respect to particular taxpayers.

(Ord. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.13

181.15 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 City or the Tax Administrator.

(Ord. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.35

181.16 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 City 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 City'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 City'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 City in order to obtain a more favorable opinion, the taxpayer may be in violation of Section 181.15 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 subsection (F) may not be appealed.

(Ord. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.38

181.17 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 ORC 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 sixty (60) days after the receipt of service. The delivery of an assessment of the Tax Administrator as prescribed in ORC 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 twenty percent (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 sixty (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. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.18

181.18 LOCAL BOARD OF TAX REVIEW; APPEAL TO LOCAL BOARD OF TAX REVIEW.

- (a) (1) The legislative authority of the City shall maintain a Local Board of Tax Review to hear appeals as provided in ORC Ch. 718.
- (2) The Local Board of Tax Review shall consist of three (3) members.

Two (2) members shall be appointed by the legislative authority of the City, and may not be employees, elected officials, or contractors with the City at any time during their term or in the five (5) years immediately preceding the date of appointment. One member shall be appointed by the top administrative official of the City. This member may be an employee of the City, 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 City shall be two (2) 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 City 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 ORC 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 sixty (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.
- (9) A member of a Local Board of Tax Review shall not be appointed to or serve on another such board simultaneously.

(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 sixty (60) days after the taxpayer receives the assessment.

(d) The Local Board of Tax Review shall schedule a hearing to be held within sixty (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 one hundred twenty (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 ninety (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 fifteen (15) days after issuing the final determination. The taxpayer or the Tax Administrator may appeal the board's final determination as provided in ORC 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 ORC 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 ORC 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. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.11

181.19 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 (3) 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 Section 181.18 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 (3) years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of twenty-five percent (25%) or more of income required to be reported, prosecutions may be commenced within six (6) 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 Section 181.09(f) 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 City 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 Section 181.18 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 Section 181.09(f) 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. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.12

181.20 ADOPTION OF RULES.

The City hereby adopts the Regional Income Tax Agency (RITA) Rules & Regulations, including amendments that may be made from time to time, for use as the City's Income Tax Rules and Regulations. Provided however, that the City's Director of Finance or designee may also adopt, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns and payments. In the event of a conflict with any provision(s) of the City Income Tax Ordinance and the RITA Rules & Regulations, the Ordinance

will supersede. Until and if the contractual relationship between the City and RITA ceases, Section 181.20 will supersede all other provisions within Ordinance regarding promulgation of rules and regulations by the Tax Administrator.

(Ord. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.30

181.97 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 and 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 prosecutions for the collection of taxes or for the punishment of violations of this chapter have been fully terminated, subject to the limitations contained in Section 181.19.

(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 Section 181.09(a) as though the same were continuing.

(Ord. O-35-2015. Passed 11-3-15.)

State law reference—ORC 718.12

181.98 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 City 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. O-35-2015. Passed 11-3-15.)

181.99 VIOLATIONS; PENALTY.

(a) Except as provided in division (B) of this section, whoever violates Section 181.15 of this Chapter,, division (A) of Section 181.14 of this Chapter,, or Section 181.051 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 one thousand dollars (\$1,000.00) or imprisonment for a term of up to six (6) 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 Section 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 five thousand dollars (\$5,000.00)

plus the costs of prosecution, or imprisonment for a term not exceeding five (5) 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 division (a) of Section 181.14 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 first 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; or
- (2) Knowingly make any incomplete return; or
- (3) Willfully fail, neglect, or refuse to pay the tax, penalties, and interest, or any combination thereof, imposed by this Chapter; or
- (4) Cause to not be remitted the city income tax withheld from qualifying wages of employees to the City municipal corporation as required by Section 181.05(a); or
- (5) Neglect or refuse to withhold or remit municipal income tax from employees; or
- (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; or
- (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; or
- (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; or
- (9) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator; or
- (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; or
- (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; or

- (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 Section 181.03, 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. O-35-2015. Passed 11-3-15.)

CHAPTER 183 INCOME TAX PRIOR TO 2016*

183.01	DEFINITIONS.
183.02	IMPOSITION OF TAX.
183.03	ALLOCATION OF NET PROFITS.
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183.10	INVESTIGATIVE POWERS OF THE CHIEF FISCAL OFFICER.
183.11	TAX INFORMATION CONFIDENTIAL.
183.12	COLLECTION OF UNPAID TAXES.
183.13	CREDITS.
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183.16	INTEREST AND PENALTIES.
183.17	ALLOCATION OF FUNDS.
183.18	SEVERABILITY.
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183.20	EFFECTIVE DATE.
183.21	BOARD OF REVIEW.
183.99	VIOLATIONS; GENERAL PENALTIES.

183.01 DEFINITIONS.

(a) For the purpose of this chapter, the following words shall have the meanings ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning.

- (1) "Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under 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 five percent (5%) of intangible income deducted under subsection (a)(1)A. hereof, 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 related to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;

***Editor's note**—Inasmuch as Ch. 181, entitled "Income Tax," applies to municipal taxable years beginning on or after Jan. 1, 2016, Ch. 183 has been retitled to read as herein set out, at the editor's discretion, for purposes of clarity and organization. This Ch. 183 applies to taxable years prior to Jan. 1, 2016.

Cross reference—Debt and tax limitations - see CHTR. 7.01

Municipal income taxes - see ORC Ch. 718

- D. 1. Except as provided in subsection (a)(1)D.2. hereof, deduct income and gain included in federal taxable income to the extent the income and gain directly related to the sale, exchange, or other disposition of an asset described in Section 1221 or 1231 of the Internal Revenue Code;
- 2. Subsection (a)(1)D.1. hereof does not apply to the extent the income or gain is 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 and 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. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:
 - 1. Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and
 - 2. Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

Nothing in subsection (a)(1) hereof 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 or accrued for purposes of federal self-employment tax.

Nothing in this chapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit and enforce the provisions of its municipal income tax.

- (2) "Association" means a partnership, limited partnership, S corporation or any other form of unincorporated enterprise owned by one or more persons.
- (3) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions.
- (4) "Board of Review" means the Board of Review created and constituted as provided in Section 183.21.
- (5) "Business" means an enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, fiduciary, trust, association, corporation or any other entity including but not limited to the renting or leasing of property, real, personal or mixed.

- (6) "Corporation" means a corporation or joint stock association organized under the laws of the United States, State of Ohio, or any other state, territory or foreign country or dependency.
- (7) "Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he is absent he intends to return. A taxpayer has only one domicile even though he may have more than one residence.
- (8) "Employee" means one who works for wages, salary, commissions, or other types of compensation in the service of an employer.
- (9) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a salary, wage, commission or other compensation basis.
- (10) "Finance Director" means the individual charged with the responsibility of managing the fiscal affairs of the Municipality.
- (11) "Fiscal year" means an accounting period of twelve (12) months or less ending on any day other than December 31.
- (12) "Form 5754, Statement by Person(s) Receiving Gambling Winnings" means Internal Revenue Service Form 5754 filed by a taxpayer pursuant to the Internal Revenue Code.
- (13) "Form 1099-MISC, Miscellaneous Income" means Internal Revenue Service Form 1099-MISC filed by a taxpayer pursuant to the Internal Revenue Code.
- (14) "Form W-2, Wage and Tax Statement" means Internal Revenue Service Form W-2 filed by a taxpayer pursuant to the Internal Revenue Code.
- (15) "Form W-2G, Certain Gambling Winnings" means Internal Revenue Service Form W-2G filed by a taxpayer pursuant to the Internal Revenue Code.
- (16) "Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.
- (17) "Generic form" means an electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports, or other documents shall accept for filing a generic form of such return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the Municipality's prescribed returns, reports, or documents.
- (18) "Gross receipts" means total income of taxpayers from whatever source derived.
- (19) "Income from a pass-through entity" means partnership income of partners, membership interests of members of a limited liability company, or other distributive or proportionate ownership shares of income from other pass-through entities.

- (20) "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 defined in ORC Ch. 5701, and patents, copyrights, trademarks, trade names, investments in real estate 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 or other similar games of chance.
- (21) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.
- (22) "Internet" means the international computer network of both Federal and nonfederal interoperable packet switched data networks, including the graphical sub network known as the World Wide Web.
- (23) "Joint Economic Development District" means districts created under ORC 715.70 through 715.83, as amended from time to time.
- (24) "Limited liability company" means a limited liability company formed under ORC Ch. 1705 or under the laws of another state.
- (25) "Municipality" means the Village of New Albany, Ohio.
- (26) "Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in Section 183.02, required to be reported on federal schedules C, E or F.
- (27) "Nonqualified deferred compensation plan" means a compensation plan described in Section 3121(v)(2)(C) of the Internal Revenue Code.
- (28) "Nonresident" means an individual domiciled outside the Municipality.
- (29) "Nonresident incorporated business entity" means an incorporated business entity not having an office or place of business within the Municipality.
- (30) "Nonresident unincorporated business entity" means an unincorporated business entity not having an office or place of business within the Municipality.
- A. "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.
- B. "Owner" means a partner of a partnership, a member of a limited liability company, or other person with an ownership interest in a pass-through entity.

- C. "Owner's proportionate share," with respect to each owner of a pass-through entity, means the ratio of:
1. The owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to
 2. The total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.
- D. "Pass-through entity" means a partnership, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.
- (31) "Person" includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity. Whenever used in any clause prescribing and imposing a penalty, the term "person" as applied to any unincorporated entity shall mean the parties or members thereof, and as applied to corporations, the officers thereof.
- (32) "Place of business" means any bona fide office, other than a mere statutory office, factory, warehouse or other space, which is occupied and used by the taxpayer in carrying on any business activity individually or through any one or more of his regular employees regularly in attendance.
- (33) "Principal place of business" means in the case of an employer having headquarters activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.
- (34) "Qualified plan" means a retirement plan satisfying the requirements under Section 401 of the Internal Revenue Code as amended.
- (35) "Qualifying wages" means wages, as defined in Section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with ORC 718.03(A)(2).
- (36) "Resident" means an individual domiciled in the Municipality.
- (37) "Resident unincorporated business entity" means an unincorporated business entity whose office; place of operations or business situs is within the Municipality.
- (38) "Resident unincorporated business entity" means an unincorporated business entity having an office or place of business within the Municipality.
- (39) "Return preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
- (40) "Schedule C" means Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

- (41) "Schedule E" means Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.
- (42) "Schedule F" means Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.
- (43) "S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.
- (44) "Taxable income" means qualifying wages, paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this Chapter.
- (45) "Taxable year" means the corresponding tax-reporting period as prescribed for the taxpayer under the Internal Revenue Code. In the case of a return for a fractional part of a year, the period for which such return is required to be made.
- (46) "Taxing municipality" means a municipality levying a tax on income earned by nonresidents working within such municipality or on income earned by its residents.
- (47) "Taxpayer" means a person subject to a tax on income levied by a municipal corporation. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

(b) The singular shall include the plural, the masculine gender shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

(Ord. 43-2003. Passed 1-13-04.)

183.02 IMPOSITION OF TAX.

(a) To provide for the purposes of general municipal operations, maintenance, new equipment, and capital improvements of the Municipality, there is hereby levied a tax at the rate of two percent (2%) per annum upon the following:

- (1) On all qualifying wages, salaries, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, commissions, lottery winnings, prize moneys, tips and gratuities, and other compensation earned, received, accrued or in any way set apart unto residents of the Municipality.
- (2) On all qualifying wages, salaries, including sick, vacation, severance and any pay as part of an employee buyout or wage continuation plan, commissions, tips and gratuities, and other compensation earned, received, accrued or in any way set apart unto nonresidents of the Municipality for work done or services performed or rendered in the municipality.
- (3) On the portion attributable to the Municipality of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived

from work done or services performed or rendered, and business or other activities conducted in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.

- (4) On the portion attributable to the Municipality of the net profits by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such unincorporated business entity has an office or place of business in the Municipality. On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the Municipality and not levied against such unincorporated business entity or pass-through entity.
- (5) On the portion attributable to the Municipality of the net profits earned by all corporations, estates and trusts that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the Municipality, whether or not such corporations have an office or place of business in the Municipality.
- (6) On all income received as gambling winnings as reported on Internal Revenue Service Form W-2G, Form 5754 and or any other form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.

(b) Businesses Both In and Outside the Municipal Boundaries. This section does not apply to taxpayers that are subject to and required to file reports under ORC Ch. 5745. Except as otherwise provided in subsection (d) hereof, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the following:

Multiply the entire net profits of the business by a business apportionment percentage to be determined by:

- (1) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation 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, 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 (8).

- (2) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation

to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under ORC 718.011.

- (3) Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed.
- (4) Adding together the percentages determined in accordance with subsections (b)(1), (2) and (3) hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.
 - A. A factor is applicable even though it may be apportioned entirely in or outside the Municipality.
 - B. Provided however, that in the event a just and equitable result cannot be obtained under the formula provided for herein, the Finance Director, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(c) As used in subsection (b) hereof, "sales made in a municipal corporation" mean:

- (1) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;
- (2) All sales of tangible personal property delivered within such municipal corporation regardless of where titles passes even though transported from a point outside such municipal corporation if 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;
- (3) All sales of tangible personal property shipped from a place within such municipal corporation to purchasers outside such municipal corporation regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(d) Except as otherwise provided in subsection (e) hereof, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

(e) This section does not apply to individuals who are residents of the Municipality and, except as otherwise provided in ORC 718.01, the Municipality may impose a tax on all income earned by residents of the Municipality to the extent allowed by the United States Constitution.

(f) Net Operating Loss.

- (1) The Village of New Albany does not allow a net operating loss carryback or carryforward.

- (2) Nothing in ORC Ch. 718.01 requires a municipal corporation to allow a net operating loss carryback or carryforward.

(g) Consolidated Returns.

- (1) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for Federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.
- (2) Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless permission in writing is granted by the Finance Director to file separate returns or until a corporation is no longer associated with other corporation(s).

(h) Exclusions. The provisions of this Chapter shall not be construed as levying a tax upon the following:

- (1) Proceeds from welfare benefits, unemployment insurance benefits, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service.
- (2) Proceeds of insurance, annuities, Workers' Compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages.
- (3) Compensation attributable to a plan or program described in Section 125 of the Internal Revenue Code.
- (4) Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.
- (5) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (6) Alimony paid or received.
- (7) Compensation for damage to property by way of insurance or otherwise.
- (8) Interest and dividends from intangible property.
- (9) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard (ORC 718.01).
- (10) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in ORC 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

- (11) Any association or organization falling in the category listed in the preceding paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder.
- (12) In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both within and without the corporate limits of the Municipality, it shall calculate its income apportioned to the Municipality under the method or methods provided above.
- (13) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from Municipal income tax.
- (14) The rental value of a home furnished to a minister of the gospel as part of his compensation, or the rental allowance paid to a minister of the gospel as part of his compensation, to the extent used by him to rent or provide a home pursuant to Section 107 of the Internal Revenue Code.
- (15) Compensation paid under ORC 3501.28 or 3501.36 to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000.00) annually. Such compensation in excess of one thousand dollars (\$1,000.00) may be subjected to taxation. The payer of such compensation is not required to withhold Municipal tax from that compensation.
- (16) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under ORC Ch. 306 for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality.
- (17) The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:
 - A. The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services.
 - B. The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the Municipality.

(18) The income of a public utility, when that public utility is subject to the tax levied under ORC 5727.24 or 5727.30, except a municipal corporation may tax the following, subject to ORC Ch. 5745:

- A. The income of an electric company or combined company;
- B. The income of a telephone company.

As used in subsection (h)(18) hereof, "combined company," "electric company," and "telephone company" have the same meanings as in ORC 5727.01.

(19) An S corporation shareholder's distributive share of net profits or losses of the S corporation.

(20) Generally the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.
(Ord. 43-2003. Passed 1-13-04.)

183.03 ALLOCATION OF NET PROFITS.

Editor's note—The provisions of former Section 183.03 are included in Section 183.02.

183.04 LEVY OF TAX.

Editor's note—The provisions of former Section 183.04 are included in Section 183.02.

183.05 RETURN AND PAYMENT OF TAX.

(a) Each person who engages in business or other activity, or whose salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities, and other compensation and other taxable income is subject to the tax imposed by this Chapter shall, whether or not a tax be due thereon, make and file a return on or before April 15 of each year with the Finance Director or his/her delegate, on a form prescribed by and acceptable to the Municipality, setting forth the aggregate amount of qualifying salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities, other compensation and other taxable income earned during the preceding year and subject to the tax, together with such other pertinent information as the Finance Director or his/her delegate may require. Provided, however, that when the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the fifteenth day of the fourth month after the close of that fiscal year or other period.

(b) The return of an employer or employers, showing the amount of Municipal tax deducted by said employer or employers from the qualifying wages, commissions, other compensation and other taxable income of a nonresident employee, and paid by him or them to the Finance Director may be accepted as the return required of a nonresident employee whose sole income, subject to tax under this Tax Code, is such qualifying wages, commissions, other compensation, and other taxable income.

(c) Each person residing in the Village, eighteen (18) years of age or older, shall be required to file a Village Income Tax Return, on or before April 15 of each year with the Finance Director or his/her delegate. When the return is made for a fiscal year or other period different from the calendar year, the return shall be made on or before the fifteenth day of the fourth month after the close of that fiscal year or other period.

(d) A husband and wife may file either separate returns or a joint return for Municipal purposes, even though one of the spouses has neither taxable income nor deductions included on the Municipal return, regardless of whether their federal and state returns were filed separately or jointly. If a joint Village return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(e) The return shall be filed with the Finance Director or his/her delegate on a form or forms furnished by or obtainable upon request from the Finance Director or his/her delegate; or on a generic form, if the generic form, when completed and filed, contains all the information required to be submitted with the Municipality's prescribed return and, if the taxpayer or return preparer filing the generic form otherwise complies with the Tax Code governing the filing of returns.

(f) The return shall set forth:

- (1) The aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined by statute as taxable, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to said tax; and
- (2) The amount of the tax imposed by this Tax Code on such earnings and profits; and
- (3) Such other pertinent statements, information returns, copies of federal/state/other municipal tax returns and/or schedules, or other information as the Finance Director may require, including a statement that the figures used in the return are the figures used for federal income tax adjusted to set forth only such income as is taxable under the provisions of this Chapter.

(g) Extensions.

- (1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a Municipal income tax return by filing a copy of the taxpayer's federal extension request with the Finance Director. Any taxpayer not required to file a federal income tax return may request an extension for filing a Municipal income tax return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the extended due date of the municipal tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended.

- (2) The Finance Director may deny a taxpayer's request for extension if the taxpayer:
 - A. Fails to timely file the request; or
 - B. Fails to file a copy of the federal extension request (if applicable); or
 - C. Owes the Municipality any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or
 - D. Has failed to file any required income tax return, report, or other related document for a prior tax period.
- (3) The granting of an extension for filing a Municipal tax return does not extend the due date as provided in this section for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by Section 183.16. No penalty shall be assessed in those cases in which the return is filed within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Finance Director shall be granted upon the condition that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

(h) Payments With Returns.

- (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Finance Director the amount of taxes shown as due. However, credit shall be allowed for:
 - A. Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of Section 183.07; and
 - B. Any portion of said tax which shall have been paid by the taxpayer pursuant to the provisions of Section 183.05; and
 - C. Credit to the extent allowed by Section 183.13 for tax paid to another municipality.
- (2) Subject to the limitations contained in Section 183.13 of this Tax Code, any taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this Tax Code may have such overpayment applied against any subsequent liability hereunder or at his election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than one dollar and one cent (\$1.01) shall be collected or refunded.

(i) Amended Return and Refund For Overpayment.

- (1) Where necessary, an amended return shall be filed in order to report additional income and pay an additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 183.05 and 183.08. The Finance Director shall

provide the format in which such amended return shall be filed. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

- (2) Within three (3) months from the final determination of any federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the municipal tax based upon such final determination of federal tax liability, and pay any additional tax shown due thereon or make a claim for refund of any overpayment.
- (3) A. No refund shall be allowed unless a written request is presented to the Finance Director or his/her delegate within three (3) years of the date the taxes were due or the return was filed, whichever is later.

B. For purposes of refunds sought under this section, the time specified in subsection (i)(3) hereof shall commence upon the first to be filed of either the employer's Form W1 (Employer's Return of Tax Withheld), the employer's W3 (Withholding Reconciliation), the current or former employee's personal income tax return, or the business income tax return.

(j) Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Tax Code. Provided, however, that the taxpayer shall have ten (10) days after notification by the Finance Director, or his authorized representative, to file the items required by this paragraph.

(Ord. 43-2003. Passed 1-13-04.)

183.06 RESERVED.

183.07 COLLECTION AT SOURCE.

(a) Withholding By Employer. Each employer within or doing business within the Municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct, when such salary, wage, commission or other compensation is paid, allocated, apportioned or set aside, the tax at the rate provided in Section 183.02 hereof on the qualifying wages due by such employer to each such employee. The employer shall make a return and pay to the Finance Director the amount of taxes so deducted in accordance with subsection (b) hereof. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. Every employer or officer of a corporation is deemed to be a trustee for this Municipality in collecting and holding the tax required under this chapter to be withheld and the funds so collected by such withholding are deemed to be trust funds.

(b) Employers shall pay to the Municipality all income taxes withheld or required to be deducted and withheld on either a semi-monthly, monthly or quarterly basis depending on the amount of taxes involved according to the following payment schedule:

- (1) Semi-monthly payments of the taxes deducted are to be made by an employer if:
 - A. The total taxes deducted in the prior calendar year were twelve thousand dollars (\$12,000.00) or more; or
 - B. The amount of taxes deducted for any month in the preceding quarter exceeded one thousand dollars (\$1,000.00).

Such payment shall be paid to the Municipality within three (3) banking days after the fifteenth and the last day of each month.

- (2) Monthly payments of taxes withheld shall be made by an employer if the taxes withheld in the prior calendar year were less than twelve thousand dollars (\$12,000.00) but more than one thousand one hundred ninety-nine dollars (\$1,199.00) or if the taxes withheld during any month for the preceding quarter exceeded one hundred dollars (\$100.00). Such payments shall be made to the Municipality within fifteen (15) days after the close of each calendar month.
- (3) All employers not required to make semimonthly or monthly payments of taxes withheld under subsections (b)(1) and (2) hereof shall make quarterly payments no later than the last day of the month following the end of each quarter.

(c) Each employer, on or before February 28, unless written request for thirty (30) days' extension is made to and granted by the Finance Director or his/her delegate, following any calendar year in which such deductions have been made, or should have been made by an employer, shall file with the Finance Director or his/her delegate an information return (Village of New Albany: Reconciliation of New Albany Income Tax withheld from wages) for each employee from whom income tax has been or should have been withheld showing the name, address, zip code and social security number of each such employee, the total amount of salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities and other compensation paid the employee during the year and the amount of municipal income tax withheld from each employee. If the total tax withheld from any employee included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to the Municipality concerning each employee.

(d) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc payments to individuals not treated as employees for services performed shall also report such payments to the Municipality when the services were performed in the Municipality. The information may be submitted on a listing, and shall include the name, address, and social security number (or federal identification number), and

the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year.

(e) An employer is not required to make any withholding 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 the corporation with respect to whose stock the option has been issued.

- (1) An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by the Municipality or by the employer's exemption from the requirement to withhold the tax.
- (2) The failure of an employer to remit to the Municipality the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

(f) The officer or the employee having control or supervision of or charged with the responsibility of filing the report and making payment, is personally liable for failure to file the report or pay the tax due as required by this section. The dissolution of a corporation does not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or pay tax due. (Ord. 43-2003. Passed 1-13-04.)

183.08 DECLARATIONS.

(a) Requirements for Filing. Every person who anticipates any taxable income which is not subject to Section 183.07 or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 183.02(a)(4) and (5) shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any; provided, however, if a person's income is wholly from qualifying wages, from which the tax will be withheld and remitted to the Municipality in accordance with Section 183.07, such person need not file a declaration.

(b) Dates for Filing.

- (1) Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth day of the fourth month following the date the taxpayer becomes subject to tax for the first time.
- (2) Those taxpayers having a fiscal year or period differing from the calendar year basis shall file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year period.

(c) Forms; Credit for Tax Withheld or Paid Another Municipality. Such declaration shall be filed upon a form furnished by, or obtainable from the Finance Director or his/her delegate, provided, however, credit shall be taken for the municipal tax to be withheld from any portion of such income. In accordance with the provisions of Section 183.13, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

(d) The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment day as provided herein. In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(e) For taxpayers who are individuals, such declarations of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.

(f) For taxpayers who are not individuals, such declaration of estimated tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth (15th) day of the sixth, ninth and twelfth months after the beginning of the taxable year.

(g) The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

(h) On or before the fifteenth day of the fourth month of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the Municipality shall be paid therewith in accordance with the provisions of Section 183.05.

(i) An entity (individual, corporate or association) may pay one hundred percent (100%) of the prior year's tax in four (4) equal installments in the current year and avoid any underpayment of estimated tax penalty. Prior year tax of zero or a prior year loss will not avoid penalty. No penalty for failure to pay estimated tax will apply to an entity whose tax for the year, after credit for tax withheld, is less than one hundred dollars (\$100.00). A declaration of estimated tax which is less than ninety percent (90%) of the tax shown to be due on the final return shall not be considered in good faith. The difference shall be subject to penalties and interest as provided for in Section 183.16.

(Ord. 43-2003. Passed 1-13-04.)

183.09 POWERS AND DUTIES.

(a) The Finance Director or his/her delegate shall collect and receive the tax imposed by this chapter in the manner prescribed by this chapter, and he shall also keep an accurate record showing payment received by him from each taxpayer and the date of the payment.

(b) The Finance Director shall have the power to appoint a delegate to assist in the administration of this chapter, and such Administrator shall be responsible to the Finance Director.

(c) The Finance Director and his/her delegate are hereby charged with the administration and enforcement of the provisions of this chapter and they are hereby empowered to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns and payments.

(d) In any case where a taxpayer has failed to file a return or failed to pay the tax due on a return or has filed a return which does not show the proper amount of tax due, the Finance Director or his/her delegate may determine the amount of tax appearing to be due the Municipality from the taxpayer based on any information in his possession and shall send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(e) The Finance Director or his/her delegate, or any authorized employee, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or of any taxpayer or person subject to, or who the Finance Director or his/her delegate 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 made, to ascertain the tax due under this chapter, and every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish upon written request by the Finance Director or his/her delegate, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(f) The Finance Director and his/her delegates are each hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or would have been returned for taxation or any transaction tending to affect such income and for this purpose may compel the production of books, papers, records and federal income tax returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(Ord. 43-2003. Passed 1-13-04.)

183.10 INVESTIGATIVE POWERS OF THE CHIEF FISCAL OFFICER.

Editor's note—The provisions of former Section 183.10 are included in Section 183.09.

183.11 TAX INFORMATION CONFIDENTIAL.

Any information gained as the result of any returns, investigations, hearing or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except in accordance with proper judicial order, or except as hereinafter provided. The Finance Director or his/her delegate may furnish the Internal Revenue Service, Treasury Department of the United States, the Tax Commissioner of Ohio, and the duly authorized income tax administrator of any other Village or state with copies of the returns filed. The Finance Director or his/her delegate is also authorized to enter into agreements for the exchange of any information with any of the foregoing Federal, State or municipal officials. Any person divulging such information, except as hereinbefore authorized, shall be deemed guilty of a misdemeanor of the third degree and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisoned for not more than sixty (60) days, or both. Each disclosure shall constitute a separate offense.

(Ord. 43-2003. Passed 1-13-04.)

183.12 COLLECTION OF UNPAID TAXES.

(a) All taxes imposed by this chapter shall be collectible together with any interest and penalties thereon, by suit, or other debts of like amount are recoverable.

(b) The Finance Director or his/her delegate is authorized to institute civil law suits to collect delinquent taxes due and owing the Municipality by virtue of the provisions of this chapter. The Finance Director or his/her delegate is authorized to waive penalties and interest and compromise tax liability and the right to accept waiver of state statutes of limitation.

(Ord. 43-2003. Passed 1-13-04.)

183.13 CREDITS.

(a) Every individual taxpayer who resides in the Municipality who received net profits, salaries, wages, commissions, lottery winnings, prize moneys, tips and gratuities or other compensation for work done or services performed or rendered outside of the Municipality, if it is documented that he has paid a municipal income tax on the same income taxable under this Chapter to another municipality, shall be allowed a credit against the tax imposed by this Chapter on such income, earned in such other municipality or municipalities where such tax is paid.

(b) Except as provided in subsection (c) hereof, if tax or withholding is paid to a municipal corporation on income or wages, and if a second municipal corporation imposes a tax on that income or wages after the time period allowed for a refund of the tax or withholding paid to the first municipal corporation, the second municipal corporation shall allow a nonrefundable credit, against the tax or withholding the second municipality claims is due with respect to such income or wages, equal to the tax or withholding paid to the first municipal corporation with respect to such income or wages.

(c) If the tax rate in the second municipal corporation is less than the tax rate in the first municipal corporation, then the credit described in subsection (b) hereof shall be calculated using the tax rate in effect in the second municipal corporation.

(d) A claim for refund or credit under this section shall be made in such manner as the Finance Director may by regulation provide.

(Ord. 43-2003. Passed 1-13-04.)

183.14 EXEMPTIONS.

(a) The provisions of this chapter shall not be construed to tax the military pay or allowance of members of the armed forces of the United States, or the income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property or tax-exempt activities.

(b) The tax provided for herein shall not be levied on the personal earnings of any natural person under eighteen (18) years of age.

(Ord. 43-2003. Passed 1-13-04.)

183.15 CONTRACT PROVISIONS.

No contract on behalf of the Municipality for works or improvements of the Municipality shall be binding or valid unless such contract contains the following provisions:

"Said hereby further agrees to withhold all municipal income taxes due or payable under the provisions of Chapter 183 of the Codified Ordinances of New Albany, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for services performed under this contract."

(Ord. 43-2003. Passed 1-13-04.)

183.16 INTEREST AND PENALTIES.

(a) All taxes imposed and monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear interest, in addition to the amount of the unpaid tax or withholdings, at the rate of eighteen percent (18%) per annum or fraction thereof, and the taxpayers upon whom such taxes were imposed by this chapter shall be liable in addition thereto, to a penalty of ten percent (10%) of the amount of the unpaid tax.

(b) In addition to interest as provided in subsection (a) hereof, penalties for nonpayment of taxes due from taxpayers, moneys required to be withheld by employers under the provisions of this Chapter, and for failure to timely file tax returns are hereby imposed as follows:

- (1) In the case of taxpayers upon whom such taxes are imposed, ten percent (10%) of the amount of unpaid tax if paid after the same has become due; provided that penalty shall not be assessed on an additional tax assessment made by the Finance Director or his/her delegate when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Finance Director or his/her delegate; and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three (3) months after final determination of the federal tax liability.
- (2) In the case of taxpayers who fail to file tax returns when due as required by this Chapter, the following penalties shall apply:
 - A. Complete tax return, whether or not a tax be due thereon, is filed not more than thirty (30) days late, penalty shall be twenty-five dollars (\$25.00).
 - B. Complete tax return, whether or not a tax be due thereon, is filed more than thirty (30) but not more than one hundred twenty (120) days late, penalty shall be fifty dollars (\$50.00).
 - C. Complete tax return, whether or not a tax be due thereon, is filed more than one hundred twenty (120) days late, penalty shall be one hundred dollars (\$100.00).

- (3) Any annual withholding reconciliation, including employee W-2 information returns, not submitted on or before February 28 of each year, shall be subject to a penalty of twenty-five dollars (\$25.00) effective March 1 and increased by twenty-five dollars (\$25.00) the first day of each month thereafter that such employer remains in violation, to a maximum of one hundred dollars (\$100.00). Upon written request to the Finance Director, a thirty-day extension may be granted.

(Ord. 43-2003. Passed 1-13-04.)

183.17 ALLOCATION OF FUNDS.

The funds collected under the provisions of this chapter shall be applied for the following purpose and in the following order, to wit:

- (a) Such part thereof as shall be necessary to defray all costs of collecting the taxes levied by this chapter and enforcing the provisions hereof;
- (b) The allocation required by Section 187.13;
- (c) Two percent (2%) to the Parks Improvement Fund;
- (d) Ten percent (10%) to the Capital Improvement Fund;
- (e) The remainder to be deposited into the General Fund for the purpose of paying the cost of General Municipal Operations.

(Ord. 43-2003. Passed 1-13-04.)

183.18 SEVERABILITY.

If any sentence, clause, section or part of this chapter; or any tax against any individual or any of the several groups 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 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 Council of the Municipality of New Albany that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

(Ord. 43-2003. Passed 1-13-04.)

183.19 EXERCISE OF POWERS.

Nothing in this chapter shall be deemed to prevent the exercise of any of the powers and duties imposed on any officer or division of the Municipality by any person or agency, including another municipal corporation, with which the Municipality may contract for the administration and/or enforcement of the provisions of this chapter, it being the intent hereof that all enforcement powers granted to any officer or division of the Municipality may be exercised by such contracting party.

(Ord. 43-2003. Passed 1-13-04.)

183.20 EFFECTIVE DATE.

The income tax imposed by this chapter and all conditions, rules and regulations pertaining to same and to the collection of same, shall take effect at 12:01 a.m. January 1, 2004, and shall remain in effect unless and until repealed or amended by the Council pursuant to the Ohio Revised Code and the Charter of the Municipality of New Albany.

(Ord. 43-2003. Passed 1-13-04.)

183.21 BOARD OF REVIEW.

(a) A Board of Review, consisting of a chairperson and two (2) other individuals to be appointed by the Village Council with a recommendation from the Finance Committee is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board may be conducted privately and the provisions of Section 183.11 with reference to the confidential character of information required to be disclosed by the chapter shall apply to such matters as may be heard before the Board on appeal.

(b) All rules and regulations and amendments or changes thereto, which are adopted by the Finance Director under the authority conferred by this chapter, must be approved by the Board of Review before the same become effective. The Board shall hear and pass on appeals from any ruling or decision of the Finance Director, and, at the request of the taxpayer or Finance Director, is empowered to substitute alternate methods of apportionment. After such approval, such rules, regulations and changes shall be filed with the Clerk of Council and shall be open to public inspection.

(c) Whenever the Finance Director issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Municipality, the Finance Director shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(d) Any person who is aggrieved by a decision of the Finance Director and who has filed with the Municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Finance Director has issued the decision.

(e) The imposition of penalty and interest as prescribed in the Codified Ordinances of the Municipality is not a sole basis for an appeal.

(f) The Board of Review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.

(g) The Board may affirm, reverse, or modify the Finance Director's decision or any part of that decision. The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the Finance Director may appeal the Board's decision as provided in ORC 5717.011.

(h) Each Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under ORC 149.43. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to ORC 121.22. (Ord. 43-2003. Passed 1-13-04.)

183.99 VIOLATIONS; GENERAL PENALTIES.

No person subject to the provisions of this chapter shall fail, neglect or refuse to make any return or declaration, and no employer shall fail, neglect or refuse to deduct and withhold the taxes or pay the taxes imposed by this chapter, and no taxpayer shall fail, neglect or refuse to pay the tax, interest and penalties imposed by this chapter, and no person shall refuse to permit the Finance Director or his/her delegate, or his duly authorized agent or employee, to examine the books, records and papers of a taxpayer, and no person shall knowingly make an incomplete, false or fraudulent return, or attempt to do anything whatever to avoid payment of the whole or any part of the tax under this chapter.

(a) Any person divulging information in violation of Section 183.11, except as authorized in Section 183.11, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than six (6) months, or both. Each disclosure shall constitute a separate offense.

(b) Whoever violates this section shall be fined not more than two hundred fifty dollars (\$250.00) for the first offense, and not more than five hundred dollars (\$500.00) or imprisoned for not more than ninety (90) days, or both, for a second and subsequent offense.

(c) The failure of an employer or taxpayer to receive or procure a return or declaration form shall not excuse him from making a return or declaration or paying the tax levied under this chapter.

(d) Whosoever violates any provision of Sections 183.02 through 183.99 shall be guilty of a misdemeanor of the third degree and fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for the first offense. For each subsequent offense such person shall, with a corporation, be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. (Ord. 43-2003. Passed 1-13-04.)

CHAPTER 184 TRANSIENT OCCUPANCY TAX

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184.01 DEFINITIONS.

(a) "Director" or "Tax Administrator" means the Director of the Finance Department for the Village of New Albany, or their designee.

(b) "Fundamental Change" means any substantial alteration by an operator including liquidation, dissolution, bankruptcy, and reorganizations such as merger, consolidation, acquisition, transfer or change in identity, form or organization.

(c) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, in which five (5) or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures. For purposes of clarity, the term "hotel" shall be broadly interpreted to include motels or similar establishments.

(d) "Occupancy" means the use or possession, or the right to use or possession, of any room or rooms or space or portion thereof, in any hotel for dwelling, lodging or sleeping purposes. The use or possession or the right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample, or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses or has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

(e) "Operator" or "Vendor" means any person who is the proprietor of the hotel whether in the capacity of owner, lessee, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character, other than as an employee, the managing agent shall be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered compliance by both.

(f) "Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other group or combination acting as a unit.

(g) "Rent" means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or service of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

(h) "Transient Accommodations" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests in which four (4) or less rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(i) "Transient Guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty (30) consecutive days.

(j) "Village Administrator" or "Administrator" means the Administrator for the Village of New Albany as appointed by Council, or their designee.
(Ord. O-07-2010. Passed 2-16-10.)

184.02 INTENT OF CHAPTER.

It is the intent of this chapter to levy an excise tax pursuant to ORC 5739 of six percent (6%) on transactions by which lodging by a hotel is furnished, or is to be furnished to transient guests. Accordingly, this chapter shall be construed to effectuate those purposes and so as to be consistent with any requirement of law compliance with which is a prerequisite to the validity of the tax intended to be levied hereby.

(Ord. O-07-2010. Passed 2-16-10.)

184.03 IMPOSITION OF TAX: EXEMPTION.

(a) For the purpose of providing revenue with which to enable the Village to meet the needs of the General Fund, an excise tax of three percent (3.0%) is hereby levied on rent received by a hotel for the providing of occupancy of guests is hereby imposed pursuant to ORC 5739.02(C)(1).

(b) In addition to the tax levied under subsection (a) hereof, there is hereby levied an additional excise tax, as authorized by ORC 5739, of three percent (3.0%) of the rent received by a hotel for the providing of occupancy to transient guests is hereby imposed. One-half (1.5) of the revenue from this additional tax shall be deposited into a separate fund to be appropriated annually by Council for the purposes of promoting tourism, convention, economic development and other projects or expenditures which would enhance the Village's appeal to visitors and tourists. The remaining one-half (1.5) of the revenue from this additional tax shall be placed in the General Fund.

(c) Although the above levies are separate and distinct for purposes of determining distribution, the combined excise tax of six percent (6.0%) is hereby referred to as the "Transient Occupancy Tax."

(d) Within thirty (30) days of commencing business, each operator of any hotel renting lodging to transient guest shall register the hotel with the Director of the Department of Finance on such form as prescribed by the Director. The Director will then issue a tax identification number for the Village of New Albany. It shall be the operator's responsibility to update such registration in the event of any fundamental change.

(e) No tax shall be imposed under this chapter on:

- (1) Rents not within the taxing authority of the Village under the Constitution or laws of Ohio or the United States; or
- (2) Rents paid by the state or any of its political subdivisions.

(f) No exemption claimed under (e) above shall be granted except on a claim therefore made at the time the rent is collected and under penalty of perjury on a form prescribed by the Finance Director. All claims of exemption shall be made in the manner prescribed by the Director.

(g) For the proper administration of this chapter, and to prevent evasion of the tax, it is presumed that all lodging furnished by hotels in the Village to transient guests is subject to the tax until the contrary is established.

(Ord. O-07-2010. Passed 2-16-10.)

184.04 TRANSIENT GUEST TO PAY: PROOF OF EXEMPTION.

(a) The tax imposed by this chapter shall be paid by the transient guest to the operator, and each operator shall collect from the transient guest the full and exact amount of the tax payable on each taxable lodging.

(b) If the transaction is claimed to be exempt, the transient guest must furnish to the operator, and the operator must obtain from the transient guest, a statement specifying the reason that the sale is not legally subject to the tax. If no statement is obtained, it shall be presumed the tax applies.

(c) No transient guest shall refuse to pay the full and exact tax as required by this chapter, or present to the vendor false evidence indicating that the lodging as furnished is not subject to the tax.

(Ord. O-07-2010. Passed 2-16-10.)

184.05 OPERATOR TO COLLECT TAX: REBATE PROHIBITED.

(a) No operator shall fail to collect the full and exact tax as required by this subchapter. No operator shall refund, remit or rebate to a transient guest, either directly or indirectly any of the tax levied pursuant to this chapter, or make in any form of advertising, verbal or otherwise, any

statements which might imply that he is absorbing the tax, or paying the tax for the transient guest by an adjustment of prices, or furnishing lodging at a price including the tax, or rebating the tax in any other manner.

(b) Each operator in collecting the transient occupancy tax shall be deemed to hold the same, until payment is made by such operator to the Department of Finance, as a trustee for the benefit of the Village of New Albany and any such tax collected by such operator, shall, until the same is paid to the Village Department of Finance, be deemed a trust fund in the hands of such operator. All returns and payments submitted by the operator shall be treated as confidential by the Director of the Department of Finance and shall not be released by him except on order of a court of competent jurisdiction or to an officer or agent of the United States, the state, the county or the Village for official use only.

(c) Whoever violates this confidentiality shall be guilty of a misdemeanor of the first degree. (Ord. O-07-2010. Passed 2-16-10.)

184.06 REFUND OF ILLEGAL OR ERRONEOUS PAYMENTS.

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Village under this chapter, it may be refunded as provided in subsections (b), (c) and (d) hereof provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director of the Department of Finance.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Director of the Department of Finance that the person from whom the tax has been collected was not a transient guest; provided, however, that neither a refund nor a credit is allowed unless the amount of the tax so collected has either been refunded to the transient guest or credited to rent subsequently payable by the transient guest to the operator.

(c) A transient guest may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the Village by filing a claim in the manner provided in subsection (a) hereof, but only when the tax was paid by the transient guest directly to the Director of the Department of Finance, or when the transient guest having paid the tax to the operator, establishes to the satisfaction of the Director of the Department of Finance that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) Applications for a refund of such excise taxes paid shall be filed with the Finance Director on the form prescribed by him, within ninety (90) days from the date it is ascertained that the assessment or payment was illegal or erroneous. No refund shall be allowed unless such written request is presented to the Finance Director within four (4) years from the date of the duplicate, illegal or erroneous payment of the tax.

(e) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.
(Ord. O-07-2010. Passed 2-16-10.)

184.07 REQUIRED RECORDS: INSPECTION: DESTRUCTION.

Each operator shall keep complete and accurate records of lodgings furnished, together with a record of the tax collected thereon, which shall be the amount due under this chapter, and shall keep all invoices and such other pertinent documents. If the operator furnishes lodging not subject to the tax, the operator's records shall show the identity of the transient guest, if the sale was exempted by reason of such identity, or the nature of the transaction if exempted for any other reason. Such records and other documents shall be open to inspection by the Finance Director during business hours and shall be preserved for a period of four (4) years, unless the Finance Director, in writing, consents to their destruction within that period, or by order requires that they be kept longer.
(Ord. O-07-2010. Passed 2-16-10.)

184.08 RETURNS REQUIRED.

(a) Each operator shall, on or before the twentieth day of each month, file a monthly return on forms prescribed by the Finance Director showing receipts from furnishing lodging, the amount of tax due from the vendor to the Village for the preceding month, and such other information as the Finance Director deems necessary for the proper administration of this subchapter. Returns shall be filed by mailing the same to the Finance Director, together with payment of the amount of tax shown to be due thereon. The Finance Director shall stamp or otherwise mark on all returns the date received by him and shall also show thereon by stamp or otherwise the amount of payment received with the return. Any vendor who fails to file a return under this subchapter shall forfeit and pay a penalty to the Village equal to the sum of one percent (1.0%) of the taxes due. The returns shall be signed by the vendor or his authorized agent.

(b) On or before January 31 of each year, each operator shall file a transient occupancy tax annual reconciliation on a form prescribed by the Finance Director. Such form shall state the annual amount of rent received, the annual amount of rent exempted for the preceding calendar year, and such other information as the Director may require. Such form or forms shall be furnished by or obtainable upon request from the Director of the Department of Finance.

(c) No operator shall fail to file any return or report required to be filed by this chapter, or file or cause to be filed any incomplete, false or fraudulent return, report or statement.

(d) The Director of the Department of Finance may extend the time for making and filing returns. The Director may authorize operators whose tax liability is not such as to merit monthly returns, as determined by the Director of the Department of Finance upon the basis of administrative costs to the Village, to make and file returns at less frequent intervals. Such authorization shall be in writing and shall indicate the intervals at which returns are to be filed. The Director of

the Department of Finance, if he deems it necessary in order to insure the payment of the tax imposed by this chapter, may at his discretion require returns and payments to be made for other than monthly periods. The Director of Finance reserves the right to modify or terminate such authorization. The notice of modification or termination shall be made in writing and shall become effective upon receipt by the operator.

(e) If any operator, required to file monthly returns under this chapter, fails on two (2) consecutive months or on three (3) or more months within a 12-month period, to file such returns when due or to pay the tax thereon, or if any operator authorized by the Finance Director to file returns at less frequent intervals, fails on two (2) or more occasions within a 24-month period, to file such returns when due or to pay the tax due thereon, the Finance Director may require such operator to furnish security in an amount equal to the average tax liability of the vendor for a period of one year, as determined by the Finance Director from a review of returns or other information pertaining to such vendor, which amount shall in no event be less than one thousand dollars (\$1,000.00). The security may be in the form of payment to be applied to pay the tax due on subsequent returns, or a corporate surety bond or letter of credit, satisfactory to the Finance Director, conditioned upon payment of the tax due with the returns from the operator. The security must be filed within ten (10) days following the operator's receipt of the notice from the Finance Director of its requirements.

(f) A corporate surety bond or letter of credit filed under this section shall be returned to the operator if, for a period of twelve (12) consecutive months following the date the bond was filed, the vendor has filed all returns and remitted payment therewith within the time prescribed in this chapter.

(g) Each recipient organization of funds pursuant to this chapter shall within one hundred twenty (120) days after the end of their fiscal year provide to the Finance Director financial statements of the organization for such fiscal year prepared in accordance with standards set forth by the Director of Finance.

(Ord. O-07-2010. Passed 2-16-10.)

184.09 LIABILITY OF GUEST: ASSESSMENT: PENALTIES.

(a) If any operator collects the tax imposed by or pursuant to this chapter and fails to remit the tax to the Village as prescribed, he shall be personally liable for any amount collected which he failed to remit. The Finance Director may make an assessment against such operator based upon any information in the Finance Director's possession.

(b) If any operator fails to collect the tax or any transient guest fails to pay the tax imposed by or pursuant to this chapter on any transaction subject to the tax, such operator or transient guest shall be personally liable for the amount of the tax applicable to the transaction. The Finance Director may make an assessment against either the operator or transient guest, as the facts may require, based upon any information in his possession.

(c) An assessment against an operator in cases where the tax imposed by or pursuant to this chapter has not been collected or paid, shall not discharge the transient guest's liability to reimburse the operator for the tax applicable to such transaction.

(d) In each case the Finance Director shall give to the operator or transient guest assessed written notice of such assessment. Such notice may be served upon the vendor or transient guest assessed personally or by registered, certified or ordinary mail. An assessment issued against either, pursuant to the provisions of this chapter shall not be considered an election of remedies, nor a bar to an assessment against the other for the tax applicable to the same transaction, provided that no assessment shall be issued against any operator or transient guest for the tax due on a particular transaction if such tax has actually been paid by another.

(e) The Finance Director may make an assessment against any operator who fails to file a return required by this chapter or fails to remit the proper amount of tax in accordance with this chapter. When information in the possession of the Finance Director indicates that the amount required to be collected is, or should be, greater than the amount remitted by the operator, the Finance Director may upon the basis of test checks of an operator's business for a representative period which are hereby authorized, determine the ratio which the tax required to be collected under this chapter bears to the hotel's or transient accommodations' lodgings which determination shall be the basis of an assessment as herein provided in this chapter. Notice of such assessment shall be made in the manner prescribed in this chapter.

(f) All taxes imposed and all moneys collected or required to be collected under the provisions of this chapter and remaining unpaid after they are due shall be penalized as follows:

- (1) Ten percent (10%) per month, or fraction thereof, or fifty dollars (\$50.00), whichever is greater, for a first offense; or
- (2) For a second and all subsequent offenses, ten percent (10%) per month, or fraction thereof, or one hundred dollars (\$100.00), whichever is greater.
- (3) If the Director of the Department of Finance determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto, in addition to the penalties stated in (f) (1) and (2) above.
- (4) All taxes imposed and all moneys collected or required to be collected by operators under the provisions of this chapter and remaining unpaid after they become due shall bear interest at the rate of one and one-half percent (1.5%) per month or fraction thereof together with the costs of any collection actions, taxed and to be taxed.
- (5) The Finance Director may adopt and promulgate rules and regulations providing for the remission of penalties added to assessments made under this chapter.

(g) When any operator or transient guest files a petition for reassessment as provided in this chapter, the assessment made by the Finance Director, together with penalties thereon, shall become due and payable within three (3) days after notice of the finding made at the hearing has been served, either personally or by registered or certified mail, upon the party assessed.

(h) No additional penalty provided under the terms of this ordinance shall be imposed during the pendency for any hearing provided herein, nor during the pendency of any appeal to the Board of Review provided for herein.

(Ord. O-07-2010. Passed 2-16-10.)

184.10 TAX TO BE PAID BY TRANSIENT GUEST: FALSE EVIDENCE OF TAX-EXEMPT STATUS PROHIBITED.

No transient guest shall refuse to pay the full and exact tax as required by this chapter; no transient guest shall present false evidence to the operator indicating that the lodging as furnished is not subject to the tax.

(Ord. O-07-2010. Passed 2-16-10.)

184.11 FOUR-YEAR LIMITATION FOR ASSESSMENTS.

No assessment shall be made or issued against an operator or transient guest for any tax imposed by or pursuant to this chapter more than four (4) years after the return date for the period in which the lodging was furnished, or more than four (4) years after the return for such period is filed, whichever is later. This section does not bar an assessment:

- (a) When the Director of the Department of Finance has substantial evidence of amounts of taxes collected by an operator from transient guest's lodging which were not returned to the Village;
- (b) When the assessed operator failed to file a return as required.

(Ord. O-07-2010. Passed 2-16-10.)

184.12 PERSONAL LIABILITY OF CORPORATE OFFICERS OR EMPLOYEES.

If any operator required to file returns and to remit tax due to the Village under the provisions of the chapter, fails for any reason to make such filing or payment, any of its officers charged with the responsibility of filing returns and making payments, shall be personally liable for such failure. The dissolution of a corporation shall not discharge an officer's or employee's liability for a prior failure of the corporation to file returns or remit tax due. Returns and payments are due immediately upon cessation of business for any reason. The sum due for such liability may be collected by assessment in the manner provided in this chapter. Any person owing money to the Village under the provisions of this chapter shall be liable to an action brought in the name of the Village for recovery of the amount due plus assessments together with the costs of this action, taxed and to be taxed.

(Ord. O-07-2010. Passed 2-16-10.)

184.13 SEVERABILITY.

If any sentence, clause, section or part of this chapter or any tax imposed as 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 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 Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

(Ord. O-07-2010. Passed 2-16-10.)

184.14 OBJECTIONS; APPEALS; HEARINGS.

(a) Unless the operator or transient guest to whom the notice of assessment is directed, files within thirty (30) days after service thereof, either personally or by registered or certified mail, a petition in writing, verified under oath by the operator, transient guest or his authorized agent, having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for such objections, such assessment shall become conclusive and the amount thereof shall be due and payable, from the operator or transient guest so assessed, to the Director of the Department of Finance. When a petition for reassessment is filed, the Director shall assign a time and place for the hearing of same and shall notify the petitioner thereof by registered or certified mail, but the Director may continue the hearings from time to time if necessary.

(b) Any operator or transient guest aggrieved by any decision may appeal to the Board of Tax Appeals by filing a notice of appeal with the Board within fifteen (15) days of the serving or mailing of the determination of the tax due. The Board shall fix a time and place for hearing the appeal, and shall give notice in writing to the operator at his last known place of address. The findings of the Board shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of the notice of hearing. Any amount found to be due shall be immediately due and payable upon service of notice.

(Ord. O-07-2010. Passed 2-16-10.)

184.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the first degree.

(Ord. O-07-2010. Passed 2-16-10.)

CHAPTER 185 MOTOR VEHICLE LICENSE TAX*

185.01 TAX LEVIED.

185.01 TAX LEVIED.

(a) There is hereby levied an annual license tax upon the operation of motor vehicles on the public roads or highways, pursuant to ORC 4505.172, for the purposes of paying the costs and expenses of enforcing and administering the tax provided for in ORC 4504.06, and to supplement revenue already available for such purposes.

(b) Such tax shall be at the rate of five dollars (\$5.00) per motor vehicle on each and every motor vehicle the district of registration of which, as defined in ORC 4503.10, is in the Municipality of New Albany, Franklin County, Ohio.

(c) As used in this chapter, "motor vehicle" means each vehicle included within the definition of motor vehicle in ORC 4501.01 and 4505.01.

(d) The tax imposed by this chapter shall apply to and be in effect for the registration year commencing January 1, 1994 and shall continue in effect and application during each registered year thereafter.

(e) The tax imposed by this chapter shall be paid to the Registrar of Motor Vehicles of the State of Ohio or to a Deputy Registrar at the time application for registration of a motor vehicle is made as provided in ORC 4503.10.

(f) All moneys derived from the tax hereinbefore levied shall be used by the Municipality of New Albany for the purposes specified in this chapter, and more particularly defined as: planning, construction, improving, maintaining and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the municipal corporation's portion of the costs and expenses of cooperating with the Department of Transportation in the planning, improvement, and construction of state highways; paying the municipal corporation's portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads and streets; paying any costs apportioned to the municipal corporation under ORC 4907.47; paying debt service charges on notes or bonds of the municipal corporation issued for such purposes; purchasing, erecting and maintaining street and traffic signs and markers; purchasing, erecting and maintaining traffic lights and signals; and/or such other uses as may be found in ORC 4505.06.

(Ord. 67-93. Passed 12-7-93.)

*Cross reference—Authority to levy - see ORC 4505.172

CHAPTER 187 Funds*

187.01	GENERAL FUND.
187.02	CAPITAL IMPROVEMENT FUND.
187.03	INDIGENT DRIVERS ALCOHOL TREATMENT FUND.
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187.18	K-9 PATROL FUND.

187.01 General Fund.

(a) The Finance Director is hereby authorized, pursuant to ORC 5705.14(E), to transfer, on a monthly basis, an amount equal to the interest earned from the General Fund to the Village Capital Improvement Fund.

(b) The Finance Director is hereby authorized to pay for the annual police awards from the General Fund.

(Ord. 86-90. Passed 12-18-90; Res. 1-91. Passed 1-22-91.)

187.02 CAPITAL IMPROVEMENT FUND.

(a) The Capital Improvement Fund is hereby created. Deposits into the Fund shall include all moneys designated for payment into it.

(b) Moneys deposited in the Fund shall be used for any of the following purposes:

(1) Acquiring, purchasing and/or constructing, reconstructing, and maintaining infrastructure, including but not limited to streets, bridges, culverts, streams, waterlines, sewerlines, sanitary sewer lines, including land acquisition costs, and for any other public purpose;

(2) Paying the cost of property improvements purchased for any public purpose.

(c) The Finance Director is authorized to deposit all water and sewer tap fees collected, after all expenses associated with such collection are paid, into the Fund.

(Ord. 34-98. Passed 1-5-99.)

*Cross reference—Establishment of funds - See ORC 5705.09
Allocation of income tax funds - See ADMIN. 183.17

187.03 INDIGENT DRIVERS ALCOHOL TREATMENT FUND.

There is hereby created the Indigent Drivers Alcohol Treatment Fund. All funds designated pursuant to ORC 4511.99(A) shall be deposited into the Indigent Drivers Alcohol Treatment Fund and disbursed in accordance with ORC 4511.99(A).

(Res. 5-90. Passed 9-25-90.)

187.04 ALCOHOL EDUCATION FUND.

There is hereby created the Alcohol Education Fund. All funds designated pursuant to ORC 4511.99(A) shall be deposited into the Alcohol Education Fund and disbursed in accordance with ORC 4511.99(A).

(Res. 7-90. Passed 10-2-90.)

187.05 COLUMBUS SEWER CAPACITY AGENCY FUND.

There is hereby created the Columbus Sewer Capacity Agency Fund. The Fund is to be used only for holding the Columbus sewer capacity fees. The Finance Director is authorized to deposit all Columbus sewer capacity fees into the Fund and to pay the City of Columbus for all fees collected.

(Ord. 16-92. Passed 3-17-92.)

187.06 ISSUE II CAPITAL PROJECTS FUND.

The Issue II Capital Projects Fund is hereby created. The Fund is to be used to account for all Issue II funds. The Finance Director is authorized to pay all invoiced Issue II expenses from the Fund.

(Ord. 26-92. Passed 5-5-92.)

187.07 LAW ENFORCEMENT FUND.

(a) There is hereby created the Law Enforcement Fund into which shall be deposited cash or proceeds from the sale of vehicles and other property seized under the Contraband Seizure Forfeiture Act.

(b) Proceeds distributed to the Law Enforcement Fund shall be allocated only to the New Albany Police Department and shall be expended only to pay the costs of protracted or complex investigations; to provide reasonable technical training and expertise; to provide matching funds to obtain Federal grants to aid law enforcement; or for such other purposes as recommended by the Chief of Police.

(c) Under authority of ORC 2901.01(J) and (M), the Mayor or Administrator is hereby authorized and designated to accept cash, vehicles and other contraband property from the common pleas courts of the State of Ohio in accordance with the Contraband Seizure Forfeiture Act, ORC 2933.43, and to place the proceeds therefrom into the Fund as provided herein.

(d) The Administrator shall further cause all vehicles and property to be tagged to the Police Department to be used solely for law enforcement purposes, or sold and the proceeds from the sale deposited into the Law Enforcement Fund.

(e) The Fund shall not be used to meet the operating costs of the Municipality that are unrelated to law enforcement.

(Ord. 27-92. Passed 4-9-92.)

187.08 MANDATORY DRUG FINE FUND.

(a) There is hereby created the Mandatory Drug Fine Fund into which shall be deposited proceeds imposed by the Franklin County Municipal Court.

(b) Proceeds distributed to the Mandatory Drug Fine Fund shall be allocated only to the New Albany Police Department and shall be expended only to pay the costs of complex cases; costs of training and providing technical expertise; application toward Federal matching funds; special equipment; or for such other purposes as recommended by the Chief of Police.

(c) Moneys deposited into the Fund may not be used for operating costs of the Municipality if those costs are not related to law enforcement.

(d) The Chief of Police is hereby authorized and designated to accept drug fines from the Franklin County Municipal Court and cause the fines to be deposited into the Fund.

(Ord. 25-93. Passed 5-4-93.)

187.09 PARKS IMPROVEMENT FUND AND LEISURE TRAIL EXPANSION AND REPAIR FUND.

(a) The Parks Improvement Fund is hereby created. Moneys in the Fund are to be used only for the following:

- (1) Purchase of land for Municipally-owned and operated park facilities;
- (2) Improvement to recreational facilities within existing Municipally-owned and operated park facilities;
- (3) Purchase of recreational equipment with an expected service life of five (5) years or more;
- (4) Purchase of maintenance equipment with an expected service life of five (5) years or more which is to be used only in the public parks.

Money in the Fund shall not be used for maintenance and operation expenses incurred by the Municipality in the daily operation of park facilities.

(b) The Leisure Trail Expansion and Repair Fund is hereby created. Moneys in this Fund are to be used only for the following:

- (1) Purchase of land, easements or rights-of-way for Municipality-owned and operated leisure trails;

(2) Construction of leisure trails within the Municipality;

(3) Improvement to existing leisure trails within the Municipality.

(Ord. 60-94. Passed 12-6-94; Ord. 31-2006. Passed 7-18-06.)

187.10 MAYOR'S COURT COMPUTER FUND.

There is hereby created the Mayor's Court Computer Fund into which shall be deposited five dollars (\$5.00) from cases processed through the New Albany Mayor's Court. Proceeds are to be used only for the payment for a court computer system and for any updates or maintenance required therefor.

(Ord. 40-96. Passed 6-18-96; Ord. 34-2006. Passed 8-14-06.)

187.11 STREET AND HIGHWAY CONSTRUCTION, REPAIR AND MAINTENANCE FUND.

That the Street and Highway Construction, Maintenance and Repair Fund is hereby created. Moneys in the fund are to be used only for the following:

- (a) Planning, constructing, improving, maintaining, and repairing public roads, highways and streets, maintaining and repairing bridges and viaducts; purchasing, erecting and maintaining street and traffic signs and markers, and traffic lights and signals.
- (b) Reconstructing, repaving, widening, clearing and cleaning public roads, highways and streets.
- (c) Paying the principal, interest, and charges on bonds and other obligations issued pursuant to ORC Ch. 133 for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the municipal corporation may issue bonds.

(d) All investment earnings of the Fund shall be credited to the Fund.

(Ord. 64-96. Passed 11-5-96.)

187.12 EQUIPMENT REPLACEMENT FUND.

Editor's note—Former Section 187.12 was repealed by Ordinance 34-2002, passed September 17, 2002.

187.13 ECONOMIC OPPORTUNITY ZONE INCOME TAX FUND.

(a) There is hereby established the Economic Opportunity Zone Income Tax Fund. The following accounts shall be established within the Fund:

- (1) The Public Infrastructure Account (Infrastructure Account);
- (2) The Village Income Account (Village Account).

(b) There shall be deposited into the Infrastructure Account thirty percent (30%) of all Municipal income tax receipts generated from all private business activities within the Economic Opportunity Zone (the Zone), including but not limited to income tax receipts attributable to the construction of private or public improvements and the conducting of all private business activities within the Zone (collectively, the Zone receipts).

(c) There shall be deposited into the Village Account receipts in the amount of seventy percent (70%) of the Zone receipts.

(d) Any investments made from moneys credited to an accounts within the Fund shall constitute part of that Account and all proceeds from those investments shall be deposited into that Account.

(e) All of the moneys deposited into the Infrastructure Account shall be used for the purpose of reimbursing private parties for costs associated with the construction of public infrastructure improvements approved by the Municipality, including reimbursing advances made pursuant to agreements entered into between the Municipality and those private parties and paying interest on those advances as agreed to by the Municipality. Moneys deposited in the Infrastructure Account may also be used to pay the interest and principal of bonds or notes issued by the Municipality to finance those public infrastructure improvements.

(f) Moneys deposited in the Village Account may be used for Municipal purposes.
(Res. 13-96. Passed 7-2-96.)

187.14 BOND RETIREMENT FUND.

The Bond Retirement Fund is hereby established to be used for the repayment of principal and interest and associated costs related to the retirement of bonds, notes, loans, certificates of indebtedness and any other agreements requiring repayment.
(Ord. 1-97. Passed 2-4-97.)

187.15 SUBDIVISION DEVELOPMENT FUND.

Editor's note—Former Section 187.15 was repealed by Ordinance 34-2002, passed September 17, 2002.

187.16 WATER AND SANITARY SEWER MAINTENANCE AND IMPROVEMENT FUND.

(a) The Water and Sanitary Sewer Maintenance and Improvement Fund is hereby established to be used for the improvement, extension, maintenance, repair, equipment and appurtenances necessary to affect such repairs and maintenance to the Village's water and sanitary sewer systems, as well as the repayment of any principal, interest, and associated costs related to the issuance or retirement of indebtedness issued in support of the Village's water and sanitary sewer systems.

(b) The water and sanitary sewer capacity fees as established by Ordinance O-13-99 passed April 20, 1999 shall be deposited in the Water and Sanitary Sewer Improvement and Extension Fund.

(c) Those water and sanitary sewer capacity fees collected and deposited in the Capital Improvement Fund since the passage of Ordinance O-13-99 shall be transferred to the Water and Sanitary Sewer Improvement and Extension Fund.

(Ord. 29-99. Passed 10-5-99; Ord. 44-2008. Passed 10-21-08.)

187.17 CAPITAL EQUIPMENT REPLACEMENT FUND.

(a) City Council hereby creates and establishes the Capital Equipment Replacement Fund. This fund is to be used to account for interfund transfers and other revenues designated for the purpose of acquiring and replacing capital equipment. Funds deposited into the fund may be used for the following purposes:

- (1) Purchasing, leasing, maintaining or replacing capital equipment; and
- (2) Purchasing or leasing computer software that has a cost greater than the value at which capital equipment is capitalized.

(b) The Director of Finance shall determine the amount at which equipment and software is to be included in this fund. In order to be included, equipment and software shall have a useful life greater than one year, and at a cost that is equal to or greater than the capitalization threshold as established by City Council.

(c) The Capital Equipment Replacement Fund shall be credited with a prorated share of investment income based upon the amount available for investment compared to total city funds available for investment.

(Ord. O-17-2011. Passed 8-16-11.)

187.18 K-9 PATROL FUND.

(a) Village Council hereby creates the K-9 Patrol Fund. This fund is to be used to account for donations and other revenues designated for the support of a K-9 patrol unit within the Village's Police Department. Funds deposited into the fund may be used for the following purposes:

- (1) Purchase of a canine animal for the patrol unit; and
- (2) Purchase of food, supplies and equipment for the animal; and
- (3) Payment of veterinary services for the animal; and
- (4) Payment of other appropriate K-9 unit-related expenses.

(b) If the Village decides in the future to terminate or discontinue having its own K-9 unit, any remaining monies in the fund may be used to pay expenses related to the use of another jurisdiction's K-9 unit.

(Ord. O-26-2010. Passed 8-3-10.)

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301.01 MEANING OF WORDS AND PHRASES.

(a) Except as otherwise provided, the definitions set forth in ORC 4501.01 shall apply to this Traffic Code and the penal laws of the Municipality.

(b) Except as otherwise provided, the following words and phrases, when used in this Traffic Code, shall have the meanings respectively ascribed to them in this chapter.

301.02 AGRICULTURAL TRACTOR.

"Agricultural tractor" means every self-propelling 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.

State law reference—ORC 4511.01(J)

301.03 ALLEY.

"Alley" means 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 includes any street or highway that has been declared an "alley" by Council.

State law reference—ORC 4511.01(XX)

301.035 BEACON.

"Beacon" means a highway traffic signal with one or more signal sections that operate in a flashing mode.

State law reference—ORC 4511.01(KKK)

301.04 BICYCLE; MOTORIZED BICYCLE.

(a) "Bicycle" means every device, other than a tricycle designed solely for use as a play vehicle by a child, propelled solely by human power, upon which any person may ride having either two (2) tandem wheels or one wheel in the front and two (2) wheels in the rear, or two (2) (wheels in the front and one wheel in the rear, any of which is more than fourteen (14) inches in diameter.

(b) "Motorized bicycle" means any vehicle having either two (2) tandem wheels or one wheel in the front and two (2) wheels in the rear, that is capable of being pedaled and is equipped with a helper motor of not more than fifty (50) cubic centimeters piston displacement which produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of no greater than twenty (20) miles per hour on a level surface.

State law references—ORC 4511.01(G); ORC 4511.01(H)

301.05 BUS.

"Bus" means every motor vehicle designed for carrying more than nine (9) passengers and used for the transportation of persons other than in a ridesharing arrangement as defined in ORC 4511.01, 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.

State law reference—ORC 4511.01(L)

301.06 BUSINESS DISTRICT.

"Business district" means the territory fronting upon a street or highway, including the street or highway, between successive intersections where fifty percent (50%) or more of the frontage between such successive intersections is occupied by buildings in use for business, or where fifty percent (50%) or more of the frontage for a distance of three hundred (300) feet or more is occupied by buildings in use for business, and the character of such territory is indicated by official traffic control devices.

State law reference—ORC 4511.01(NN)

301.07 COMMERCIAL TRACTOR.

"Commercial tractor" means 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 such other vehicles, or the load thereon, or both.

State law reference—ORC 4511.01(I)

301.08 CONTROLLED-ACCESS HIGHWAY.

"Controlled-access highway" means 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 such points only and in such manner as may be determined by the public authority having jurisdiction over such street or highway.

State law reference—ORC 4511.01(CC)

301.09 CROSSWALK.

"Crosswalk" means:

- (a) 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;

- (b) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;
- (c) Notwithstanding subsections (a) and (b) hereof, there shall not be a crosswalk where authorized signs have been placed indicating no crossing.

State law reference—ORC 4511.01(LL)

301.10 DRIVER OR OPERATOR.

"Driver" or "operator" means every person who drives or is in actual physical control of a vehicle.

State law reference—ORC 4511.01(Y)

301.11 EMERGENCY VEHICLE.

"Emergency vehicle" means emergency vehicles of municipal, township or county departments or public utility corporations when identified as such as required by law, the Ohio Director of Public Safety or local authorities, and motor vehicles when commandeered by a police officer.

State law reference—ORC 4511.01(D)

301.12 EXPLOSIVES.

"Explosives" means 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 such a sudden generation of highly heated gases 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 such limited quantities, of such nature or in such packing, that it is impossible to procure a simultaneous or a destructive explosion of such units, to the injury of life, limb or property by fire, by friction, by concussion, by percussion or by a detonator, such as fixed ammunition for small arms, firecrackers or safety fuse matches.

State law reference—ORC 4511.01(T)

301.13 EXPRESSWAY.

"Expressway" means a divided arterial highway for through traffic with full or partial control of access with an excess of fifty percent (50%) of all crossroads separated in grade.

State law reference—ORC 4511.01(ZZ)

301.14 FLAMMABLE LIQUID.

"Flammable liquid" means any liquid that has a flash point of seventy degrees Fahrenheit (70°F), or less, as determined by a tagliabue or equivalent closed cup test device.

State law reference—ORC 4511.01(U)

301.15 FREEWAY.

"Freeway" means a divided multi-lane highway for through traffic with all crossroads separated in grade and with full control of access.

State law reference—ORC 4511.01(YY)

301.16 GROSS WEIGHT.

"Gross weight" means the weight of a vehicle plus the weight of any load thereon.

State law reference—ORC 4511.01(V)

301.165 HIGHWAY TRAFFIC SIGNAL.

"Highway traffic signal" means 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.

State law reference—ORC 4511.01(MMM)

301.165 HYBRID.

"Hybrid beacon" means 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.

State law reference—ORC 4511.01(LLL)

301.17 INTERSECTION.

"Intersection" means:

- (a) 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 (2) 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.
- (b) If a highway includes two (2) roadways that are thirty (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 (2) roadways thirty (30) feet or more apart, then every crossing of any two (2) roadways of such highways constitutes a separate intersection.
- (c) At a location controlled by a traffic control signal, regardless of the distance between the separate intersections as described in division (b) of this definition:
 - (1) If a stop line, yield line, or crosswalk has not been designated on the roadway within the median between the separate intersections, the two (2) intersections and the roadway and median constitute one intersection.

- (2) 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.
- (3) 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.

State law reference—ORC 4511.01(KK)

301.18 LANED STREET OR HIGHWAY.

"Laned street or highway" means a street or highway the roadway of which is divided into two (2) or more clearly marked lanes for vehicular traffic.

State law reference—ORC 4511.01(GG)

301.185 MEDIAN.

"Median" means the area between two (2) 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.

State law reference—ORC 4511.01(NNN)

301.19 MOTORCYCLE.

"Motorcycle" means 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 (3) wheels in contact with the ground, including but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter" or "motorcycle" without regard to weight or brake horsepower.

State law reference—ORC 4511.01(C)

301.20 MOTOR VEHICLE.

"Motor vehicle" means every vehicle propelled or drawn by power other than muscular power, 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 (10) miles and at a speed of twenty-five (25) miles per hour or less.

State law reference—ORC 4511.01(B)

301.201 OPERATE.

"Operate" means to cause or have caused movement of a vehicle.

State law reference—ORC 4511.01(HHH)

301.21 PARK OR PARKING.

"Park or parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

301.22 PEDESTRIAN.

"Pedestrian" means any natural person afoot.

State law reference—ORC 4511.01(X)

301.23 PERSON.

"Person" means every natural person, firm, copartnership, association or corporation.

State law reference—ORC 4511.01(W)

301.24 POLE TRAILER.

"Pole trailer" means 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 connection.

State law reference—ORC 4511.01(O)

301.25 POLICE OFFICER.

"Police officer" means every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

State law reference—ORC 4511.01(Z)

301.251 PREDICATE MOTOR VEHICLE OR TRAFFIC OFFENSE.

"Predicate motor vehicle or traffic offense" means any of the following:

- (a) A violation of ORC 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 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;
- (b) A violation of division (A)(2) of ORC 4511.17, divisions (A) to (D) of ORC 4511.51, or division (A) of ORC 4511.74;
- (c) A violation of any provision of ORC 4511.01 to 4511.76 for which no penalty otherwise is provided in the section that contains the provision violated;

- (d) A violation of a municipal ordinance that is substantially similar to any section or provision set forth or described in subsection (a) to (c) of this section.

State law reference—ORC 4511.01(III)

301.252 PRIVATE ROAD OPEN TO PUBLIC TRAVEL.

"Private road open to public travel" means 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.

State law reference—ORC 4511.01(OOO)

301.26 PRIVATE ROAD OR DRIVEWAY.

"Private road or driveway" means 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.

State law reference—ORC 4511.01(DD)

301.27 PUBLIC SAFETY VEHICLE.

"Public safety vehicle" means any of the following:

- (a) Ambulances, including private ambulance companies under contract to a municipal corporation, township or county and private ambulances and transport vehicles bearing license plates issued under ORC 4503.49;
- (b) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the State or the Municipality;
- (c) Any motor vehicle when properly identified as required by the Ohio 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 Ohio Fire Marshal shall be designated by the Ohio Director of Public Safety as the certifying agency for all public safety vehicles described in this subsection (c);
- (d) Vehicles used by fire departments, including motor vehicles when used by volunteer fire fighters responding to emergency calls in the fire department service when identified as required by the Ohio Director of Public Safety.
- (e) 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 a public safety vehicle when transporting an ill or injured person to a hospital regardless of whether such vehicle has already passed a hospital.

- (f) Vehicles used by the Motor Carrier Enforcement Unit for the enforcement of orders and rules of the Public Utilities Commission as specified in ORC 5503.34.

State law reference—ORC 4511.01(E)

301.28 RAILROAD.

"Railroad" means a carrier of persons or property operating upon rails placed principally on a private right-of-way.

State law reference—ORC 4511.01(P)

301.29 RAILROAD SIGN OR SIGNAL.

"Railroad sign or signal" means 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.

State law reference—ORC 4511.01(SS)

301.30 RAILROAD TRAIN.

"Railroad train" means a steam engine, or an electric or other motor, with or without cars coupled thereto, operated by a railroad.

State law reference—ORC 4511.01(Q)

301.31 RESIDENCE DISTRICT.

"Residence district" means the territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of three hundred (300) feet or more, the frontage is improved with residences or residences and buildings in use for business.

State law reference—ORC 4511.01(OO)

301.32 RIGHT-OF-WAY.

"Right-of-way" means either of the following, as the context requires:

- (a) The right of a vehicle or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it or the individual is moving in preference to another vehicle or pedestrian approaching from a different direction into its or the individual's path;
- (b) 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.

State law reference—ORC 4511.01(UU)

301.325 ROAD SERVICE VEHICLE.

"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.

State law reference—ORC 4511.01(JJJ)

301.33 ROADWAY.

"Roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, except the berm or shoulder. If a street or highway includes two (2) or more separate roadways, the term "roadway" means any such roadway separately but not all such roadways collectively.

State law reference—ORC 4511.01(E)

301.34 SAFETY ZONE.

"Safety zone" means 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 as to be plainly visible at all times.

State law reference—ORC 4511.01(M)

301.35 SCHOOL BUS.

"School bus" means every bus designed for carrying more than nine (9) passengers that 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 "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of the Municipality, or within such limits and the territorial limits of municipal corporations immediately contiguous to the Municipality, nor a common passenger carrier certified by the Public Utilities Commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, and "school bus" 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 fifteen (15) children in the van or bus at any time. "Child day-care center" and "type A family day-care home" have the same meanings as in ORC 5104.01.

State law reference—ORC 4511.01(F), (F)

301.36 SEMITRAILER.

"Semitrailer" means 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.

State law reference—ORC 4511.01(N)

301.365 SHARED-USE PATH.

"Shared-use path" means 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.

State law reference—ORC 4511.01(PPP)

301.37 SIDEWALK.

"Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

State law reference—ORC 4511.01(FF)

301.38 STATE ROUTE.

"State route" means every highway that is designated with an official State route number and so marked.

State law reference—ORC 4511.01(JJ)

301.39 STOP (WHEN REQUIRED).

"Stop" when required means a complete cessation of movement.

301.40 STOPPING OR STANDING.

(a) "Stop or stopping" when prohibited means any halting of a vehicle, even momentarily, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

(b) "Stand or standing" means the halting of a vehicle, whether occupied or not, otherwise then temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

301.41 STOP INTERSECTION.

"Stop intersection" means any intersection at one or more entrances of which stop signs are erected.

State law reference—ORC 4511.01(BBB)

301.42 STREET OR HIGHWAY; ARTERIAL STREET.

(a) "Street" or "highway" are synonymous and mean 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.

State law reference—ORC 4511.01(BB)

(b) "Arterial street" means 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.

State law reference—ORC 4511.01(CCC)

301.43 THROUGH STREET OR HIGHWAY.

"Through street or highway" means every street or highway as provided in Section 313.02.

State law reference—ORC 4511.01(HH)

301.44 THRUWAY.

"Thruway" means a through street or highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.

State law reference—ORC 4511.01(AAA)

301.45 TRAFFIC.

"Traffic" means 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.

State law reference—ORC 4511.01(TT)

301.46 TRAFFIC CONTROL DEVICE.

"Traffic control device" means 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.

State law reference—ORC 4511.01(QQ)

301.47 TRAFFIC CONTROL SIGNAL.

"Traffic control signal" means any highway traffic signal by which traffic is alternately directed to stop and permitted to proceed.

State law reference—ORC 4511.01(RR)

301.48 TRAILER.

"Trailer" means 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 such 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 twenty-five (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 (10) miles or at a speed of more than twenty-five (25) miles per hour.

State law reference—ORC 4511.01(M)

301.49 TRUCK.

"Truck" means every motor vehicle, except trailers and semitrailers, designed and used to carry property.

State law reference—ORC 4511.01(K)

301.50 URBAN DISTRICT.

"Urban district" means 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 one hundred (100) feet for distance of a quarter of a mile or more, and the character of such territory is indicated by official traffic control devices.

State law reference—ORC 4511.01(PP)

301.51 VEHICLE.

"Vehicle" means 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 "vehicle" does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wire or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power.

State law reference—ORC 4511.01(A)

301.52 WHEELCHAIR, MOTORIZED.

"Motorized wheelchair" means any self-propelled vehicle designed for, and used by, a handicapped person and that is incapable of a speed in excess of eight (8) miles per hour.

State law reference—ORC 4511.01(EEE)

CHAPTER 303 ENFORCEMENT, IMPOUNDING AND PENALTY*

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303.01 COMPLIANCE WITH LAWFUL ORDER OF POLICE OFFICER; FLEEING.

(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) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer. A violation of subsection (a) is a misdemeanor of the first degree. A violation of subsection (b) is a misdemeanor of the first degree, unless the jury or judge as trier of fact finds any one of the following by proof beyond a reasonable doubt:

- (1) In committing the offense, the offender was fleeing immediately after the commission of a felony;
- (2) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property;
- (3) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

***Cross reference**—See sectional histories for similar state law

Disposition of unclaimed vehicles - see ORC 737.32, 4513.62 et seq.

Citations for minor misdemeanors - see ORC 2935.26 et seq.

Power of trial court of record to suspend license for certain violations - see ORC 4510.05, 4510.15

State point system suspension - see ORC 4507.40

Uniform application of Ohio Traffic Law - see ORC 4511.06

Marking motor vehicles used by traffic officers - see ORC 4549.13

Distinctive uniform required for traffic officers - see ORC 4549.15

Exceptions for emergency or public safety vehicles - see TRAF. 331.20, 333.06

(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 ORC 4510.02(A)(5). If the offender previously has been found guilty of an offense under this section or under ORC 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 ORC 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 ORC 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.

State law reference—ORC 2921.331

303.02 TRAFFIC DIRECTION IN EMERGENCIES; OBEDIENCE TO SCHOOL GUARD.

(a) Police officers shall direct or regulate traffic in accordance with the provisions of this Traffic Code, provided that, in the event of fire or other emergency or to expedite traffic or safeguard pedestrians, they are authorized to direct traffic as conditions may require notwithstanding the provisions of this Traffic Code. Firemen, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity. The direction of traffic may be by word or audible signal, by gesture or visible signal or by any combination thereof. No person shall fail to comply with any lawful order or direction of any police officer or fireman issued pursuant to this section.

(b) No person shall fail to comply with any lawful order or direction of any school crossing guard invested with authority to direct, control or regulate traffic in the vicinity of the school to which such guard may be assigned.

(c) 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.

303.03 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, or any public or private property used by the public for purposes of vehicular travel or parking. The officer removing such key shall place notification upon the vehicle detailing his name and badge number, the place where such key may be reclaimed and the procedure for reclaiming such key. The key shall be returned to the owner of the motor vehicle upon presentation of proof of ownership.

State law reference—ORC 4549.05

303.04 ROAD WORKERS, MOTOR VEHICLES AND EQUIPMENT EXCEPTED.

(a) The provisions of this Traffic Code 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 such 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 ORC 331.01 to 331.04, 331.06 to 331.08, 331.31, 333.04, 337.01 and ORC 4511.66 and 5577.01 to 5577.09.

(c) (1) This section does not exempt a driver of a highway maintenance vehicle from civil liability arising from a violation of Sections 331.01 to 331.04, 331.06 to 331.08, 331.31, 333.04, 337.01 or ORC 4511.66 or 5577.01 to 5577.09.

(2) This section does not exempt the driver of a vehicle that is engaged in the transport of highway maintenance equipment from criminal liability for a violation of ORC 5577.01 to 5577.09.

(d) As used in this section, "highway maintenance vehicle" means 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.

State law reference—ORC 4511.04

303.041 EMERGENCY, PUBLIC SAFETY AND CORONER'S VEHICLES EXEMPT.

(a) ORC 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 all sections of this Traffic Code or other municipal ordinances that are substantially equivalent to the sections listed above, 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 five hundred (500) feet to the front of the vehicle and if the driver of the vehicle 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.

(b) ORC 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, and all sections of this Traffic Code or other municipal ordinances that are substantially equivalent to the sections listed above, do not apply to a coroner, deputy coroner, or coroner's investigator operating a motor vehicle in accordance with ORC 4513.171. This section 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.

State law reference—ORC 4511.042

303.05 APPLICATION TO PERSONS RIDING, DRIVING ANIMALS UPON ROADWAY.

Every person riding, driving or leading an animal upon a roadway shall be subject to the provisions of this Traffic Code applicable to the driver of a vehicle, except those provisions of such sections which by their nature are inapplicable.

State law reference—ORC 4511.05

303.06 FREEWAY USE PROHIBITED BY PEDESTRIANS, BICYCLES AND ANIMALS.

(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 (5) brake horsepower; an agricultural tractor; farm machinery; except in the performance of public works or official duties.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.051

303.07 APPLICATION TO DRIVERS OF GOVERNMENT VEHICLES.

The provisions of this Traffic Code applicable to the drivers of vehicles shall apply to the drivers of all vehicles owned or operated by the United States, any state or any political subdivision thereof, including this Municipality, except as may be otherwise provided by law and subject to such specific exceptions as are set forth with reference to authorized emergency and public safety vehicles.

303.08 IMPOUNDING OF VEHICLES; REDEMPTION.

(a) Police officers are authorized to provide for the removal of a vehicle under the following circumstances:

- (1) When any vehicle is illegally parked, stopped, or standing on any public street, bridge, causeway, or highway, or so as to unreasonably interfere with street cleaning, maintenance, snow removal operations or special events.

- (2) When any vehicle or "abandoned junk motor vehicle" as defined in ORC 4513.63 is left on private property for more than forty-eight (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 forty-eight (48) consecutive hours or longer, without notification to the Police Chief of the reasons for leaving such vehicle in such place. Prior to disposal of an "abandoned junk motor vehicle" as defined in ORC 4513.63, it shall be photographed by a law enforcement officer.
- (3) When any vehicle has been stolen or operated without the consent of the owner and is located upon either public or private property.
- (4) When any vehicle displays illegal license plates or fails to display the current lawfully required plates and is located upon any public street or other property open to the public for purposes of vehicular travel or parking.
- (5) When any vehicle has been used in or connected with the commission of a felony and is located upon either public or private property.
- (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, and is located upon any public street or other property open to the public for purposes of vehicular travel or parking.
- (7) When any vehicle is left unattended either on public or private property due to the removal of an ill, injured or arrested operator, or due to the abandonment thereof by the operator during or immediately after pursuit by a law enforcement officer.
- (8) When any vehicle has been operated by any person who has failed to stop in case of an accident or collision and is located either on public or private property.
- (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 and is located upon a public street or other property open to the public for purposes of vehicular travel or parking.
- (10) When any vehicle is found for which two (2) 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, and is located upon a public street or other property open to the public for purposes of vehicular travel or parking.

(b) Any vehicle removed under authority of subsection (a)(2) hereof shall be ordered into storage and/or disposed of as provided under ORC 4513.60 et seq. Any other vehicle removed under authority of this section shall be ordered into storage and the Municipal police shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, reasons therefor and the place of storage. Any person desiring to redeem an impounded vehicle shall appear at the police offices 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 on account 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 such 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.

(d) 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.

(Ord. O-34-2014. Passed 11-18-14.)

303.081 IMPOUNDING VEHICLES ON PRIVATE PROPERTY; PRIVATE TOW-AWAY ZONES; RELEASE OF VEHICLES.

(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 division (a) of this section is guilty of a minor misdemeanor.

(c) (1) The owner of private property may establish a private tow-away zone only if all of the following conditions are satisfied:

- A. The owner posts on the owner's property a sign that is at least eighteen (18) inches by twenty-four (24) inches in size, that is visible from all entrances to the property, and that contains at least all of the following information:
 1. A notice that the property is a private tow-away zone and that vehicles not authorized to park on the property will be towed away;
 2. The telephone number of the person from whom a towed-away vehicle can be recovered and the address of the place to which the vehicle will be taken and the place from which it may be recovered;
 3. A statement that the vehicle may be recovered at any time during the day or night upon the submission of proof of ownership and the payment of a towing charge, in an amount not to exceed ninety dollars (\$90.00), and a storage charge, in an amount not to exceed twelve dollars (\$12.00) per 24-hour period; except that the charge for towing shall not exceed one hundred fifty dollars (\$150.00), and the

storage charge shall not exceed twenty dollars (\$20.00) per 24-hour period, if the vehicle has a manufacturer's gross vehicle weight rating in excess of ten thousand (10,000) pounds and is a truck, bus or a combination of a commercial tractor and trailer or semitrailer.

- B. The place to which the towed vehicle is taken and from which it may be recovered is conveniently located, is well lighted and is on or within a reasonable distance of a regularly scheduled route of one or more modes of public transportation, if any public transportation is available in the municipality in which the private tow-away zone is located.
- (2) If a vehicle is parked on private property that is established as a private tow-away zone in accordance with division (c)(1) without the consent of the owner of the property or in violation of any posted parking condition or regulation, the owner or the owner's agent may remove, or cause the removal of, the vehicle, the owner and the operator of the vehicle shall be deemed to have consented to the removal and storage of the vehicle and to the payment of the towing and storage charges specified in division (c)(1)A.3. of this section, and the owner, subject to division (d) of this section, may recover a vehicle that has been so removed only in accordance with division (f) of this section.
- (3) If the municipality requires tow trucks and tow truck operators to be licensed, no owner of private property located within the municipality shall remove or shall cause the removal and storage of any vehicle pursuant to division (c)(2) of this section by an unlicensed tow truck or unlicensed tow truck operator.
- (4) Divisions (c)(1) through (c)(3) of this section do not affect or limit the operation of ORC 4513.60 through 4513.65 as they relate to property other than private property that is established as a private tow-away zone under division (c)(1) of this section.
- (d) If the owner or operator of a vehicle that has been ordered into storage pursuant to division ORC 4513.60(A) or of a vehicle that is being removed under authority of division (c)(2) of this section arrives after the vehicle has been prepared for removal but prior to its actual removal from the property, the owner or operator shall be given the opportunity to pay a fee of not more than one-half of the charge for the removal of vehicles under ORC 4513.60(A) or of vehicles under division (c)(2) of this section, whichever is applicable, that normally is assessed by the person who has prepared the vehicle for removal, in order to obtain release of the vehicle. Upon payment of that fee, the vehicle shall be released to the owner or operator, and upon its release, the owner or operator immediately shall move it so that:
- (1) If the motor vehicle was ordered into storage pursuant to ORC 4513.60(A), it is not on the private residential or private agricultural property without the permission of the person having the right to possession of the property, or is not at the garage or place of storage without the permission of the owner, whichever is applicable;

(2) If the vehicle was being removed under authority of division (c)(2) of this section, it is not parked on the private property established as a private tow-away zone without the consent of the owner or in violation of any posted parking condition or regulation.

(e) (1) If an owner of private property that is established as a private tow-away zone in accordance with division (c)(1) of this section or the authorized agent of such an owner removes or causes the removal of a vehicle from that property under authority of division (c)(2) of this section, the owner or agent promptly shall notify the Police Department of the removal, the vehicle's license number, make, model and color, the location from which it was removed, the date and time of its removal, the telephone number of the person from whom it may be recovered, and the address of the place to which it has been taken and from which it may be recovered.

(2) The Police Chief shall maintain a record of vehicles that the Police Chief orders into storage pursuant to ORC 4513.60(A) and of vehicles removed from private property in the Police Chief's jurisdiction that is established as a private tow-away zone of which the Police Chief has received notice under division (e)(1) of this section. The record shall include an entry for each such vehicle that identifies the vehicle's license number, make, model and color, the location from which it was removed, the date and time of its removal, the telephone number of the person from whom it may be recovered, and the address of the place to which it has been taken and from which it may be recovered. Any information in the record that pertains to a particular vehicle shall be provided to any person who, either in person or pursuant to a telephone call, identifies self as the owner or operator of the vehicle and requests information pertaining to its location.

(3) Any person who registers a complaint that is the basis of the Police Chief's order for the removal and storage of a vehicle under ORC 4513.60(A) shall provide the identity of the law enforcement agency with which the complaint was registered to any person who identifies self as the owner or operator of the motor vehicle and requests information pertaining to its location.

(f) The owner of a vehicle that is ordered into storage pursuant to ORC 4513.60(A) or of a vehicle that is removed under authority of division (c)(2) of this section may reclaim it upon payment of any expenses or charges incurred in its removal, in an amount not to exceed ninety dollars (\$90.00), and storage, in an amount not to exceed twelve dollars (\$12.00) per 24-hour period; except that the charge for towing shall not exceed one hundred fifty dollars (\$150.00), and the storage charge shall not exceed twenty dollars (\$20.00) per 24-hour period, if the vehicle has a manufacturer's gross vehicle weight rating in excess of ten thousand (10,000) pounds and is a truck, bus or a combination of a commercial tractor and trailer or semitrailer. Presentation of proof of ownership, which may be evidenced by a certificate of title to the vehicle also shall be required for reclamation of the vehicle. If a vehicle that is ordered into storage pursuant to ORC 4513.60(A) remains unclaimed by the owner for thirty (30) days, the procedures established by ORC 4513.61 and 4513.62 shall apply.

(g) No person shall remove, or cause the removal of, any vehicle from private property that is established as a private tow-away zone under division (c)(1) of this section other than in accordance with division (c)(2) of this section, and no person shall remove, or cause the removal of, any motor vehicle from any other private property other than in accordance with ORC 4513.60 through 4513.65.

(h) Whoever violates division (c)(3) or (g) of this section is guilty of a minor misdemeanor.

State law references—ORC 4511.681; ORC 4513.60

303.082 RECODIFIED.

Editor's note—Sections 303.081, 303.082 and 303.083 were all derived from ORC 4513.60. They have therefore been combined as part of the 2011 updating and revision of these Codified Ordinances. Please see Section 303.081.

303.083 RECODIFIED.

Editor's note—Sections 303.081, 303.082 and 303.083 were all derived from ORC 4513.60. They have therefore been combined as part of the 2011 updating and revision of these Codified Ordinances. Please see Section 303.081.

303.09 ABANDONED MOTOR VEHICLE AND JUNK MOTOR VEHICLE DEFINED.

For the purposes of Section 303.10, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(a) **Junk Motor Vehicle.** Any motor vehicle meeting all of the following requirements:

- (1) Three (3) years or older;
- (2) Extensively damaged, such damage may include but is not limited to any of the following: a broken windshield or window, missing wheels, tires, motor or transmission;
- (3) Apparently inoperable;
- (4) Having a fair market value of two hundred dollars (\$200.00) or less. A wrecked vehicle being held for repair at an automobile service garage or body shop in compliance with Zoning Ordinance shall be exempted from the provisions of this section.

(b) **"Abandoned Vehicle."** Any vehicle including a passenger vehicle, a recreational vehicle, or agricultural equipment left without the permission of the property owner on private property for seventy-two (72) hours or longer, on a public street or other property open to the public for the purpose of vehicular travel or parking, or upon or within the public right-of-way of any road or highway for forty-eight (48) hours or longer. The fact that a motor vehicle has been left without the permission or notification of the property owner is prima facie evidence of abandonment.

(Ord. 21-2001. Passed 6-19-01.)

303.10 JUNK MOTOR VEHICLES.

(a) Declared a Public Nuisance. Except as otherwise provided, the deposit, storage, maintenance or collection of junk motor vehicles outside of a building or buildings is hereby declared to be a public nuisance causing a deteriorating and blighting influence on nearby properties.

(b) Parking and Storage of Junk Motor Vehicles. No person shall willfully park, store, leave, or consent to the parking or storing on any public or private property in the Village of New Albany a junk motor vehicle except in an enclosed building or garage. No junk motor vehicle shall be left uncovered and be open on private properties for more than seventy-two (72) hours without the permission of the persons 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 forty-eight (48) hours or longer.

(c) Whenever the Chief of Police or his designated representative finds on private property a junk motor vehicle as defined herein, he shall cause written notice of such finding to be served by certified mail, return receipt requested, on the titled owner of the vehicle, or on the owner, lessee, agent or tenant, having the right to possession of such real property, if the titled owner is unknown. Such notice shall provide that the junk motor vehicle must be removed from the real property identified in the notice within ten (10) days after service of such notice. If the address of the titled owner of the vehicle or of the owner, lessee, agent or tenant having the right to possession of such property is unknown, it shall be sufficient to publish the notice of finding once in a newspaper of general circulation.

(d) An owner, lessee, agent or tenant having the right of possession of such real property on which the junk motor vehicle is located or the titled owner of the vehicle may within seven (7) days after service of the notice provided for herein request in writing to the Chief of Police a hearing before the Board of Zoning Appeals on the question of whether or not the motor vehicle identified in the notice is a junk motor vehicle as defined herein.

After conducting such hearing, the Board of Zoning Appeals shall render a decision as to whether or not the motor vehicle is a junk motor vehicle as defined herein. Such decision shall set forth the facts upon which it is based.

(e) Upon failure of the titled owner of the vehicle or the owner, lessee, agent or tenant having the right to possession of the real property to comply with the notice or following the hearing and decision by the Board of Zoning Appeals, where following such hearing it is determined that the motor vehicle is in fact a junk motor vehicle, the Chief of Police shall cause such vehicle to be removed by the direct employment of labor or authorize some person to remove the vehicle on behalf of the Municipality. The Chief of Police shall order the vehicle to be photographed where parked. The officer shall record the make of the motor vehicle, the serial number when available, and shall also detail the damage or missing equipment. The Chief of Police shall thereupon immediately dispose of the junk motor vehicle to a junkyard or scrap metal processing facility or to any other facility owned by or under contract with the Municipality for the disposal of such motor vehicles. The records and photographs relating to the junk motor vehicle shall be retained by the Chief of Police after the disposition of such vehicle for a period of at least two (2) years. Such officer shall execute, in quadruplicate, an affidavit as prescribed by the Registrar of Motor Vehicles, describing the motor vehicle and the manner in which it was disposed of, and that all

requirements of this section have been complied with, and he shall sign and file the same with the Clerk of Courts of Franklin County. Any monies arising from the disposal of a junk motor vehicle shall be deposited in the General Fund.

(f) Whoever violates subsection (b) hereof is guilty of a minor misdemeanor, and in addition to any other penalty, shall be assessed any costs incurred by the Municipality in disposing of such junk motor vehicle, less any money accruing to the Municipality from such disposal.
(Ord. 21-2001. Passed 6-19-01.)

303.11 ABANDONED MOTOR VEHICLES.

(a) Declared a Public Nuisance. Except as otherwise provided, the deposit of an abandoned vehicle on private property without the permission of the property owner is hereby declared to be a public nuisance causing a deteriorating and blighting influence on nearby properties.

(b) Parking and Storage of Abandoned Vehicles. No person shall willfully abandon a vehicle without the permission of the property owner on any public or private property in the Village of New Albany. No abandoned vehicle shall be left on private property for more than seventy-two (72) hours without the permission of the persons 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 forty-eight (48) hours or longer.

(c) Whenever the Chief of Police or his designated representative is notified of an abandoned vehicle as defined herein, he shall cause written notice of such finding to be served by certified mail, return receipt requested, on the titled owner of the vehicle, or on the owner, lessee, agent or tenant, having the right to possession of such real property, if the titled owner is unknown. Such notice shall provide that the abandoned vehicle must be removed from the real property identified in the notice within ten (10) days after service of such notice. If the address of the titled owner of the vehicle or of the owner, lessee, agent or tenant having the right to possession of such property is unknown, it shall be sufficient to publish the notice of finding once in a newspaper of general circulation.

(d) Upon failure of the titled owner of the vehicle or the owner, lessee, agent or tenant having the right to possession of the real property to comply with the notice, the Chief of Police shall cause such vehicle to be removed by the direct employment of labor or authorize some person to remove the vehicle on behalf of the Municipality. The Chief of Police shall order the vehicle to be photographed where parked. The officer shall record the make of the motor vehicle and the serial number when available. The Chief of Police shall thereupon immediately dispose of the vehicle to a junkyard or scrap metal processing facility or to any other facility owned by or under contract with the Municipality for the disposal of such motor vehicles. The records and photographs relating to the vehicle shall be retained by the Chief of Police after the disposition of such vehicle for a period of at least two (2) years. Such officer shall execute, in quadruplicate, an affidavit as prescribed by the Registrar of Motor Vehicles, describing the motor vehicle and the manner in

which it was disposed of, and that all requirements of this section have been complied with, and he shall sign and file the same with the Clerk of Courts of Franklin County. Any monies arising from the disposal of an abandoned vehicle shall be deposited in the General Fund.

(e) Whoever violates subsection (b) hereof is guilty of a minor misdemeanor, and in addition to any other penalty, shall be assessed any costs incurred by the Municipality in disposing of such abandoned vehicle, less any money accruing to the Municipality from such disposal.

(Ord. 21-2001. Passed 6-19-01.)

303.12 PROVIDING FALSE INFORMATION TO POLICE 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.

State law reference—ORC 4513.361

303.99 GENERAL TRAFFIC CODE PENALTIES.

(a) General Misdemeanor Classifications. Whoever violates any provision of this Traffic Code for which violation no penalty is otherwise provided, 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.

(b) Penalties. Whoever is convicted of or pleads guilty to a violation of this Traffic Code shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the court as provided in this section.

<i>Classification of Misdemeanor</i>	<i>Maximum Term of Imprisonment</i>	<i>Maximum Fine</i>
First degree	180 days	\$1,000.00
Second degree	90 days	750.00
Third degree	60 days	500.00
Fourth degree	30 days	250.00
Minor	No imprisonment	150.00

State law references—ORC 2929.24; 2929.28; ORC 4513.99

CHAPTER 305 TRAFFIC CONTROL*

305.01	AUTHORITY TO REGULATE LOCAL TRAFFIC.
305.02	CONFORMITY WITH STATE MANUAL.
305.03	PERMIT REQUIRED FOR TRAFFIC SIGNAL ON STATE ROUTE.
305.04	VIOLATIONS SUBJECT TO MISDEMEANOR CLASSIFICATION.
305.05	OWNER MAY ESTABLISH NONLIABILITY FOR LOCAL TRAFFIC OFFENSES BY PROOF OF LEASE OF VEHICLE.

305.01 AUTHORITY TO REGULATE LOCAL TRAFFIC.

The provisions of the State Traffic Code as contained in ORC Chs. 4511 and 4513 do not prevent the Municipality from enacting local traffic regulations covering the following activities with respect to the streets and highways under local jurisdiction and within the reasonable exercise of the police power by the Municipality:

- (a) Regulating the stopping, standing or parking of vehicles;
- (b) Regulating traffic by means of police officers or traffic control devices;
- (c) Regulating or prohibiting processions or assemblages on streets or highways;
- (d) Designating particular streets as one-way streets and requiring that all vehicles on the one-way streets be moved in one specific direction;
- (e) Regulating the speed of vehicles in public parks;
- (f) Designating any street or highway as a through street or highway and requiring that all vehicles stop before entering or crossing a through street or highway, or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection;
- (g) Regulating or prohibiting vehicles from passing to the left of safety zones;
- (h) Regulating the operation of bicycles and requiring the registration and licensing of bicycles, including the requirements of a registration fee.
- (i) Regulating the use of certain streets by vehicles.

No ordinance or regulation enacted under subsections (d), (e), (f), (g) or (i) of this section shall be effective until signs giving notice of the local traffic regulations are posted upon or at the entrance to the street or highway or part of the street or highway affected, as may be most appropriate.

***Cross reference**—See sectional history for similar state law

Power to designate highway as included in a freeway, expressway or thruway - see ORC 4511.011

Uniform system of traffic control devices - see ORC 4511.09, 4511.11(D)

Placing and maintaining local traffic control devices - see ORC 4511.10, 4511.11

Alteration of prima-facie speed limits - see ORC 4511.21, 4511.22(A), 4511.23

Power to erect stop signs at grade crossings - see ORC 4511.61

Designation of through streets and erection of stop or yield signs - see ORC 4511.65; TRAF. 313.02

Traffic control devices defined - see TRAF. 301.46

Every ordinance, resolution or regulation enacted under subsection (a) hereof shall be enforced in compliance with Section 305.05.

State law reference—ORC 4511.07

305.02 CONFORMITY WITH STATE MANUAL.

All traffic control devices placed pursuant to the provisions of this Traffic Code shall conform to the Ohio Manual of Uniform Traffic Control Devices for Streets and Highways, as set forth in ORC 4511.09.

305.03 PERMIT REQUIRED FOR TRAFFIC SIGNAL ON STATE ROUTE.

No traffic control signal shall be placed or maintained upon an extension of the State highway system within the Village without first obtaining the permission of the Ohio Director of Transportation. The Director may revoke the permission and may require to be removed any traffic control signal that has been erected without his permission on an extension of a State highway within the Village, or that, if erected under a permit granted by the Director, does not conform to the State manual and specifications as required by Section 305.02, or that is not operated in accordance with the terms of the permit.

State law reference—ORC 4511.11(C)

305.04 VIOLATIONS SUBJECT TO MISDEMEANOR CLASSIFICATION.

Except as otherwise provided, any person violating the rules and regulations promulgated in connection with this chapter is guilty of a misdemeanor which shall be classified as provided in Section 303.99.

305.05 OWNER MAY ESTABLISH NONLIABILITY FOR LOCAL TRAFFIC OFFENSES BY PROOF OF LEASE OF VEHICLE.

(a) The owner of a vehicle shall be entitled to establish nonliability for prosecution for violation of an ordinance, resolution or regulation enacted under Section 305.01(a) by proving the vehicle was in the care, custody or control of a person other than the owner at the time of the violation pursuant to a written lease agreement providing that except for such agreement, no other business relationship with respect to the vehicle in question exists between the operator and owner.

(b) Proof that the vehicle was in the care, custody or control of a person other than the owner shall be established by sending a copy of such written lease agreement to the prosecuting authority within thirty (30) days from the date of receipt by the owner of the notice of violation. The furnishing of a copy of a written lease agreement shall be prima-facie evidence that a vehicle was in the care, custody or control of a person other than the owner.

State law reference—ORC 4511.071

TITLE THREE

STREETS AND TRAFFIC CONTROL DEVICES

Chapter 311	Street Obstructions and Special Uses
Chapter 313	Traffic Control Devices

PROOFS

CHAPTER 311 STREET OBSTRUCTIONS AND SPECIAL USES*

311.01	PLACING INJURIOUS MATERIAL OR OBSTRUCTION IN STREET.
311.02	PARADES AND ASSEMBLAGES.
311.03	TOY VEHICLES ON STREETS.
311.04	PLAY STREETS.

311.01 PLACING INJURIOUS MATERIAL OR OBSTRUCTION IN STREET.

(a) No person shall place or knowingly drop upon any part of a street, highway 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 street, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof.

(b) Any person who drops or permits to be dropped or thrown upon any street any noxious, destructive or injurious material shall immediately remove the same.

(c) Any person authorized to remove a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle.

(d) No person shall place any obstruction in or upon a street without proper authority.

(e) No person, with intent to cause physical harm to a person or 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.

(f) (1) Except as otherwise provided in this subsection, whoever violates any provision of subsections (a) to (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 subsections (a) to (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 (2) or more predicate motor vehicle or traffic offenses, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates subsection (e) of this section is guilty of a misdemeanor of the first degree.

State law reference—ORC 4511.74

311.02 PARADES AND ASSEMBLAGES.

(a) No person, group of persons or organization shall conduct or participate in any parade, assemblage or procession other than a funeral procession upon any street or highway, or block off any street or highway area, without first obtaining a permit from the Police Chief.

***Cross reference**—See sectional history for similar state law

Power to regulate processions or assemblages - see ORC 4511.07(C)

Dropping, sifting and leaking loads - see TRAF. 339.08

Applications for such permits shall be made on such forms as may be 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 five (5) days before the time intended for such parade, procession or assemblage.

The permit may be refused or cancelled 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 so 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, fire-fighting 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, misleading or incomplete in any material detail.
- (6) 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 place of assembly and of dispersal, the route of march or travel and the streets, highways or portions thereof which may be used or occupied.

(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.

311.03 TOY VEHICLES ON STREETS.

(a) No person on roller skates or riding in or by means of any sled, toy vehicle, skateboard or similar device shall go upon any roadway except while crossing a street on a crosswalk and except on streets set aside as play streets.

(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.

311.04 PLAY STREETS.

(a) Whenever authorized signs are erected indicating that any street or part thereof is a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or whose residences are within such closed area and then such drivers shall exercise the greatest care in driving upon any such street or portion thereof.

(b) Whoever violates any provision of 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.

CHAPTER 313 TRAFFIC CONTROL DEVICES*

313.01	OBEDIENCE TO TRAFFIC CONTROL DEVICES.
313.02	THROUGH STREETS; STOP AND YIELD RIGHT-OF-WAY SIGNS.
313.03	TRAFFIC CONTROL SIGNAL TERMS AND LIGHTS.
313.04	LANE-USE CONTROL SIGNALS OVER INDIVIDUAL LANES.
313.05	PEDESTRIAN CONTROL SIGNALS.
313.06	FLASHING TRAFFIC SIGNALS. (REPEALED)
313.07	UNAUTHORIZED SIGNS AND SIGNALS, HIDING FROM VIEW, ADVERTISING.
313.08	ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.
313.09	DRIVER'S DUTIES UPON APPROACHING AMBIGUOUS OR NON-WORKING TRAFFIC SIGNAL.
313.10	UNLAWFUL PURCHASE, POSSESSION OR SALE.
313.11	PORTABLE SIGNAL PREEMPTION DEVICES PROHIBITED.
313.12	TRAFFIC LAW PHOTO-MONITORING DEVICES.

313.01 OBEDIENCE TO 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 provisions 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.
- (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 ORC 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;

*Cross reference—See sectional histories for similar state law

Designation of through streets or stop intersections - see ORC 4511.07(F), 4511.65

Uniform system of traffic control devices - see ORC 4511.09, 4511.11(D)

Placing and maintaining local traffic control devices - see ORC 4511.10, 4511.11

Traffic control devices defined - TRAF. 301.46

(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 ten thousand (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 to 180.

(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.

(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 (2) 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 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 (2) 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.

(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.

State law references—ORC 4511.121(A)-(C), (E); ORC 4511.12(A); ORC 4549.081(B); ORC 4511.12(B); ORC 4511.121(D); ORC 4549.081(C)

313.02 THROUGH STREETS; STOP AND YIELD RIGHT-OF-WAY SIGNS.

(a) All State routes are hereby designated as through streets or highways, provided that stop signs, yield signs or traffic control signals shall be erected at all intersections with such through streets or highways, except as otherwise provided in this section. Where two (2) or more State routes that are through streets or 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 Ohio Department of Transportation, except as otherwise provided in this section.

Whenever the Ohio 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 jurisdiction. Before the Director either installs or removes a stop sign under this paragraph, he shall give notice, in writing, of that proposed action to the Municipality at least thirty (30) days before installing or removing the stop sign.

(b) Other streets or highways or portions thereof, are hereby designated through streets or highways, if they are within the Municipality, if they have a continuous length of more than one mile between the limits of such 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 such street or highway or portion thereof, shall be a municipal corporation line, the physical terminus of the street or highway or any point on such street 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 (2) or more streets or highways designated under this subsection (b) 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 Ohio Department of Transportation or by Council or the authorized local authority, except as otherwise provided in this section.

(c) Stop signs need not be erected at intersections so constructed as to permit traffic to safely enter a through street or 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 street or highway.

(d) Council or the authorized local authority may designate additional through streets or highways and shall erect stop signs, yield signs or traffic control signals at all streets and highways intersecting such through streets or highways, or may designate any intersection as a stop or yield intersection and shall erect like signs at one or more entrances to such intersection.

State law reference—ORC 4511.65

313.03 TRAFFIC CONTROL SIGNAL TERMS AND 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 are 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, are 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 ORC 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 are 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 ORC 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 to enter the intersection to turn right, or to turn left from a one-way street, after stopping. 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 to enter the intersection to make the movement indicated by the arrow signal indication, after stopping. 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 ORC 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 ORC 4511.61 and 4511.62.

State law reference—ORC 4511.13

313.04 LANE-USE CONTROL SIGNALS OVER INDIVIDUAL LANES.

- (a) The meanings of lane-use control signal indications are as follows:
- (1) A steady downward green arrow. A road user is permitted to drive in the lane over which the arrow signal indication is located.
 - (2) 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.
 - (3) 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.

- (4) 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.
- (5) 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.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4511.99; ORC 4511.131

313.05 PEDESTRIAN CONTROL SIGNALS.

(a) Whenever special pedestrian signals exhibiting the words "walk" or "don't walk," or the symbol of a walking person or an upraised palm are in place, such signals shall indicate the following instructions:

- (1) 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.
- (2) 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.
- (3) A steady upraised hand signal indication means that a pedestrian shall not enter the roadway in the direction of the signal indication.
- (4) 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.
- (5) A flashing walking person signal indication has no meaning and shall not be used.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4511.14; ORC 4511.99

313.06 FLASHING TRAFFIC SIGNALS. (REPEALED)

Editor's note—Section 313.06 was repealed as part of the 2013 updating and revision of these Codified Ordinances because substantially equivalent state law (ORC 4511.15) was repealed by the Ohio General Assembly.

313.07 UNAUTHORIZED SIGNS AND SIGNALS, HIDING FROM VIEW, ADVERTISING.

(a) No person shall place, maintain or display upon or in view of any street 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 street any traffic sign or signal bearing thereon any commercial advertising. This section does not prohibit either the erection upon private property adjacent to streets 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 ORC 4511.211 and 4511.432.

Every such prohibited sign, signal, marking or device is a public nuisance, and the Police Chief is authorized to remove it or cause it to be removed.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.16

313.08 ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.

(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 subsection, whoever violates subsection (a)(1) or (3) of this section is guilty of a misdemeanor of the third degree. If a violation of subsection (a)(1) or (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 subsection (a)(1) or (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 and shall be prosecuted under appropriate state law.
- (2) Except as otherwise provided in this subsection, whoever violates subsection (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 subsection (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 (2) or more predicate motor vehicle or traffic offenses, whoever violates subsection (a)(2) of this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.17

313.09 DRIVER'S DUTIES UPON APPROACHING AMBIGUOUS OR NON-WORKING TRAFFIC SIGNAL.

(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 either exhibits no colored lights or colored lighted arrows or exhibits a combination of such lights or arrows that fails to clearly indicate the assignment of right-of-way:

- (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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.132

313.10 UNLAWFUL PURCHASE, POSSESSION OR SALE.

(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 ORC 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;
- (5) 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 ORC 2913.02 or a municipal ordinance relating to theft, or for receiving stolen property in violation of ORC 2913.51 or a municipal ordinance relating to receiving stolen property.

(d) Whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.18

313.11 PORTABLE SIGNAL PREEMPTION DEVICES PROHIBITED.

- (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 signal.

(b) Subsection (a)(1) of this section does not apply to any of the following persons and subsection (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 ORC 109.71(A)(11), (12), (14) or (19);
- (2) A State highway patrol trooper;
- (3) A person while occupying a public safety vehicle as defined in ORC 4511.01(E)(1), (3) or (4).

(c) Whoever violates subsection (a)(1) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates subsection (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.

State law reference—ORC 4513.031

313.12 TRAFFIC LAW PHOTO-MONITORING DEVICES.

(a) As used in this section, "traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle or its license plate.

(b) (1) The municipality shall not use traffic law photo-monitoring devices to enforce any traffic law until after it has erected signs on every highway that is not a freeway that is part of the state highway system and that enters the municipality. The signs shall inform inbound traffic that the municipality utilizes traffic law photo-monitoring devices to enforce traffic laws. The signs shall be erected within the first three hundred (300) feet of the boundary of the municipality or, if the signs cannot be located within the first three hundred (300) feet of the boundary of the municipality, as close to that distance as possible, provided that if a particular highway enters and exits the territory of the municipality multiple times, the municipality shall erect the signs as required by this division at the locations in each direction of travel where inbound traffic on the highway first enters the territory of the municipality and is not required to erect additional signs along such highway each time the highway reenters the territory of the municipality. The municipality is responsible for all costs associated with the erection, maintenance, and replacement, if necessary, of the signs. All signs erected under this division shall conform in size, color, location, and content to standards contained in the manual adopted by the Department of Transportation pursuant to ORC 4511.09 and shall remain in place for as long as the municipality utilizes traffic law photo-monitoring devices to enforce any traffic law. Any ticket, citation, or summons issued by or on behalf of the municipality for any traffic law violation based upon evidence gathered by a traffic law photo-monitoring device after March 12, 2009, but before the signs have been erected, is invalid; provided that no ticket, citation, or summons is invalid if the municipality is in substantial compliance with the requirement of this division to erect the signs.

(2) The municipality is deemed to be in substantial compliance with the requirement of division (b)(1) of this section to erect the advisory signs if the municipality does both of the following:

- A. First erects all signs as required by division (b)(1) of this section and subsequently maintains and replaces the signs as needed so that at all times at least ninety percent (90%) of the required signs are in place and functional;
- B. Annually documents and upon request certifies its compliance with division (b)(2)A. of this section.

(c) If the municipality uses traffic law photo-monitoring devices to enforce any traffic law at an intersection where traffic is controlled by traffic control signals that exhibit different colored lights or colored lighted arrows, the municipality shall time the operation of the yellow lights and yellow arrows of those traffic control signals so that the steady yellow indication exceeds by one second the minimum duration for yellow indicators at similar intersections as established by the provisions of the manual adopted by the Department of Transportation under ORC 4511.09.

State law reference—ORC 4511.094

PROOFS

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CHAPTER 331 OPERATION GENERALLY*

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*Cross reference—See sectional histories for similar state law

Obedience to traffic control devices - see TRAF. 313.01

Operation of bicycles and motorcycles - see TRAF. 373.01 et seq.

School bus operation - see OAC Ch. 4501-3

331.01 DRIVING UPON RIGHT SIDE OF ROADWAY; EXCEPTIONS.

(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 (3) 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.

331.02 PASSING TO RIGHT WHEN PROCEEDING 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.26

331.03 OVERTAKING, PASSING TO LEFT; DRIVER'S DUTIES.

(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 subsection (a)(3) hereof, 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.
- (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 street or highway as defined in Section 331.31, a limited access highway as defined in ORC 5511.02 or a highway with four (4) or more traffic lanes, is not required to signal audibly to the vehicle being overtaken and passed.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.27

331.04 OVERTAKING AND PASSING UPON RIGHT.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

- (1) When the vehicle overtaken is making or about to make a left turn;
- (2) Upon a roadway with unobstructed pavement of sufficient width for two (2) 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 such movement in safety. The movement shall not be made by driving off the roadway.

(c) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.28

331.05 OVERTAKING, PASSING TO LEFT OF CENTER.

(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 such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such 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 traffic approaching from the opposite direction before coming within two hundred (200) feet of any approaching vehicle.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.29

331.06 ADDITIONAL RESTRICTIONS ON 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 one hundred (100) feet of any bridge, viaduct or tunnel;
- (3) When approaching within one hundred (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 Section 331.01(a)(2).

(c) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.30

331.07 HAZARDOUS OR NO PASSING 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 ORC 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 ORC 4511.29, considering the speed of the slower vehicle.

(c) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.31

331.08 DRIVING IN MARKED LANES OR CONTINUOUS LINES OF TRAFFIC.

(a) Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic or wherever traffic is lawfully moving in two (2) 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 such lane or line until the driver has first ascertained that such movement can be made with safety.
- (2) Upon a roadway which is divided into three (3) lanes and provides for 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 such center lane is clear of traffic within a safe distance, or when preparing for a left turn, or where such 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.33

331.09 FOLLOWING TOO CLOSELY.

(a) 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 such vehicle and the traffic upon and the condition of the highway.

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 such vehicle and another vehicle ahead so an overtaking motor vehicle may enter and occupy such space without danger. This paragraph does not prevent overtaking and passing nor does it apply to any lane specially designated for use by trucks.

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 such vehicles so an overtaking vehicle may enter and occupy such space without danger. This paragraph shall not apply to funeral processions.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.34

331.10 TURNING 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 such 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 such 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 the traffic moving in that lane.
 - (4) Markers, buttons or signs may 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 such markers, buttons or signs are so placed, no operator of a vehicle shall turn such vehicle at an intersection other than as directed and required by such markers, buttons or signs.
- (b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.36

331.11 TURNING 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.

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, private road, driveway or building.

(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.

331.12 "U" TURNS RESTRICTED.

(a) Except as provided in ORC 4511.13 and subsection (b) hereof, 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 the vehicle cannot be seen within five hundred (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 subsection 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 five hundred (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 subsection 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 provided in subsection (b) hereof, no vehicle shall be turned so as to proceed in the opposite direction within an intersection, or upon any street in a business district, or upon a freeway, expressway or controlled-access highway, or where authorized signs are erected to prohibit such movement, or at any other location unless such movement can be made with reasonable safety to other users of the street and without interfering with the safe operation of any traffic that may be affected by such movement.

(d) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.37

331.13 STARTING AND BACKING VEHICLES.

(a) No person shall start a vehicle which is stopped, standing or parked until such movement can be made with reasonable safety.

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.

No person shall back a motor vehicle on a freeway, except: in a rest area; 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.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.38

331.14 SIGNALS BEFORE CHANGING COURSE, TURNING OR STOPPING.

- (a) (1) No person shall turn a vehicle or move right or left upon a highway unless and until such 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 one hundred (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 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 twenty-four (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 fourteen (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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.39

331.15 HAND AND ARM SIGNALS.

(a) Except as provided in subsection (b) hereof, all signals required by this Traffic Code, when given by hand and arm shall be given from the left side of the vehicle in the following manner, and such 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 subsection (a)(2) hereof, 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.40

331.16 RIGHT-OF-WAY AT INTERSECTIONS.

(a) When two (2) 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 subsection (a) hereof, is modified at through highways and otherwise as stated in this Traffic Code and ORC Ch. 4511.

(c) Subject to compliance with any traffic control device, when two (2) vehicles approach or enter a junction of two (2) or more alleys from different directions 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.

(d) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.41

331.17 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, whenever the approaching vehicle is within the intersection or so close to the intersection, alley, private road or driveway as to constitute an immediate hazard.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.42

331.18 OPERATION OF VEHICLE AT YIELD SIGNS.

(a) 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 or stopping, 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.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.43(B)

331.19 OPERATION OF VEHICLE AT STOP 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) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.43(A)

331.20 EMERGENCY OR PUBLIC SAFETY VEHICLES AT STOP SIGNALS OR SIGNS.

(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 such 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.03

331.21 RIGHT-OF-WAY OF PUBLIC SAFETY OR CORONER'S VEHICLE.

(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 five hundred (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 street 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 street.

(c) This section applies to a coroner's vehicle only when the vehicle is operated in accordance with ORC 4513.171. 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 subsection, whoever violates subsection (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.

State law reference—ORC 4511.45

331.22 DRIVING ONTO ROADWAY FROM PLACE OTHER THAN ROADWAY: DUTY TO YIELD.

(a) Subject to compliance with any traffic control device, the operator of a vehicle about to enter or cross a highway from an alley or 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.44

331.23 DRIVING ONTO ROADWAY FROM PLACE OTHER THAN ROADWAY: STOPPING AT SIDEWALK.

(a) Subject to compliance with any traffic control device, 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.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.431

331.24 RIGHT-OF-WAY OF FUNERAL PROCESSION.

(a) As used in this section "funeral procession" means two (2) 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 Section 331.21 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 this Traffic 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.451

331.25 DRIVER'S VIEW AND CONTROL TO BE UNOBSTRUCTED BY LOAD OR PERSONS.

(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 such 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) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.70(A),(B),(D)

331.26 DRIVING UPON STREET POSTED AS CLOSED FOR REPAIR.

(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 such street or highway.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.71

331.27 FOLLOWING AND PARKING NEAR EMERGENCY OR SAFETY VEHICLES.

(a) 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 five hundred (500) feet, or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm, unless directed to do so by a police officer or a firefighter.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.72

331.28 DRIVING OVER FIRE HOSE.

(a) No vehicle shall, without the consent of the Fire Chief or fire official in command, be driven over any unprotected fire hose 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.73

331.29 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.60

331.30 ONE-WAY STREETS AND ROTARY TRAFFIC ISLANDS.

(a) Upon a roadway designated and posted with signs for one-way traffic a vehicle shall be driven only in the direction designated. 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.32

331.31 DRIVING UPON DIVIDED ROADWAYS.

(a) Whenever any street has been divided into two (2) roadways by an intervening space, or by a physical barrier, or 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 such dividing space, barrier or median section, except through an opening, crossover or intersection established by public authority. This section does not prohibit the occupancy of such dividing space, barrier or median 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.35

331.32 ENTERING AND EXITING CONTROLLED-ACCESS HIGHWAY.

(a) No person shall drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.

(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.

331.33 OBSTRUCTING INTERSECTION, CROSSWALK OR GRADE CROSSING.

(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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.712

331.34 FAILURE TO CONTROL; WEAVING; FULL TIME AND ATTENTION.

(a) No person shall operate a vehicle without exercising reasonable and ordinary control over such vehicle.

(b) No person shall operate a vehicle in a weaving or zigzag course unless such irregular course is necessary for safe operation or in compliance with law.

(c) No person shall operate a vehicle without giving his full time and attention to the operation of such vehicle.

(d) 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.

331.35 OCCUPYING A MOVING TRAILER OR MANUFACTURED OR MOBILE HOME.

(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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.701

331.36 SQUEALING TIRES, "PEELING," CRACKING EXHAUST NOISES.

(a) 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, commonly called "peeling".

(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.

331.37 DRIVING UPON SIDEWALKS, STREET LAWNS OR CURBS.

- (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.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(c) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.

State law reference—ORC 4511.711

331.38 STOPPING FOR SCHOOL BUS; DISCHARGING CHILDREN.

(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 (10) 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 subsection (a) hereof that the school bus involved failed to display or be equipped with an automatically extended stop warning sign as required by subsection (b) hereof.

(b) Every school bus shall be equipped with amber and red visual signals meeting the requirements of ORC 4511.771, 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 boarding 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 (4) 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 subsection (a) hereof.

(d) School buses operating on divided highways or on highways with four (4) 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 or person's residence side of the road.

(f) As used in this section:

- (1) "Head start agency" has the same meaning as in ORC 3301.32.
- (2) "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 ORC 4511.77, and is equipped with amber and red visual signals meeting the requirements of ORC 4511.771, irrespective of whether or not the bus has fifteen (15) or more children aboard at any time. "School bus" does not include a van owned and operated by a head start agency, irrespective of its color, lights, or markings.

- (g) (1) Whoever violates subsection (a) of this section may be fined an amount not to exceed five hundred dollars (\$500.00). A person who is issued a citation for a violation of subsection (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 (7) 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 division (a)(7) of ORC 4510.02. 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.

State law reference—ORC 4511.75

331.39 DRIVING ACROSS GRADE CROSSING.

- (a) (1) Whenever any person driving a vehicle approaches a railroad grade crossing, the person shall stop within fifty (50) feet, but not less than fifteen (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. to 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.

State law reference—ORC 4511.62

331.40 STOPPING AT GRADE CROSSING.

- (a) (1) Except as provided in subsection (a)(2) hereof, the operator of any bus, any school vehicle, or any vehicle transporting material required to be placarded under 49 CFR Parts 100-185, 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.
- (2) This section does not apply at grade crossings when the Ohio Public Utilities Commission has authorized and approved an exempt crossing as provided in this subsection.
 - A. Any local authority may file an application with the Commission requesting the approval of an exempt crossing. Upon receipt of such a request, the Commission shall authorize a limited period for the filing of comments by any party regarding the application and then shall conduct a public hearing in the community seeking the exempt crossing designation. The Commission shall provide appropriate prior public notice of the comment period and the public hearing. By registered mail, the Commission shall notify each railroad operating over the crossing of the comment period.
 - B. After considering any comments or other information received, the Commission may approve or reject the application. By order, the Commission may establish conditions for the exempt crossing designation, including compliance with division (b) of 49 C.F.R. Part 392.10, when applicable. An exempt crossing designation becomes effective only when appropriate signs giving notice of the exempt designation are erected at the crossing as ordered by the Commission and any other conditions ordered by the Commission are satisfied.
 - C. By order, the Commission may rescind any exempt crossing designation made under this section if the Commission finds that a condition at the exempt crossing has changed to such an extent that the continuation of the exempt crossing designation compromises public safety. The Commission may conduct a public hearing to investigate and determine whether to rescind the exempt crossing designation. If the Commission rescinds the designation, it shall order the removal of any exempt crossing signs and may make any other necessary order.
- (3) As used in this section:
 - A. "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.

- B. "Bus" means any vehicle originally designed by its manufacturer to transport sixteen (16) or more passengers, including the driver, or carries sixteen (16) or more passengers, including the driver.
 - C. "Exempt crossing" means a highway rail grade crossing authorized and approved by the Public Utilities Commission under subsection (a)(2) hereof at which vehicles may cross without making the stop otherwise required by this section.
- (4) Except as otherwise provided in this subsection (a)(4), whoever violates subsection (a) hereof is guilty of a minor misdemeanor. If the offender previously has been convicted of or pleaded guilty to one or more violations of subsection (a) hereof or ORC 4511.76, 4511.761, 4511.762, 4511.764, 4511.77 or 4511.79, or a municipal ordinance that is substantially similar to any of those sections, whoever violates subsection (a) hereof is guilty of a misdemeanor of the fourth degree.
- (b) (1) When authorized stop signs are erected at railroad grade crossings, the operator of any vehicle shall stop within fifty (50) but not less than fifteen (15) feet from the nearest rail of the railroad tracks and shall exercise due care before proceeding across such grade crossing.
- (2) Except as otherwise provided in this subsection, whoever violates this subsection (b)(1) hereof 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4511.61; ORC 4511.63

331.41 SHORTCUTTING; AVOIDING TRAFFIC CONTROL DEVICES.

- (a) No person shall operate a vehicle across public or private property marked with signs "No Through Traffic" or words of similar import for the purpose of passing from one roadway to another.
- (b) No person shall operate a vehicle across public or private property for the purpose of avoiding compliance with a traffic control device.
- (c) It shall be prima-facie evidence of a violation of this section for the operator of a vehicle to cross public or private property as provided herein without using the service of such property, stopping the engine or both.
- (d) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

331.42 LITTERING FROM MOTOR VEHICLE.

(a) 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.

(b) 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.

(c) 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.

(d) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4511.82

331.43 WEARING EARPLUGS OR EARPHONES PROHIBITED.

(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. "Earphones" 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 personnel and emergency medical service personnel while on duty;
- (4) Any person engaged in the operation of equipment for use in the maintenance or repair of any street or highway; or
- (5) Any person engaged in the operation of refuse collection equipment.

(c) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.84

331.44 LOUD SOUND AMPLIFICATION SYSTEMS PROHIBITED.

(a) Prohibition. No operator or passenger of a vehicle shall cause, or permit the operation of, any amplification system which can be heard outside the vehicle from fifty (50) or more feet when the vehicle is upon a public street or highway.

"Sound amplification system" shall include any radio, tape player, compact disc player, loud-speaker, or other electronic device used for the amplification of the human voice, music or any other noise or sound.

(b) It is an affirmative defense to charge under this section that the operator or passenger was not otherwise prohibited by law from operating the sound amplification system, and that any of the following apply:

- (1) The system was being operated to request medical or vehicular assistance or to warn of a hazardous road condition;
- (2) The vehicle was an emergency or public safety vehicle;
- (3) The vehicle was owned and operated by the Village, or a gas, electric, communications, refuse, or water utility company;
- (4) The vehicle was being used in a parade, within the meaning of Section 311.02, and the person or organization conducting the parade has obtained a permit.

(c) Penalty. Whoever violates any provisions of this section is guilty of a minor misdemeanor. If the offender persists in generating or permitting to be generated or operated any such amplification system after reasonable warning or request to desist generating such noise in violation of this section, such offender shall be guilty of a misdemeanor in the fourth degree.

(Ord. 20-2004. Passed 4-20-04.

331.45 SENDING, READING, OR WRITING A TEXT MESSAGE OR ACCESSING THE INTERNET WHILE DRIVING.

(a) As used in this section:

- (1) "Emergency vehicles" and "public safety vehicles" have the same meanings as set forth in ORC 4511.01 (D) and (E).
- (2) "Mobile communications device" means any portable electronic device capable of transmitting or receiving data in the form of a text message or capable of accessing the internet including but not limited to a wireless telephone, a text-messaging device, a personal digital assistant, or a personal computer, but specifically excluding portable internet based vehicle navigation systems being used for that purpose.
- (3) "Text message" means any message sent, stored or received via mobile communications device. For the purposes of this section an email message shall be considered a text message.

- (b) No person shall operate a motor vehicle while using a mobile communication device to:
 - (1) Manually enter letters, numbers or text messages or read any received emails or text messages transmitted to or stored within such device; or
 - (2) Send, read, create, or interact with internet-based content, play games or otherwise interact with the internet.

(c) This provision shall not apply to operators of emergency or public safety vehicles, where the operator of a public safety vehicle uses such device in the course of the operator's official duties, to any person reporting a health or safety emergency, to drivers parked, standing or stopped and removed from the flow of traffic, or stopped due to an inoperable vehicle.

(d) A violation of this section shall be considered a primary offense.

(e) Whoever violates this section shall be guilty of a minor misdemeanor.
(Ord. O-13-2010. Passed 4-6-10.)

331.46 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 thirty-five (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 thirty-five (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 forty-five (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 thirty-five (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 forty-five (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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(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 thirty-five (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 ORC 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 ORC Ch. 4503, and are titled in accordance with ORC Ch. 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.

- (g) (1) Except as provided in this division (g) 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 (g) shall be penalized as provided in division (d) of this section.

(h) This section will take effect on January 1, 2017.

State law references—ORC 4511.214; ORC 4511.215; ORC 4519.401

CHAPTER 333 OVI; WILLFUL MISCONDUCT; SPEED*

333.01	DRIVING OR PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.
333.011	IMMOBILIZING OR DISABLING DEVICE VIOLATION.
333.02	OPERATION IN WILLFUL OR WANTON DISREGARD OF SAFETY.
333.03	MAXIMUM SPEED LIMITS; ASSURED CLEAR DISTANCE AHEAD.
333.031	APPROACHING A STATIONARY PUBLIC SAFETY VEHICLE.
333.04	STOPPING VEHICLE; SLOW SPEED; POSTED MINIMUM SPEEDS.
333.05	SPEED LIMITATIONS OVER BRIDGES.
333.06	SPEED EXCEPTIONS FOR EMERGENCY OR SAFETY VEHICLES.
333.07	STREET RACING PROHIBITED.
333.08	OPERATION WITHOUT REASONABLE CONTROL.
333.09	RECKLESS OPERATION ON STREETS, PUBLIC OR PRIVATE PROPERTY.
333.10	OPERATION IN VIOLATION OF IMMOBILIZATION ORDER.
333.11	SPEED ZONES.
333.12	SPEED LIMITS ON PRIVATE ROADS AND DRIVEWAYS.

333.01 DRIVING OR PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

(a) Driving Under the Influence.

- (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 two hundred ten (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 one hundred (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.

*Cross reference—See sectional histories for similar state law

Drug of abuse defined - see ORC 3719.011(A)

Alcohol defined - see ORC 4301.01(B)(1)

Alteration of prima-facie speed limits - see ORC 4511.21, 4511.22(B), 4511.23

Failure to control vehicle - see TRAF. 331.34

Walking on highway while under the influence - see TRAF. 371.09

- H. The person has a concentration of 0.17 grams or more by weight of alcohol per two hundred ten (210) liters of the person's breath.
- I. The person has a concentration of 0.238 grams or more by weight of alcohol per one hundred (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 five hundred (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 one hundred (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 one hundred fifty (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 fifty (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 one hundred fifty (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 fifty (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 two thousand (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 fifty (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 (10) 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 (10) 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 twenty-five (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 (10) 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 (10) 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 (2) 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, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least fifteen (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 (5) nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.
 - b. As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least thirty-five (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 fifty (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 five hundred (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 one hundred (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 twenty-five (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 (10) 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 ORC 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, streetcar, or trackless trolley 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 twenty (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 ORC 4511.191 or any substantially equivalent municipal ordinance, and being advised by the officer in accordance with ORC 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) Underage Alcohol Consumption. No person under twenty-one (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 two hundred ten (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 one hundred (100) milliliters of the person's urine.

(c) Prosecution; Limitation on Convictions. 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), (2), or (3) of this section, but the person may not be convicted of more than one violation of these divisions.

(d) Evidence; Tests.

- (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 ORC 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 (3) 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 4511.191(A)(5), the form to be read to the person to be tested, as required under division (g) of this section, 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 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 blood, 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 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 determina-

tion 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) Laboratory report.

- (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 or 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 (7) 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) Limitation of liability.

- (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 ORC 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 ORC 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 ORC 4765.01.

(g) Implied Consent.

(1) Definitions. As used in this section:

- A. "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.
- B. "Physical control" has the same meaning as in ORC 4511.194.

- (2) Implied consent to chemical tests. 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 division (a), (b) or (c) of this section, ORC 4511.19(A) or (B), ORC 4511.194 or a substantially equivalent municipal ordinance, or any other municipal O.V.I. ordinance.
- (3) The chemical test or tests under division (g)(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 (g)(2) of this section. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

- (4) Effect of death or unconsciousness. 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 (g)(2) of this section and the test or tests may be administered, subject to ORC 313.12 to 313.16.
 - (5) A. If a law enforcement officer arrests a person for a violation of ORC 4511.19(A) or (B), 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 ORC 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 (g)(7) 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 (g)(3) and (g)(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 (g)(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.
- (6) Advice required. Except as provided in division (g)(5) of this section, the arresting law enforcement officer shall give advice in accordance with this division to any person under arrest for a violation of division (a), (b) or (o) of this section, ORC 4511.19(A) or (B), 4511.194 or a substantially equivalent municipal ordinance, or any other municipal O.V.I.

ordinance. The officer shall give that advice in a written form that contains the information described in division (g)(7) 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 (2) 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.

- (7) Certification of arrest. Except as provided in division (g)(5) of this section, if a person is under arrest as described in division (g)(6) 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 O.V.I., O.V.U.A.C., 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 twenty (20) years, you are now under arrest for State O.V.I., and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the State O.V.I. (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."

- (8) Actions required by arresting officer. If the arresting law enforcement officer does not ask a person under arrest as described in division (g)(5) or (g)(6) of this section to submit to a chemical test or tests under ORC 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 twenty-four (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 ORC 4511.196.

- (9) A. If a law enforcement officer asks a person under arrest as described in division (g)(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 (g)(6) of this section to submit to a chemical test or tests under ORC 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 division (o) of this section, ORC 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:
1. 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 (5) 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 thirty (30) days after that initial appearance;
 2. 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 twenty-four (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;

3. 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;
4. Send to the Registrar, within forty-eight (48) hours after the arrest of the person, a sworn report that includes all of the following statements:
 - a. 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 ORC 4511.19(A) or (B) or a municipal O.V.I. ordinance or for being in physical control of a stationary vehicle in violation of ORC 4511.194 or a substantially equivalent municipal ordinance;
 - b. That the person was arrested and charged with a violation of ORC 4511.19(A) or (B), 4511.194 or a substantially equivalent municipal ordinance, or a municipal O.V.I. ordinance;
 - c. Unless division (g)(9)A.4.e. 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 (g)(7) of this section;
 - d. Unless division (g)(9)A.4.e. 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 ORC 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;
 - e. If the person was under arrest as described in division (g)(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.
- B. Division (g)(9)A. of this section does not apply to a person who is arrested for a violation of division (o) of this section, ORC 4511.194 or a substantially equivalent municipal ordinance, or any other 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.

(10) Sworn report of arresting officer.

- A. 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 fourteen (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 forty-eight (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.
- B. 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 ORC 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.

(11) Suspension effective immediately. 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 ORC 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 (g)(1) through (g)(5) of this section does not affect the suspension.

(12) Initial appearance. If a person arrested for operating a vehicle in violation of division (a) or (b) of this section, ORC 4511.19(A) or (B), or any other municipal O.V.I. ordinance, or for being in physical control of a vehicle in violation of division (o) of this section or ORC 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 ORC 4511.191(B) or (C) or ORC Ch. 4510, the person's initial appearance on the charge resulting from the arrest shall be held within five (5) 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 ORC 4511.197 regarding the issues specified in that section.

(h) Penalty for Driving Under the Influence.

- (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 ORC Ch. 2929, except as otherwise authorized or required by divisions (h)(1)A. through (h)(1)E. of this section:

- A. Except as otherwise provided in division (h)(1)B., C., D., or 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 ORC 4511.19(G)(1)(a)(i) to (iv).
 - B. Except as otherwise provided in division (h)(1)E. of this section, an offender who, within six (6) 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 ORC 4511.19(G)(1)(b)(i) to (v).
 - C. Except as otherwise provided in division (h)(1)E. of this section, an offender who, within six (6) years of the offense, previously has been convicted of or pleaded guilty to two (2) 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 ORC 4511.19(G)(1)(c)(i) to (vi).
 - D. Except as otherwise provided in division (h)(1)E. of this section, an offender who, within six (6) years of the offense, previously has been convicted of or pleaded guilty to three (3) or more violations of division (a) or (b) of this section or other equivalent offenses or an offender who, within twenty (20) years of the offense, previously has been convicted of or pleaded guilty to five (5) 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 ORC 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 ORC 4511.19 as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in ORC 4511.191(F)(2).
- (3) A. If an offender is sentenced to a jail term under ORC 4511.19(G)(1)(b)(i) or (ii) or (G)(1)(c)(i) or (ii) and if, within sixty (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 ORC 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 ORC 4511.19(G)(1), the court may sentence the offender as provided in ORC 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 (h) of this section or ORC 4511.19(G) and if ORC 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 ORC 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 ORC 4503.231(B).
 - (5) Fines imposed under this section for a violation of division (a) of this section shall be distributed as provided in ORC 4511.19(G)(5).
 - (6) If title to a motor vehicle that is subject to an order of criminal forfeiture under division (h)(1)C., D., or E. of this section is assigned or transferred and ORC 4503.234(B)(2) or (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 Dealer's 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 (h) of this section, the offender shall provide the court with proof of financial responsibility as defined in ORC 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 Section 501.99(f) or ORC 2929.18 or 2929.28 in an amount not exceeding five thousand dollars (\$5,000.00) 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 (h) of this section.
 - (8) As used in division (g) of this section, "electronic monitoring" has the same meaning as in ORC 2929.01.
- (i) Penalty for Operating a Vehicle After Underage Alcohol Consumption. 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 (i)(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 (6) 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 ORC 4510.02(A)(6);

- (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 (4) 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 ORC 4510.02(A)(4).
- (3) If the offender also is convicted of or also pleads guilty to a specification of the type described in ORC 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 ORC 2929.24(E).
- (4) The offender shall provide the court with proof of financial responsibility as defined in ORC 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 Section 501.99(f) or ORC 2929.28 in an amount not exceeding five thousand dollars (\$5,000.00) 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.
- (j) (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 ORC Ch. 3793 by the Director of Alcohol and Drug 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.

(k) If a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under this section or ORC 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.

(l) 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.

(m) 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 ORC 2923.16(D) in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.

(n) All terms defined in ORC 4510.01 apply to this section. If the meaning of a term defined in ORC 4510.01 conflicts with the meaning of the same term as defined in ORC 4501.01 or 4511.01, the term as defined in ORC 4510.01 applies to this section.

(o) Physical Control of Vehicle While Under the Influence.

- (1) Definition. As used in this division, "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.
- (2) Generally. No person shall be in physical control of a vehicle if, at the time of the physical control, 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's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in divisions (a)(1)B., (a)(1)C., (a)(1)D., or (a)(1)E. of this section.
 - C. Except as provided in division (o)(5) 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 division (a)(1)J. of this section.
- (3) A. 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:
- 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 (o)(3)A.1. or 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.
 - B. Division (o)(3)A. 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 (o)(3)A. of this section.
- (4) Penalty. Whoever violates this division (o) 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 (7) 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 ORC 4510.02(A)(7).
- (5) Exception. Division (o)(2)C. 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 division (a)(1)J. of this section if both of the following apply:
- A. The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.
 - B. The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.
- (p) As used in this section:
- (1) "Community residential sanction", "continuous alcohol monitoring", "jail", "mandatory prison term", "mandatory term of local incarceration", "prison term", and "sanction" have the same meanings as in ORC 2929.01.
 - (2) "Drug of abuse" has the same meaning as in ORC 4506.01.
 - (3) "Equivalent offense" means any of the following:
 - A. A violation of ORC 4511.19(A) or (B);
 - B. A violation of a municipal O.V.I. ordinance;
 - C. A violation of ORC 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 ORC 2903.06(A)(1) or ORC 2903.08 or a municipal ordinance that is substantially equivalent to either of those divisions;

- E. A violation of ORC 2903.06(A)(2), (A)(3), or (A)(4), ORC 2903.08(A)(2), or former ORC 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 ORC 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 ORC 4511.19(A) or (B) or 1547.11(A) or (B);
 - I. A violation of a former law of this state that was substantially equivalent to ORC 4511.19(A) or (B) or 1547.11(A) or (B).
- (4) "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 (p);
 - 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 ORC 4511.19(A) or (B);
 - C. A violation of a former law of this State that was substantially equivalent to ORC 4511.19(A) or (B).
- (5) "Mandatory jail term" means the mandatory term in jail of 3, 6, 10, 20, 30, or sixty (60) days that must be imposed under ORC 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 ORC 4511.19, the term must be served in a jail.
 - B. Except as specifically authorized under ORC 4511.19, the term cannot be suspended, reduced, or otherwise modified pursuant to ORC 2929.21 through 2929.28 or any other provision of the Ohio Revised Code.
- (6) "Municipal O.V.I. ordinance" and "municipal O.V.I. 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.

State law reference—Disposition of fines, immobilization of vehicle and impoundment of license plates, criminal forfeiture for municipal ordinance conviction, see ORC 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 ORC 4511.191

Judicial pretrial suspension, initial appearance, see ORC 4511.196

Mayor's Court to suspend driver's license, see ORC 1905.201

Seizure of vehicles upon arrest, see ORC 4511.195

Trial judge to suspend driver's license, see ORC 4510.05

State law references—ORC 4511.19(A)—(F); ORC 4511.19(G)—(M); ORC 4511.181; ORC 4511.191(A); ORC 4511.191(D); ORC 4511.192; ORC 4511.194

333.011 IMMOBILIZING OR DISABLING DEVICE VIOLATION.

(a) (1) No offender with limited 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) A. Except as provided in division (a)(2)B. of this section, 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 an offender with limited driving privileges who is permitted to operate only a motor vehicle equipped with an immobilizing or disabling device.

B. Division (a)(2)A. of this section does not apply to a person in the following circumstances:

1. The person is an offender with limited driving privileges.
2. The person breathes 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 starts a motor vehicle equipped with an immobilizing or disabling device.
3. The person breathes into the device or starts the vehicle for the purpose of providing the person with an operable motor vehicle.

(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.

State law reference—ORC 4510.44

333.02 OPERATION IN WILLFUL OR WANTON DISREGARD OF SAFETY.

(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) 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.

This subsection 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.

(c) Whoever violates this section is guilty of a misdemeanor of the first degree.

(d) Whenever a person is found guilty under this section of operating a motor vehicle in violation of this section 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 division (A)(5) of ORC 4510.02.

(Ord. 32-97. Passed 8-19-97.)

State law references—ORC 4510.15; ORC 4511.20; ORC 4511.201

333.03 MAXIMUM SPEED LIMITS; ASSURED CLEAR DISTANCE AHEAD.

(a) No person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard to 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 the person 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 pursuant to ORC 4511.21 by the Ohio Director of Transportation or Council, for the operator of a motor vehicle to operate the same at a speed not exceeding the following:

(1) A. Twenty (20) 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 twenty (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 subsection (b)(4) hereof and on freeways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by subsections (b)(9) and (b)(10) hereof. 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 ORC 3301.16 and any nonchartered school that during the preceding year filed with the Department of

Education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio 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. "School" 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. Upon request from the Municipality for streets and highways under its jurisdiction and that portion of a State highway under the jurisdiction of the Ohio 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 subsections (b)(1)C.1. to 3. hereof shall not exceed three hundred (300) feet per approach per direction and are bounded by whichever of the following distances or combinations 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 three hundred (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 three hundred (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 three hundred (300) feet on each approach direction of 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 subsections (b)(1)A. and C. hereof.
- E. As used in this subsection, "crosswalk" has the meaning given that term in Section 301.09. The Director may, upon request by resolution of Council, 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 the crosswalk is no more than one thousand three

hundred twenty (1,320) feet. Such a school zone shall include the distance encompassed by the crosswalk and extending three hundred (300) feet on each approach direction of the State route;

- 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 one thousand three hundred twenty (1,320) feet. Such a school zone shall include the distance encompassed by the crosswalk and extending three hundred (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 (25) 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 (35) miles per hour on all State routes or through highways within the Municipality outside business districts, except as provided in subsections (b)(4) and (b)(6) hereof;
- (4) Fifty (50) miles per hour on controlled-access highways and expressways within the Municipality;
- (5) Fifty-five (55) miles per hour on highways outside the municipality, other than highways within island jurisdictions as provided in division (b)(8) of this section and freeways as provided in divisions (b)(13) and (b)(14) of this section;
- (6) Fifty (50) 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 (15) miles per hour on all alleys within the Municipality;

- (8) Thirty-five (35) miles per hour on highways outside the Municipality that are within an island jurisdiction;
- (9) Fifty-five (55) miles per hour at all times on freeways with paved shoulders inside the municipality, other than freeways as provided in divisions (b)(13) and (b)(14);
- (10) Fifty-five (55) miles per hour at all times on freeways outside the municipality, other than freeways as provided in divisions (b)(13) and (b)(14);
- (11) Fifty-five (55) miles per hour at all times on portions of freeways that are part of the interstate system and on all portions of freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system for operators of any motor vehicle weighing in excess of eight thousand (8,000) pounds empty weight and any noncommercial bus, except as provided in division (b)(14) of this section;
- (12) Fifty-five (55) miles per hour for operators of any motor vehicle weighing eight thousand (8,000) pounds or less empty weight and any commercial bus at all times on all portions of freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, unless a higher speed limit is established under ORC 4511.21(L);
- (13) Sixty-five (65) miles per hour for operators of any motor vehicle weighing eight thousand (8,000) pounds or less empty weight and any commercial bus at all times on all portions of the following:
 - A. Freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995, and freeways that are not part of the interstate system, but are built to the standards and specifications that are applicable to freeways that are part of the interstate system and that had such a speed limit established prior to October 1, 1995;
 - B. Freeways that are part of the interstate system and freeways that are not part of the interstate system but are built to the standards and specifications that are applicable to freeways that are part of the interstate system, and that had such a speed limit established under ORC 4511.21(L);
 - C. Rural, divided, multi-lane highways that are designated as part of the national highway system under the "National Highway System Designation Act of 1995", 109 Stat. 568, 23 U.S.C.A. 103, and that had such a speed limit established under ORC 4511.21(M).
- (14) Sixty-five (65) miles per hour at all times on all portions of freeways that are part of the interstate system and that had such a speed limit on July 1, 2009 for operators of any motor vehicle weighing in excess of eight thousand (8,000) pounds empty weight and any noncommercial bus.

(c) It is prima-facie unlawful for any person to exceed any of the speed limitations in subsections (b)(1)A., (b)(2), (b)(3), (b)(4), (b)(6), (b)(7) and (b)(8) hereof, 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 subsection (d) hereof. 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 fifty-five (55) miles per hour, except upon a freeway as provided in divisions (b)(13) and (b)(14) of this section;
- (2) At a speed exceeding sixty-five (65) miles per hour upon a freeway as provided in divisions (b)(13) and (b)(14) of this section;
- (3) If a motor vehicle weighing in excess of eight thousand (8,000) pounds empty weight or a noncommercial bus as prescribed in subsection (b)(11) hereof, at a speed exceeding fifty-five (55) miles per hour upon a freeway as provided in that subsection.
- (4) At a speed exceeding the posted speed limit upon a freeway for which the Director has determined and declared a speed limit of not more than sixty-five (65) miles per hour pursuant to ORC 4511.21(L)(2) or (M);
- (5) At a speed exceeding sixty-five (65) miles per hour upon a freeway for which such a speed limit has been established through the operation of ORC 4511.21(L)(3);
- (6) At a speed exceeding the posted speed limit upon a freeway for which the Director has determined and declared a speed limit pursuant to ORC 4511.21(I)(2).

(e) Pursuant to ORC 4511.21(E), in every charge of violation of 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 subsection (c) hereof also the speed which subsections (b)(1)A., (b)(2), (b)(3), (b)(4), (b)(6), (b)(7) or (b)(8) of, or a limit declared or established pursuant to this section or ORC 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 a 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 ORC 4511.21(F), when a speed in excess of both a prima-facie limitation and a limitation in subsection (d)(1), (d)(2), (d)(3), (d)(4), (d)(5) or (d)(6) hereof is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both subsections (b)(1)A., (b)(2), (b)(3), (b)(4), (b)(6), (b)(7) or (b)(8) hereof, or of a limit declared or established pursuant to this section or ORC 4511.21 by the Director or local authorities, and of the limitation in subsection (d)(1), (d)(2), (d)(3), (d)(4), (d)(5) or (d)(6) hereof. If the court finds a violation of subsection (b)(1)A., (b)(2), (b)(3), (b)(4), (b)(6), (b)(7) or (b)(8), or a limit declared or established pursuant to this section or ORC 4511.21 has occurred, it shall enter a judgment of conviction under such subsection and dismiss the charge under subsection (d)(1), (d)(2), (d)(3),

(d)(4), (d)(5) or (d)(6) hereof. If it finds no violation of subsections (b)(1)A., (b)(2), (b)(3), (b)(4), (b)(6), (b)(7) or (b)(8) of, or a limit declared or established pursuant to, this section or ORC 4511.21, it shall then consider whether the evidence supports a conviction under subsection (d)(2), (d)(3), (d)(4), (d)(5) or (d)(6) hereof.

(g) Points shall be assessed for violation of a limitation under subsection (d) hereof in accordance with ORC 4510.036.

(h) Whenever, in accordance with ORC 4511.21(H) though (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:

- (1) "Interstate system" has the same meaning as in 23 U.S.C.A. 101.
- (2) "Commercial bus" means a motor vehicle designed for carrying more than nine (9) passengers and used for the transportation of persons for compensation.
- (3) "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.

(j) (1) A violation of any provision of this section is one of the following:

- A. Except as otherwise provided in subsections (j)(1)B., (1)C., (2) and (3) 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 (2) violations of any provision of this section or of any provision of ORC 4511.21 or a municipal ordinance that is substantially similar to any provision of this section, 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 (3) or more violations of any provision of this section or of any provision of ORC 4511.21 or a municipal ordinance that is substantially similar to any provision of this section, a misdemeanor of the third degree.
- (2) If the offender has not previously been convicted of or pleaded guilty to a violation of any provision of ORC 4511.21 or of any provision of a municipal ordinance that is substantially similar to ORC 4511.21 and operated a motor vehicle faster than thirty-five (35) miles an hour in a business district of a municipal corporation, faster than fifty (50) miles an hour in other portions of a municipal corporation, or faster than thirty-five (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.

- (3) Notwithstanding subsection (j)(1) of this section, if the offender operated a motor vehicle in a construction zone where a sign was then posted in accordance with ORC 4511.98, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two (2) times the usual amount imposed for the violation. No court shall impose a fine of two (2) 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 subsection and if the court determines that the offender is an indigent person and unable to pay the fine.

State law references—ORC 4511.20; ORC 4511.21(A)—(G); ORC 4511.21(O); ORC 4511.21(P)

333.031 APPROACHING A STATIONARY PUBLIC SAFETY VEHICLE.

(a) The driver of a motor vehicle, upon approaching a stationary public safety vehicle, an emergency vehicle, or a road service vehicle that is displaying the appropriate visual signals by means of flashing, oscillating, or rotating lights, as prescribed in ORC 4513.17, shall do either of the following:

- (1) If the driver of the motor vehicle is traveling on a street or highway that consists of at least two (2) 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 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, an emergency vehicle, or a road service vehicle.
- (2) If the driver is not traveling on a street or highway of a type described in subsection (a)(1) 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.

(b) This section does not relieve the driver of a public safety vehicle, an emergency vehicle, or a road service vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(c) No person shall fail to drive a motor vehicle in compliance with subsection (a)(1) or (2) of this section when so required by subsection (a) of this section.

- (d) (1) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

- (2) Notwithstanding Section 303.99, upon a finding that a person operating a motor vehicle in violation of subsection (c) of this section, the court, in addition to all other penalties provided by law, shall impose a fine of two (2) times the usual amount imposed for the violation.

State law reference—ORC 4511.213

333.04 STOPPING VEHICLE; SLOW SPEED; POSTED MINIMUM SPEEDS.

(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 thirty (30) miles per hour, greater than fifty (50) miles per hour, nor effective until the provisions of ORC 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.22

333.05 SPEED LIMITATIONS OVER BRIDGES.

(a) No person shall operate a vehicle over any bridge or other elevated structure constituting a part of a street 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 authorized signs stating such maximum speed. Such signs shall be erected and maintained at a distance of at least one hundred (100) feet before each end of such structure.

(b) Upon the trial of any person charged with a violation of this section, proof of the determination of the maximum speed 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.

(c) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.23

333.06 SPEED EXCEPTIONS FOR EMERGENCY OR SAFETY VEHICLES.

The prima-facie speed limitations set forth in Section 333.03 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 five hundred (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.

State law reference—ORC 4511.24

333.07 STREET RACING PROHIBITED.

(a) As used in this section, "street racing" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance 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 (2) or more vehicles side by side either at speeds in excess of prima-facie lawful speeds established by Section 333.03 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

privilege for not less than thirty (30) days or more than three (3) years. No judge shall suspend the first thirty (30) days of any suspension of an offender's license, permit, or privilege imposed under this subsection.

State law reference—ORC 4511.251

333.08 OPERATION WITHOUT 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 trailer without being in control of it, a minor misdemeanor.

State law reference—ORC 4511.202

333.09 RECKLESS OPERATION ON STREETS, PUBLIC OR PRIVATE PROPERTY.

(a) No person shall operate a vehicle on any street or highway without due regard for the safety of persons or property.

(b) No person shall operate a vehicle on any public or private property other than streets or highways, without due regard for the safety of persons or property.

This subsection 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.

(c) Whoever violates this section is guilty of a misdemeanor of the first degree.
(Ord. 32-97. Passed 8-19-97.)

333.10 OPERATION IN VIOLATION OF IMMOBILIZATION ORDER.

(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 ORC 4503.233.

(b) A motor vehicle that is operated by a person during a violation of subsection (a) hereof shall be criminally forfeited in accordance with the procedures contained in ORC 4503.234.

(c) Whoever violates this section is guilty of a misdemeanor of the second degree.

State law reference—ORC 4503.236

333.11 SPEED ZONES.

Notwithstanding the provisions of Section 333.03(b), the following speed zones are established within the Municipality:

(a) Twenty-five (25) miles per hour.

Roadway	Description
Harlem Road	From SR 62 to the south corporation limit.

(b) Thirty-five (35) miles per hour.

Dublin-Granville Road	From a point approximately 5441 feet east of the western corporation boundary to a point approximately eight hundred seventy-five (875) feet west of the center of the intersection of Dublin Granville Road and U.S. Route 62.
Harlem Road	From the intersection of Dublin-Granville Road to the northernmost corporation boundary of the Village.

(c) Forty-five (45) miles per hour.

Central College	From about 550 feet east from SR 605 to the east corporation limit.
Dublin-Granville Road	From Harlem Road east to West Granville Road
	From the current western corporation boundary to a point approximately 5441 feet east of said boundary.
Kitzmiller Road	From Dublin-Granville Road to the south corporation limit.
Johnstown Road (US Rte. 62)	From Morse Road north to West Main Street.
Johnstown Road (US Rte. 62)	From East Main Street north to Central College.
New Albany-Conduit Road	From Central College south to North High Street.
Reynoldsburg-New Albany Road	The south side property line of Maplewood Cemetery to the south corporation limit.
Thompson Road	From Johnstown Road (US Rte. 62) west to the corporation limit.
Beech Road	From the northern Village corporation limit to State Route 161.

(Ord. 25-89. Passed 9-5-89; Ord. 49-96. Passed 10-1-96; Ord. 59-96. Passed 10-1-96; Ord. 39-2001. Passed 9-4-01; Ord. 31-2002. Passed 9-3-02; Ord. 31-2002. Passed 9-3-02; Ord. 06-2003. Passed 2-11-03.)

333.12 SPEED LIMITS ON PRIVATE ROADS AND DRIVEWAYS.

(a) The owner of a private road or driveway located in a private residential area containing twenty (20) or more dwelling units may establish a speed limit on the road or driveway by complying with all of the following requirements:

- (1) The speed limit is not less than twenty-five (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 ORC 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, a speed limit has been established for the road or driveway and the speed limit is enforceable by law enforcement officers under state law.

(b) No person shall operate a vehicle upon a private road or driveway as provided in subsection (a) hereof at a speed exceeding any speed limit established and posted pursuant to that subsection.

(c) When a speed limit is established and posted in accordance with subsection (a) hereof, any law enforcement officer may apprehend a person violating the speed limit of the residential area by utilizing any of the means described in ORC 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.

(d) Points shall be assessed for violation of a speed limit established and posted in accordance with subsection (a) hereof in accordance with ORC 4510.036.

(e) As used in this section:

- (1) "Owner" includes, but is not limited to, a person who holds title to the real property in a fee simple, a condominium owners' association, a property owners' association, the board of directors or trustees of a private community, and a nonprofit corporation governing a private community.
- (2) Private residential area containing twenty (20) or more dwelling units does not include a Chautauqua assembly as defined in ORC 4511.90.

(f) A violation of subsection (b) of this section is one of the following:

- (1) Except as otherwise provided in subsections (f)(2) and (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 two (2) violations of subsection (b) of this section or of any municipal ordinance that is substantially similar to subsection (b) of this 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 (3) or more violations of subsection (b) of this section or of any municipal ordinance that is substantially similar to subsection (b) of this section, a misdemeanor of the third degree.

State law reference—ORC 4511.211

PROOFS

CHAPTER 335 LICENSING; ACCIDENTS*

335.01	DRIVER'S LICENSE OR COMMERCIAL DRIVER'S LICENSE REQUIRED.
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335.01 DRIVER'S LICENSE OR COMMERCIAL DRIVER'S LICENSE REQUIRED.

- (a) (1) No person, except those expressly exempted under ORC 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 ORC Ch. 4507 or a commercial driver's license issued under ORC Ch. 4506.
- (2) No person, except a person expressly exempted under ORC 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 ORC Ch. 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

***Cross reference**—See sectional histories for similar state law

Deposit of driver's license as bond - see ORC 2937.221

Motor vehicle licensing law - see ORC Ch. 4503

Driver's license law - see ORC Ch. 4507

Power of trial court of record to suspend license for certain violations - see ORC 4510.05, 4510.15

State point system suspension - see ORC 4507.40

State accident reports - see ORC 4509.01(J), 4509.06, 4509.74, 5502.11

Motorized bicycle operator's license - see ORC 4511.521

Glass removal from street after accident - see TRAF. 311.01

commercial motor vehicle, or in the form of a restricted license as provided in ORC 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 noncertified copy of the law enforcement automated data system report or a noncertified 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 Section 501.99 or ORC 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 Section 501.99(d) or ORC 2929.26; notwithstanding 501.99(f)(1)B.1. and ORC 2929.28(A)(2)(a), the offender may be fined up to one thousand dollars (\$1,000); and, notwithstanding Section 501.99(e)(1)C. and ORC 2929.27(A)(3), the offender may be ordered pursuant to Section 501.99(e)(3) or ORC 2929.27(C) to serve a term of community service of up to five hundred (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 ORC 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 (3) years of the offense, the offender previously has

been convicted of or pleaded guilty to two (2) 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 (3) years have passed since the offender's last violation of ORC 4510.12 or a substantially equivalent municipal ordinance.

(e) If the offender is sentenced under division (c)(2) of this section, if within three (3) years of the offense the offender previously was convicted of or pleaded guilty to one or more violations of ORC 4510.12 or a substantially equivalent municipal ordinance within the past three (3) years, and if the offender's license was expired for more than six (6) 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 division (A)(7) of ORC 4510.02.

State law reference—ORC 4510.12

335.02 PERMITTING OPERATION WITHOUT VALID LICENSE; ONE LICENSE PERMITTED.

(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 ORC Ch. 4507 or a valid commercial driver's license issued under ORC Ch. 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 Section 501.99, ORC 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 Section 501.99(d) or ORC 2929.26; notwithstanding Section 501.99(f)(1)B.1. and ORC 2929.28(A)(2)(a), the offender may be fined up to one thousand dollars (\$1,000); and, notwithstanding Section 501.99(e)(1)C. and ORC 2929.27(A)(3), the offender may be ordered pursuant to Section 501.99(e)(3) or ORC 2929.27(C) to serve a term of community service of up to five hundred (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 ORC 2705.02(A) that may be filed in the underlying case. If, within three (3) years of the offense, the offender previously has been convicted of or pleaded guilty to two (2) or more violations of this section or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

(b) 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 the State of Ohio. 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 in his possession more than one valid license at any time.

State law reference—ORC 4507.02

335.03 DRIVING WITH TEMPORARY INSTRUCTION PERMIT.

(a) No holder of a temporary instruction permit issued under ORC 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 ORC 4507.05(A).

(b) Except as provided in division (c) of this section, no holder of a temporary instruction permit that is issued under ORC 4507.05(A) and that is issued on or after July 1, 1998, and who has not attained the age of eighteen (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.

(c) The holder of a temporary instruction permit issued under ORC 4507.05(A) on or after July 1, 1998, who has not attained the age of eighteen (18) years, may 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. 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 ORC 4511.19(A).

(d) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4507.05(F), (I)

335.031 DRIVING WITH PROBATIONARY LICENSE.

(a) (1) A. No holder of a probationary driver's who has not attained the age of seventeen (17) 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. unless the holder is accompanied by the holder's parent or guardian.

B. No holder of a probationary driver's license who has attained the age of seventeen (17) years but has not attained the age of eighteen (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 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 (c)(1)A. of this section, division (a)(1)A. of this section does not apply to the holder of a probationary driver's license who is traveling to or from work between the hours of midnight and 6:00 a.m. and has in the holder's immediate possession written documentation from the holder's employer.
 - B. Division (a)(1)B. of this section does not apply to the holder of a probationary driver's license who is traveling to or from work between the hours of 1:00 a.m. and 5:00 a.m. and has in the holder's immediate possession written documentation from the holder's employer.
 - (3) An employer 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 provided an employee who is the holder of a probationary driver's license with the written documentation described in division (a)(2) of this section. The Registrar of Motor Vehicles has available at no cost a form to serve as the written documentation described in division (a)(2) of this section, and employers 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 is less than seventeen (17) years of age 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.
- (b) It is an affirmative defense to a violation of subsection (a)(1)A. or (a)(1)B. hereof if, at the time of the violation, the holder of the probationary driver's license was traveling to or from an official function sponsored by the school the holder attends, or an emergency existed that required the holder to operate a motor vehicle in violation of subsection (a)(1)A. or (a)(1)B. hereof, or the holder was an emancipated minor.
- (c) (1) A. Except as otherwise provided in division (c)(2) of this section, if a person is issued a probationary driver's license prior to attaining the age of seventeen (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 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 during whichever of the following time periods applies:
- 1. If, on the date the holder of the probationary driver's license pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed the moving violation, the holder has not attained the age of sixteen and one-half (16.5) years, during the six-month period commencing on that date;

2. If, on the date the holder pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed the moving violation, the holder has attained the age of sixteen and one-half (16.5) years but not seventeen (17) years, until the person attains the age of seventeen (17) years.
- B. If the holder of a probationary driver's license commits a moving violation during the six-month period after the person is issued the probationary driver's license and before the person attains the age of seventeen (17) years and on the date the person pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed the moving violation the person has attained the age of seventeen (17) years, or if the person commits the moving violation during the six-month period after the person is issued the probationary driver's license and after the person attains the age of seventeen (17) years, the holder is not subject to the restriction described in divisions (c)(1)A.1. and (c)(1)A.2. of this section unless the court or juvenile court imposes such a restriction upon the holder.
- (2) Any person who is subject to the operating restrictions established under division (c)(1) of this section as a result of a first moving violation may petition the court for occupational or educational driving privileges without being accompanied by the holder's parent or guardian during the period of time specified in that division. The court may grant the person such driving privileges if the court finds reasonable cause to believe that the restrictions established in division (c)(1) will seriously affect the person's ability to continue in employment or educational training or will cause undue hardship on the license holder or a family member of the license holder. In granting the driving privileges, the court shall specify the purposes, times, and places of the privileges and shall issue the person appropriate forms setting forth the privileges granted. Occupational or educational driving privileges under this division shall not be granted to the same person more than once. If a person is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed a second or subsequent moving violation, any driving privileges previously granted under this division are terminated upon the subsequent conviction, plea, or adjudication.
- (3) No person shall violate division (c)(1)A. of this section.
- (d) 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.
- (e) A restricted license may be issued to a person who is fourteen (14) or fifteen (15) years of age under proof of hardship satisfactory to the Registrar of Motor Vehicles.
- (f) 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 each occupant of the motor vehicle is wearing

all of the available elements of a properly adjusted occupant restraining device as required by subsection (d) hereof, or for the sole purpose of issuing a ticket, citation, or summons if the requirement in that subsection 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.

(g) 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 subsection (a)(1)A. or (a)(1)B. hereof 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 of or commencing a prosecution of a person for such violation.

(h) As used in this section:

(1) "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 ORC 4507.05.

(2) "Moving violation" means any violation of any statute or ordinance that regulates the operation of vehicles on the highways or streets. "Moving violation" does not include a violation of ORC 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.

(3) "Occupant restraining device" has the same meaning as in ORC 4513.263.

(i) Whoever violates divisions (a)(1), (a)(4), (c)(3), or (d) of this section is guilty of a minor misdemeanor.

State law reference—ORC 4507.071(B) - (J)

335.04 CERTAIN ACTS PROHIBITED.

(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 ORC 4507.08 or 4507.081 when knowing the same to be false or fictitious.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.

State law reference—ORC 4507.30

335.05 WRONGFUL ENTRUSTMENT OF A MOTOR VEHICLE.

(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 ORC Ch. 4510, or any other provision of the Ohio Revised Code or this Traffic 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 ORC Ch. 4509.
- (4) The offender knows or has reasonable cause to believe that the other person's act of driving would violate ORC 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 ORC 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 subsection (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 subsection (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 Section 501.99 or ORC 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 Section 501.99(d) or ORC 2929.26; notwithstanding Section 501.99(f)(1)B.1. and ORC 2929.28(A)(2)(a), the offender may be fined up to one thousand dollars (\$1,000.00); and, notwithstanding Section 501.99(e)(1)C. and ORC 2929.27(A)(3), the offender may be ordered pursuant to Section 501.99(e)(3) or ORC 2929.27(C) to serve a term of community service of up to five hundred (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 ORC 2705.02(A) that may be filed in the underlying case.
- (2) A. If, within three (3) 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 (2) or more violations of division (a)(1), (a)(2), or (a)(3) of this section, ORC 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 ORC Ch. 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 ORC 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 thirty (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 ORC 4503.233.
 - B. If the offender previously has been convicted of or pleaded guilty to one violation of this section, ORC 4511.203, or a substantially equivalent municipal ordinance, the court may order, for sixty (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 ORC 4503.233.
 - C. If the offender previously has been convicted of or pleaded guilty to two (2) or more violations of this section, ORC 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 ORC 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 ORC 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 ORC 4503.234(C)(2).

(d) If a court orders the immobilization of a vehicle under subsection (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 subsection (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 (5) 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 ORC 4549.65.

(g) Evidence of a conviction of, plea of guilty to, or adjudication as a delinquent child for a violation of this section or a substantially similar municipal ordinance 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.

State law reference—ORC 4511.203

335.06 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 ORC Ch. 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 Section 501.99 or ORC 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 Section 501.99(d) or ORC 2929.26; notwithstanding Section 501.99(f)(1)B.1. and ORC 2929.28(A)(2)(a), the offender may be fined up to one thousand dollars (\$1,000.00); and notwithstanding Section 501.99(e)(1)C. and ORC 2929.27(A)(3), the offender may be ordered pursuant to Section 501.99(e)(3) or ORC 2929.27(C) to serve a term of community service of up to five hundred (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 ORC 2705.02(A) that may be filed in the underlying case.

(2) If, within three (3) years of the offense, the offender previously has been convicted of or pleaded guilty to two (2) or more violations of this section, ORC 4507.35, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.

State law reference—ORC 4507.35

335.07 DRIVING UNDER SUSPENSION OR IN VIOLATION OF LICENSE RESTRICTION.

(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, Section 335.072 and in ORC 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 ORC Ch. 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 division (D) of ORC 4506.10 or under ORC 4507.14.
- (3) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified 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 ORC 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 (3) years of the offense, the offender previously has been convicted of or pleaded guilty to one violation of this section, ORC 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 thirty (30) days and the impoundment of that vehicle's license plates for thirty (30) days in accordance with ORC 4503.233.
 2. If the vehicle is registered in the offender's name and if, within three (3) years of the offense, the offender previously has been convicted of or pleaded guilty to two (2) violations of this section, or any combination of two (2) violations of this section, ORC 4510.11, 4510.111 or 4510.16, or of a substantially similar 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 sixty (60) days and the impoundment of that vehicle's license plates for sixty (60) days in accordance with ORC 4503.233.

3. If the vehicle is registered in the offender's name and if, within three (3) years of the offense, the offender previously has been convicted of or pleaded guilty to three (3) or more violations of this section, or any combination of three (3) or more violations of this section or ORC 4510.11, 4510.111 or 4510.16, or of a substantially similar 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 ORC 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 ORC 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 (5) 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 ORC 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 Section 501.99(f) or ORC 2929.28 in an amount not exceeding five thousand dollars (\$5,000.00) 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.
- (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 ORC 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 noncertified copy of the law enforcement automated data system report or a noncertified 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) 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 Section 501.99 or ORC 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 Section 501.99(d) or ORC 2929.26; notwithstanding Section 501.99(f)(1)B.1. and ORC 2929.28(A)(2)(a), the offender may be fined up to one thousand dollars (\$1,000.00); and, notwithstanding Section 501.99(e)(1)C. and ORC 2929.27(A)(3), the offender may be ordered pursuant to Section 501.99(e)(3) or ORC 2929.27(C) to serve a term of community service of up to five hundred (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 ORC 2705.02(A) that may be filed in the underlying case.

B. If, within three (3) years of the offense, the offender previously was convicted of or pleaded guilty to two (2) or more violations of division (b)(1) of this section, or any combination of two (2) or more violations of division (b)(1) of this section, ORC 4510.11, 4510.111 or 4510.16, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the fourth degree.

(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 ORC 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 (3) days in jail. No court shall suspend the first three (3) days of jail time imposed pursuant to this division.

(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.

State law references—ORC 4510.04; ORC 4510.11; ORC 4510.037(J); ORC 4510.111

335.071 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 ORC 4511.19, 4511.191, or 4511.196 or under ORC 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 ORC Ch. 2929, subject to the differences authorized or required by this section.

(1) Except as otherwise provided in subsection (b)(2) or (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 (3) consecutive days. The three-day term shall be imposed, unless, subject to subsection (c) of this section, the court instead imposes a sentence of not less than thirty (30) consecutive days of house arrest with electronic monitoring. A period of house arrest with electronic monitoring imposed under this subsection shall not exceed six (6) months. If the court imposes a mandatory three-day jail term under this subsection, 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 (6) months.
- B. A fine of not less than two hundred fifty dollars (\$250.00) and not more than one thousand dollars (\$1,000.00).
- C. A license suspension under subsection (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 thirty (30) days of the offender's vehicle and impoundment for thirty (30) days of the identification license plates of that vehicle. The order for immobilization and impoundment shall be issued and enforced in accordance with ORC 4503.233.

(2) If, within six (6) 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 ten (10) consecutive days. Notwithstanding the jail terms provided in ORC Ch. 2929, the court may sentence the offender to a longer jail term of not more than one year. The ten-day mandatory jail term shall be imposed unless, subject to subsection (c) of this section, the court instead imposes a sentence of not less than ninety (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 ORC Ch. 2929, a fine of not less than five hundred dollars (\$500.00) and not more than two thousand five hundred dollars (\$2,500.00).
 - C. A license suspension under subsection (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 sixty (60) days and the impoundment for sixty (60) days of the identification license plates of that vehicle. The order for immobilization and impoundment shall be issued and enforced in accordance with ORC 4503.233.
- (3) If, within six (6) years of the offense, the offender previously has been convicted of or pleaded guilty to two (2) or more violations of this section or two (2) or more equivalent offenses, 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 thirty consecutive days. Notwithstanding the jail terms provided in ORC Ch. 2929, 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 ORC Ch. 2929, a fine of not less than five hundred dollars (\$500.00) and not more than two thousand five hundred dollars (\$2,500.00).
 - C. A license suspension under subsection (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 ORC 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 ORC 4503.234(B)(2) or (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 ORC 4503.234(C)(2).
- (c) (1) No court shall impose an alternative sentence of house arrest with electronic monitoring under subsection (b)(1) or (2) of this section unless, within sixty (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 sixty-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 (50) percent of any fine imposed by a court under subsection (b)(1), (2) or (3) of this section shall be deposited into the county indigent drivers alcohol treatment fund or municipal indigent drivers alcohol treatment fund under the control of that court, as created by the county or municipal corporation pursuant to ORC 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 ORC 4510.02(A)(7).

(1) When permitted as specified in ORC 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 ORC 4503.231, on the vehicle driven subject to the privileges, except as provided in division (B) of that section.

(2) A suspension of a commercial driver's license under this section shall be concurrent with any period of suspension or disqualification under ORC 3123.58 or 4506.16. No person who is disqualified for life from holding a commercial driver's license under ORC 4506.16 shall be issued a driver's license under ORC Ch. 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 ORC Ch. 4507 during the period of the suspension.

(f) The offender shall provide the court with proof of financial responsibility as defined in ORC 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 501.99(f) or ORC 2929.28 in an amount not exceeding five thousand dollars (\$5,000.00) 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:

(1) "Electronic monitoring" has the same meaning as in ORC 2929.01.

(2) "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 subsection (a) of this section;

B. A violation of a former law of this State that was substantially equivalent to subsection (a) of this section.

(3) "Jail" has the same meaning as in ORC 2929.01.

(4) "Mandatory jail term" means the mandatory term in jail of three, ten, or thirty consecutive days that must be imposed under subsection (b)(1), (2) or (3) of this section upon an offender convicted of a violation of subsection (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.

(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.

State law references—ORC 4510.04; ORC 4510.14

335.072 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 ORC Ch. 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 ORC Ch. 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 ORC 4509.45 to file and maintain proof of financial responsibility for a violation of ORC 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 ORC 4509.37 or 4509.40 for nonpayment of a judgment.

(c) Upon the request or motion of the prosecuting authority, a noncertified copy of the law enforcement automated data system report or a noncertified 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 this 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 Section 501.99 or ORC 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 Section 501.99(d) or ORC 2929.26; notwithstanding Section 501.99(f)(1)B.1. and ORC 2929.28(A)(2)(a), the offender may be fined up to one thousand dollars (\$1,000.00); and, notwithstanding Section 501.99(e)(1)C. and ORC 2929.27(A)(3), the offender may be ordered pursuant to Section 501.99(e)(3) or ORC 2929.27(C) to serve a term of community service of up to five hundred (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 ORC 2705.02(A) that may be filed in the underlying case.
- (2) If, within three (3) years of the offense, the offender previously was convicted of or pleaded guilty to two (2) or more violations of this section, or any combination of two (2) violations of this section, ORC 4510.11, 4510.111 or 4510.16, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree.
- (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 ORC 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 ORC 4509.101(A)(1) as shown by proof of financial responsibility that was in effect at the time of that request.

State law references—ORC 4510.04; ORC 4510.16

State law references—Immobilization of vehicle; impoundment of license plates; criminal forfeiture of vehicle, see ORC 4510.161

335.073 DRIVING WITHOUT COMPLYING WITH LICENSE REINSTATEMENT REQUIREMENTS.

(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 noncertified copy of the law enforcement automated data system report or a noncertified 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 Section 501.99 or ORC 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 Section 501.99(d) or ORC 2929.26; notwithstanding Section 501.99(f)(1)B.1. and ORC 2929.28(A)(2)(a), the offender may be fined up to one thousand dollars (\$1,000.00); and, notwithstanding Section 501.99(e)(1)C. and ORC 2929.27(A)(3), the offender may be ordered pursuant to Section 501.99(e)(3) or ORC 2929.27(C) to serve a term of community service of up to five hundred (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 ORC 2705.02(A) that may be filed in the underlying case.
- (2) If, within three (3) years of a violation of division (a) of this section, the offender previously has pleaded guilty to or been convicted of two (2) or more violations of this section, ORC 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 ORC 4510.02(A)(7).

(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.

State law references—ORC 4510.04; ORC 4510.21

335.08 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 ORC Ch. 4505 or, if a physical certificate

of title has not been issued for a motor vehicle, operate the motor vehicle in this Municipality 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 ORC Ch. 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 ORC Ch. 4505;
- (4) Fail to surrender the certificate of title to a clerk of a court of common pleas as provided in ORC Ch. 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 ORC Ch. 4505;
- (6) Except as otherwise provided in ORC Ch. 4505 and Ch. 4517, sell at wholesale a motor vehicle the 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 ORC 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 Municipality 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 two hundred dollars (\$200.00) or imprisoned not more than ninety (90) days, or both.

State law reference—ORC 4505.18

335.09 DISPLAY OF LICENSE PLATES.

(a) No person who is the owner or operator of a motor vehicle shall fail to properly display in plain view on the front and rear of the motor vehicle the distinctive number and registration mark, including any county identification sticker and any validation sticker issued under ORC 4503.19 and 4503.191, furnished by the Ohio Director of Public Safety, except that 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, cab-enclosed motorcycle, manufactured home, mobile home, trailer or semitrailer shall display on the rear only. A motor vehicle that is issued two (2) license plates shall display the validation sticker on the rear

license plate. A commercial tractor that does not receive an apportioned license plate under the international registration plan shall be issued one license plate and one validation sticker, which license plate and validation sticker shall be displayed on the front of the commercial tractor.

No person to whom a temporary license placard or windshield sticker has been issued for the use of a motor vehicle under ORC 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.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4503.21

335.10 EXPIRED OR UNLAWFUL LICENSE PLATES.

(a) Except as otherwise provided by ORC 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.

(b) 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.

(c) 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.

(d) No person shall park or operate any vehicle upon any public street or highway upon which are displayed any license plates for any period of time which has expired, or any license plates issued in another state for which the period of reciprocal agreement with the state of issue has expired.

(e) No person shall park or operate any vehicle upon any public street or highway upon which are displayed any license plates not legally registered and issued for the vehicle, or upon which are displayed any license plates that were issued on an application for registration that contains any false statement by the applicant.

(f) 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 the vehicle are fastened in such a manner, and not covered, obscured or concealed by any part or accessory of the vehicle, to be readable in their entirety from left to right.

- (g) (1) Whoever violates division (a) of this section is guilty of a misdemeanor of the fourth degree.
- (2) Whoever violates division (b) 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.
- (3) Whoever violates division (c) 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.

State law references—ORC 4503.11(A); ORC 4503.11(D); ORC 4549.11(A); ORC 4549.11(B); ORC 4549.12(A); ORC 4549.12(B)

335.11 USE OF ILLEGAL LICENSE PLATES; TRANSFER OF REGISTRATION.

(a) No person shall operate or drive a motor vehicle upon the streets in this Municipality if it displays a license plate or a distinctive number or identification mark that meets any of the following criteria:

- (1) Is fictitious;
- (2) Is a counterfeit or an unlawfully made copy of any distinctive number or identification mark;
- (3) Belongs to another motor vehicle, provided that this section does not apply to a motor vehicle that is operated on the streets 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 streets in this Municipality, during the thirty-day period described in subsection (c) hereof.

(b) Whoever violates subsection (a)(1), (2) or (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.

(c) Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle expires, and the original owner shall immediately remove the license plates from the motor vehicle. The transfer of the registration and, where applicable, the license plates from the motor vehicle for which they originally were issued to a succeeding motor vehicle purchased by the same person in whose name the original registration and license plates were issued shall be done within a period not to exceed thirty (30) days. During that thirty-day period, the license plates from the motor vehicle for which they originally were issued may be displayed on the succeeding motor vehicle, and the succeeding motor vehicle may be operated on the streets of the Municipality.

(d) Whoever violates subsection (c) of this section is guilty of a misdemeanor of the fourth degree.

State law references—ORC 4503.12; ORC 4549.08

335.12 STOPPING AFTER ACCIDENT UPON STREETS; COLLISION WITH UNATTENDED VEHICLE.

- (a) (1) In case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the driver's or operator's motor vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or 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 any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.
- (2) In the event the injured person is unable to comprehend and record the information required to be given by this section, the other driver involved in the accident or collision forthwith shall notify the nearest police authority concerning the location of the accident or collision, and the driver's name, address and the registered number of the motor vehicle the driver was operating, and then 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 subsection (a) of this section is guilty of failure to stop after an accident, a misdemeanor of the first degree. If the accident or collision results in serious physical harm or death to a person, failure to stop after an accident is a felony and shall be prosecuted under appropriate state law. 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 division (A)(5) of ORC 4510.02. No judge shall suspend the first six (6) months of suspension of an offender's license, permit, or privilege required by this subsection.
- (2) The offender shall provide the court with proof of financial responsibility as defined in ORC 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 Section 501.99(f) or ORC 2929.18 or 2929.28 in an amount not exceeding five thousand dollars (\$5,000.00) 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.

State law reference—ORC 4549.02

335.13 STOPPING AFTER ACCIDENT UPON PROPERTY OTHER THAN STREET.

- (a) (1) In case of accident or collision resulting in injury or damage to persons or property upon any public or private property other than public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, shall stop, and, upon request of the person injured or damaged, or any other person, shall give that person the driver's or operator's name and address, and, if the driver or 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 driver's or operator's driver's or commercial driver's license.
- (2) If the owner or person in charge of the damaged property is not furnished such information, the driver of the motor vehicle involved in the accident or collision, within twenty-four (24) hours after the accident or collision, shall forward to the police authority in the municipality in which the accident or collision occurred the same information required to be given to the owner or person in control of the damaged property and give the date, time, and location of the accident or collision.
- (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 subsection (a) of this section is guilty of failure to stop after a nonpublic road accident, a misdemeanor of the first degree. If the accident or collision results in serious physical harm or death to a person, failure to stop after a nonpublic road accident is a felony and shall be prosecuted under appropriate state law. 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 division (A)(5) of ORC 4510.02. No judge shall suspend the first six (6) months of suspension of an offender's license, permit, or privilege required by this subsection.
- (2) The offender shall provide the court with proof of financial responsibility as defined in ORC 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 Section 501.99(f) or ORC 2929.18 or 2929.28 in an amount not exceeding five thousand dollars (\$5,000.00) 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.

State law reference—ORC 4549.021

335.14 VEHICLE ACCIDENT RESULTING IN 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 the vehicle the driver is driving and, upon request and if available, shall exhibit the 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 twenty-four (24) hours after the accident, shall forward to the police authority in the municipality in which the accident or collision occurred, 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 subsection (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 ORC 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 Section 501.99(f) or ORC 2929.28 in an amount not exceeding five thousand dollars (\$5,000.00) 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.

State law reference—ORC 4549.03

335.15 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, the Chief of Police or the Chief of the Fire Department may, without consent of the owner but with the approval of the law enforcement agency conducting any investigation of the accident, remove 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.
- (b) (1) Except as provided in division (b)(2) or (b)(3) of this section, the Chief of Police, any police officer, the Chief of the Fire Department, and any firefighter who authorizes or participates in the removal of any unoccupied motor vehicle, cargo, or personal property as authorized by division (a) of this section is not liable in 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. Except as provided in division (b)(2) or (b)(3) of this section, if the Chief of Police or Chief of the Fire Department authorizes, employs, or arranges to have a private tow truck operator or towing company remove any unoccupied motor vehicle, cargo, or personal property as authorized by division (a) of this section, that private tow truck operator or towing company is not liable in 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, and the Chief of Police or Chief of the Fire Department is not liable in civil damages for any injury, death, or loss to person or property that results from the private tow truck operator or towing company's removal of that unoccupied motor vehicle, cargo, or personal property.

- (2) Division (b)(1) of this section does not apply to 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.
 - (3) Division (b)(1) of this section does not apply to a private tow truck operator or towing company that was not authorized, employed, or arranged by the Chief of Police or Chief of the Fire Department or to a private tow truck operator or towing company that was authorized, employed, or arranged by the Chief of Police or Chief of the Fire Department to perform the removal of the unoccupied motor vehicle, cargo, or personal property and the private tow truck operator or towing company performed the removal in a reckless or willful manner.
- (c) As used in this section, "hazardous material" has the same meaning as in ORC 2305.232.
- State law reference—**ORC 4513.66

CHAPTER 337 SAFETY AND EQUIPMENT*

337.01	DRIVING UNSAFE VEHICLES.
337.02	LIGHTED LIGHTS; MEASUREMENT OF DISTANCES AND HEIGHTS.
337.03	HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.
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337.01 DRIVING UNSAFE VEHICLES.

(a) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any street any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property.

*Cross reference—See sectional histories for similar state law

Warning devices for commercial vehicles disabled upon freeways - see ORC 4513.28

Slow moving vehicle emblem - see OAC Ch. 4501.13

Motorized bicycle lights and equipment - see ORC 4511.521

Vehicle lighting - see OAC 4501-15

Use of stop and turn signals - see TRAF. 331.14

Wheel protectors for commercial vehicles - see TRAF. 339.05

Vehicles transporting explosives - see TRAF. 339.06

Towing requirements - see TRAF. 339.07

Use of studded tires and chains - see TRAF. 339.11

Bicycle equipment - see TRAF. 373.05 et seq.

(b) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(c) The provisions of this chapter with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers or agricultural tractors except as made applicable to such articles of machinery.

(d) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.02

337.02 LIGHTED LIGHTS; MEASUREMENT OF DISTANCES AND HEIGHTS.

(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 ORC 4513.04 through 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 one thousand (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 ORC 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.

State law reference—ORC 4513.03

337.03 HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.

- (a) (1) Every motor vehicle, other than a motorcycle, shall be equipped with at least two (2) 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 (2) headlights.
- (b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.04

337.04 TAIL LIGHT; 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 five hundred (500) feet to the rear, provided that in the case of a train of vehicles only the tail light on the rear-most 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 fifty (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.

State law reference—ORC 4513.05

337.05 REAR RED REFLECTORS.

- (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 (2) red reflectors meeting the requirements of this section, except that vehicles of the type mentioned in ORC 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 a size and characteristics and so maintained as to be visible at night from all distances within three hundred (300) feet to fifty (50) feet from the vehicle.
- (b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.06

337.06 SAFETY LIGHTING ON 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 the regulations, and the equipment shall be lighted at all times mentioned in ORC 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 five hundred (500) feet.

- (2) This equipment shall be in addition to all other lights specifically required by ORC 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.

State law reference—ORC 4513.07

337.07 OBSCURED LIGHTS ON VEHICLES IN COMBINATION.

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.

State law reference—ORC 4513.08

337.08 RED LIGHT OR RED FLAG ON EXTENDED LOADS.

(a) Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in Section 337.02, a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the side 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 sixteen (16) inches square.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.09

337.09 LIGHTS ON PARKED OR STOPPED VEHICLES.

(a) Except in case of an emergency, whenever a vehicle is parked or stopped upon a roadway open to traffic or shoulder adjacent thereto, whether attended or unattended during the times mentioned in Section 337.02, 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 five hundred (500) feet to the front of such vehicle, and a red light visible from a distance of five hundred (500) feet to the rear. No lights need be displayed upon any such vehicle when it is stopped or parked where there is sufficient light to reveal any person or substantial object within a distance of five hundred (500) feet upon such street. Any lighted headlights upon a parked vehicle shall be depressed or dimmed.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4513.10; ORC 4513.99

337.10 LIGHTS ON SLOW-MOVING VEHICLES; EMBLEM REQUIRED; 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 Section 337.01(c), not specifically required to be equipped with lights or other lighting devices by Section 337.02 to 337.09, shall at all times specified in Section 337.02, be equipped with at least one light displaying a white light visible from a distance of not less than one thousand (1,000) feet to the front of the vehicle, and also shall be equipped with two (2) lights displaying red light visible from a distance of not less than one thousand (1,000) feet to the rear of the vehicle, or as an alternative, one light displaying a red light visible from a distance of not less than one thousand (1,000) feet to the rear and two (2) red reflectors visible from all distances of six hundred (600) feet to one hundred (100) feet to the rear when illuminated by the lawful lower beams of headlamps. Lamps and reflectors required or authorized by this section shall meet standards adopted by the Ohio 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 Ohio Director of Transportation, or the Municipal or County Engineer, when such construction area is marked in accordance with requirements of the Director and the Manual of Uniform Traffic Control Devices, as set forth in ORC 4511.09, which is designed for operation at a speed of twenty-five (25) miles per hour or less shall be operated at a speed not exceeding twenty-five (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 five hundred (500) feet to the rear. The Ohio 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 twenty-five (25) miles per hour may be operated on a street or highway at a speed greater than twenty-five (25) miles per hour provided it is operated in accordance with this section. As used in this subsection (b), "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 twenty-five (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 may, 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 twenty-five (25) miles per hour, in addition to the display of a speed identification symbol, be equipped with a red flashing light that shall be visible from a distance of not less than one thousand (1,000) feet to the rear at all times specified in Section 337.02. 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 subsection, farm machinery and motor vehicles escorting farm machinery may display a flashing, oscillating or rotating amber light, as permitted by Section 337.16, 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 Ohio Director of Public Safety, subject to ORC Ch. 119, establishing standards and specifications for the position of mounting of the alternate reflective material authorized by this division (f). The rules shall 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 Section 337.02, from a distance of not less than five hundred (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 twenty-five (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 twenty-five (25) miles per hour is being operated on a street or highway at a speed greater than twenty-five (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 twenty-five (25) miles per hour is being operated on a street or highway at a speed greater than twenty-five (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 (10) miles and at a speed of twenty-five (25) miles per hour or less.

(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 ORC 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 ORC Ch. 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 ORC 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 ORC 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.

(k) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4513.11; ORC 4513.11(I), 4513.111(E)

337.11 SPOTLIGHT AND AUXILIARY 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 one hundred (100) feet ahead of the vehicle.
- (2) Any motor vehicle may be equipped with not more than three (3) State approved auxiliary driving lights mounted on the front of the vehicle, which when used shall conform to State regulations.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.12

337.12 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.

State law reference—ORC 4513.13

337.13 DISPLAY OF LIGHTED LIGHTS.

(a) At all times mentioned in ORC 4513.03 or a substantially equivalent municipal ordinance, at least two (2) lighted lights shall be displayed, one near each side of the front of every motor vehicle, except when the vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.14

337.14 USE OF HEADLIGHT BEAMS.

(a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in ORC 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, the 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.

State law reference—ORC 4513.15

337.15 LIGHTS OF LESS INTENSITY ON SLOW-MOVING VEHICLES.

(a) Any motor vehicle may be operated under the conditions specified in Section 337.02 when it is equipped with two (2) lighted lights upon the front thereof capable of revealing persons and substantial objects seventy-five (75) feet ahead in lieu of lights required in Section 337.13, provided that such vehicle shall not be operated at a speed in excess of twenty (20) miles per hour.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.16

337.16 NUMBER OF LIGHTS; LIMITATIONS ON FLASHING, OSCILLATING OR ROTATING LIGHTS.

(a) Whenever a motor vehicle equipped with headlights also is equipped with any auxiliary lights or spotlight or any other light on the front thereof projecting a beam of an intensity greater than three hundred (300) candle power, not more than a total of five (5) 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 three hundred (300) candle power, 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 seventy-five (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 a 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, traffic line strippers, snow plows, rural mail delivery vehicles, vehicles transporting preschool children as provided in ORC 4513.182, Ohio Department of Transportation 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 Section 337.10 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 subsection (c)(1) hereof does not apply to such machinery or vehicles. Farm machinery also may display the lights described in Section 337.10.

(d) Except a person operating a public safety vehicle, as defined in Section 301.27, 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 or Municipality, 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 either on farm machinery or vehicles escorting farm machinery, when used on a street or highway.

(f) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.17

337.17 FOCUS AND AIM OF HEADLIGHTS.

(a) No person shall use any lights mentioned in Section 337.02 to 337.16, inclusive, upon any motor vehicle, trailer or semitrailer unless the 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) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.19

337.18 MOTOR VEHICLE AND MOTORCYCLE BRAKES.

(a) The following requirements govern as to brake equipment on vehicles:

- (1) Every motor vehicle, other than a motorcycle, when operated upon a street or highway, shall be equipped with brakes adequate to control the movement of and to stop and hold such motor vehicle, including two (2) separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two (2) wheels. If these two (2) 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 (2) wheels.
- (2) Every motorcycle, when operated upon a street or 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 Ohio Director of Public Safety under ORC 4511.521.
- (4) When operated upon the streets or highways of this Municipality, 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 two thousand (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 two thousand (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 three thousand (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 (2) 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 two thousand (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 sources 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 be capable at all times and under all conditions of loading 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 thirty (30) feet or less from a speed of twenty (20) miles per hour.
- B. Vehicles or combinations of vehicles not having brakes on all wheels shall come to a stop in forty (40) feet or less from a speed of twenty (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.
- (b) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4513.20; ORC 4513.99

337.19 HORN, SIREN AND THEFT ALARM SIGNAL.

- (a) (1) Every motor vehicle when operated upon a street 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 two hundred (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 or public safety 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 five hundred (500) feet and of a type approved by the Ohio 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 or public safety 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.

State law reference—ORC 4513.21

337.20 MUFFLER; MUFFLER CUTOUT; EXCESSIVE SMOKE, GAS OR NOISE; ENGINE BRAKING.

- (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, by-pass 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 other 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.
- (c) (1) No person may slow a vehicle and/or truck by a device, method, or practice known as engine braking or transmission braking, also referred to as "jake braking", "C Brakes", "PackBrakes", "TekBrakes", or any other type of engine retarder commonly utilized in the

trucking industry whereby rapid downshifting of a vehicle's engine or a compression release device is used in lieu of applying a vehicle's wheel brakes, causing a loud noise to emit from the vehicle's engine and exhaust system on any public highway, street, parking lot, or alley within the City. This provision does not apply to emergency or public safety vehicles.

- (2) It is an affirmative defense to a charge under this section that the driver was in an emergency situation and true use of such brake device was necessary to avoid a collision or to keep the vehicle under control.

(Ord. 11-2007. Passed 3-6-07.)

State law references—ORC 4513.20; ORC 4513.22

337.21 REAR-VIEW MIRROR; CLEAR VIEW TO FRONT, BOTH SIDES AND REAR.

(a) Every motor vehicle and motorcycle shall be equipped with a mirror so located as to reflect to the operator a view of the street 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 or motorcycles and shall have a clear view to the rear of their vehicles or motorcycles by mirror.

- (b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.23

337.22 WINDSHIELD AND WINDSHIELD WIPER; SIGN OR POSTER THEREON.

(a) No person shall drive any motor vehicle on a street or highway, 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 (4) inches in height by six (6) 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 six (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.

State law reference—ORC 4513.24

337.23 LIMITED LOAD EXTENSION ON LEFT SIDE OF PASSENGER VEHICLE.

(a) No passenger-type vehicle shall be operated on a street with any load carried on such vehicle which extends more than six (6) inches beyond the line of the fenders on the vehicle's left side.

- (b) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4513.30; ORC 4513.99)

337.24 MOTOR VEHICLE STOP LIGHTS.

- (a) (1) Every motor vehicle, trailer, semitrailer, and pole trailer when operated upon a street or highway shall be equipped with two (2) 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 five hundred (500) feet to the rear, provided that in the case of a train of vehicles only the stop lights on the rear-most 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 ORC 4513.19.
- (4) Historical motor vehicles as defined in ORC 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.

State law reference—ORC 4513.071

337.25 AIR CLEANER REQUIRED.

(a) No person shall operate a motor vehicle with an internal combustion engine unless the carburetion system of the vehicle is protected with an air filter, a flame arresting device, or any other accepted method of protection that is adequate for this purpose. If the original device or system is replaced, it shall be replaced with one that is equal to or better than the original equipment.

(b) This section does not apply to a person doing automotive repair work on a motor vehicle that necessitates this device being removed while the work is performed.

(c) 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.

337.26 CHILD RESTRAINT SYSTEM USAGE.

(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, 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 safety standards:

- (1) A child who is less than four (4) years of age;
- (2) A child who weighs less than forty (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 (4) years of age;
- (2) A child who weighs less than forty (40) pounds.

(c) When any child who is less than eight (8) years of age and less than four (4) feet nine (9) 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 ORC 4511.01 or a vehicle that is regulated under ORC 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 (8) years of age but not older than fifteen (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 ORC 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 ORC 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 Ohio 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 in an occupant restraining device as required by 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 ORC Ch. 4731 or a chiropractor licensed to practice in this state under ORC Ch. 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 twenty-five dollars (\$25.00) nor more than seventy-five dollars (\$75.00).

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 ORC 4511.81(I).

State law reference—ORC 4511.81(A) - (H), (K), (L)

337.27 DRIVERS AND PASSENGERS REQUIRED TO WEAR SEAT BELTS.

(a) As used in this section:

(1) "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.A. 1392.

(2) "Occupant restraining device" means 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.

(3) "Passenger" means any person in an automobile, other than its operator, who is occupying a seating position for which an occupant restraining device is provided.

(4) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as provided in ORC 4501.01.

(5) "Vehicle" and "motor vehicle", as used in the definitions of the terms set forth in subsection (a)(4) hereof, have the same meanings as provided in Chapter 301.

- (6) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim, as defined in ORC 2307.71 and an asbestos claim, as defined in ORC 2307.91, but does not include a civil action for damages for breach of contract or another agreement between persons.

(b) No person shall do either of the following:

- (1) Operate an automobile on any street or highway unless that person 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 that person 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 subsection (b)(3) hereof 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 that person 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) Subsection (b)(3) hereof does not apply to a person who is required by Section 337.26 to be secured in a child restraint device or booster seat. Subsection (b)(1) hereof 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. Subsections (b)(1) and (3) hereof do not apply to a person who has an affidavit signed by a physician licensed to practice in this State under ORC Ch. 4731 or a chiropractor licensed to practice in this State under ORC Ch. 4734 that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical.

(d) 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 subsection (b) hereof 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.

(e) All fines collected for violations of subsection (b) hereof shall be forwarded to the Treasurer of State for deposit as provided in ORC 4513.263.

- (f) (1) Subject to subsection (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 subsection (b)(1) or (3) 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 subsection (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 noneconomic loss, as defined in ORC 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) (1) Whoever violates subsection (b)(1) of this section shall be fined thirty dollars (\$30.00).
- (2) Whoever violates subsection (b)(3) of this section shall be fined twenty dollars (\$20.00).
- (3) Except as otherwise provided in this subsection, whoever violates subsection (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 subsection (b)(4) of this section, whoever violates subsection (b)(4) of this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4513.263

337.28 USE OF SUNSCREENING, NONTRANSPARENT AND REFLECTORIZED MATERIALS.**(a) Requirements.**

- (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 required to be registered in this State with any suncreening material, or other product or material which has the effect of making the windshield or windows nontransparent or would alter the windows' color, increase its reflectivity, or reduce its light transmittance, unless the product or material satisfies one of the following exceptions:
 - A. Any 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 Number 205" (FMVSS 205) in effect at the time of the manufacture of the motor vehicle until such standard is subsequently repealed or reduced. In "Federal Motor Vehicle Safety Standard Number 205" (FMVSS 205) "manufacturer" means any person engaged in the manufacturing or assembling of motor vehicles or motor vehicle equipment, including any person importing motor vehicles or motor vehicle equipment for resale.
 - B. Any sunscreening material or other product or material applied to the windshield when used in conjunction with the safety glazing materials of such window, has a light transmittance of not less than seventy percent (70%) plus or minus three percent (3%) and is not red or yellow in color.
 - C. Any sunscreening material or other product or material applied to the side windows to the immediate right or left the driver, so long as such material, when used in conjunction with the safety glazing materials of such windows, has a light transmittance of not less than fifty percent (50%) plus or minus three percent (3%) and is not red or yellow in color.
 - D. Any sunscreening material or other product or material applied to a window not otherwise listed in subsections (a)(1)A. to C. or E. of this section, except that outside left and right rear view mirrors are required if the sunscreening material is applied to the rear window and the sunscreening material, when used in conjunction with the safety glazing material of such window, has a light transmittance of less than fifty percent (50%) plus or minus three percent (3%).
 - E. Any sunscreening material or other product or material applied along the top of the windshield and that does not extend downward beyond the AS-1 line or five (5) inches from the top of the windshield, whichever is closer to the top, is not regulated by this section.
- (2) No person shall install in any motor vehicle any glass or other material that fails to conform to the specifications of this section.

- (3) No used motor vehicle dealer or new motor vehicle dealer, as defined in ORC 4517.01, shall sell any motor vehicle that fails to conform to the specifications of this section.
 - (4) No reflectorized materials shall be permitted upon or in any front windshield, side windows, sidewings or rear window.
 - (5) 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 required to be registered in this State that is equipped with privacy drapes, louvers, curtains or blinds unless the drapes, louvers, curtains or blinds are open and secure during vehicle operation.
 - (6) All motor vehicles, beginning with the 1990 model year, must be equipped with labels identifying sunscreening material. All sunscreening material must indicate the manufacturer's name and the percentage level of light transmission of the material permanently installed between the material and the surface to which the material is applied or affixed. Such label must be legible and must be placed in the lower left-hand corner of the vehicle window when viewed from the outside. (OAC 4501-41-03)
- (b) Exemptions. The provisions of this section do not apply to:
- (1) A motor vehicle registered in this State in the name of a person, or the person's parent, legal guardian or spouse who has an affidavit signed by a physician licensed to practice in this State under ORC Ch. 4731 or an affidavit signed by an optometrist licensed to practice in this State under ORC Ch. 4725 that states that the person has a physical condition that makes it necessary to equip such motor vehicle with sunscreening material which would be of a light transmittance and/or luminous reflectance in violation of this section. Such affidavit shall be in the possession of the person so afflicted or the driver at all times while in the motor vehicle;
 - (2) The windows to the rear of the driver in chauffeured limousines as defined herein;
 - (3) The windows to the rear of the driver in those vehicles designed and used to transport corpses which include hearses and other vehicles adapted for such use; and
 - (4) 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 Number 205" (FMVSS 205) in effect at the time of the manufacture of the motor vehicle as provided in subsection (a) hereof. (OAC 4501-41-05)
- (c) Definitions. As used in this section, certain terms are defined as follows:
- (1) "Motor vehicle" has the same meaning as specified in Section 301.20.
 - (2) "Sunscreening material" means products or materials, including film, glazing and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduce the effects of the sun with respect to light reflectance or transmittance.

- (3) "Transmittance" means the ratio of the amount of total light, expressed in percentages, which is allowed to pass through the product or material, including glazing, to the amount of total light falling on the product or material and the glazing.
- (4) "Windshield" means the front exterior viewing device of a motor vehicle.
- (5) "Window" means any device designed for exterior viewing from a motor vehicle, except the windshield or any roof-mounted viewing device.
- (6) "Manufacturer" unless otherwise specified in this section, means any person who engages in the manufacturing or assembling of sunscreening products or materials or any person who fabricates, laminates or tempers a safety glazing material, incorporating, during the manufacturing process, the capacity to reflect or reduce the transmission of light.
- (7) "Chauffeured limousine" means a motor vehicle that is designed to carry nine (9) or fewer passengers and is operated for hire on an hourly basis 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 arrangement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine at a fixed rate per hour or trip. "Chauffeured limousine" does not include any vehicle that is used exclusively in the business of funeral directing. (OAC 4501-41-02)

(d) Penalty. 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.

337.29 BUMPER HEIGHTS.

(a) Definitions.

- (1) "Passenger car" means any motor vehicle with motive power, designed for carrying ten (10) persons or less, except a multipurpose passenger vehicle or motorcycle.
- (2) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a motorcycle, designed to carry ten (10) persons or less, that is constructed either on a truck chassis or with special features for occasional off-road operation.
- (3) "Truck" means every motor vehicle, except trailers and semitrailers, designed and used to carry property and having a gross vehicle weight rating of ten thousand (10,000) pounds or less.
- (4) "Manufacturer" has the same meaning as in ORC 4501.01.
- (5) "Gross vehicle weight rating" means the manufacturer's gross vehicle weight rating established for the vehicle.

- (6) "Body floor height" means the vertical distance between top of the frame rail and the bottom of the passenger compartment (cab) floor. In the event that the vehicle is a truck body floor height will be measured by the vertical distance between the passenger compartment (cab) floor and the floor of the truck bed.
- (7) "Bumper height" means the vertical distance between the ground and the highest point of the bottom of the bumper, measured when the vehicle is laden on a level surface with the vehicle tires inflated to the manufacturer's recommended pressure.
- (8) "Frame" means the main longitudinal structural members of the chassis of the vehicle or, for vehicles with unitized body construction, the lowest main longitudinal structural members of the body of the vehicle. (OAC 4501-43-02)

(b) Prohibitions; Application.

- (1) 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.
- (2) 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 including the installation of inverted, altered or modified suspension system component parts which results in elevation of the height of the vehicle bumper or frame unit which is not in compliance with this section.
- (3) No person shall operate upon a street or highway any passenger car, multipurpose passenger vehicle or truck registered in this State without a bumper on the front and rear of the vehicle if such vehicle was equipped with bumpers as standard equipment by the manufacturer.
- (4) No person shall operate upon a street or highway any passenger car, multipurpose passenger vehicle or truck registered in this State if the difference in height between the body floor and the top of the frame exceeds four (4) inches.
- (5) Nothing contained in this section shall be construed to prohibit either of the following:
 - A. 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 as long as such equipment does not cause the vehicle to be in violation of this section;
 - B. 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.

- (6) This section does 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.
- (7) A specially designed or modified passenger car, multipurpose passenger vehicle or truck which does not conform to this section shall not be operated on a street or highway. (OAC 4501-43-03)

(c) Specifications.

- (1) The horizontal bumper shall be at least four and one-half (4.5) inches in vertical height, centered on the vehicle's centerline, and extend no less than the width of the respective wheel track distances. Bumpers shall be horizontal load bearing bumpers and attached to the vehicle frame to effectively transfer impact when engaged.
- (2) Maximum bumper heights shall be determined by weight category of gross vehicle weight rating (GVWR) measured in terms of the vertical distance between the ground and the bottom of the frame rail or bumper. Maximum bumper heights are as follows:

	<u>Front (inches)</u>	<u>Rear (inches)</u>
Passenger Vehicles	22	22
4,500 lbs. and under GVWR	24	26
4,501 lbs. to 7,500 lbs. GVWR	27	29
7,501 lbs. to 10,000 lbs. GVWR	28	31

- (3) If the body and/or truck bed height is altered the difference in height between the body floor and/or the truck bed floor to the top of the frame rail shall not exceed four (4) inches.
- (4) For any vehicle with bumpers or attaching components which have been modified or altered from the original manufacturer's design in order to conform with the maximum bumper requirements of this section, the bumper height shall be measured from a level surface to the bottom of the vehicle frame rail at the most forward and rearward points of the frame rail.
- (5) The height restriction in this subsection (c) applies to the distance from the ground to the bottom of the frame rail under any one or more of the following conditions:
 - A. A motor vehicle is not equipped with a front and rear bumper.
 - B. The bumper height relative to the frame rails has been altered.
 - C. A supplemental bumper has been installed or an addition to the original or replacement has been made. (OAC 4501-43-04)

(d) 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.

337.30 VEHICLES TRANSPORTING 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 (2) 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 Ohio Director of Public Safety pursuant to ORC 4513.182.

(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.

(c) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4513.99; ORC 4513.182

337.31 IGNITION INTERLOCK DEVICES. (REPEALED)

Editor's note—Section 337.31 was repealed as part of the 2006 updating and revision of these Codified Ordinances because substantially equivalent state law (ORC 4511.83(A), (B), (E)) was repealed by the Ohio General Assembly.

337.32 DIRECTIONAL SIGNALS REQUIRED.

(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) "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 Section 337.02.

(d) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.261

337.33 AIR BAGS.

(a) As used in this section, "air bag" has the same meaning as in 49 C.F.R. 579.4, as amended.

(b) No person shall install or reinstall in any motor vehicle any object to fulfill the function of an air bag, including 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) Whoever violates division (b) 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, the person is guilty of a felony to be prosecuted under appropriate state law.

State law reference—ORC 4549.20

CHAPTER 339 COMMERCIAL AND HEAVY VEHICLES*

339.01	OVERSIZE OR OVERWEIGHT VEHICLE OPERATION.
339.02	RESERVED.
339.03	MAXIMUM WIDTH, HEIGHT AND LENGTH.
339.04	ROUTE AND LOAD INFORMATION.
339.05	WHEEL PROTECTORS.
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339.07	TOWING REQUIREMENTS; EXCEPTION TO SIZE AND WEIGHT RESTRICTIONS.
339.08	LOADS DROPPING OR LEAKING; REMOVAL REQUIRED; TRACKING MUD.
339.09	SHIFTING LOAD; LOOSE LOADS.
339.10	VEHICLES WITH SPIKES, LUGS AND CHAINS.
339.11	USE OF STUDDED TIRES AND CHAINS.
339.12	CHAUFFEURED LIMOUSINES.

339.01 OVERSIZE OR OVERWEIGHT VEHICLE OPERATION.

(a) No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in ORC 5577.01 to 5577.09, inclusive, or otherwise not in conformity with ORC 4513.01 to 4513.37, inclusive, upon any route within the Municipality, except pursuant to special written permit issued by the Ohio Director of Transportation. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

(b) Whoever violates the weight provisions of subsection (a) hereof shall be subject to the fine schedule specified in ORC 5577.99. For any other violation of a provision of this chapter, see Section 303.99 for misdemeanor classifications and penalties.
(Ord. 26-98. Passed 9-15-98.)

339.02 RESERVED.

339.03 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 in excess of:

- (1) One hundred four (104) inches for passenger bus type vehicles operated exclusively within the Municipality.
- (2) One hundred two (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

*Cross references—See sectional histories for similar state law

Weighing vehicle; removal of excess load - see ORC 4513.33

Arrest notice of driver - see ORC 5577.14

Slower moving vehicles to be driven in right-hand lane - see TRAF. 331.01(b)

minimum pavement widths of twenty-two (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) One hundred thirty-two (132) inches for traction engines.
 - (4) One hundred two (102) inches for recreational vehicles, excluding safety devices and retracted awnings and other appurtenances of six (6) 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) One hundred two (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 in excess of:
- (1) Sixty-six (66) feet for passenger bus type vehicles and articulated passenger bus type vehicles operated by a regional transit authority pursuant to ORC 306.30 to 306.54.
 - (2) Forty-five (45) feet for all other passenger bus type vehicles.
 - (3) Fifty-three (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-semi-trailer combination on such State highways or portions of State highways as the Director designates.
 - (4) Twenty-eight and one-half (28½) feet for any semitrailer or trailer when operated in a commercial tractor-semi-trailer-trailer or commercial tractor-semi-trailer-semi-trailer combination, except that the Director may prohibit the operation of any such commercial tractor-semi-trailer-trailer or commercial tractor-semi-trailer-semi-trailer combination on such State highways or portions of State highways as the Director designates.
 - (5) A. Ninety-seven (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 (3) saddlemounted vehicles, but which may include one fullmount;
B. Seventy-five (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 (3) saddlemounted vehicles, but which may include one fullmount.
 - (6) Sixty-five (65) feet for any other combination of vehicles coupled together, with or without load, except as provided in division (c)(3) and (4), and in division (e) below.

- (7) Forty-five (45) feet for recreational vehicles.
- (8) Forty (40) feet for all other vehicles, except trailers and semitrailers, with or without load.
- (d) No such vehicle shall have a height in excess of thirteen and one-half (13½) feet, with or without load.
- (e) An automobile transporter or boat transporter shall be allowed a length of sixty-five (65) feet, and a stinger-steered automobile transporter or stinger-steered boat transporter shall be allowed a length of seventy-five (75) feet, except that the load thereon may extend no more than four (4) feet beyond the rear of such vehicles and may extend no more than three (3) 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 (3) inches from either side of the vehicle.
 - (3) The lengths prescribed in divisions (c)(2) to (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 twenty-four (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. 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 ORC Ch. 119.

- (2) 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 ORC 4501.01.

(i) No person shall violate any rule or regulation promulgated by the Director of Transportation in accordance with ORC 5577.05.

(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.

State law references—ORC 5577.05; ORC 5577.06; ORC 5577.99(C)

339.04 ROUTE AND LOAD INFORMATION.

Drivers of vehicles described in this chapter shall be required, upon request by a police officer, to give full and true information as to the route they are following and the name of the consignor and consignee and place of delivery or removal and the location of any consignment being hauled or goods being removed, and upon a designation by such police officer of a route to be followed, shall immediately adopt and pursue such route.

339.05 WHEEL PROTECTORS.

(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 (3) tons, upon the streets, bridges and culverts within this 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-fifth 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.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 5577.11

339.06 VEHICLES TRANSPORTING EXPLOSIVES.

(a) Any person operating any vehicle transporting explosives upon a street or highway shall at all times comply with the following requirements:

- (1) Such vehicle shall be marked or placarded on each side and on the rear with the word "EXPLOSIVES" in letters not less than eight (8) inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four (24) inches square marked with the word "DANGER" in white letters six (6) inches high, or shall be marked or placarded in accordance with Section 177.823 of the United States Department of Transportation Regulations.
- (2) Such vehicle shall be equipped with not less than two (2) fire extinguishers, filled and ready for immediate use, and placed at convenient points on such vehicle.
- (b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4513.29

339.07 TOWING REQUIREMENTS; EXCEPTION TO SIZE AND WEIGHT RESTRICTIONS.

(a) When one vehicle is towing another vehicle, the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby, and such drawbar or other connection shall not exceed fifteen (15) feet from one vehicle to the other, except the connection between any two (2) vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(b) 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 twelve (12) inches square.

(c) 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. The 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.

(d) Every trailer or semitrailer, except pole and cable trailers and pole and cable dollies operated by a public utility, as defined in ORC 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 twenty-five (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 (10) miles and at a speed of twenty-five (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:

- (1) An agricultural tractor may tow or draw more than one such vehicle;
 - (2) 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 (2) tons may tow or draw not more than two (2) 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.
- (e) Whoever violates this section is guilty of a minor misdemeanor.
- (f) Exception to Size and Weight Restrictions.
- (1) The size and weight provisions of this chapter and ORC Ch. 5577 do not apply to a person who is engaged in the initial towing or removal of 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 ORC Ch. 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 ORC Ch. 5577.
 - (3) No court shall impose any penalty prescribed in ORC 5577.99, or any substantially equivalent municipal ordinance, or the civil liability established in ORC 5577.12 upon a person towing or removing a vehicle in the manner described in division (c)(1) of this section.

State law references—ORC 4513.32; ORC 4513.99; ORC 5577.15

339.08 LOADS DROPPING OR LEAKING; REMOVAL REQUIRED; TRACKING MUD.

(a) No vehicle shall be driven or moved on any street, highway or other public place unless such 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 such 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 street, highway or other public place unless the load is covered with a sufficient cover to prevent the load or any part of the load from spilling onto the street, highway or other public place.

(c) No person shall operate any vehicle so as to track or drop mud, stones, gravel or other similar material on any street, highway or other public place.

(d) It shall be the duty of the driver of a vehicle who unlawfully drops or deposits mud, stones, gravel or other similar material or permits the load or any portion thereof to be dropped or deposited upon any street, highway or other public place to immediately remove the same or cause it to be removed.

(e) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4513.31; ORC 4513.99

339.09 SHIFTING LOAD; LOOSE LOADS.

(a) In addition to any other lawful requirements of load distribution, no person shall operate any vehicle upon a street or highway unless such vehicle is so laden as to prevent its contents from shifting or otherwise unbalancing the vehicle to such an extent as to interfere with the safe operation of the same.

(b) No motor vehicle or trailer shall be driven unless the tailboard or tailgate, tarpaulins, chains (except ground or contact chains), ropes, stakes, poles, and the like, or any part of the load, are securely fastened to prevent dangling, flapping, swinging or falling from the side, end or top of the load or body. All projecting cargo shall be properly guarded by a red flag or cloth or a red light or lantern as required by Section 337.08.

(c) 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.

339.10 VEHICLES WITH SPIKES, LUGS AND CHAINS.

(a) No person shall drive over the improved streets 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, or no person shall tow or in any way pull another vehicle over the improved streets 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. "Traction engine" or "tractor," as used in this section, 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.

(c) 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.

(d) (1) Except as provided in division (d)(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 (d)(1) of this section.

(e) Division (d) of 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.

(f) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 5589.08; ORC 5589.081; ORC 5589.99

339.11 USE OF STUDED TIRES AND CHAINS.

(a) For 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. "Motor vehicle," "street or highway," "public safety vehicle" and "school bus" have the same meaning as given those terms in Chapter 301.

(b) No person shall operate any motor vehicle, other than a public safety vehicle or bus, that is equipped with studded tires on any street or highway, except during the period extending from November 1 of each year through April 15 of the succeeding year.

(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.

(d) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 5589.081; ORC 5589.99

339.12 CHAUFFEURED LIMOUSINES.

(a) The operator of a chauffeured limousine shall accept passengers only on the basis of prearranged contracts, as defined in ORC 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) 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 him or her to provide the service is registered in accordance with ORC 4503.24, and is in compliance with ORC 4509.80.

(c) Whoever violates this section is guilty of a misdemeanor of the first degree and shall be subject to the penalty provided in Section 303.99.

State law references—ORC 4511.85; ORC 4511.99(B)

PROOFS

CHAPTER 341 COMMERCIAL DRIVERS*

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341.01 DEFINITIONS.

As used in this chapter:

(a) "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:

- (1) One hundred (100) milliliters of whole blood, blood serum, or blood plasma;
- (2) Two hundred ten (210) liters of breath;
- (3) One hundred (100) milliliters of urine.

(b) "Commercial driver's license." A license issued in accordance with ORC Ch. 4506 that authorizes an individual to drive a commercial motor vehicle.

(c) "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.

(d) "Commercial motor vehicle." Except when used in ORC 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 combined gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, provided that the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of ten thousand (10,000) pounds;
- (2) Any single vehicle with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, or any such vehicle towing a vehicle having a gross vehicle weight rating that is not in excess of ten thousand (10,000) pounds;
- (3) Any single vehicle or combination of vehicles that is not a Class A or Class B vehicle, but is designed to transport sixteen (16) or more passengers including the driver;

***Cross reference**—See sectional histories for similar state law

Disqualification - see ORC 4506.16

Suspension of license - see ORC 4507.16

Warning devices when disabled on freeways - see ORC 4513.28

Arrest notice of driver - see ORC 5577.14

Load limits - see TRAF. Ch. 339

- (4) Any school bus with a gross vehicle weight rating of less than twenty-six thousand one (26,001)pounds that is designed to transport fewer than sixteen (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.

(e) "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.

(f) "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.

(g) "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.

(h) "Downgrade." Any of the following, as applicable:

- (1) A change in the commercial driver's license holder's self-certified status as described in ORC 4506.10(A)(2);
- (2) A change to a lesser class of vehicle;
- (3) Removal of commercial driver's license privileges from the individual's driver's license.

(i) "Drive." To drive, operate or be in physical control of a motor vehicle.

(j) "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.

(k) "Driver's license." A license issued by the Bureau of Motor Vehicles that authorizes an individual to drive.

(l) "Drug of abuse." Any controlled substance, dangerous drug as defined in ORC 4729.01, or over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes.

(m) "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.

(n) "Eligible unit of local government." A village, township, or county that has a population of not more than three thousand (3,000) persons according to the most recent Federal census.

(o) "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.

(p) "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.

(q) "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 one hundred fifty (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 one hundred fifty (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 ORC 4923.01.

(r) "Fatality." The death of a person as the result of a motor vehicle accident occurring not more than three hundred sixty-five (365) days prior to the date of death.

(s) "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.

(t) "Foreign jurisdiction." Any jurisdiction other than a state.

(u) "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.

(v) "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.

(w) "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.

(x) "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.

(y) "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.

(z) "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.

(aa) "Peace officer." Has the same meaning as in ORC 2935.01.

(bb) "Portable tank." A liquid or gaseous packaging designed primarily to be loaded on or temporarily attached to a vehicle and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means.

(cc) "Public safety vehicle." Has the same meaning as in ORC 4511.01(E)(1) and (E)(3).

(dd) "Recreational vehicle." Includes every vehicle that is defined as a recreational vehicle in ORC 4501.01 and is used exclusively for purposes other than engaging in business for profit.

(ee) "Residence." Any person's residence determined in accordance with standards prescribed in the rules adopted by the Registrar.

(ff) "School bus." Has the same meaning as in ORC 4511.01.

(gg) "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 ORC 4506.03

- (2) A violation while operating a commercial motor vehicle of a law of this state, or any municipal ordinance or county or township resolution prohibiting texting while driving, or any other substantially similar law of another state or political subdivision of another state;
- (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 fifteen (15) miles per hour or more;
 - B. Violations of ORC 4511.20 or 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 ORC 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 ORC 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 ORC 4511.33 or 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 or an ordinance or resolution relating to traffic control, other than a parking violation, that is determined to be a serious traffic violation by the United States Secretary of Transportation and the Ohio Director of Public Safety designates as such by rule.

(hh) "State." A state of the United States and includes the District of Columbia.

(ii) "Tank vehicle." Any commercial motor vehicle that is designed to transport any liquid and has a maximum capacity greater than one hundred nineteen (119) gallons or is designed to transport gaseous materials and has a water capacity greater than one thousand (1,000) pounds within a tank that is either permanently or temporarily attached to the vehicle or its chassis. "Tank vehicle" does not include any of the following:

- (1) Any portable tank having a rated capacity of less than one thousand (1,000) gallons;

- (2) Tanks used exclusively as a fuel tank for the motor vehicle to which it is attached;
- (3) An empty storage container tank that is not designed for transportation and that is readily distinguishable from a transportation tank;
- (4) Ready-mix concrete mixers.

(jj) "Tester." Means a person or entity acting pursuant to a valid agreement entered into pursuant to ORC 4506.09(B).

(kk) "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, or engaging in any other form of electronic text retrieval or entry, for present or future communication. "Texting" does not include the following:

- (1) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone call or using voice commands to initiate or receive a telephone call;
- (2) Inputting, selecting, or reading information on a global positioning system or navigation system.

(ll) "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, but 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.

(mm) "United States." Means the fifty (50) states and the District of Columbia.

(nn) "Upgrade." A change in the class of vehicles, endorsements, or self-certified status as described in ORC 4506.10(A)(2) that expands the ability of a current commercial driver's license holder to operate commercial motor vehicles under this chapter or ORC Ch. 4506.

(oo) "Vehicle." Has the same meaning as in ORC 4511.01.

State law reference—ORC 4506.01

341.02 USE OF ACTUAL GROSS WEIGHT IN LIEU OF RATING.

For purposes of this chapter, 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 or combination of vehicles is not determinable, or if the manufacturer of the vehicle has not specified a gross vehicle weight rating.

State law reference—ORC 4506.011

341.03 PREREQUISITES TO OPERATION OF A COMMERCIAL MOTOR VEHICLE.

(a) On and after April 1, 1992, the following shall apply:

- (1) No person shall drive a commercial motor vehicle on a highway in this Municipality unless the person holds a valid commercial driver's license with proper endorsements for the motor vehicle being driven, issued by the registrar of motor vehicles, a valid examiner's commercial driving permit issued under ORC 4506.13, a valid restricted commercial driver's license and waiver for farm-related service industries issued under ORC 4506.24 or a valid commercial driver's license temporary instruction permit issued by the Registrar and is accompanied by an authorized state driver's license examiner or tester or a person who has been issued and has in his immediate possession a current, valid commercial driver's license with proper endorsements for the motor vehicle being driven.
- (2) No person who has been a resident of this State for thirty (30) days or longer shall drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

(b) As used in this section, "tester" means a person or entity acting pursuant to a valid agreement entered into under ORC 4506.09(B).

(c) Whoever violates this section is guilty of a misdemeanor of the first degree.

State law reference—ORC 4506.03

341.04 PROHIBITIONS.

(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 canceled, or while the person is subject to disqualification;
- (3) Drive a motor vehicle on a highway in this Municipality under authority of a commercial driver's license issued by another state or a foreign jurisdiction, after having been a resident of this State for thirty (30) days or longer.
- (4) Knowingly give false information in any application or certification required by ORC 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.

(c) No person shall drive any commercial motor vehicle for which an endorsement is required under ORC 4506.12 unless the proper endorsement appears on the person's commercial driver's license.

- (d) (1) Whoever violates division (a)(1), (2) or (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 ORC 4507.19 apply.
 - (3) Whoever violates division (c) of this section is guilty of a misdemeanor of the first degree.
- State law references**—ORC 4506.04(A), (B), (C); ORC 4506.12(E), (F)

341.05 CRIMINAL OFFENSES.

(a) No person who holds a commercial driver's license or operates a motor vehicle for which a commercial driver's license 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 ORC 4511.19 or a municipal O.V.I. ordinance as defined in ORC 4511.181;
- (7) Use a vehicle in the commission of a felony;
- (8) Refuse to submit to a test under ORC 4506.17 or ORC 4511.191, or any substantially similar municipal ordinance;
- (9) Operate a commercial motor vehicle while the person's 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 ORC 4549.02 to 4549.03, or any substantially similar municipal ordinance;
- (12) Drive a commercial motor vehicle in violation of any provision of ORC 4511.61 to 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 ORC 3719.01 or the possession with intent to manufacture, distribute, or dispense a controlled substance.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.

State law reference—ORC 4506.15

341.06 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 (10) 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 canceled 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 Section 341.05.

(d) Whoever violates subsection (c) of this section may be assessed a fine not to exceed ten thousand dollars (\$10,000.00).

State law reference—ORC 4506.20

341.07 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 he or she is physically qualified to do so.

- (1) Prior to January 30, 2012, each person who drives or expects to drive a commercial motor vehicle in interstate or foreign commerce or is otherwise subject to 49 C.F.R. 391, et seq., as amended, shall certify to the Registrar of Motor Vehicles at the time of application for a

commercial driver's license that he or she is in compliance with these standards. Any person who is not subject to 49 C.F.R. 391, et seq., as amended, shall also certify at the time of application that he or she is not subject to these standards.

- (2) Beginning on January 30, 2012, any person applying for a commercial driver's license, renewing a commercial driver's license, or transferring 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.

- (3) Notwithstanding the expiration date on a person's commercial driver's license, every commercial driver's license 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 and shall be subject to the penalty provided in Section 303.99.

State law references—ORC 4506.10(A); ORC 4506.99(A)

341.08 PERMITTING OR DRIVING WHILE FATIGUED OR ILL PROHIBITED.

(a) No person shall drive a commercial motor vehicle, commercial car or commercial tractor while his or her ability or alertness is so impaired by fatigue, illness or other causes that it is unsafe for him or her to drive such vehicle. No driver shall use any drug which would adversely affect his or her ability or alertness.

(b) No owner 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 subsection (a) hereof to drive such vehicle upon any street or highway.

(c) Whoever violates any provision of this section is guilty of a misdemeanor of the first degree.

State law references—ORC 4506.99; ORC 4511.79

PROOFS

TITLE SEVEN

PARKING

Chapter 351 Parking Generally

PROOFS

CHAPTER 351 PARKING GENERALLY*

351.01	POLICE MAY REMOVE UNATTENDED VEHICLE WHICH OBSTRUCTS TRAFFIC.
351.02	REGISTERED OWNER PRIMA-FACIE LIABLE FOR UNLAWFUL PARKING.
351.03	PROHIBITED STANDING OR PARKING PLACES.
351.04	PARKING NEAR CURB; HANDICAPPED LOCATIONS ON PUBLIC AND PRIVATE LOTS AND GARAGES.
351.05	MANNER OF ANGLE PARKING.
351.06	SELLING, WASHING OR REPAIRING VEHICLE UPON ROADWAY.
351.07	UNATTENDED VEHICLE: DUTY TO STOP ENGINE, REMOVE KEY, SET BRAKE AND TURN WHEELS.
351.08	OPENING VEHICLE DOOR ON TRAFFIC SIDE.
351.09	TRUCK LOADING ZONES.
351.10	BUS STOPS AND TAXICAB STANDS.
351.11	PARKING IN ALLEYS AND NARROW STREETS; EXCEPTIONS.
351.12	PROHIBITION AGAINST PARKING ON STREETS OR HIGHWAYS.
351.13	PARKING ON POSTED PRIVATE PROPERTY.
351.14	SETTING A SIGHT DISTANCE FIELD OF VISION AT INTERSECTING STREETS.

351.01 POLICE MAY REMOVE UNATTENDED VEHICLE WHICH OBSTRUCTS TRAFFIC.

Whenever any police officer finds a vehicle unattended upon any street, bridge or causeway, or in any tunnel, where such vehicle constitutes an obstruction to traffic, such officer may provide for the removal of such vehicle to the nearest garage or other place of safety.

State law reference—ORC 4511.67

351.02 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.

351.03 PROHIBITED STANDING OR PARKING PLACES.

(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 Traffic Code, or while obeying the directions of a police officer or a traffic control device, in any of the following places:

- (1) On a sidewalk, curb or street lawn area, except a bicycle;
- (2) In front of a public or private driveway;

**Cross reference*—See sectional histories for similar state law

Owner nonliability, lease defense - see ORC 4511.071

Police may remove ignition key from unattended vehicle - see TRAF. 303.03

Parking near stopped fire apparatus - see TRAF. 331.27

Lights on parked or stopped vehicles - see TRAF. 337.09

- (3) Within an intersection;
- (4) Within ten (10) feet of a fire hydrant;
- (5) On a crosswalk;
- (6) Within twenty (20) feet of a crosswalk at an intersection;
- (7) Within thirty (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 thirty (30) feet of points on the curb immediately opposite the end of a safety zone, unless a different length is indicated by a traffic control device;
- (9) Within fifty (50) feet of the nearest rail of a railroad crossing;
- (10) Within twenty (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 seventy-five (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 other elevated structure upon a street, or within a street tunnel;
- (14) At any place where signs prohibit stopping, standing or parking, or where the curbing or street is painted yellow, or at any place in excess of the maximum time limited by signs;
- (15) Within one foot of another parked vehicle;
- (16) On the roadway portion of a freeway, expressway or thruway.

(b) Parking of Commercial Vehicles.

- (1) Definitions. As used in this section: "Commercial Vehicle" means any vehicle, trailer, with or without motive power, designed or used for carrying merchandise, freight, professional materials and/or equipment, or used as a commercial tractor or motor bus, with a gross vehicle weight greater than one thousand four hundred (1,400) pounds.
- (2) Prohibitions. No person shall stand or park a recreational or commercial vehicle except when necessary to avoid conflict with other traffic or while obeying the direction of a police officer on a residential street.
- (3) Exceptions. This parking prohibition shall not apply to such vehicles used for conveying the necessary tools and materials to a premises where labor, using such tools and materials, is to be performed, during the time of parking such vehicles or to the time during which such vehicle is being loaded or unloaded or used to deliver or hoist property or merchandise for completion of delivery, if such loading and unloading or other activities referred to in this provision are conducted diligently and without unnecessary delay.

(c) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(Ord. 23-2005. Passed 10-18-05; Ord. 18-2006. Passed 5-16-06.)

State law reference—ORC 4511.68(A), (B)

351.04 PARKING NEAR CURB; HANDICAPPED LOCATIONS ON PUBLIC AND PRIVATE LOTS AND GARAGES.

(a) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the curb side wheels of the vehicle parallel with and not more than twelve (12) inches from the curb, unless it is impossible to approach so close to the curb; in such case the stop shall be as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise.

(b) This subsection does not apply to streets or parts thereof where angle parking is lawfully permitted. However, no angle parking shall be permitted on a State Route unless an unoccupied roadway width of not less than twenty-five (25) feet is available for free-moving traffic.

(c) (1) Except as provided in division (c)(2) of this section, no vehicle shall be stopped or parked on a road or street with the vehicle facing in a direction other than the direction of travel on that side of the road or street.

(2) 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.

(d) Notwithstanding any provision of this Code or any rule, 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, 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 Ohio 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 the Municipality 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 subsection and ORC 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 (5) 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) No person shall stop, stand or park any motor vehicle at special parking locations provided under subsection (e) hereof, 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 subsection (e) hereof, unless one of the following applies:

- A. 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;
- B. 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.

(2) Any motor vehicle that is parked in a special marked parking location in violation of subsection (f)(1) of this section may be towed or otherwise removed from the parking location by the Police Department. 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.

(3) If a person is charged with a violation of subsection (f)(1) of this section, it is an affirmative defense to the charge that the person suffered an injury not more than seventy-two (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 ORC 4503.44(A)(1).

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

- (1) "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.
- (2) "Person with a disability that limits or impairs the ability to walk" has the same meaning as in ORC 4503.44.
- (3) "Special license plates" and "removable windshield placard" mean any license plates or removable windshield placard or temporary removable windshield placard issued under ORC 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 subsection (a) or (c) of this section is guilty of a minor misdemeanor.
- (2) A. Whoever violates subsection (f)(1)A. or B. of this section is guilty of a misdemeanor and shall be punished as provided in subsection (i)(2)A. and B. of this section. Except as otherwise provided in subsection (i)(2)A. of this section, an offender who violates subsection (f)(1)A. or B. of this section shall be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00). An offender who violates subsection (f)(1)A. or B. of this section shall be fined not more than one hundred dollars (\$100.00) 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 subsection (f)(1)A. 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 subsection (f)(1)A. of this section.
 2. At the time of the violation of subsection (f)(1)B. 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 subsection (f)(1)B. of this section.

- B. In no case shall an offender who violates subsection (f)(1)A. or B. of this section be sentenced to any term of imprisonment.
 - C. An arrest or conviction for a violation of subsection (f)(1)A. or B. 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 division (k)(2) 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 division (k)(2) 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 fifty percent (50%) of each fine it receives under division (k)(2) 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 (h) of this section shall be punished as follows:
- A. Except as otherwise provided in division (k)(3) 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 twenty-five dollars (\$25.00) for each parking location that is not properly marked or whose markings are not properly maintained.

State law reference—ORC 4511.69

351.05 MANNER OF ANGLE PARKING.

(a) Upon streets where angle parking is permitted, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway as is indicated by appropriate signs or markings.

(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.

351.06 SELLING, WASHING OR REPAIRING VEHICLE UPON ROADWAY.

- (a) No person shall stop, stand or park a vehicle upon any roadway for the principal purpose of:
- (1) Displaying such vehicle for sale;

(2) Washing, greasing or repairing such vehicle except repairs necessitated by an emergency.

(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.

351.07 UNATTENDED VEHICLE: DUTY TO STOP ENGINE, REMOVE KEY, SET BRAKE AND TURN WHEELS.

(a) 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.

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 shall not apply to an emergency vehicle or a public safety vehicle.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.661

351.08 OPENING VEHICLE DOOR ON TRAFFIC SIDE.

(a) 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.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.70(C), (D)

351.09 TRUCK LOADING ZONES.

(a) 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 thirty (30) minutes.

(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.

351.10 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 (3) minutes, if such stopping is not prohibited therein by posted signs.

(b) The operator of a bus shall not stop, stand or park such vehicle upon any street 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) The operator of a bus shall enter a bus stop on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than eighteen (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) The operator of a taxicab shall not stand or park such vehicle upon any street 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.

(e) 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.

351.11 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 ten (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.

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 thirty (30) minutes.

(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.

351.12 PROHIBITION AGAINST PARKING ON STREETS OR HIGHWAYS.

(a) Upon any street or highway outside a business or residence district, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main traveled part of the street or highway if it is practicable to stop, park or so leave such vehicle off the paved or main traveled part of such street or highway. In every event, a clear and unobstructed portion of the street or 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 two hundred (200) feet in each direction upon such street or highway.

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 street or 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.66

351.13 PARKING ON POSTED PRIVATE PROPERTY.

(a) If an owner of private property posts on the property in a conspicuous manner, 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.

State law reference—ORC 4511.681

351.14 SETTING A SIGHT DISTANCE FIELD OF VISION AT INTERSECTING STREETS.

(a) At every intersection of street rights-of-way, a sight triangle shall be established as described by the right-of-way lines of intersecting streets as existing or as may be required by the future New Albany Thoroughfare Plan, whichever is greater, and the third side.

(b) The third side is established by the line related by connecting points on each right-of-way line identified by measuring along each right-of-way line from the intersection a distance equal to the sum of the width of both rights-of-way divided by four (4).

(1) Example of Sight Triangle.

(NOTE: See printed page for table.)

(2) Within the sight triangle there shall be maintained a clear visibility between the heights of two (2) feet and ten feet above the average center line grade of the intersection streets within the sight triangle, except trunks of existing trees or light or sign supports. Such supports shall have a maximum dimension of six (6) inches or less of its horizontal section. If there are two (2) or more supports on a framework, they shall not be closer to each other than four (4) feet. There shall be no vehicle parking or standing space provided within the sight triangle.

(c) Whoever violates any provision of 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.

(Ord. 51-96. Passed 9-17-96.)

TITLE NINE

PEDESTRIANS, BICYCLES AND MOTORCYCLES

Chapter 371	Pedestrians
Chapter 373	Bicycles, Motorcycles and Other Children's Vehicles
Chapter 375	Snowmobiles, Off-Highway Motorcycles and All Purpose Vehicles

PROOFS

CHAPTER 371 PEDESTRIANS*

371.01	RIGHT-OF-WAY IN CROSSWALK.
371.02	RIGHT-OF-WAY OF BLIND PERSON.
371.03	CROSSING ROADWAY OUTSIDE CROSSWALK; DIAGONAL CROSSINGS AT INTERSECTIONS.
371.04	MOVING UPON RIGHT HALF OF CROSSWALK.
371.05	WALKING ALONG HIGHWAYS.
371.06	USE OF HIGHWAY FOR SOLICITING; RIDING ON OUTSIDE OF VEHICLES.
371.07	RIGHT-OF-WAY ON SIDEWALK.
371.08	YIELDING TO PUBLIC SAFETY VEHICLE.
371.09	WALKING ON HIGHWAY WHILE UNDER THE INFLUENCE.
371.10	ON BRIDGES OR RAILROAD CROSSINGS.
371.11	PERSONS OPERATING MOTORIZED WHEELCHAIRS.
371.12	ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES.

371.01 RIGHT-OF-WAY IN CROSSWALK.

(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 Section 313.09, 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) Subsection (a) hereof does not apply under the conditions stated in Section 371.03(b).

(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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.46

***Cross reference**—See sectional histories for similar state law

Pedestrian defined - see TRAF. 301.22

Pedestrian prohibited on freeways - see TRAF. 303.06

Obedience to traffic control devices - see TRAF. 313.01, 313.03

Pedestrian control signals - see TRAF. 313.05

371.02 RIGHT-OF-WAY OF BLIND PERSON.

(a) 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 twenty degrees (20°).

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 predominately 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 metallic cane, with or without a red tip.

(c) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.47

371.03 CROSSING ROADWAY OUTSIDE CROSSWALK; DIAGONAL CROSSINGS AT INTERSECTIONS.

(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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.48

371.04 MOVING UPON RIGHT HALF OF CROSSWALK.

(a) Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.49

371.05 WALKING ALONG HIGHWAYS.

(a) Where a sidewalk is provided and its use is practicable, no pedestrian shall 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 Section 313.03 and 371.01, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

(e) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.50

371.06 USE OF HIGHWAY FOR SOLICITING; RIDING ON OUTSIDE OF VEHICLES.

(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 subsection (b)(2) hereof, no person shall stand on a highway for the purpose of soliciting employment, business or contributions from the occupant of any vehicle.
- (2) The Administrator or designee 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 ORC 4511.051(A), that is under the jurisdiction of the Municipality. The permit shall be valid for only one period or time, which shall be specified in the permit, in any calendar year. The permit 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.
- (3) As used herein, "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 Section 501(c)(3) of the "Internal Revenue Code."

(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 sixteen (16) years to ride in the unenclosed or unroofed cargo storage area of the driver's vehicle if the vehicle is traveling faster than twenty-five (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 ORC 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;
- (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 subsection, whoever violates any provision of subsections (a) to (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 subsections (a) to (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 (2) or more predicate motor vehicle or traffic offenses, whoever violates any provision of subsections (a) to (d) of this section is guilty of a misdemeanor of the third degree.

(2) Whoever violates subsection (e) or (f) of this section is guilty of a minor misdemeanor.
(Ord. 44-2009. Passed 11-3-09.)

State law reference—ORC 4511.51

371.07 RIGHT-OF-WAY ON SIDEWALK.

(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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.441

371.08 YIELDING TO PUBLIC SAFETY VEHICLE.

(a) Upon the immediate approach of a public safety vehicle as stated in Section 331.21, 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.452

371.09 WALKING ON HIGHWAY WHILE UNDER THE INFLUENCE.

(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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.481

371.10 ON BRIDGES OR RAILROAD CROSSINGS.

(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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.511

371.11 PERSONS OPERATING MOTORIZED WHEELCHAIRS.

(a) Every person operating a motorized wheelchair shall have all of the rights and duties applicable to a pedestrian that are contained in this Traffic Code, except those provisions which by their nature can have no application.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4511.99; ORC 4511.491

371.12 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.

- (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 five hundred (500) feet;
 - B. A red reflector facing the rear that is visible from all distances from one hundred (100) feet to six hundred (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 fifty-five (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 eighteen (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 sixteen (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 eighteen (18) years of age or older and is responsible for the immediate care of the person under sixteen (16) years of age.
- (c) No person who is under fourteen (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) "Electric personal assistive mobility device" means a self-balancing two (2) non-tandem wheeled device that is designed to transport only one person, has an electric propulsion system of an average of seven hundred fifty (750) watts, and when ridden on a paved level surface by an operator who weighs one hundred seventy (170) pounds has a maximum speed of less than twenty (20) miles per hour.
- (f) Whoever violates subsection (b) or (c) hereof is guilty of a minor misdemeanor and shall be punished as follows:
- (1) The offender shall be fined ten dollars (\$10.00).

- (2) If the offender previously has been convicted of or pleaded guilty to a violation of division (B) or (C) of ORC 4511.512 or a substantially similar municipal ordinance, the court, in addition to imposing the fine required under subsection (f)(1) hereof, shall do one of the following:
- A. Order the impoundment for not less than one day but not more than thirty (30) days of the electric personal assistive mobility device that was involved in the current violation of that section. 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 five dollars (\$5.00) 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 fifty dollars (\$50.00).
 - B. If the court does not issue an impoundment order pursuant to subsection (f)(2)A. hereof, 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 thirty (30) days.

(g) Whoever violates subsection (d) hereof is guilty of a minor misdemeanor.

State law references—ORC 4501.01; ORC 4511.512

CHAPTER 373 BICYCLES, MOTORCYCLES AND OTHER CHILDREN'S VEHICLES*

373.01	CODE APPLICATION TO BICYCLES AND OTHER CHILDREN'S VEHICLES.
373.02	RIDING UPON SEATS; HANDLE BARS; HELMETS AND GLASSES.
373.03	ATTACHING BICYCLE OR SLED TO VEHICLE.
373.04	RIDING ON RIGHT SIDE OF ROADWAY; RIDING ABREAST.
373.05	LIGHTS, SIGNAL DEVICES, BRAKES ON BICYCLE.
373.06	LIGHTS AND REFLECTOR ON BICYCLE; BRAKES. (RECODIFIED)
373.07	RIDING BICYCLE ON RIGHT SIDE OF ROADWAY; OBEDIENCE TO TRAFFIC RULES; PASSING. (RECODIFIED)
373.08	RECKLESS OPERATION; CONTROL, COURSE AND SPEED.
373.09	PARKING OF BICYCLE.
373.10	MOTORIZED BICYCLE OPERATION, EQUIPMENT AND LICENSE.
373.11	VEHICLE OPERATION ON WALKING/BIKING PATHS PROHIBITED.
373.12	PARENT'S RESPONSIBILITY.
373.13	RIDING BICYCLES; HELMETS.
373.14	HELMET-RELATED PENALTIES AND NEGLIGENCE.

373.01 CODE APPLICATION TO BICYCLES AND OTHER CHILDREN'S VEHICLES.

(a) The provisions of this Traffic Code which are applicable to bicycles shall also apply to other children's vehicles which, for the purposes of Traffic Code, shall be defined as scooters, skateboards, roller skates, roller blades, razors and similar vehicles, as well as low-horsepower motorized vehicles including, but not limited to, mini-motorcycles, powered scooters and any other motorized vehicle under five (5) horse-power, gasoline or electric-powered that does not require a license. This Chapter does not include golf-carts or motorized wheelchairs.

(b) This provision shall apply whenever a bicycle or children's vehicle is operated upon any street, sidewalk, or upon any shared-use paths.

(c) Except as provided in division (e) of this section, a bicycle or children's vehicle operator who violates any provisions of this Traffic Code described in division (b) 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 or children's vehicle shall not have any points assessed against the person's driver's license, commercial driver's license, temporary instruction permit, or probationary license under ORC 4510.036.

***Editor's note**—Ord. O-06-2016, passed March 1, 2016, amended Ch. 373 and in so doing changed the title of said chapter from "Bicycles and Motorcycles" to "Bicycles, Motorcycles and Other Children's Vehicles," as set out herein.

Cross reference—See sectional histories for similar state law

Bicycle regulations to be consistent with state law - see ORC 4511.07(A)(8)

Motorcycle protective equipment - see OAC Ch. 4501-17

Motorized bicycle equipment - see OAC Ch. 4501-23

Bicycle defined - see TRAF. 301.04

Motorcycle defined - see TRAF. 301.19

Bicycles prohibited on freeways - see TRAF. 303.06

Hand and arm signals - see TRAF. 331.15

Motorcycle operator's license required - see TRAF. 335.01(a)

Motorcycle headlight - see TRAF. 337.03

Motorcycle brakes - see TRAF. 337.18(b)

(d) Except as provided in division (e) of this section, in the case of a violation of any provision of this Traffic Code described in division (b) of this section by a bicycle or children's vehicle 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 other 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, children's vehicle 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.

(e) Divisions (c) and (d) of this section do not apply to violations of ORC 4511.19, or a substantially equivalent municipal ordinance.

(f) Every person operating a bicycle or children's vehicle shall obey the instructions of official traffic control devices and signals applicable to vehicles, unless otherwise directed by a police officer.

(Ord. O-06-2016. Passed 3-1-16.)

Editor's note—Ord. O-06-2016, passed March 1, 2016, amended § 373.01, and in so doing changed the title of said section from "Code Application to Bicycles" to "Code Application to Bicycles and Other Children's Vehicles," as set out herein.

3;ORC 4511.52

373.02 RIDING UPON SEATS; HANDLE BARS; HELMETS AND GLASSES.

(a) For purposes of this section "snowmobile" has the same meaning as given that term in ORC 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)(2) 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)(2) of this section, no person who is under the age of eighteen (18) years, or who holds a motorcycle operator's endorsement or license bearing a "novice" designation that is currently in effect as provided in ORC 4507.13, shall operate a motorcycle on a highway, or be a passenger on a motorcycle, unless wearing a United States Department of Transportation-approved 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 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) Division (c)(1) of this section does not apply to a person operating a cab- enclosed motorcycle when the occupant compartment top is in place enclosing the occupants.
- (3) A. 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 ORC 4507.05 unless the person, at the time of such operation, is wearing on the person's head a protective helmet that has been approved by the United States Department of Transportation that conforms with rules adopted by the Director.
- B. No person shall operate a motorcycle with a valid temporary instruction permit and temporary instruction permit identification card issued by the Registrar pursuant to ORC 4507.05 in any of the following circumstances:
 - 1. At any time when lighted lights are required by ORC 4513.03(A)(1);
 - 2. While carrying a passenger;
 - 3. On any limited access highway or heavily congested roadway.
- (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 subsection, whoever violates division (b) or (c)(1) or (c)(3) 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)(3) 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates division (b) or (c)(1) or (c)(3) of this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.53

373.03 ATTACHING BICYCLE OR SLED TO VEHICLE.

(a) No person riding upon any motorcycle, bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or self to any vehicle upon a roadway.

No operator shall knowingly permit any person riding upon any motorcycle, bicycle, coaster, roller skates, sled or toy vehicle to attach the same or self to any vehicle while it is moving upon a roadway. This section does not apply to the towing of a disabled vehicle.

(b) Except as otherwise provided in this subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4511.54

373.04 RIDING ON RIGHT SIDE OF ROADWAY; RIDING 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 (2) 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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 4511.55

373.05 LIGHTS, SIGNAL DEVICES, BRAKES ON BICYCLE.

(a) Every bicycle when in use at the times specified in ORC 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 five hundred (500) feet to the front and three hundred (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 one hundred (100) feet to six hundred (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 five hundred (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 subsection, 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 (2) or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4511.56

373.06 LIGHTS AND REFLECTOR ON BICYCLE; BRAKES. (RECODIFIED)

Editor's note—This section and Section 373.05 were both derived from ORC 4511.56. They have therefore been combined as part of the 2007 revision and updating of these Codified Ordinances. Please see Section 373.05.

373.07 RIDING BICYCLE ON RIGHT SIDE OF ROADWAY; OBEDIENCE TO TRAFFIC RULES; PASSING. (RECODIFIED)

Editor's note—This section and Section 373.04 were both derived from ORC 4511.55. They have therefore been combined as part of the 2007 revision and updating of these Codified Ordinances. Please see Section 373.04.

373.08 RECKLESS OPERATION; CONTROL, COURSE AND SPEED.

- (a) No person shall operate a bicycle:
 - (1) Without due regard for the safety and rights of pedestrians and drivers and occupants of all other vehicles, and so as to endanger the life, limb or property of any person while in the lawful use of the streets or sidewalks or any other public or private property;
 - (2) Without exercising reasonable and ordinary control over such bicycle;
 - (3) In a weaving or zigzag course unless such irregular course is necessary for safe operation in compliance with law;

- (4) Without both hands upon the handle grips except when necessary to give the required hand and arm signals, or as provided in Section 373.02(d);
- (5) At a speed greater than is reasonable and prudent under the conditions then existing.

(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.

373.09 PARKING OF BICYCLE.

(a) No person shall park a bicycle upon a sidewalk in such a manner so as to unduly interfere with pedestrian traffic or upon a roadway so as to unduly interfere with vehicular traffic.

(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.

373.10 MOTORIZED BICYCLE OPERATION, EQUIPMENT AND LICENSE.

(a) No person shall operate a motorized bicycle upon any street or 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 fourteen (14) or fifteen (15) years of age and holds a valid probationary motorized bicycle license issued after the person has passed the test provided for in ORC 4511.521, or the person is sixteen (16) years of age or older and holds either a valid commercial driver's license issued under ORC Ch. 4506, or a driver's license issued under ORC Ch. 4507, or a valid motorized bicycle license issued after the person has passed the test provided for in ORC 4511.521, except that if a person is sixteen (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 ORC 4511.521;
- (2) The motorized bicycle is equipped in accordance with rules adopted by the Ohio Director of Public Safety and is in proper working order;
- (3) The person, if under eighteen (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 rear-view mirror;
- (4) The person operates the motorized bicycle when practicable within three (3) feet of the right edge of the roadway obeying all traffic rules applicable to vehicles; and
- (5) The motorized bicycle displays on the rear of such bicycle the current license plate or validation sticker furnished by the Ohio Director of Public Safety under ORC 4503.191.

(b) No person operating a motorized bicycle shall carry another person upon the motorized bicycle.

(c) Each probationary motorized bicycle license or motorized bicycle license shall be laminated with a transparent plastic material.

(d) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4511.521

373.11 VEHICLE OPERATION ON WALKING/BIKING PATHS PROHIBITED.

(a) No person shall operate a motor vehicle, snowmobile, motorized bicycle, golf cart and all purpose vehicles on any walking/biking paths when an appropriate sign giving notice of such use is posted on the path.

(b) Nothing in this section regulates vehicular traffic on golf course cart paths within the Municipality.

(c) Whoever violates any provision of 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.

(Ord. 51-93. Passed 10-5-93.)

373.12 PARENT'S RESPONSIBILITY.

(a) No parent of any child or guardian of any ward shall authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.

(b) Whoever violates any provision of 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.

(Ord. 27-97. Passed 6-20-97.)

373.13 RIDING BICYCLES; HELMETS.

(a) No person under the age of eighteen (18) years shall operate a bicycle within the City of New Albany unless such person is wearing a protective helmet on his/her head with a properly fastened chin strap. Such helmets shall be appropriately fitted to the size of the operator and shall meet or exceed the standards set by the U.S. Consumer Product Safety Commission.

(b) No person the age of one year or older but under the age of eighteen (18) years shall be a passenger on a bicycle or bicycle trailer within the City of New Albany unless such person is wearing a protective helmet on his/her head, with a properly fastened chin strap. Such helmet shall be appropriately fitted to the size of the passenger and shall meet or exceed the standards set by the U.S. Consumer Product Safety Commission.

(c) No parent, guardian, or legal custodian of a person under the age of eighteen (18) years, who fails to comply with subsections (a) or (b), shall knowingly aid, abet, cause, encourage, or permit such conduct.

(d) This section shall not be applicable to the operation of a bicycle on private residential property.

(Ord. O-06-2016. Passed 3-1-16.)

373.14 HELMET-RELATED PENALTIES AND NEGLIGENCE.

(a) Notwithstanding Section 373.12 herein, an operator and/or passenger over the age of one year but under the age of eighteen (18) years who violates Section 373.13 of this section and the parent, guardian, or legal custodian of said operator and/or passenger, may be given a written warning detailing the violation along with information concerning the dangers which result when an accident occurs to a person who is not wearing a helmet. On a second violation of this section within one year from the date of the written warning, the parent, guardian, or legal custodian of said rider and or passenger, is guilty of an unclassified misdemeanor and subject to a fine in an amount not to exceed twenty-five dollars (\$25.00). For each and every subsequent violation of this section the fine shall not exceed fifty dollars (\$50.00).

(b) Failure to wear a protective helmet as required in Section 373.13 of this Chapter shall not be considered to be comparative or contributory negligence on the part of the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child nor on the part of the child nor shall such failure be admissible in any civil action.

(Ord. O-06-2016. Passed 3-1-16.)

CHAPTER 375 SNOWMOBILES, OFF-HIGHWAY MOTORCYCLES AND ALL PURPOSE VEHICLES*

375.01	DEFINITIONS.
375.02	EQUIPMENT.
375.03	CODE APPLICATION; PROHIBITED OPERATION.
375.04	PERMITTED OPERATION.
375.05	LICENSING REQUIREMENTS OF OPERATOR.
375.06	REGISTRATION OF VEHICLES.
375.07	ACCIDENT REPORTS.
375.08	CERTIFICATE OF TITLE.

375.01 DEFINITIONS.

As used in this chapter:

(a) "Snowmobile" means any self-propelled vehicle designed primarily for use on snow or ice, and steered by skis, runners or caterpillar treads.

(b) "All purpose vehicle" means 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 ORC 4501.01 or any vehicle principally used in playing golf, any motor vehicle or aircraft required to be registered under ORC Ch. 4503 or Chapter 4561, and any vehicle excepted from definition as a motor vehicle by Section 301.20 of this Traffic Code.

(c) "Owner" means any person, firm or corporation, 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.

(d) "Operator" means any person who operates or is in actual physical control of a snowmobile, off-highway motorcycle or all purpose vehicle.

(e) "Limited access highway" or "freeway" means a highway especially designed for through traffic and over which abutting property owners have no easement or right of access by reason of the fact that their property abuts upon such highway, and access to which may be allowed only at highway intersections designated by the Ohio Director of Transportation.

(f) "Interstate highway" means any part of the interstate system of highways as defined in subsection (e), 90 Stat. 431 (1976), 23 U.S.C.A. 103, and amendments thereof.

*See sectional histories for similar state law

Cross references—Lights, brakes and muffler - see OAC Ch. 4501.29

Power of trial court of record to impound registration certificate for certain violations - see ORC 4519.47

Power to regulate; municipal licensing prohibited - see ORC 4519.48

Street or highway defined - see TRAF. 301.42

Required usage of helmets and safety glasses - see TRAF. 373.02(f)

(g) "Off-highway motorcycle" means every motorcycle, as defined in ORC 4511.01, that is designed to be operated primarily on lands other than a street or highway.

(h) "Mini-truck." A vehicle that has four (4) wheels, is propelled by an electric motor with a rated power of seven thousand five hundred (7,500) watts or less or an internal combustion engine with a piston displacement capacity of six hundred sixty (660) cubic centimeters or less, has a total dry weight of nine hundred (900) to two thousand two hundred (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.

State law references—ORC 4519.01; ORC 4519.01(A), (B), (C); ORC 5511.02

375.02 EQUIPMENT.

(a) Equipment of snowmobiles, off-highway motorcycles, and all purpose vehicles shall include, but not necessarily be limited to requirements for the following items:

- (1) At least one headlight having a minimum candlepower of sufficient intensity to reveal persons and objects at a distance of at least one hundred (100) feet ahead under normal atmospheric conditions during hours of darkness;
- (2) At least one red taillight having a minimum candlepower of sufficient intensity to be plainly visible from a distance of five hundred (500) feet to the rear under normal atmospheric conditions during hours of darkness;
- (3) Adequate brakes. Every snowmobile, while traveling on packed snow, shall be capable of carrying a driver who weighs one hundred seventy-five (175) pounds or more, and, while carrying such driver, be capable of stopping in not more than forty (40) feet from an initial steady speed of twenty (20) miles per hour, or locking its traction belt.
- (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 eighty-two (82) decibels on the "A" scale at fifty (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 subsections (a)(1) and (2) hereof shall not be required on snowmobiles, off-highway motorcycles, or all purpose vehicles operated during the daylight hours.

(c) Except as otherwise provided in this subsection, whoever violates subsection (b) of this section shall be fined not more than fifty dollars (\$50.00). If the offender within the preceding year previously has committed a violation of subsection (b) of this section, whoever violates subsection (b) of this section shall be fined not less than fifteen dollars (\$15.00) nor more than one hundred dollars (\$100.00), imprisoned not more than three (3) days, or both.

State law reference—ORC 4519.20

375.03 CODE APPLICATION; PROHIBITED OPERATION.

(a) The applicable provisions of this Traffic Code shall be applied to the operation of snowmobiles, off-highway motorcycles, and all purpose vehicles; except that no snowmobile, off-highway motorcycle, or all purpose vehicle shall be operated as follows:

- (1) On any street or highway except for emergency travel only during such time and in such manner as the State or local authority having jurisdiction over such street or highway shall designate, and except as provided in Section 375.04;
- (2) Upon any property owned or leased by the Municipality except in areas designated for such purposes;
- (3) 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;
- (4) On any land or waters controlled by the State, except at those locations where a sign has been posted permitting such operation;
- (5) On tracks or right-of-way of any operating railroad;
- (6) While transporting any firearm, bow or other implement for hunting, that is not unloaded and securely encased;
- (7) For the purpose of chasing, pursuing, capturing or killing any animal or wild fowl;
- (8) During the time from sunset to sunrise, unless displaying lighted lights as required by Section 375.02.

(b) Whoever violates this section shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisoned not less than three (3) nor more than thirty (30) days, or both.

State law reference—ORC 4519.40

375.04 PERMITTED OPERATION.

Snowmobiles, off-highway motorcycles, and all purpose vehicles may be operated as follows:

(a) To make a crossing of a highway, other than a freeway or limited access highway, 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 highway so permits;

(c) Off and alongside a 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 ORC 4519.40(A), 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 of 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.

State law reference—ORC 4519.41

375.05 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 ORC Ch. 4506 or 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, on any portion of the right-of-way thereof, or on any public land or waters. This subsection shall not be construed to permit the holder of such a license to operate a snowmobile, off-highway motorcycle, or all purpose vehicle in violation of Section 375.03.

(b) No person who is less than sixteen (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 such person's parent or guardian, unless accompanied by another person who is eighteen (18) years of age, or older, and who holds a license as provided in subsection (a) hereof, 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 sixteen (16) years of age and is accompanied by a parent or guardian who is a licensed driver eighteen (18) years of age or older.

(c) Whoever violates this section shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisoned not less than three (3) nor more than thirty (30) days, or both.

State law reference—ORC 4519.44

375.06 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 unless the snowmobile, off-highway motorcycle, or all purpose vehicle is registered and numbered in accordance with ORC 4519.03 and 4519.04.

(2) Except as provided in ORC 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 ORC 4511.215 and ORC 4519.401, or any substantially equivalent municipal ordinance. This division (a)(2) shall take effect on January 1, 2017.

- (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 ORC 4519.41.

(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 ORC Ch. 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 ORC Ch. 4519 shall comply with ORC 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 ORC Ch. 1547 and ORC Ch. 1548 relative to the operation of watercraft.

(f) Whoever violates subsection (a) of this section shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00).

State law reference—ORC 4519.02

375.07 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 one hundred dollars (\$100.00) shall report the accident within forty-eight (48) hours to the Chief of Police, and, within thirty (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 that 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.

Any law enforcement officer or other person authorized by ORC 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 forty-eight (48) hours.

(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.

State law reference—ORC 4519.46

375.08 CERTIFICATE OF TITLE.

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

- (1) Operate in this Municipality 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 ORC Ch. 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 relating 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 if 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 ORC Ch. 4519;
- (4) Fail to surrender the certificate of title to a clerk of the court of common pleas as provided in ORC Ch. 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 ORC 4519.51 to 4519.70 or any lawful rules adopted pursuant to those sections;
- (6) Operate in this Municipality 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 two hundred dollars (\$200.00) or imprisoned not more than ninety (90) days, or both.

State law reference—ORC 4519.66

PART FIVE - GENERAL OFFENSES CODE

Chapter 501	General Provisions and Penalty
Chapter 505	Animals and Fowl
Chapter 509	Disorderly Conduct and Peace Disturbance
Chapter 513	Drug Abuse Control
Chapter 517	Gambling
Chapter 521	Health, Safety and Sanitation
Chapter 525	Law Enforcement and Public Office
Chapter 529	Liquor Control
Chapter 531	Minors' Curfew
Chapter 533	Obscenity and Sex Offenses
Chapter 537	Offenses Against Persons
Chapter 541	Property Offenses
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CHAPTER 501 GENERAL PROVISIONS AND PENALTY*

501.01	DEFINITIONS.
501.02	CLASSIFICATION OF OFFENSES.
501.03	COMMON LAW OFFENSES ABROGATED.
501.04	RULES OF CONSTRUCTION.
501.05	CRIMINAL LAW JURISDICTION.
501.06	LIMITATION OF CRIMINAL PROSECUTION.
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501.08	CULPABLE MENTAL STATES.
501.09	ATTEMPT.
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501.14	SELF DEFENSE: LIMITATIONS ON DUTY TO RETREAT PRIOR TO USING FORCE.
501.15	JUVENILE RECORDS: AUTHORITY TO SEAL.
501.99	PENALTIES FOR MISDEMEANORS.

501.01 DEFINITIONS.

As used in the Codified Ordinances:

- (a) "Force" means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.
- (b) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.
- (c) "Physical harm to persons" means any injury, illness or other physiological impairment, regardless of its gravity or duration.
- (d) "Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.
- (e) "Serious physical harm to persons" means any of the following:
 - (1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
 - (2) Any physical harm 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;

***Cross reference**—See sectional histories for similar state law
 Limitation of prosecution for income tax violations - see ORC 718.06
 Modification of sentence - see ORC 2929.10(C), (D)
 Penalty considerations - see ORC 2929.22
 Citation issuance for minor misdemeanors - see ORC 2935.26 et seq.

- (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.

(f) "Serious physical harm to property" means 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 and enjoyment for an extended period of time.

(g) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(h) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(i) "Offense of violence" means any of the following:

- (1) A violation of ORC 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, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1) to (3) or 2919.22(B)(1) to (4), or felonious sexual penetration in violation of former ORC 2907.12;
- (2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section listed in subsection (i)(1) hereof;
- (3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed, purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;
- (4) A conspiracy or attempt to commit, or complicity in committing any offense under subsection (i)(1), (2) or (3) hereof.

(j) (1) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" 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 section, "trade secret" has the same meaning as in ORC 1333.61, and "telecommunications service" and "information service" have the same meanings as in ORC 2913.01.
- (3) As used in this section, "cable television service", "computer", "computer software", "computer system", "computer network", "data", and "telecommunications device" have the same meanings as in ORC 2913.01.
- (k) "Law enforcement officer" means 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 ORC 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, Charter or ordinance, 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 that statutory duty and authority;
 - (3) A mayor or manager in the mayor's or manager's capacity as chief conservator of the peace within the mayor's or manager's municipal corporation;
 - (4) A member of an auxiliary police force organized by county, township or municipal law enforcement authorities, within the scope of the member's appointment or commission;
 - (5) A person lawfully called pursuant to ORC 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 ORC 737.01 as a special patrolling officer during 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 ORC 5907.02.
 - (10) A member of a police force employed by a regional transit authority under ORC 306.35(Y).
 - (11) A special police officer employed by a port authority under ORC 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 ORC 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 Section 119.3 of Title 14 of the Code of Federal Regulations, 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 Parts 1542 and 1544 of Title 49 of the Code of Federal Regulations, as amended.

(l) "Privilege" means an immunity, license or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office or relationship, or growing out of necessity.

(m) "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. "Contraband" includes, but is not limited to, all of the following:

- (1) Any controlled substance, as defined in ORC 3719.01, or any device or paraphernalia related thereto;
- (2) Any unlawful gambling device or paraphernalia;
- (3) Any dangerous ordnance or obscene material.

(n) "School safety zone" consists of a school, school building, school premises, school activity, and school bus.

(o) "School", "school building" and "school premises" have the same meaning as in ORC 2925.01.

(p) "School activity" means 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 ORC Ch. 3314; a governing body of an educational service center; or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under ORC 3301.07.

(q) "School bus" has the same meaning as in ORC 4511.01.

State law reference—ORC 2901.01

501.02 CLASSIFICATION OF OFFENSES.

As used in the Codified Ordinances:

(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 the effective date of this amendment, a fine not exceeding one hundred dollars (\$100.00);
- (2) For an offense committed on or after the effective date of this amendment, a fine not exceeding one hundred fifty dollars (\$150.00), community service under division (D) of ORC 2929.27, or a financial sanction other than a fine under ORC 2929.28.

State law reference—ORC 2901.02

501.03 COMMON LAW OFFENSES ABROGATED.

(a) No conduct constitutes a criminal offense against the Municipality unless it is defined as an offense in the Codified Ordinances or any other Municipal ordinance.

(b) An offense is defined when one or more sections of the Codified Ordinances 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.

State law reference—ORC 2901.03

501.04 RULES OF CONSTRUCTION.

(a) Except as otherwise provided in subsection (c) hereof, sections of the Codified Ordinances 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 the Ohio Revised 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 the Codified Ordinances that refers to a previous conviction of or plea of guilty to a violation of a section of the Codified Ordinances or Ohio Revised Code or of a division of a section of the Codified Ordinances or 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 State, another state, or the United States or under an existing or former municipal ordinance.

(d) Any provision of the Codified Ordinances that refers to a section, or to a division of a section, of the Codified Ordinances 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.

State law reference—ORC 2901.04

501.05 CRIMINAL LAW JURISDICTION.

(a) A person is subject to misdemeanor 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 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 Municipality.

(b) In homicide, the element referred to in subsection (a)(1) hereof is either the act that causes death, or the physical contact that causes death, or the death itself. 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 such land and water, and real property outside the corporate limits, 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 meaning as in ORC 2913.01.

State law reference—ORC 2901.11

501.06 LIMITATION OF CRIMINAL PROSECUTION.

(a) (1) Except as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

- A. For a felony, six (6) years;
- B. For misdemeanor other than a minor misdemeanor, two (2) years;
- C. For a minor misdemeanor, six (6) months.

(2) There is no period of limitation for the prosecution of a violation of ORC 2903.01 or ORC 2903.02.

(3) Except as otherwise provided in divisions (b) to (h) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within twenty (20) years after the offense is committed:

- A. A violation of ORC 2903.03, 2903.04, 2905.01, 2907.02, 2907.03, 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 ORC 2903.11 or 2903.12 if the victim is a peace officer, a violation of ORC 2903.13 that is a felony, or a violation of former ORC 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.

(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 a fiduciary duty, within one year after discovery of the offense either by an aggrieved person, or by his legal representative who is not himself a party to the offense.

(2) If the period of limitation provided in division (a)(1) or (a)(3) of this section has expired, prosecution for a violation of ORC 2913.49 shall be commenced within five (5) 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 subsection (a) hereof 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 (2) 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 (2) years thereafter.

(2) As used in this division:

- A. The phrase "offense is directly related to the misconduct in office of a public servant" includes, but is not limited to, a violation of ORC 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)A.
- B. "Public servant" has the same meaning as in ORC 2921.01.

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

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

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

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

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

(i) The period of limitation for a violation of this Part 6 or ORC Tit. XIX that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen (18) years of age or of a mentally retarded, developmentally disabled, or physically impaired child under twenty-one (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.

(j) As used in this section, "peace officer" has the same meaning as in ORC 2935.01.

(k) This section shall not apply to prosecutions commenced within the period of limitations set forth in ORC 718.12(B) for violations of the Municipal income tax ordinance.

State law reference—ORC 2901.13

501.07 REQUIREMENTS FOR CRIMINAL LIABILITY.

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

- (1) 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 section defining the offense.

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

(c) 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.

(d) As used in this section:

- (1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.

- (2) Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition, are involuntary acts.
- (3) "Culpability" means purpose, knowledge, recklessness or negligence, as defined in Section 501.08.
- (4) "Intoxication" includes, but is not limited to, intoxication resulting from the ingestion of alcohol, a drug, or alcohol and a drug.

State law reference—ORC 2901.21

501.08 CULPABLE MENTAL STATES.

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

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

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

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

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

State law reference—ORC 2901.22

501.09 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 or of complicity in the commission of 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 the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's 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 ORC Ch. 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 ORC Ch. 3734, other than ORC 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 ORC 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 ORC 2941.1418, 2941.1419, or 2941.1420, the offender shall be sentenced to a prison term or term of life imprisonment pursuant to ORC 2971.03.

(f) As used in this section:

(1) "Drug abuse offense" has the same meaning as in ORC 2925.01.

(2) "Motor vehicle" has the same meaning as in ORC 4501.01.

State law reference—ORC 2923.02

501.10 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) Cause an innocent or irresponsible person to commit the offense.

(b) It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.

(c) No person shall be convicted of complicity under this section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of Section 501.09.

(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 when it charges the jury, shall state substantially the following:

"The testimony of an accomplice does not become inadmissible because of his complicity, moral turpitude or self-interest, but the admitted or claimed complicity of a witness may affect his credibility and make his testimony subject to grave suspicion, and require that it be weighed with great caution.

"It is for you, as jurors, in the light of all the facts presented to you from the witness stand, to evaluate such testimony and to determine its quality and worth or its lack of quality and worth."

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

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

State law reference—ORC 2923.03

501.11 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 the officer's, agent's, or employee's 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, those 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 the officer's, agent's, or employee's 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, those 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 such a board's or person's office or employment.

(b) If 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 nonprofit association, estate, trust or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program.

State law reference—ORC 2901.23

501.12 PERSONAL ACCOUNTABILITY FOR ORGANIZATIONAL CONDUCT.

(a) An officer, agent or employee of an organization as defined in Section 501.11 may be prosecuted for an offense committed by such organization, if he acts with the kind of culpability required for the commission of the offense, and any of the following apply:

- (1) In the name of the organization or in its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility;

(2) He has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

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

State law reference—ORC 2901.24

501.13 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.

(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.

State law references—ORC 2921.29; ORC 2909.31

501.14 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 ORC 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.

State law reference—ORC 2901.09

501.15 JUVENILE RECORDS: AUTHORITY TO SEAL.

(a) Upon the successful and satisfactory completion of the City's juvenile diversion program, as determined by the City, the Mayor or Magistrate of the Mayor's Court shall be permitted, within the discretion of the court, to seal the records of the juvenile pursuant to the applicable provisions of ORC 2151.356 through 2151.358.

(b) For purposes of this section, a juvenile shall be any person between the ages of nine (9) and seventeen (17), and ten (10) months.
(Ord. 05-2013. Passed 3-19-13)

501.99 PENALTIES FOR MISDEMEANORS.

(a) 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 offender, 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 (a)(1) of this section shall be reasonably calculated to achieve the two (2) overriding purposes of misdemeanor sentencing set forth in division (a)(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 (a)(1) of this section shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.
- (4) Divisions (a)(1) and (a)(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 (a)(1) to (a)(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.

(b) Jail Terms.

- (1) Except as provided in ORC 2929.22 or 2929.23 of the Revised Code, or division (b)(5) or (b)(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 General Offenses Code, 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 one hundred eighty (180) days;
 - B. For a misdemeanor of the second degree, not more than ninety (90) days;
 - C. For a misdemeanor of the third degree, not more than sixty (60) days;
 - D. For a misdemeanor of the fourth degree, not more than thirty (30) days.
- (2) A. A court that sentences an offender to a jail term under division (b) 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 (d)(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 ORC 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 this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to ORC 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 is sentenced to a jail term pursuant to this section, the court may impose as part of the sentence pursuant to ORC 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 ORC 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 and ORC 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 ORC 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 subsection (b)(4)A.1. of this section and does not pay the bill by the times specified in ORC 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 subsection (b)(4)A.2. of this section.
- (5) If an offender who is convicted of or pleads guilty to a violation of ORC 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 ORC 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 (6) 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 ORC 2907.23, 2907.24, 2907.241, or 2907.25, or any substantially equivalent municipal ordinance, and to a specification of the type described in ORC 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 (b)(6)A.2. of this section, an additional definite jail term of not more than sixty (60) days;

2. If the offender previously has been convicted of or pleaded guilty to one or more misdemeanor or felony violations of ORC 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 ORC 2941.1421 regarding one or more of those violations, an additional definite jail term of not more than one hundred twenty (120) days.
- B. In lieu of imposing an additional definite jail term under division (b)(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 (b)(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 ORC 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 (d) of this section or ORC 2929.26. A sanction imposed under this division shall be considered to be a community control sanction for purposes of division (c) of this section or ORC 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 ORC 2903.13 and also is convicted of or pleads guilty to a specification of the type described in ORC 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 thirty (30) days.
- (8) If a court sentences an offender to a jail term under this division (b), 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 (d) or (e) of this section for any jail days that are not mandatory jail days.
- (c) Misdemeanor Community Control Sanctions.
 - (1) A. Except as provided in Section 533.99 of this Code or ORC 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 (d), (e), or (f) 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 (b) 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 (d), (e), or (f) 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 (5) years.
- C. At sentencing, if a court directly imposes a community control sanction or combination of community control sanctions pursuant to division (c)(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 (c)(1)B. of this section;
 2. Impose a more restrictive community control sanction under division (d), (e), or (f) 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 (b) of this section.
- (2) If a court sentences an offender to any community control sanction or combination of community control sanctions pursuant to division (c)(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 (d), (e), or (f) 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 (d), (e), or (f) 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 (c)(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 the court imposes a jail term upon a violator pursuant to division (c)(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 (c)(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 (d), (e), or (f) 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 (f) of this section.

(d) 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 (d). Community residential sanctions include, but are not limited to, the following:
- A. A term of up to one hundred eighty (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 ORC 307.932, a term of up to sixty (60) days 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 complete in the center the entire term imposed.
- (2) A sentence to a community residential sanction under division (d)(1)C. of this section shall be in accordance with ORC 307.932. In all other cases, the court that sentences an offender to a community residential sanction under this division (d) 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 (d)(2) of this section be applied to any financial sanction imposed under division (f) of this section.

- (4) No court shall sentence any person to a prison term for a 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 (d)(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 (d)(1)A. of this section.
- (e) 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 five hundred (500) hours for misdemeanor of the first degree or two hundred (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 ORC 2919.25 or a substantially equivalent municipal ordinance or a violation of ORC 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 (e)(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 (e)(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 thirty (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 (e)(2) of this section.

(f) Financial Sanctions.

- (1) In addition to imposing court costs pursuant to ORC 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 (f). 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 ORC 3937.18.

4. If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than five percent (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 (f)(1)B.1. and 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 one thousand dollars (\$1,000.00);
 - b. For a misdemeanor of the second degree, not more than seven hundred fifty dollars (\$750.00);
 - c. For a misdemeanor of the third degree, not more than five hundred dollars (\$500.00);
 - d. For a misdemeanor of the fourth degree, not more than two hundred fifty dollars (\$250.00);
 - e. For a minor misdemeanor, not more than one hundred fifty dollars (\$150.00).
 2. A State fine or cost as defined in ORC 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 ORC 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 ORC 4510.13.
 2. The amount of reimbursement under division (f)(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 ORC 2929.37. In addition, the offender may be required to pay the fees specified in ORC 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 (f) 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 (e)(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 (e)(1) of this section in lieu of or in addition to imposing a financial sanction under this division (f) and in addition to imposing court costs. The court may order community service for a minor misdemeanor pursuant to division (e)(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 (f)(1)C. of this section to pay the costs incurred by a county pursuant to any sanction imposed under division (d), (e), or (f) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (d) 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 (d), (e), or (f) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (d) of this section.
 - B. The offender shall pay reimbursements imposed upon the offender pursuant to division (f)(1)C. of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under division (d), (e), or (f) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (d) 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 (d), (e), or (f) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (d) of this section.

- C. The offender shall pay reimbursements imposed pursuant to division (f)(1)C. of this section for the costs incurred by a private provider pursuant to a sanction imposed under division (d), (e), or (f) of this section to the provider.
- (4) A. Except as otherwise provided in this division (f)(4), a financial sanction imposed under division (f)(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 (f)(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 (f)(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 (f)(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 (f)(4)B.1. of this section, through execution as described in division (f)(4)B.2. of this section or through an order as described in division (f)(4)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 ORC 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 ORC 1321.33 or a substantially equivalent municipal ordinance.
- (5) The civil remedies authorized under division (f)(4) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence.
- (6) Each court imposing a financial sanction upon an offender under this division (f) 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 (f), a court shall comply with ORC 307.86 to 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 (5) 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 ORC 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.
- (7) No financial sanction imposed under this division (f) shall preclude a victim from bringing a civil action against the offender.

(g) Organizations.

- (1) Regardless of the other penalties provided in this section, an organization convicted of an offense pursuant to Section 501.11 shall be fined by the court as follows:
- A. For a misdemeanor of the first degree, not more than five thousand dollars (\$5,000.00);
 - B. For a misdemeanor of the second degree, not more than four thousand dollars (\$4,000.00);
 - C. For a misdemeanor of the third degree, not more than three thousand dollars (\$3,000.00);
 - D. For a misdemeanor of the fourth degree, not more than two thousand dollars (\$2,000.00);
 - E. For a minor misdemeanor, not more than one thousand dollars (\$1,000.00);
 - F. For a misdemeanor not specifically classified, not more than two thousand dollars (\$2,000.00);
 - G. For a minor misdemeanor not specifically classified, not more than one thousand dollars (\$1,000.00).
- (2) When an organization is convicted of an offense that is 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 the penalty so provided shall be imposed in lieu of the penalty provided in this subsection (g).

- (3) When an organization is convicted of an offense that is not specifically classified, and the penalty provided includes a higher fine than the fine that is provided in this subsection (g), then the penalty imposed shall be pursuant to the penalty provided for the violation of the section defining the offense.
- (4) This subsection (g) does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to Section 501.11, either in addition to or in lieu of a fine imposed pursuant to this subsection (g).

State law references—ORC 2929.21; ORC 2929.24; ORC 2929.25; ORC 2929.26; ORC 2929.27; ORC 2929.28; ORC 2929.31

CHAPTER 505 ANIMALS AND FOWL*

505.01	DOGS AND OTHER ANIMALS RUNNING AT LARGE; NUISANCE, DANGEROUS AND VICIOUS DOGS; HEARINGS.
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505.99	PENALTY.

505.01 DOGS AND OTHER ANIMALS RUNNING AT LARGE; NUISANCE, DANGEROUS AND VICIOUS DOGS; HEARINGS.

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

(1) "Dangerous dog."

- A. A dog that, without provocation, and subject to division ORC 955.11(B), has done any of the following:
 - 1. Caused injury, other than killing or serious injury, to any person;
 - 2. Killed another dog;
 - 3. Been the subject of a third or subsequent violation of ORC 955.22(C) or any substantially equivalent municipal ordinance.
- B. "Dangerous dog" does not include a police dog that has caused injury, other than killing or serious injury, to any person or has killed another dog while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

(2) "Menacing fashion." A dog that would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

***Cross reference**—See sectional histories for similar state law

Possession of dangerous wild animals and restricted snakes, requirements and licensing - see ORC Ch. 935

Owner or keeper liable for damages - see ORC 951.10

Dog registration - see ORC 955.01

(3) "Nuisance dog."

- A. Subject to ORC 955.11(B), "nuisance dog" means a dog that without provocation and while off the premises of its owner, keeper, or harbinger has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.
- B. "Nuisance dog" does not include a police dog that, while being used to assist one or more law enforcement officers in the performance of official duties, has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person.

(3) "Police dog." A dog that has been trained and may be used to assist one or more law enforcement officers in the performance of their official duties.

(5) "Serious injury." Any of the following:

- A. Any physical harm that carries a substantial risk of death;
- B. Any physical harm that involves a permanent incapacity, whether partial or total, or a temporary, substantial incapacity;
- C. Any physical harm that involves a permanent disfigurement or a temporary, serious disfigurement;
- D. Any physical harm that involves acute pain of a duration that results in substantial suffering or any degree of prolonged or intractable pain.

(4) "Vicious dog."

- A. A dog that, without provocation and subject to division ORC 955.11(B), has killed or caused serious injury to any person.
- B. "Vicious dog" does not include either of the following:
 - 1. A police dog that has killed or caused serious injury to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;
 - 2. A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.

(5) "Without provocation." A dog acts "without provocation" when it was not teased, tormented or abused by a person, or it was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out the activity.

(b) No person, who is the owner or keeper of horses, mules, cattle, bison, sheep, goats, swine, llamas, alpacas, or geese, 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.

(c) No owner, keeper or harbinger of any female dog shall permit it to go beyond the premises of the owner, keeper or harbinger at any time the dog is in heat unless the dog is properly in leash.

(d) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper or harbinger of any dog shall fail at any time to do either of the following:

- (1) Keep the dog physically confined or restrained upon the premises of the owner, keeper or harbinger by a leash, tether, adequate fence, supervision or secure enclosure to prevent escape;
- (2) Keep the dog under the reasonable control of some person.

(e) Except when a dangerous dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper or harbinger of a dangerous dog shall fail to do either of the following:

- (1) While the dog is on the premises of the owner, keeper or harbinger, securely confine it at all times in a locked pen that has a top.
- (2) While the dog is off the premises of the owner, keeper or harbinger, keep that dog on a chain-link leash or tether that is not more than six (6) 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.

(f) No person who has been convicted of or pleaded guilty to three (3) or more violations of division (d) of this section involving the same dog and no owner, keeper, or harbinger of a dangerous dog shall fail to do the following:

- (1) 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;
- (2) Obtain a dangerous dog registration certificate from the County Auditor pursuant to division (j) 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;
- (3) Notify the local dog warden immediately if any of the following occurs:
 - A. The dog is loose or unconfined.

- B. 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.
 - C. The dog attacks another animal while the dog is off the property of the owner of the dog.
- (4) If the dog is sold, given to another person, or dies, notify the County Auditor within ten (10) days of the sale, transfer, or death.
- (g) No person shall do any of the following:
- (1) Debark or surgically silence a dog that the person knows or has reason to believe is a dangerous dog;
 - (2) Possess a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
 - (3) Falsely attest on a waiver form provided by the veterinarian under division (h) of this section that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.
- (h) 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:
- (1) The veterinarian's license number and current business address;
 - (2) The number of the license of the dog if the dog is licensed;
 - (3) A reasonable description of the age, coloring and gender of the dog as well as any notable markings on the dog;
 - (4) The signature of the owner of the dog attesting that the owner's dog is not a dangerous dog;
 - (5) A statement that ORC 955.22(F) prohibits any person from doing any of the following:
 - A. Debarking or surgically silencing a dog that the person knows or has reason to believe is a dangerous dog;
 - B. Possessing a dangerous dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;
 - C. Falsely attesting on a waiver form provided by the veterinarian under ORC 955.22(G) that the person's dog is not a dangerous dog or otherwise provide false information on that written waiver form.
- (i) It is an affirmative defense to a charge of a violation of division (g) 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 (h) of this section and that attests that the dog is not a dangerous dog.

- (j) (1) The County Auditor shall issue a dangerous dog registration certificate to a person who is the owner of a dog, who is eighteen (18) years of age or older, and who provides the following to the County Auditor:
- A. A fee of fifty dollars (\$50.00);
 - B. The person's address, phone number, and other appropriate means for the local dog warden or County Auditor to contact the person;
 - C. With respect to the person and the dog for which the registration is sought, all of the following:
 - 1. 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;
 - 2. 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;
 - 3. 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;
 - 4. Satisfactory evidence of the fact that the dog has been permanently identified by means of a microchip and the dog's microchip number.
- (2) 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 (j)(3)B. of this section and, upon the expiration of the certificate issued in the original county, shall renew the certificate in the new county.
- (3) A. 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 (10) days of relocating to the new address.
- B. 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 (10) days of relocating to the new address:
- 1. 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;
 - 2. Provide written notice of the new address to the County Auditor of the county where the owner previously resided.

- (4) 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.
- (k) Hearing.
- (1) The municipal court or county court that has territorial jurisdiction over the residence of the owner, keeper, or harbinger 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 harbinger 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 harbinger of the dog may request a hearing regarding the designation in accordance with this division (k). The notice shall include instructions for filing a request for a hearing in the county in which the dog's owner, keeper, or harbinger resides.
- (3) If the owner, keeper, or harbinger 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 harbinger, not later than ten (10) 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 harbinger. 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 harbinger 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 harbinger or an attorney representing the owner, keeper, or harbinger, 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 harbinger 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 (e) 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 harbinger 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 (k), or on appeal as described in this division (k), to be a vicious dog, ORC 955.11(D) and divisions (e) to (j) of this section apply with respect to the dog and the owner, keeper, or harbinger of the dog as if the dog were a dangerous dog, and Section 505.15 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 harbinger in that manner. As part of the order, the court shall require the owner, keeper, or harbinger to obtain the liability insurance required under division (f)(1) in an amount described in division (l)(5)B. of this section.
- (6) As used in this division (k), "nuisance dog", "dangerous dog", and "vicious dog" have the same meanings as in ORC 955.11.

(l) Penalty.

- (1) Whoever recklessly violates division (b) of this section is guilty of a misdemeanor of the fourth degree.
- (2) A. Whoever violates division (c) of this section or commits a violation of division (d) of this section that involves a dog that is not a nuisance dog, dangerous dog, or vicious dog shall be fined not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100.00) on a first offense, and on each subsequent offense shall be fined not less than seventy-five dollars (\$75.00) or more than two hundred fifty dollars (\$250.00) and may be imprisoned for not more than thirty (30) days.
- B. In addition to the penalties prescribed in division (l)(2)A. of this section, if the offender is guilty of a violation of division (c) of this section or a violation of division (d) 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.
- (3) A. Whoever commits a violation of division (d) 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 (d) 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 (l)(2)A. of this section, if a violation of division (d) 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.

- (4) Whoever commits a violation of division (d) of this section that involves a dangerous dog, or a violation of division (e) 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 (f) 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 (d) 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 (e) of this section or at the county dog pound at the owner's expense.
- (5) A. Whoever commits a violation of division (d) 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 (l)(5)A.2. of this section, the court shall issue an order that specifies that ORC 955.11(D) and divisions (e) to (j) of this section apply with respect to the dog and the owner, keeper, or harbinger of the dog as if the dog were a dangerous dog and that Section 505.15 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 (f)(1) of this section in an amount, exclusive of interest and costs, that equals or exceeds one hundred thousand dollars (\$100,000.00). Until the court makes a final determination and during the pendency of any appeal of a violation of division (d) 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 (e) of this section or at the county dog pound at the owner's expense.
- (6) Whoever violates division (f)(2) of this section is guilty of a misdemeanor of the fourth degree.
- (7) Whoever violates division (g)(1), (g)(2), or (g)(3) 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 (g)(1), (g)(2), or (g)(3) 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 (e) of this section or at the county dog pound at the owner's expense.

- (8) Whoever violates division (f)(1), (f)(3), or (f)(4) of this section is guilty of a minor misdemeanor.
 - (9) Whoever violates division (j)(4) of this section is guilty of a minor misdemeanor.
 - (10) A. If a dog is confined at the county dog pound pursuant to division (l)(4), (l)(5), or (l)(7) 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 one hundred dollars (\$100.00) is due to the county dog warden within ten (10) days to secure payment of all reasonable expenses, including medical care and boarding of the dog for sixty (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 (l)(10)A. of this section does not do so within ten (10) 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 (10) days after the court makes a final determination under division (l)(4), (l)(5), or (l)(7) 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 (l)(10)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 thirty (30) days after the court's determination. If the county dog warden finds that the security provided under division (l)(10)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 thirty (30) days after the court's determination.
- (11) As used in this division (l), "nuisance dog", "dangerous dog", and "vicious dog" have the same meanings as in ORC 955.11.

State law references—ORC 951.02; ORC 951.99; ORC 955.11(A); ORC 955.22; ORC 955.99(E)—(H), (J), (L)—(N), (P), (Q); ORC 955.222

505.02 IMPOUNDING AND DISPOSITION; RECORDS.

(a) A police officer or animal warden may impound every animal or dog found in violation of Section 505.01. If the dog is not wearing a valid registration tag and the owner is not otherwise reasonably determined, notice shall be posted in the pound or animal shelter both describing the dog and place where seized and advising the unknown owner that unless the dog is redeemed within three (3) days, it may thereafter be sold or destroyed according to law. If the dog is wearing a valid registration tag or the identity of the owner, keeper or harborer is otherwise reasonably determined, notice shall be given by certified mail to such owner, keeper or harborer that the dog has been impounded and unless redeemed within fourteen (14) days of the date of notice, it may thereafter be sold or destroyed according to law. Any dog seized and impounded may be redeemed by its owner, keeper or harborer at any time prior to the applicable redemption period upon payment of all lawful costs assessed against the animal and upon providing the dog with a valid registration tag if it has none.

(b) A record of all dogs impounded, the disposition of the same, the owner's name and address where known, and a statement of any costs assessed against the dog shall be kept by any poundkeeper.

505.03 ANNUAL REGISTRATION OF DOGS; TAGS REQUIRED.

(a) Except for guide dogs registered under ORC 955.011 and dogs kept by an institution or organization for teaching and research purposes under ORC 955.16, no person shall own, keep or harbor a dog more than three (3) months of age without annually registering such dog with the County Auditor. Failure of any dog at any time to wear a valid registration tag shall be prima-facie evidence of lack of registration and subject such dog to impounding and disposition as provided by ORC 955.16.

(b) Whoever violates this section is guilty of a minor misdemeanor for a first offense and a misdemeanor of the fourth degree for each subsequent offense.

State law reference—ORC 955.99(D)

505.04 ABANDONING ANIMALS.

(a) No owner or keeper of a dog, cat or other domestic animal shall abandon such animal.

(b) Whoever violates 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.

State law references—ORC 959.01; ORC 959.99

505.05 KILLING OR INJURING ANIMALS.

(a) No person shall maliciously, or willfully, and without the consent of the owner, kill or injure a farm animal, dog, cat or other domestic animal that is the property of another. This section does not apply to a licensed veterinarian acting in an official capacity, or to trespassing animals as set forth in ORC 959.04.

(b) Except as otherwise provided herein, whoever violates this section is guilty of a misdemeanor of the second degree. If the value of the animal killed or the injury done amounts to three hundred dollars (\$300.00) or more, such person is guilty of a misdemeanor of the first degree.

State law references—ORC 959.02; ORC 959.99(B)

505.06 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 farm animal, dog, cat, poultry or 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 of such animals, either upon his own lands or the lands of another. This section does not apply to trespassing animals as set forth in ORC 959.04.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

State law references—ORC 959.03; ORC 959.99(C)

505.07 CRUELTY TO ANIMALS GENERALLY.

(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 such confinement with a sufficient quantity of good wholesome food and water;
- (2) Impound or confine an animal without affording it, during such 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 subsection (a)(2) does not apply to animals impounded or confined prior to slaughter. For the purpose of this section, "shelter" means a man-made 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 twenty-eight (28) hours after they are so placed without supplying them with necessary food, water and attention, nor permit such livestock 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 such livestock may be detained in any cars or compartments without food, water and attention, may be extended to thirty-six (36) hours without penalty therefor. This section does not prevent the dehorning of cattle.

(c) 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 subsection, 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.

State law references—ORC 959.13; ORC 959.99(D)

505.071 CRUELTY TO COMPANION ANIMALS.

(a) As used in this section:

- (1) "Companion animal" means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept. "Companion animal" does not include livestock or any wild animal.
- (2) "Cruelty", "torment" and "torture" have the same meanings as in ORC 1717.01.
- (3) "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.
- (4) "Practice of veterinary medicine" has the same meaning as in ORC 4741.01.
- (5) "Wild animal" has the same meaning as in ORC 1531.01.
- (6) "Federal animal welfare act" means the "Laboratory Animal Act of 1966", Pub. L. No. 89-544, 80 Stat. 350 (1966), 7 U.S.C.A. 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.

(b) 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.

(c) No person who confines or who is the custodian or caretaker of a companion animal shall negligently do any of the following:

- (1) Torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against the companion animal;
- (2) Deprive the companion animal of necessary sustenance, confine the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water, or 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 deprivation, confinement, or impoundment in any of those specified manners.

- (d) Subsections (b) and (c) of this section do not apply to any of the following:
- (1) A companion animal used in scientific research conducted by an institution in accordance with the federal animal welfare act and related regulations;
 - (2) The lawful practice of veterinary medicine by a person who has been issued a license, temporary permit, or registration certificate to do so under ORC Ch. 4741;
 - (3) 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;
 - (4) 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;
 - (5) 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 ORC Ch. 4741.
- (e) (1) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the first degree on a first offense. On each subsequent offense such person is guilty of a felony and shall be prosecuted under appropriate state law.
- (2) Whoever violates subsection (c) hereof is guilty of a misdemeanor of the second degree on a first offense and a misdemeanor of the first degree on each subsequent offense.
- (3) A. A court may order a person who is convicted of or pleads guilty to a violation of this section to forfeit to an impounding agency, as defined in ORC 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 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 ORC 959.132.
- (4) 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.

State law references—ORC 959.99; ORC 959.131

505.08 NUISANCE CONDITIONS PROHIBITED.

(a) No person shall keep or harbor any animal or fowl in the Municipality so as to create noxious, or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.

(b) Whoever violates this section is guilty of a minor misdemeanor.

505.09 BARKING OR HOWLING DOGS.

(a) No person shall keep or harbor any dog within the Municipality which, by frequent and habitual barking, howling or yelping, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet and good order of the Municipality. Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which he occupies or owns, shall be considered as harboring such dog.

(b) Whoever violates this section is guilty of a minor misdemeanor.

505.10 ANIMAL BITES; REPORTS AND QUARANTINE.

(a) Whenever any person is bitten by a dog or other animal, report of such bite shall be made to the Health Commissioner within twenty-four (24) hours. Whenever it is reported to the Health Commissioner that any dog or cat has bitten a person, that dog or cat shall be quarantined under an order issued by the Health Commissioner. The dog or cat shall be quarantined by its owner or by a harborer, or shall be quarantined in a pound or kennel. In all cases, such quarantine shall be under the supervision of the Health Commissioner and shall be at the expense of the owner or harborer. Quarantine shall continue until the Health Commissioner determines that the dog or cat is not afflicted with rabies. The quarantine period hereby required shall not be less than ten (10) days from the date on which the person was bitten. If at any time during the quarantine, the Health Commissioner requires the dog or cat to be examined for symptoms of rabies, then the examination shall be by a licensed doctor of veterinary medicine. The veterinarian shall report to the Health Commissioner the conclusions reached as a result of the examinations. The examination by a veterinarian shall be at the expense of the owner or harborer. No dog or cat shall be released from the required quarantine unless and until it has been properly vaccinated against rabies.

No person shall fail to comply with the requirements of this section or with any order of the Health Commissioner made pursuant thereto, nor fail to immediately report to the Health Commissioner any symptoms or behavior suggestive of rabies.

(b) Whoever violates this section is guilty of a minor misdemeanor.

505.11 HUNTING PROHIBITED.

(a) Except as otherwise set forth herein, no person shall hunt, kill or attempt to kill any animal or fowl by the use of firearms, bow and arrow, or air rifle within the corporate limits of the Municipality.

(b) Deer hunting may be permitted during periods and within locations specified by the Chief of Police, including but not limited to public parks. No such deer hunting permit shall be issued by the Chief of Police unless both of the following criteria are met:

(1) All applicable state permits are obtained; and

(2) All applicable local rules and regulations are met.

(c) The Chief of Police shall establish appropriate rules and regulations for deer hunting and the issuance of deer hunting permits. These rules and regulations shall be approved by the Administrator following review by Council.

(d) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 19-2004. Passed 5-4-04.)

505.12 COLORING RABBITS OR BABY POULTRY; SALE OR DISPLAY OF POULTRY.

(a) No person shall dye or otherwise color any rabbit or baby poultry, including, but not limited to, chicks and ducklings. No person shall sell, offer for sale, expose for sale, raffle or give away any rabbit or poultry which has been dyed or otherwise colored. No poultry younger than four (4) weeks of age may be sold, given away or otherwise distributed to any person in lots of less than six (6). Stores, shops, vendors and others offering young poultry for sale or other distribution shall provide and operate brooders or other heating devices that may be necessary to maintain poultry in good health, and shall keep adequate food and water available to the poultry at all times.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 925.62

505.13 REPORT OF ESCAPE OF EXOTIC OR DANGEROUS ANIMAL. (REPEALED)

Editor's note—Section 505.13 was repealed as part of the 2013 updating and revision of these Codified Ordinances because substantially equivalent state law (ORC 2927.21) was repealed by the Ohio General Assembly.

505.14 DANGEROUS AND VICIOUS DOGS.

(a) As used in this section:

- (1) A. "Dangerous dog" means a dog that, without provocation, and subject to subsection (a)(1)B. hereof, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper or harbinger and not under the reasonable control of its owner, keeper, harbinger or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top.
- B. "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.
- (2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.
- (3) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(4) A. "Vicious dog" means a dog that, without provocation and subject to subsection (a)(4)B. hereof, meets any of the following:

1. Has killed or caused serious injury to any persons;
2. Has caused injury, other than killing or serious injury to any person, or has killed another dog;
3. Is a pit bull terrier, the ownership, keeping or harboring of such a dog shall be prima-facie evidence of the ownership, keeping or harboring of a vicious dog.

B. "Vicious dog" does not include either of the following:

1. A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;
2. A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper or harbinger of the dog.

C. "Pit bull terrier" as used herein includes, but is not limited to, any American Pit Bull Terrier, any Bull Terrier, any Staffordshire Bull Terrier or American Staffordshire Terrier breed of dog, or any mixed breed of dog which contains as an element of its breeding the breed of American Pit Bull Terrier, Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of American Pit Bull Terrier, Bull Terrier, Staffordshire Bull Terrier or American Staffordshire Terrier.

(5) "Without provocation" means that a dog was not teased, tormented or abused by a person, or that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(b) No owner, keeper or harbinger of a dangerous or vicious dog shall fail to do either of the following:

- (1) While that dog is on the premises of the owner, keeper or harbinger, securely confine it at all times in a building, in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;
- (2) While that dog is off the premises of the owner, keeper or harbinger, keep that dog on a chain-link leash or tether that is not more than six (6) feet in length and additionally do at least one of the following:
 - A. Keep that dog in a locked pen that has a top, locked fenced yard or other locked enclosure that has a top;

B. 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 stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

C. Muzzle that dog.

(c) No owner, keeper or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this State providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars (\$100,000.00) because of damage or bodily injury to or death of a person caused by the vicious dog.

(d) If a violation of subsection (b) hereof involves a dangerous dog, whoever violates that subsection 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 subsection (c) hereof. The court, in the alternative, may order the dangerous dog to be humanely destroyed by a licensed veterinarian, the Dog Warden or the humane society.

(e) If a violation of subsection (b) hereof involves a vicious dog, whoever violates that subsection is guilty of one of the following:

- (1) A misdemeanor of the first degree on a first offense. Additionally, the court may order the vicious dog to be humanely destroyed by a licensed veterinarian, the Dog Warden or the humane society.
- (2) A misdemeanor of the first degree if the dog causes injury other than killing or serious injury, to any person.

(f) Whoever violates subsection (c) hereof is guilty of a misdemeanor of the first degree.

State law references—ORC 955.11; ORC 955.22; ORC 955.99

505.15 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 ORC Ch. 959, ORC Ch. 2923 or ORC Ch. 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 (3) 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 twelve (12) weeks of age;

- (2) Any dog that has been determined to be a dangerous dog under ORC Ch. 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.
- (d) Whoever violates division (a) or (b) of this section is guilty of a misdemeanor of the first degree.

State law references—ORC 955.54; ORC 955.99(O)

505.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

CHAPTER 509 DISORDERLY CONDUCT AND PEACE DISTURBANCE*

509.01	RIOT.
509.011	INCITING TO VIOLENCE.
509.02	FAILURE TO DISPERSE.
509.03	DISORDERLY CONDUCT; INTOXICATION.
509.04	DISTURBING A LAWFUL MEETING.
509.05	MISCONDUCT AT AN EMERGENCY.
509.06	INDUCING PANIC.
509.07	MAKING FALSE ALARMS.
509.99	PENALTY.

509.01 RIOT.

(a) No person shall participate with four (4) or more others in a course of disorderly conduct in violation of Section 509.03:

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

(b) No person shall participate with four (4) or more others with purpose to do an act with unlawful force or violence, even though such act might otherwise be lawful.

(c) Whoever violates this section is guilty of riot, a misdemeanor of the first degree.

(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 (4) or more others to commit any act that constitutes a violation this section prior to or while committing those acts.

State law references—ORC 2917.03; ORC 2917.031

509.011 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.

***Cross reference**—See sectional histories for similar state law

Use of force to suppress riot - see ORC 2917.05

Cordoning off riot areas, prohibiting sales of firearms and explosives - see ORC 3761.16

Emergency suspension of permits and sales by Director of Liquor Control - see ORC 4301.251

Criminal trespass - see GEN. OFF. 541.05

(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.

State law reference—ORC 2917.01

509.02 FAILURE TO DISPERSE.

(a) Where five (5) or more persons are participating in a course of disorderly conduct in violation of Section 509.03, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order.

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

(c) (1) Whoever violates this section is guilty of failure to disperse.

(2) Except as otherwise provided in subsection (c)(3) hereof, 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 subsection (a) hereof, 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.

State law reference—ORC 2917.04

509.03 DISORDERLY CONDUCT; INTOXICATION.

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

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

(2) Making unreasonable noise or offensively coarse utterance, gesture or display, or communicating unwarranted and grossly abusive language to any person, which by its very utterance or usage inflicts injury or tends to incite an immediate breach of the peace;

(3) Insulting, taunting or challenging another, under circumstances in which such conduct is likely to provoke a violent response;

(4) Hindering or preventing the movement of persons on a public street, road, highway or right-of-way, or to, from, within or upon public or private property, so as to interfere with the rights of others, and by any act 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 (2) 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 the offender were not intoxicated, should know is likely to have that effect on others;
- (2) Engage in conduct or create a condition that presents a risk of physical harm to the offender 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 subsection (b) hereof.

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

(e) (1) Whoever violates this section is guilty of disorderly conduct.

(2) Except as otherwise provided in this subsection (e)(3), disorderly conduct is a minor misdemeanor.

(3) 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:

- (1) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in ORC 2133.21.
- (2) "Emergency facility person" is the singular of "emergency facility personnel" as defined in ORC 2909.04.
- (3) "Emergency facility" has the same meaning as in ORC 2909.04.
- (4) "Committed in the vicinity of a school" has the same meaning as in ORC 2925.01.

State law reference—ORC 2917.11

509.04 DISTURBING A LAWFUL MEETING.

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

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

(b) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree.

State law reference—ORC 2917.12

509.05 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 subsection, misconduct at an emergency is a misdemeanor of the fourth degree. If a 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:

- (1) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in ORC 2133.21.
- (2) "Emergency facility person" is the singular of "emergency facility personnel" as defined in ORC 2909.04.
- (3) "Emergency facility" has the same meaning as in ORC 2909.04.

State law reference—ORC 2917.13

509.06 INDUCING PANIC.

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

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

(b) Division (a) hereof 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 one thousand dollars (\$1,000.00) 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 these Codified Ordinances may be prosecuted under this section, the other section, or both sections.

(e) As used in this section:

(1) "Economic harm" means any of the following:

A. All direct, incidental, and consequential pecuniary harm suffered by a victim as a result of 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 for 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 Municipality as a result of, or in making any response to, the criminal conduct that constituted the violation of this section or Section 509.07, 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.
- (2) "School" means any school operated by a board of education or any school for which the state board of education prescribes minimum standards under ORC 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.
- (3) "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 their 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 (4) 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 (e)(3)D.1. of this section and from which an item or device described in that division may be readily assembled.
- (4) "Biological agent" has the same meaning as in ORC 2917.33.
- (5) "Emergency medical services personnel" has the same meaning as in ORC 2133.21.
- (6) "Institution of higher education" means any of the following:
- A. A State university or college as defined in ORC 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 ORC Ch. 1713;
- C. A post-secondary institution with a certificate of registration issued by the State Board of Career Colleges and Schools pursuant to ORC Ch. 3332.

State law reference—ORC 2917.31

509.07 MAKING FALSE ALARMS.

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

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

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

(c) Whoever violates this section is guilty of making false alarms, a misdemeanor of the first degree. If a violation of this section results in economic harm of one thousand dollars (\$1,000.00) or more, or 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 and shall be prosecuted under appropriate state law.

(d) Any act that is a violation of this section and any other section of the Codified Ordinances 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 meanings as in Section 509.06.

State law reference—ORC 2917.32

509.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

CHAPTER 513 DRUG ABUSE CONTROL*

513.01	DEFINITIONS.
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513.04	POSSESSING DRUG ABUSE INSTRUMENTS.
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513.07	POSSESSING OR USING HARMFUL INTOXICANTS.
513.08	ILLEGALLY DISPENSING DRUG SAMPLES.
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513.10	HYPODERMIC POSSESSION, DISPLAY AND DISPENSING.
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513.12	DRUG PARAPHERNALIA.
513.13	COUNTERFEIT CONTROLLED SUBSTANCES.
513.14	PSEUDOEPHEDRINE SALES.
513.99	PENALTY.

513.01 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.

- (a) "Administer." The direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.
- (b) "Adulterate." To cause a drug to be adulterated as described in ORC 3715.63.
- (c) "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 (10) grams or twenty-five (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 (10) grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

*Cross reference—See sectional histories for similar state law

Federal prosecution bar to local prosecution - see ORC 2925.50, 3719.19

Analysis report and notarized statement as evidence - see ORC 2925.51

Criteria for granting probation - see ORC 3719.70(B)

Adulterating food with drug of abuse - see GEN. OFF. 537.13

Using weapons while under the influence - see GEN. OFF. 549.03.

- C. An amount equal to or exceeding thirty (30) grams or ten (10) 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 twenty (20) grams or five (5) 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 (5) grams or ten (10) unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;
 - F. An amount equal to or exceeding one hundred twenty (120) grams or thirty (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 (3) 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 one hundred twenty (120) grams or thirty (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 twenty (20) grams or five (5) 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 two hundred fifty (250) milliliters or two hundred fifty (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 two hundred (200) solid dosage units, sixteen (16) grams, or sixteen (16) milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

(d) "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.

(e) "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.

(f) "Committed in the vicinity of a juvenile." An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within one hundred (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 one hundred (100) feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

(g) "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 one thousand (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 one thousand (1,000) feet of the boundaries of any school premises.

(h) "Controlled substance." A drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of ORC 3719.41.

(i) "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 ORC 2925.03 or 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.

(j) "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.

(k) "Crack cocaine." A compound, mixture, preparation, or substance that is or contains any amount of cocaine that is analytically identified as the base form of cocaine or that is in a form that resembles rocks or pebbles generally intended for individual use.

(l) "Cultivate." Includes planting, watering, fertilizing or tilling.

(m) "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 prescrip-

tion" 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 ORC Ch. 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 ORC Ch. 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.
- (n) "Deception." Has the same meaning as in ORC 2913.01.
- (o) "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.
- (p) "Dispense." Means to sell, leave with, give away, dispose of, or deliver.
- (q) "Distribute." Means to deal in, ship, transport or deliver, but does not include administering or dispensing a drug.
- (r) "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.
- (s) "Drug abuse offense." Any of the following:
 - (1) A violation of ORC 2913.02(A) that constitutes theft of drugs, or any violation of ORC 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 any municipality, 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 any municipality, 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.

(t) "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.

(u) "Drug of abuse." Any controlled substance, any harmful intoxicant, and any dangerous drug, as defined in this section.

(v) "Federal drug abuse control laws." The "Comprehensive Drug Abuse Prevention and Control Act of 1970," 21 U.S.C. 801 et seq., as amended.

(w) "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.

(x) "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.

(y) "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.

(z) "Hypodermic." A hypodermic syringe or needle, or other instrument or device for the injection of medication.

- (aa) "Juvenile." A person under eighteen (18) years of age.

(bb) "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.

(cc) "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.

(dd) "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 ORC Ch. 4715.
- (2) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under ORC 4723.48.
- (3) An optometrist licensed under ORC Ch. 4725 to practice optometry under a therapeutic pharmaceutical agents certificate.
- (4) A physician authorized under ORC Ch. 4731 to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.
- (5) A physician assistant who holds a certificate to prescribe issued under ORC Ch. 4730.
- (6) A veterinarian licensed under ORC Ch. 4741.

(ee) "L.S.D." Lysergic acid diethylamide.

(ff) "Major drug offender." Has the same meaning as in ORC 2929.01.

(gg) "Mandatory prison term." Has the same meaning as in ORC 2929.01.

(hh) "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.

(ii) "Manufacturer." A person who manufactures a controlled substance, as "manufacture" is defined by this section.

(jj) "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. "Marihuana" 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. "Marihuana" does not include "hashish."

(kk) "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.

(ll) "Minor drug possession offense." Either of the following:

- (1) A violation of ORC 2925.11 as it existed prior to July 1, 1996, or a substantially equivalent municipal ordinance.
- (2) A violation of ORC 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.

(mm) "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.

(nn) "Person." Means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

(oo) "Pharmacist." A person licensed under ORC Ch. 4729 to engage in the practice of pharmacy.

(pp) "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.

(qq) "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.

(rr) "Prescription." 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.

(ss) "Presumption for a prison term" or "presumption that a prison term shall be imposed." A presumption as described in ORC 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 ORC 2929.11.

(tt) "Professional license." Any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in ORC 2925.01(W)(1) to (36) and that qualifies a person as a professionally licensed person.

(uu) "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 ORC Ch. 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 ORC Ch. 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 ORC Ch. 4703;
- (4) A person who is registered as a landscape architect under ORC Ch. 4703 or who holds a permit as a landscape architect issued under that chapter;
- (5) A person licensed under ORC Ch. 4707;
- (6) A person who has been issued a certificate of registration as a registered barber under ORC Ch. 4709;
- (7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of ORC Ch. 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, managing cosmetologist's license, managing hair designer's license, managing manicurist's license, managing esthetician's license, managing 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 ORC Ch. 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 ORC Ch. 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 ORC Ch. 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 ORC Ch. 4723;
- (12) A person who has been licensed to practice optometry or to engage in optical dispensing under ORC Ch. 4725;
- (13) A person licensed to act as a pawnbroker under ORC Ch. 4727;
- (14) A person licensed to act as a precious metals dealer under ORC Ch. 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 ORC Ch. 4729;
- (16) A person who is authorized to practice as a physician assistant under ORC Ch. 4730;

- (17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under ORC Ch. 4731;
- (18) A person licensed as a psychologist or school psychologist under ORC Ch. 4732;
- (19) A person registered to practice the profession of engineering or surveying under ORC Ch. 4733;
- (20) A person who has been issued a license to practice chiropractic under ORC Ch. 4734;
- (21) A person licensed to act as a real estate broker or real estate salesperson under ORC Ch. 4735;
- (22) A person registered as a registered sanitarian under ORC Ch. 4736;
- (23) A person licensed to operate or maintain a junkyard under ORC Ch. 4737;
- (24) A person who has been issued a motor vehicle salvage dealer's license under ORC Ch. 4738;
- (25) A person who has been licensed to act as a steam engineer under ORC Ch. 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 ORC Ch. 4741;
- (27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under ORC Ch. 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 ORC Ch. 4749;
- (29) A person licensed and registered to practice as a nursing home administrator under ORC Ch. 4751;
- (30) A person licensed to practice as a speech-language pathologist or audiologist under ORC Ch. 4753;
- (31) A person issued a license as an occupational therapist or physical therapist under ORC Ch. 4755;
- (32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under ORC Ch. 4757;
- (33) A person issued a license to practice dietetics under ORC Ch. 4759;
- (34) A person who has been issued a license or limited permit to practice respiratory therapy under ORC Ch. 4761;
- (35) A person who has been issued a real estate appraiser certificate under ORC Ch. 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.

(vv) "Public premises." Any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

(ww) "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.

(xx) "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.

(yy) "Schedule I, II, III, IV or V." Controlled substance Schedules I, II, III, IV, and V established pursuant to ORC 3719.41, as amended pursuant to ORC 3719.43 or 3719.44.

(zz) "School." Any school operated by a board of education, any community school established under ORC Ch. 3314, or any nonpublic school for which the State Board of Education prescribes minimum standards under ORC 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.

(aaa) "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.

(bbb) "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 ORC Ch. 3314, or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under ORC 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.

(ccc) "Standard Pharmaceutical Reference Manual." The current edition, with cumulative changes if any, of references that are approved by the State of Board of Pharmacy.

(ddd) "Theft offense." Has the same meaning as in ORC 2913.01.

(eee) "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.

(fff) "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.

State law reference—ORC 2925.01, 3719.01, 3719.011, 3719.013, 4729.01

513.02 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 ORC Chs. 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 twenty (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 twenty (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 ORC 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or ORC 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 shall do all of the following that are applicable regarding the offender:

- (1) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with ORC 2925.03(G).
- (2) If the offender is a professionally licensed person, the court immediately shall comply with ORC 2925.38.
- (e) (1) Notwithstanding any contrary provision of ORC 3719.21 and except as provided in ORC 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 ORC 2929.18(A) or (B)(5) to the County, Township, Municipality, park district, as created pursuant to ORC 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) A. Prior to receiving any fine moneys under division (e)(1) of this section or ORC 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 ORC 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.
- B. Each law enforcement agency that receives in any calendar year any fine moneys under division (e)(1) of this section or ORC 2925.42(B) shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (e)(2)A. of this section for that calendar year, and shall send a copy of the cumulative report, no later than the

first day of March in the calendar year following the calendar year covered by the report, to the Attorney General. Each report received by the Attorney General is a public record open for inspection under ORC 149.43.

(3) As used in division (e) of this section:

- A. "Law enforcement agencies" includes, but is not limited to, the State Board of Pharmacy and the office of a prosecutor.
- B. "Prosecutor" has the same meaning as in ORC 2935.01.

(f) As used in this section, "drug" includes any substance that is represented to be a drug.
State law reference—ORC 2925.03

513.03 DRUG ABUSE; CONTROLLED SUBSTANCE POSSESSION OR USE.

(a) No person shall knowingly obtain, possess or use a controlled substance or a controlled substance analog.

(b) This section does not apply to the following:

- (1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with ORC Chs. 3719, 4715, 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", 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed or administered for that purpose in accordance with that Act;
- (4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(c) Whoever violates subsection (a) hereof 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 ORC 3719.41, with the exception of marihuana, or is cocaine, L.S.D., heroin, a controlled substance analog, or a compound, mixture or preparation containing such drug, drug abuse 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 ORC 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 one hundred (100) grams but is less than two hundred (200) grams, possession of marihuana is a misdemeanor of the fourth degree.
 - C. If the amount of the drug involved equals or exceeds two hundred (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 (5) grams but is less than ten (10) grams of hashish in a solid form or equals or exceeds one gram but is less than two (2) 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 (10) grams of hashish in a solid form or equals or exceeds two (2) 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 ORC 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 or ORC 2929.11 through 2929.18, or ORC 2929.21 to 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 shall do the following if applicable regarding the offender:

- (1) Notwithstanding any contrary provision of ORC 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to ORC 2929.18(A) in accordance with and subject to the requirements of ORC 2925.03(F). The agency that receives the fine shall use the fine as specified in ORC 2925.03(F).
- (2) The court shall suspend for not less than six (6) months nor more than five (5) years the offender's driver's or commercial driver's license or permit.
- (3) 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 ORC 2925.38.

State law reference—ORC 2925.11

513.04 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 ORC Chs. 3719, 4715, 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) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not less than six (6) months or more than five (5) years the offender's driver's or commercial driver's license or permit.

State law reference—ORC 2925.12

513.05 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 ORC 4501.01(A), 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 the 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, a misdemeanor of the first degree. If the felony drug abuse offense in question is a violation of ORC 2925.02 or 2925.03, permitting drug abuse is a felony and shall be prosecuted under appropriate state law.

(d) In addition to any other sanction imposed for an offense under this section, the court that sentences a person who is convicted of or pleads guilty to a violation of this section may suspend for not less than six (6) months or more than five (5) years the offender's driver's or commercial driver's license or permit.

(e) Any premises or real estate that is permitted to be used in violation of subsection (b) hereof constitutes a nuisance subject to abatement pursuant to ORC Ch. 3767.

State law reference—ORC 2925.13

513.06 ILLEGAL CULTIVATION OF MARIHUANA.

(a) No person shall knowingly cultivate marihuana.

(b) This section does not apply to any person listed in ORC 2925.03(B)(1) to (3) to the extent and under the circumstances described in those divisions.

(c) Whoever commits a violation of subsection (a) hereof is guilty of illegal cultivation of marihuana.

(1) Except as otherwise provided in subsection (c)(2) hereof, 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 one hundred (100) grams but is less than two hundred (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 two hundred (200) grams, illegal cultivation of marihuana is a felony to be prosecuted under appropriate state law.

(d) In addition to any other sanction imposed for an offense under division (c) of this section and ORC 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or ORC 2929.11 through 2929.18, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (a) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with ORC 2925.03(G). If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.

- (2) If the offender is a professionally licensed person, the court immediately shall comply with ORC 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 an application for employment, a license, or any other right or privilege or made in connection with the person's appearance as a witness.

State law reference—ORC 2925.04

513.07 POSSESSING OR USING 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 and shall be prosecuted under appropriate state law.

(c) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not less than six (6) months or more than five (5) years the offender's driver's or commercial driver's license or permit.

State law reference—ORC 2925.31

513.08 ILLEGALLY DISPENSING DRUG SAMPLES.

(a) No person shall knowingly furnish another a sample drug.

(b) Subsection (a) hereof 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 ORC Chs. 3719, 4715, 4729, 4730, 4731, and 4741.

(c) Whoever violates this section is guilty of illegal dispensing of drug samples. 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, or is marihuana, the penalty for the offense shall be determined as follows:

- (1) Except as otherwise provided in subsection (c)(2) hereof, illegal dispensing of drug samples is a misdemeanor of the second degree.
- (2) 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) In addition to any other sanction imposed for an offense under this section, the court that sentences an offender who is convicted of or pleads guilty to a violation of this section shall suspend for not less than six (6) months or more than five (5) years the offender's driver's or commercial driver's license or permit.

State law reference—ORC 2925.36

513.09 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.

(a) No person shall alter, deface or remove any label affixed by a manufacturer, wholesaler, pharmacist or licensed health professional authorized to prescribe drugs who dispenses a controlled substance in a package or container, as long as any of the original contents remain, except when lawfully filling a prescription.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree. If the offender has previously been convicted of a violation of this section, ORC 3719.07 or 3719.08 or a drug abuse offense, such violation is a felony and shall be prosecuted under appropriate state law.

State law references—ORC 3719.08; ORC 3719.99

513.10 HYPODERMIC POSSESSION, DISPLAY AND DISPENSING.

(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 or employee of that manufacturer, distributor or dealer, in the regular course of business;
- (2) 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 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.

(c) Whoever violates this section is guilty of a misdemeanor of the third degree. If the offender has previously been convicted of a violation of this section, ORC 3719.05, 3719.06, 3719.13, 3719.172(B) or (E), or 3719.31 or a drug abuse offense, a violation is a misdemeanor of the first degree.

State law references—ORC 3719.99(D); ORC 3719.172

513.11 HARMFUL INTOXICANTS; POSSESSING NITROUS OXIDE IN MOTOR VEHICLE.

(a) As used in this section, "motor vehicle", "street" and "highway" have the same meanings as in ORC 4511.01.

(b) Unless authorized under ORC Ch. 3719, 4715, 4729, 4731, 4741 or 4765, no person shall possess an open cartridge of nitrous oxide in either of the following circumstances:

- (1) 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;
- (2) 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.

(c) Whoever violates this section is guilty of possessing nitrous oxide in a motor vehicle, a misdemeanor of the fourth degree.

State law reference—ORC 2925.33

513.12 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 or ORC Ch. 2925. "Drug paraphernalia" 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 designated 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 ORC Ch. 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 the owner or person in control of the equipment, product or material knows intends to use the object to facilitate a violation of any provision of this chapter or ORC Ch. 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 ORC Ch. 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 the person 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 the person knows that the purpose of the advertisement is to promote the illegal sale in the 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 ORC Chs. 3719, 4715, 4729, 4730, 4731, and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by Section 513.10.
- (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 marijuana.
- (e) Notwithstanding ORC 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 ORC 2981.12(B).
- (f) (1) Whoever violates subsection (c)(1) hereof is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.
- (2) Except as provided in subsection (f)(3) hereof, whoever violates subsection (c)(2) hereof is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

- (3) Whoever violates subsection (c)(2) hereof by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.
- (4) Whoever violates subsection (c)(3) hereof is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(g) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six (6) months or more than five (5) years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court shall immediately comply with ORC 2925.38.

(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 ORC 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) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six (6) months or more than five (5) years the offender's driver's or commercial driver's license or permit. 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 ORC 2925.38.

State law reference—ORC 2925.141

513.13 COUNTERFEIT CONTROLLED SUBSTANCES.

- (a) No person shall knowingly possess any counterfeit controlled substance.

(b) Whoever violates this section is guilty of possession of counterfeit controlled substances, a misdemeanor of the first degree.

State law reference—ORC 2925.37

513.14 PSEUDOEPHEDRINE SALES.

(a) Unlawful Purchases.

(1) As used in divisions (a), (b), (c) and (d) of this section:

- A. "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.
- B. "Ephedrine." Any material, compound, mixture, or preparation that contains any quantity of ephedrine, any of its salts, optical isomers, or salts of optical isomers.
- C. "Ephedrine product." A consumer product that contains ephedrine.
- D. "Pseudoephedrine." Any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.
- E. "Pseudoephedrine product." A consumer product consisting that contains pseudoephedrine.
- F. "Retailer." A place of business that offers consumer products for sale to the general public.
- G. "Single-ingredient preparation." A compound, mixture, preparation, or substance that contains a single active ingredient.
- H. "Terminal distributor of dangerous drugs." Has the same meaning as in ORC 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 ORC Ch. 3719, 4715, 4723, 4729, 4730, 4731, or 4741:

- a. Three (3) and six tenths grams within a period of a single day;
- b. Nine (9) grams within a period of thirty (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 eighteen (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 ORC Ch. 3719, 4715, 4723, 4729, 4730, 4731, or 4741.
- B. Division (a)(3)A. of this section does not apply to an individual under eighteen (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 ORC Ch. 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 eighteen (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 ORC 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.

(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 (3) and six tenths grams within a period of a single day;
 - b. Nine (9) grams within a period of thirty (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 ORC Ch. 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 ORC 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 eighteen (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 eighteen (18) years of age and whose conduct is in accordance with ORC Ch. 3719, 4715, 4723, 4729, 4730, 4731, or 4741;
 - 2. A parent or guardian of an individual under eighteen (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 eighteen (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 eighteen (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 ORC 3715.051(A) or ORC 3715.052(A)(2).
- (4) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of ORC 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 one thousand dollars (\$1,000.00) per violation.

(c) Transaction Scans.

(1) As used in this division and division (d) of this section:

- A. "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.
- B. Identification card" and "transaction scan device" have the same meanings as in ORC 2927.021.
- C. "Seller" means a retailer or terminal distributor of dangerous drugs.
- D. "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.

(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 ORC 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, ORC 2925.28, or ORC 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 one thousand dollars (\$1,000.00) for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.
- (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 eighteen (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 ORC 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.

(e) Retailer's Duties.

(1) As used in divisions (e) and (f) of this section:

- A. "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.
- B. "Drug." Has the same meanings as in ORC 4729.01.
- C. "Ephedrine." Any material, compound, mixture, or preparation that contains any quantity of ephedrine, any of its salts, optical isomers, or salts of optical isomers.
- D. "Ephedrine product." A consumer product that contains ephedrine.
- E. "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.
- F. "Licensed health professional authorized to prescribe drugs." Has the same meanings as in ORC 4729.01.
- G. "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.

- H. "Pharmacist." A person licensed under ORC Ch. 4729 to engage in the practice of pharmacy.
 - I. "Pharmacy." Has the same meanings as in ORC 4729.01.
 - J. "Prescriber." Has the same meanings as in ORC 4729.01.
 - K. "Prescription." Has the same meanings as in ORC 4729.01.
 - L. "Proof of age." A driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under sections ORC 4507.50 to 4507.52 that shows a person is eighteen (18) years of age or older.
 - M. "Pseudoephedrine." Any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.
 - N. "Pseudoephedrine product." A consumer product that contains pseudoephedrine.
 - O. "Retailer." A place of business that offers consumer products for sale to the general public.
 - P. "Single-ingredient preparation." A compound, mixture, preparation, or substance that contains a single active ingredient.
 - Q. "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 ORC 2925.56(A)(1) or Federal law.
 - R. "Terminal distributor of dangerous drugs." Has the same meanings as in ORC 4729.01.
 - S. "Wholesaler." Has the same meaning as in ORC 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 eighteen (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 (3) and six tenths grams within a period of a single day;
 - ii. Nine (9) grams within a period of thirty (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 ORC 3715.051;
 - D. If required to comply with section ORC 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 ORC Ch. 4731.

(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 (9) 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 ORC 2921.22.
- (2) Within thirty (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.

State law references—ORC 2925.55; ORC 2925.56; ORC 2925.57; ORC 2925.58; ORC 3715.05; ORC 3715.06

513.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

PROOFS

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517.01 DEFINITIONS.

As used in this chapter:

- (a) "Bet" means the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk.
- (b) "Bingo" means 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 twenty-five (25) spaces arranged in five (5) horizontal and five (5) 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 seventy-five (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 seventy-five (75) possible combinations of a letter and a number that can appear on the bingo cards or sheets;

***Cross references**—See sectional histories for similar state law
 Lotteries prohibited; exception - see Ohio Const., Art. XV, Sec. 6
 Contributing to delinquency of minors - see ORC 2151.41
 Search warrants - see ORC 2933.21(E)
 Licensing charitable bingo games - see ORC 2915.0

- 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.

(c) "Bingo game operator" means 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.

(d) "Bingo session" means a period that includes both of the following:

- (1) Not to exceed five (5) 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 (2) hours before and not more than two (2) hours after the period described in division (1) of this definition.

(e) "Bingo supplies" means 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 ORC Ch. 2915. For purposes of this chapter, "bingo supplies" are not to be considered equipment used to conduct a bingo game.

(f) "Bookmaking" means the business of receiving or paying off bets.

(g) "Chamber of commerce" means 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).

(h) "Charitable bingo game" means 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 ORC 2915.08 and the proceeds of which are used for a charitable purpose.

(i) "Charitable instant bingo organization" means 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. A "charitable instant bingo organization" 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 ORC 2915.13, or any substantially equivalent municipal ordinance.

(j) "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 (2) years immediately preceding either the making of an application for a bingo license under ORC 2915.08 or the conducting of any game of chance as provided in ORC 2915.02(D), or a substantially equivalent municipal ordinance.

(k) "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 seventy-five percent (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 ORC 5739.02(B)(12), is used for awarding scholarships to or for attendance at an institution mentioned in that division of the 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 fifteen (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.

(l) "Community action agency" has the same meaning as in ORC 122.66.

(m) "Conduct" means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo or a game of chance.

(n) "Deal of instant bingo tickets" means a single game of instant bingo tickets all with the same serial number.

(o) "Distributor" means 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.

(p) "Electronic bingo aid."

(1) "Electronic bingo aid" means 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) "Electronic bingo aid" does not include any device into which a coin, currency, token, or an equivalent is inserted to activate play.

(q) "Expenses" means 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 ORC 2915.08;

- (3) Bank fees and service charges for a bingo session or game account described in ORC 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 ORC 2915.08(B)(1).

(r) "Fraternal organization" means 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.

(s) "Gambling device" means 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 ORC Ch. 2915.

(t) "Gambling offense" means any of the following:

- (1) A violation of ORC 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 ORC 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.

(u) "Game flare" means 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 tickers 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.

(v) "Game of chance" means 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.

(w) "Game of chance conducted for profit" means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

(x) "Gross annual revenues" means 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.

(y) "Gross profit" means gross receipts minus the amount actually expended for the payment of prize awards.

(z) "Gross receipts" means 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. "Gross receipts" 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 (2) 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.

(aa) "Historic railroad" means 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.

(bb) "Instant bingo" means 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.

(cc) "Instant bingo ticket dispenser" means 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.

(dd) "IRC" or "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1 et seq., as now or hereafter amended.

(ee) "Manufacturer" means 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.

(ff) "Merchandise prize" means 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.

(gg) "Net profit" means gross profit minus expenses.

(hh) "Net profit from the proceeds of the sale of instant bingo" means 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.

(ii) "Participant" means any person who plays bingo.

(jj) "Person" has the same meaning as in ORC 1.59 and includes any firm or any other legal entity, however organized.

(kk) "Pool not conducted for profit" means 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.

(ll) "Punch board" means 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.

(mm) "Raffle" means 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.

(nn) "Redeemable voucher" means any ticket, token, coupon, receipt, or other noncash representation of value.

(oo) "Religious organization" means 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.

(pp) "Revoke" means to void permanently all rights and privileges of the holder of a license issued under ORC 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

(qq) "Scheme of chance" means a slot machine, lottery, 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.

(rr) "Seal card" means 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.

(ss) "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 ORC 109.71 to 109.79 and who is hired to provide security for the premises on which bingo is conducted.

(tt) "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 ten dollars (\$10.00);
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 ten dollars (\$10.00);
3. Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than ten dollars (\$10.00) 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.

(uu) "Slot machine".

(1) Means 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) "Slot machine" does not include a skill-based amusement machine or an instant bingo ticket dispenser.

(vv) "Sporting organization" means 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 (3) years.

(ww) "Suspend" means to interrupt temporarily all rights and privileges of the holder of a license issued under ORC 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

(xx) "Veteran's organization" means 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 division, "national veteran's association" means any veteran's association that has been in continuous existence as such for a period of at least five (5) years and either is incorporated by an act of the United States Congress or has a national dues-paying membership of at least five thousand (5,000) persons.

(yy) "Volunteer firefighter's organization" means any organization of volunteer firefighters, as defined in ORC 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.

(zz) "Volunteer rescue service organization" means any organization of volunteers organized to function as an emergency medical service organization, as defined in ORC 4765.01.

(aaa) "Youth athletic organization" means 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 twenty-one (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.

(bbb) "Youth athletic park organization" means 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 one hundred (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 eighteen (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.

State law reference—ORC 2915.01

517.02 GAMBLING.

(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) With purpose to violate subsection (a)(1), (2), (3), or (4) of this section, acquire, possess, control, or operate any gambling device.

(b) For purposes of subsection (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 subsection (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 subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.
- C. The games of chance are conducted at festivals of the charitable organization that are conducted not more than a total of five (5) 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 subsection (d)(1)C. hereof if the veteran's or fraternal organization has already leased the premises twelve (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 subsection (d)(1)C. hereof, 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 Section 517.06(b)(1) 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, or given, donated or otherwise transferred to, any organization that is described in subsection 509(a)(1), (2) or (3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;
- E. The games of chance are not conducted during, or within ten (10) hours of, a bingo game conducted for amusement purposes only pursuant to Section 517.13.
No person shall receive any commission, wage, salary, reward, tip, donations, 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 operated under a permit issued under ORC 1533.92, as "tag fishing tournament" is defined in ORC 1531.01.

(3) Bingo conducted by a charitable organization that holds a license issued under ORC 2915.08.

(e) Subsection (d) hereof 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 subsection (d) hereof, by any charitable organization that is granted that right.

(f) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of a gambling offense, gambling is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2915.02

517.03 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 such premises for gambling in violation of Section 517.02;
- (2) Recklessly permit such premises to be used or occupied for gambling in violation of Section 517.02.

(b) Whoever violates 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 and shall be prosecuted under appropriate state law.

(c) Premises used or occupied in violation of this section constitute a nuisance subject to abatement pursuant to ORC Ch. 3767.

State law reference—ORC 2915.03

517.04 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 subsection (a) of this section.

(c) Subsections (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 subsection, 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 subsection (b) of this section constitute a nuisance subject to abatement under ORC Ch. 3767.

State law reference—ORC 2915.04

517.05 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 subsection cheating is a misdemeanor of the first degree. If the potential gain from the cheating is one thousand dollars (\$1,000.00) or more, or if the offender previously has been convicted of any gambling offense or of any theft offense as defined in ORC 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.

State law reference—ORC 2915.05

517.06 METHODS OF CONDUCTING A BINGO GAME; PROHIBITIONS.

(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 ORC 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 ORC 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 six hundred dollars (\$600.00) or forty-five percent (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 ORC 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 ORC 2915.101.

(b) No charitable organization that conducts a bingo game described in division (1) of the definition of "bingo" in ORC 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 six hundred fifty dollars (\$650.00) per bingo session or forty-five percent (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 four hundred fifty dollars (\$450.00) 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 four hundred fifty dollars (\$450.00) 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 (3) 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 (3) charitable organizations per calendar week for conducting bingo sessions on the premises. In no case shall more than nine (9) 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 ORC 2915.01.

(c) No charitable organization that conducts a bingo game described in division (1) of the definition of "bingo" in ORC 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 (3) bingo sessions in any seven-day period. A volunteer firefighter's organization or a volunteer rescue service organization that conducts not more than five (5) bingo sessions in a calendar year may conduct more than three (3) bingo sessions in a seven-day period after notifying the Attorney General when it will conduct the sessions;
- (5) Pay out more than six thousand dollars (\$6,000.00) in prizes for bingo games described in ORC 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 (10) hours of, a bingo game conducted for amusement only pursuant to ORC 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 ORC 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 eighteen (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 ORC 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 ninety (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 ORC Ch. 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 eighteen (18) years of age to play bingo described in division (1) of the definition of "bingo" in ORC 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 (2) 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 (2) bingo sessions per calendar week on the premises, may continue to lease the premises to those charitable organizations, provided that no more than four (4) 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) to (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) to (c)(11), or (d) of this section, a violation of division (a)(1), (a)(3), (b)(1), (b)(2), (b)(3), (c)(1) to (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.

State law reference—ORC 2915.09

517.07 INSTANT BINGO CONDUCT.

- (a) No charitable organization that conducts instant bingo shall do any of the following:
 - (1) Fail to comply with the requirements of divisions (A)(1), (2), and (3) of ORC 2915.09;
 - (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 subsection 501(a), is described in subsection 501(c)(3) of the Internal Revenue Code, is a charitable organization as defined in Section 517.01, is in good standing in the State pursuant to ORC 2915.08, and is in compliance with ORC Ch. 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 subsection 501(a), is described in subsection 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, and conducts instant bingo under Section 517.14.
- (3) Conduct instant bingo on any day, at any time, or at any premises not specified on the organization's license issued pursuant to ORC 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 ORC 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;
- (7) Sell an instant bingo ticket or card to a person under eighteen (18) years of age;
- (8) Fail to keep unsold instant bingo tickets or cards for less than three (3) 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 ORC 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 ORC 2915.081 as reflected on an invoice issued by the distributor that contains all of the information required by Section 517.11(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 (2) highest tiers of prizes in that deal are sold;
- (16) Possess bingo supplies that were not obtained in accordance with ORC 2915.01 to 2915.13.

(b) A charitable organization may purchase, lease, or use instant bingo ticket dispensers to sell instant bingo tickets or cards.

(c) Pursuant to ORC 2915.091(C), the Attorney General may adopt rules in accordance with ORC Ch. 119 that govern the conduct of instant bingo by charitable organizations.

(d) Whoever violates subsection (a) of this section or a rule adopted under ORC 2915.091(C) is guilty of illegal instant bingo conduct. Except as otherwise provided in this subsection, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been

convicted of a violation of subsection (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.

State law reference—ORC 2915.091

517.08 RAFFLES.

(a) (1) Subject to subsection (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 subsection 501(a) and is described in subsection 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code 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 subsection (a)(1) of this section, but that is not also described in subsection 501(c)(3) of the Internal Revenue Code, conducts a raffle, the charitable organization shall distribute at least fifty percent (50%) of the net profit from the raffle to a charitable purpose described in Section 517.01 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 subsection (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 subsection (c) of this section is guilty of illegal conduct of a raffle. Except as otherwise provided in this subsection, illegal conduct of a raffle is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (c) of this section, illegal conduct of a raffle is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2915.092

517.09 CHARITABLE INSTANT BINGO ORGANIZATIONS.

(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 subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, 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 (5) days per calendar year and not more than ten (10) hours per day.
- (c) Except as provided in subsection (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 subsection (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 six percent (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 ORC 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 six percent (6%) of the total gross receipts of any deal of instant bingo tickets.
 - (4) As used in this subsection, "full gross profit" means the amount by which the total receipts of all instant bingo tickets, if the deal had 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 subsection (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 subsection (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 this chapter or ORC Ch. 2915.

(f) Subsection (c) of this section does not apply to a volunteer firefighter's organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, 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 (5) years prior to July 1, 2003, and that, during each of those five (5) years, had gross receipts of at least one million five hundred thousand dollars (\$1,500,000.00).

State law reference—ORC 2915.093

517.10 LOCATION OF 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 Section 517.09, 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 subsection (a) of this section shall violate any provision of ORC Ch. 2915, or permit, aid, or abet any other person in violating any provision of ORC Ch. 2915.

(d) No owner or lessor of a location that enters into a written contract as prescribed in subsection (a) of this section shall violate the terms of the contract.

(e) (1) Whoever violates subsection (c) or (d) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this subsection, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (c) or (d) of this section, illegal instant bingo conduct is a felony and shall be prosecuted under appropriate state law.

(2) If an owner or lessor of a location knowingly, intentionally, or recklessly violates subsection (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.

State law reference—ORC 2915.094

517.11 BINGO OR GAME OF CHANCE RECORDS.

(a) No charitable organization that conducts bingo or a game of chance pursuant to Section 517.02(d), shall fail to maintain the following records for at least three (3) 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;

- (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 six hundred dollars (\$600.00) or more in value;
 - (4) An itemized list of the recipients of the net profit of the 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 Section 517.01, Section 517.02(d), or ORC 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" Section 517.01;
 - (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 subsection (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 Section 517.01 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 ORC Ch. 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 (3) 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 (3) 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) The Attorney General, or any law enforcement agency, may do all of the following:

- (1) Investigate any charitable organization or any officer, agent, trustee, member, or employee of the organization;
- (2) Examine the accounts and records of the organization;
- (3) Conduct inspections, audits, and observations of bingo or games of chance;
- (4) Conduct inspections of the premises where bingo or games of chance are conducted;
- (5) Take any other necessary and reasonable action to determine if a violation of any provision of this chapter has occurred and to determine whether Section 517.12 has been complied with.

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, the law enforcement agency may proceed by action in the proper court to enforce this chapter, provided that the law enforcement agency shall give written notice to the Attorney General when commencing an action as described in this subsection.

(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 subsection (h) of this section.

(j) Whoever violates subsection (a) or (i) of this section is guilty of a misdemeanor of the first degree.

State law reference—ORC 2915.10

517.12 BINGO OPERATOR PROHIBITIONS.

(a) No person shall be a bingo game operator unless he is eighteen (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 subsection (a) hereof is guilty of a misdemeanor of the third degree.

(d) Whoever violates subsection (b) hereof is guilty of a misdemeanor of the first degree.

State law reference—ORC 2915.11

517.13 BINGO EXCEPTIONS.

(a) ORC 2915.07 to 2915.11 or Section 517.06 et seq. of this chapter 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 subsection (a) hereof:

- (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, 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 nonmonetary, and in the form of merchandise, goods or entitlements to goods or services only, and the total value of all prizes awarded during the game is less than one hundred dollars (\$100.00).
- 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 (10) hours of any of the following:
 1. A bingo session during which a charitable bingo game is conducted pursuant to ORC 2915.07 to 2915.11 or Section 517.06 et seq. of this chapter;

2. A scheme or game of chance or bingo described in Section 517.01.
- E. The number of players participating in the bingo game does not exceed fifty (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 twenty-five cents (\$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 one hundred dollars (\$100.00).
- 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 one hundred dollars (\$100.00).
- 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 (10) hours of either of the following:
 1. A bingo session during which a charitable bingo game is conducted pursuant to ORC 2915.07 to 2915.11 or Section 517.06 et seq. of this chapter;
 2. A scheme of chance or game of chance or bingo described in Section 517.01.
- 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 subsection (a) hereof. 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.

State law reference—ORC 2915.12

517.14 INSTANT BINGO CONDUCT BY A VETERAN'S OR FRATERNAL ORGANIZATION.

(a) A veteran's organization, a fraternal organization, or a sporting organization authorized to conduct a bingo session pursuant to ORC 2915.01 to 2915.12 may conduct instant bingo other than at a bingo session if all of the following apply:

- (1) The veteran's organization, fraternal organization or sporting organization limits the sale of instant bingo to twelve (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.

- (2) The veteran's organization, fraternal organization or a sporting organization limits the sale of instant bingo to its own premises and to its own members and invited guests.
- (3) The veteran's organization, fraternal organization, or sporting organization is raising money for an organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code 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 subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this State and executes a written contract with that organization as required in subsection (b) of this section.

(b) If a veteran's organization, fraternal organization, or sporting organization authorized to conduct instant bingo pursuant to subsection (a) of this section is raising money for another organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code 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 subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, 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 subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code 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 subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, 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 subsection 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code 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 subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and that is in good standing in this State.

- (c) (1) If a veteran's organization, fraternal organization or a sporting organization authorized to conduct instant bingo pursuant to subsection (a) of this section has been issued a liquor permit under ORC Ch. 4303, that permit may be subject to suspension, revocation, or cancellation if the veteran's organization, fraternal organization, or a sporting organization violates a provision of this chapter or ORC Ch. 2915.
- (2) No veteran's organization, fraternal organization, or a sporting organization that enters into a written contract pursuant to subsection (b) of this section shall violate any provision of this chapter or ORC Ch. 2915, or permit, aid, or abet any other person in violating any provision of this chapter or ORC Ch. 2915.

(d) A veteran's organization, fraternal organization, or a 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 a sporting organization has entered into a written contract.

(e) Whoever violates this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this subsection, illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal instant bingo conduct is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2915.13

517.15 SKILL-BASED AMUSEMENT MACHINES; PROHIBITED CONDUCT.

(a) No person shall give to another person any item described in Section 517.01(ii)(1), (2), (3), or (4) 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.

State law reference—ORC 2915.06

517.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

CHAPTER 521 HEALTH, SAFETY AND SANITATION*

521.01	ABANDONED REFRIGERATORS AND AIRTIGHT CONTAINERS.
521.02	VENTING OF HEATERS AND BURNERS.
521.03	BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.
521.04	SIDEWALK OBSTRUCTIONS; DAMAGE OR INJURY.
521.05	NOTICE TO FILL LOTS, REMOVE PUTRID SUBSTANCES.
521.06	DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN.
521.07	FENCES.
521.08	LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.
521.09	NOXIOUS OR OFFENSIVE ODORS.
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521.11	SPREADING CONTAGION.
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521.13	PROHIBITING OUTDOOR STORAGE AND ACCUMULATION.
521.14	NOISE.
521.15	TURFGRASS SWARDS.
521.99	PENALTY.

521.01 ABANDONED REFRIGERATORS AND AIRTIGHT CONTAINERS.

(a) No person shall abandon, discard, or knowingly permit to remain on premises under the person's control, in a place accessible to children, any abandoned or discarded icebox, refrigerator or other airtight or semi airtight container which has a capacity of one and one-half (1.5) cubic feet or more and an opening of fifty (50) square inches or more and which has a door or lid equipped with hinge, latch or other fastening device capable of securing such door or lid, without rendering such equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. This section shall not apply to an icebox, refrigerator or other airtight or semi airtight container located in that part of a building occupied by a dealer, warehouseman or repairer.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

State law reference—ORC 3767.29

521.02 VENTING OF HEATERS AND BURNERS.

(a) A brazier, salamander, space heater, room heater, furnace, water heater or other burner or heater using wood, coal, coke, fuel oil, kerosene, gasoline, natural gas, liquid petroleum gas or similar fuel, and tending to give off carbon monoxide or other harmful gas:

(1) When used in living quarters, or in any enclosed building or space in which persons are usually present, shall be used with a flue or vent so designed, installed and maintained as to

***Cross reference**—See sectional histories for similar state law

Flagpole installation in sidewalk - see ORC 723.012

Excavation liability - see ORC 723.49 et seq.

Removal of noxious weeds or litter - see ORC 731.51 et seq.

Nuisances - see ORC Ch. 3767

Tampering with safety devices - see GEN. OFF. 541.04

vent the products of combustion outdoors; except in storage, factory or industrial buildings which are provided with sufficient ventilation to avoid the danger of carbon monoxide poisoning;

- (2) When used as a portable or temporary burner or heater at a construction site, or in a warehouse, shed or structure in which persons are temporarily present, shall be vented as provided in subsection (a) hereof, or used with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(b) This section does not apply to domestic ranges, laundry stoves, gas logs installed in a fireplace with an adequate flue, or hot plates, unless the same are used as space or room heaters.

(c) No person shall negligently use, or, being the owner, person in charge, or occupant of premises, negligently permit the use of a burner or heater in violation of the standards for venting and ventilation provided in this section.

(d) Subsection (a) hereof does not apply to any kerosene-fired space or room heater that is equipped with an automatic extinguishing tip-over device, or to any natural gas-fired or liquid petroleum gas-fired space or room heater that is equipped with an oxygen depletion safety shutoff system, and that has its fuel piped from a source outside of the building in which it is located, that are approved by an authoritative source recognized by the State Fire Marshal in the State Fire Code adopted by him under ORC 3737.82.

(e) The State Fire Marshal may make rules to ensure the safe use of unvented kerosene, natural gas or liquid petroleum gas heaters exempted from subsection (a) hereof when used in assembly buildings, business buildings, high hazard buildings, institutional buildings, mercantile buildings and type R-1 and R-2 residential buildings, as these groups of buildings are defined in rules adopted by the Board of Building Standards under ORC 3781.10. No person shall negligently use, or, being the owner, person in charge or occupant of premises, negligently permit the use of a heater in violation of any rules adopted under this subsection.

(f) The State Fire Marshal may make rules prescribing standards for written instructions containing ventilation requirements and warning of any potential fire hazards that may occur in using a kerosene, natural gas, or liquid petroleum gas heater. No person shall sell or offer for sale any kerosene, natural gas or liquid petroleum gas heater unless the manufacturer provides with the heater written instructions that comply with any rules adopted under this subsection.

(g) No product labeled as a fuel additive for kerosene heaters and having a flash point below one hundred degrees Fahrenheit (100°F) or thirty-seven (37) and eight-tenths degrees centigrade shall be sold, offered for sale or used in any kerosene space heater.

(h) No device that prohibits any safety feature on a kerosene, natural gas or liquid petroleum gas space heater from operating shall be sold, offered for sale or used in connection with any kerosene, natural gas or liquid petroleum gas space heater.

(i) No person shall sell or offer for sale any kerosene-fired, natural gas or liquid petroleum gas-fired heater that is not exempt from subsection (a) hereof unless it is marked conspicuously by the manufacturer on the container with the phrase "Not Approved For Home Use."

(j) No person shall use a cabinet-type, liquid petroleum gas-fired heater having a fuel source within the heater, inside any building, except as permitted by the State Fire Marshal in the State Fire Code adopted by him under ORC 3737.82.

(k) Whoever violates this section is guilty of a misdemeanor of the first degree.

State law references—ORC 3701.82; ORC 3701.99(B)

521.03 BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.

(a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(b) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.

(c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

(d) Whoever violates this section is guilty of a minor misdemeanor.

521.04 SIDEWALK OBSTRUCTIONS; DAMAGE OR INJURY.

(a) No person shall place or knowingly drop upon any part of a sidewalk, playground or other public place any tacks, bottles, wire, glass, nails or other articles which may damage property of another or injure any person or animal traveling along or upon such sidewalk or playground.

(b) No person shall walk on, or allow any animal upon, or injure or deface in any way, any soft or newly laid sidewalk pavement.

(c) No person shall place, deposit or maintain any merchandise, goods, material or equipment upon any sidewalk so as to obstruct pedestrian traffic thereon except for such reasonable time as may be actually necessary for the delivery or pickup of such articles. In no such case shall the obstruction remain on such sidewalk for more than one hour.

(d) No person shall unload upon, or transport any heavy merchandise, goods, material or equipment over or across any sidewalk or curb without first placing some sufficient protection over the pavement to protect against damage or injury. The affected area shall be rendered safe and free from danger.

(e) No person shall allow any cellar or trap door, coal chute or elevator or lift opening in any sidewalk to remain open without providing suitable safeguards to protect and warn pedestrian traffic of the dangerous condition.

(f) Whoever violates this section is guilty of a minor misdemeanor.

521.05 NOTICE TO FILL LOTS, REMOVE PUTRID SUBSTANCES.

(a) No person shall fail to comply with the following requirements within the lawful time after service or publication of the notice or resolution is made as required by law:

To fill or drain any lot or land or remove all putrid substances therefrom, or remove all obstructions from culverts, covered drains or natural watercourses as provided in ORC 715.47.

(b) Whoever violates this section is guilty of a minor misdemeanor.

521.06 DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN.

(a) No owner or occupant of abutting lands shall fail to keep the sidewalks, curbs or gutters in repair and free from snow, ice or any nuisance.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 723.011

521.07 FENCES.

(a) No person shall erect or maintain any fence charged with electrical current.

(b) No person shall erect or maintain a barbed wire fence which abuts or is adjacent to any public street or sidewalk. This subsection (b) does not prevent the placement and use of not more than three (3) strands of barbed wire on top of a fence other than a barbed wire fence, provided such strands are not less than seventy-two (72) inches from the ground.

(c) Whoever violates this section is guilty of a minor misdemeanor.

521.08 LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.

(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 him, or in or on waters of the State, or Municipality, 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 subsection (b) hereof, 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 Ohio 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 him, 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 he 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 subsection (b)(1) hereof, "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 subsection (b)(4) hereof, "casual passerby" means a person who does not have depositing litter in a litter receptacle as his primary reason for traveling to or by the property on which the litter receptacle is located.

(d) As used in this section:

- (1) "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.
- (2) "Deposit" means to throw, drop, discard or place.
- (3) "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 the municipality, police constable or officer of a township, or township or joint police district, wildlife officer, park officer, forest officer, preserve officer, conservancy district police officer, inspector of nuisances of a county, or any other law enforcement officer within the law enforcement officer's jurisdiction.

State law reference—ORC 3767.32

(f) Whoever violates any provision of this section, is guilty of a misdemeanor of the third degree. The sentencing court may, in addition to or in lieu of the penalty provided in this subsection require a person to remove litter from any public or private property, or in or on any waters.

State law reference—ORC 3767.99(C)

521.09 NOXIOUS OR OFFENSIVE ODORS.

(a) No person shall erect, continue, use or maintain a dwelling, building, structure or place for a residence or for the exercise of a trade, employment or business, or for the keeping or feeding of an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort or property of individuals or of the public.

(b) Whoever violates this section is guilty of a misdemeanor of the third degree.

State law reference—ORC 3767.13

521.10 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 rest home serving as the residence of a person living in such rest home;
- (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 retarded and the mentally ill; 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 subsection (a)(1) or (2) hereof is a place of public assembly if it has a seating capacity of fifty (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 Department 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, no 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 subsection (a)(1) hereof the local fire authority having jurisdiction shall designate no smoking area. In places included in subsection (a)(2) hereof that are owned by the Municipality, Council shall designate an officer who shall designate the area. In places included in subsection (a)(3) hereof, the person having control of the operations of the place of public assembly shall designate the no smoking area. In places included in subsection (a)(2) hereof which are also included in subsection (a)(1) hereof, the officer who has authority to designate the area in places in subsection (a)(2) hereof 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 ORC 3313.751(B).

(d) No person shall smoke in any area designated as a no smoking area in accordance with subsection (b) hereof or ORC 3791.031.

(e) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 3791.031

521.11 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.

(d) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the second degree.

State law references—ORC 3701.81; ORC 3701.99(C)

521.12 HOURS OF WORK.

(a) These standards are intended to protect persons from excessive noise levels, which interfere with the comfortable enjoyment of life, property and recreation because they can interfere with sleep, communication, relaxation and the full enjoyment of one's property.

(b) The following types of work conducted outside are considered to be loud, disturbing and unnecessary noises and shall not be performed in the City on Sunday, on major holidays to include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, or on other days between the hours of 7:00 p.m. and 7:30 a.m.

- (1) Commercial Garbage Collection: The servicing of private, commercial garbage dumpster by any person(s) using garbage collection vehicles and equipment within one thousand five hundred (1,500) feet of any residential area.
- (2) Pile drivers, hammers, etc.: The operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise.
- (3) Tools: The use of or operation of any noise producing power tool, generator, air compressor, or other tools or appliances which can be heard from the property boundaries. Interior work may be conducted if the work does not emit noise to the exterior.
- (4) Construction: The erection, including construction, excavation, demolition, alteration, or repair work, or the permitting or causing thereof, of any building, structure, or infrastructure, the operation or the permitting or causing the operation of any tools, or equip used in construction, excavation, drilling, demolition, alteration or repair work.
- (5) Sweeping: Cleaning of non-residential parking lots.

(c) The loading, unloading or engine idling of any commercial truck or van in a commercially zoned area which borders a residential area shall not be performed in the City between the hours of 11:00 p.m. and 7:00 a.m. Sunday through Saturday; and between the hours of 10:00 p.m. Saturday and 9:00 a.m. Sunday. This section shall include the usage of any hydraulic trash compacting equipment.

(d) The following types of work shall be exempt from the provisions of this ordinance:

- (1) Use of any mechanical device, apparatus or equipment used, related to or connected with emergency activities or emergency work or associated with work performed by private or public utilities in the maintenance or modification of its facilities;
- (2) Noise sources resulting from emergency work, being work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger;
- (3) Lawn maintenance including the use of lawnmowers, blowers, edge trimmers, electric trimmers, or tree trimming equipment may be conducted on Sunday but may not be conducted on any day between the hours of 8:00 p.m. and 8:00 a.m.

(Ord. 22-2001. Passed 6-19-01; Ord. O-43-2010. Passed 1-11; Ord. O-09-2013. Passed 5-21-13)

521.13 PROHIBITING OUTDOOR STORAGE AND ACCUMULATION.

(a) No person being the owner or occupant of any premises within the Village shall maintain or permit to be maintained on the exterior property area of such premises the storage or accumulation of discarded materials, trash and waste materials, including, but not limited to the following: out of use or nonuseable appliances, auto parts, tires, rugs, rags, broken, dilapidated, or unusable furniture, other household furniture/goods, plastic materials, paints or combustible materials, disabled or inoperative machinery or equipment, lumber, building materials, decaying matter of any kind, wood or paper boxes, wearing apparel, grass clippings, trimmings from trees or shrubs, wood, tin cans, glass and metal including all forms of scrap.

(b) This section shall not apply to the following:

- (1) To building materials accumulated in the construction, remodeling or repairing of buildings on the premises, provided there is a valid building permit for such construction, remodeling or repairing project and provided that such materials may only be stored or accumulated for a reasonable length of time during such construction, if the same does not constitute a health, sanitary or safety hazard.
- (2) To trash and waste which is properly placed in appropriate covered containers and located within the buildable area or at the curb for regularly scheduled trash collection.
- (3) To wood intended and prepared for the personal use of household residents in a fireplace or wood stove, provided the wood is cut and stacked.

(c) Costs. The property owner shall pay all costs associated with the cutting and removal of the noxious weeds and grass. The Village Administrator or his designated representative shall determine the cost of cutting and removal, and shall cause a statement thereof to be mailed to the owner of the land.

(d) Payment of Costs; Unpaid Costs a Lien. The property owner may pay such fees as charged in accordance with this section to the Village within thirty (30) days after the statement of costs is issued without penalty. If the fee is not paid within thirty (30) days after the statement of charges has been mailed to the owner, the Director of Finance shall certify the charges for services as provided in subsection (c) hereof to the County Auditor, together with a property description of the premises. Such amounts shall be entered upon the tax duplicate and shall be a lien upon such lands from the date of entry, and shall be collected as other taxes and returned to the Village General Fund as provided by ORC 731.54. The recovery of costs by the Village pursuant to this section is a remedy in addition to the penalty provided in subsection (e) hereof.

(e) Penalty. Whoever violates any provision of subsections (a) through (d) hereof is guilty of a minor misdemeanor. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(Ord. 22-2001. Passed 6-19-01.)

521.14 NOISE.

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

(b) Definitions.

- (1) "Amplified sounds" means any sound augmented by any electronic means that increases the sound level or volume.
- (2) "Device" means any mechanism, which actually produces noise.
- (3) "Live music" means any sound comprised of instrumental music, song, or a combination of instrumental music and song, produced in whole or in part by a singer vocalizing or by a musician playing a musical instrument on the same premises as the sound source.
- (4) "Receiving property" means any lot, parcel of land, public space, institution or dwelling unit onto which sound, not originating therefrom, travels.
- (5) "Recorded music" means any sound comprised of instrumental music or song, or combination thereof, produced and generated by a speaker, loudspeaker, radio, television, tape deck, record player, compact disc player, jukebox, computer, or synthesizer, or other sound producing devices.
- (6) "Sound source" means the place from which amplified sound emanates without limitation to a speaker, loudspeaker, or any other sound producing instrument or person.

(c) Prohibition. Noise shall be presumed unreasonable if uninvited noise is plainly audible at a receiving property, or part thereof, greater than fifty (50) feet away from the property line of the sound source.

(d) Noise Enumerated. The following acts, among others, are declared to be loud, disturbing and unreasonable noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

- (1) Horns, signaling devices, etc. The sounding of any horn or signaling device on any automobile, motorcycle, motor scooter or other vehicle on any street or public place of the Village, except as a danger warning; the creation by means of any such signaling device of unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time. The use of any signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason, help up;
- (2) Radios, stereo, etc.. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, television set, stereo or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than necessary for convenient hearing for the person or persons who are in the room, yard, vehicle, or

chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, stereo, machine, or device between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday, and 11:00 p.m. and 7:00 a.m. Friday, Saturday, and legal holidays in such a manner as to be plainly audible at a distance of fifty (50) feet from the source of such sound including but not limited to a yard, building, structure, or vehicle in which it is located shall be prima-facie evidence of a violation of this section.

- (3) Loudspeakers, amplifiers for advertising. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, stereo, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure;
- (4) Street sales. Offering for sale, selling or advertising an object or service within the Village, its streets or sidewalks, by shouting or outcry in a louder voice than would be used in ordinary conversation in transacting, promoting or procuring business.
- (e) Exceptions. The provisions of this chapter shall not apply to the following:
 - (1) The emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work;
 - (2) Warning devices necessary for the protection of public safety;
 - (3) Public gatherings, assemblages, processions or other entertainment events that have been permitted by the Chief of Police, as defined in Section 311.02, or the Village Administrator;
 - (4) Use of any mechanical device, apparatus, or equipment used, related to or connected with emergency activities or emergency work or associated with work performed by private or public utilities in the maintenance or modification of its facilities;
 - (5) Noise sources resulting from emergency work, being work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger;
 - (6) Lawn maintenance including the use of lawnmowers, blowers, edge trimmers, electric trimmers, or tree trimming equipment, except that such maintenance may not be conducted on any day between the hours of 8:00 p.m. and 8:00 a.m.;
 - (7) Noise sources resulting from activities sponsored by a public entity and taking place on public property;
 - (8) Those exceptions listed in Section 521.12(d) relating to hours of work.
 - (9) Sounds created by church bells or chimes or calls to worship from places of worship.

(f) Penalty. Any person violating any provision of this chapter, after receiving a warning of said violation and ignoring or refusing to comply with such order, shall be guilty of a minor misdemeanor on the first offense, and shall be fined not more than one hundred fifty dollars (\$150.00). On a second or subsequent offense, if less than twelve months have elapsed since the last offense of the same provision, a person is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty (30) days or both. Each day such violation continues shall constitute a separate offense and shall be punishable as such.

(Ord. 21-2004. Passed 4-20-04; Ord. 24-2008. Passed 8-19-08; ; Ord. O-03-2014. Passed 2-18-14.)

521.15 TURFGRASS SWARDS.

(a) Purpose. This section seeks to ensure that the landscape of each property within the City is appropriately managed and maintained in good condition in a state of care, maintenance and health.

(b) Definitions. "Turfgrass sward" means any area, including but not limited to front and rear yards or lawns, public rights-of-way, utility easements, or athletic fields, whose dominant forms of vegetation are turfgrasses. Turfgrass sward in this context is further defined as consisting of vegetation from a large family (Gramineae) of monocotyledonous, mostly herbaceous plants with jointed stems, slender sheathing leaves, and flowers borne in spikelets of bracts.

(c) Regulation of turfgrasses.

- (1) No person, whether as owner, lessee, agent, tenant or any other person having charge or care of land shall allow turfgrasses to grow thereon to a height in excess of eight (8) inches, or fail to cut such turfgrasses when notified by the City Manager or designee. All premises, exterior property areas and adjacent rights-of-way shall be maintained free from turfgrasses in excess of eight (8) inches in height.
- (2) The City Manager or designee is authorized to determine upon what lots or parcels of land turfgrass sward is growing in violation of these provisions.
- (3) This section will be enforced during the growing season which shall be March 1 through October 31 of each calendar year.
- (4) Areas exempted from these regulations include areas cultivated specifically for wildflowers, back yard meadows on unplatted lots, vegetable gardens/landscaped planting beds, riparian stream corridors, wetlands, platted conservation or preservation areas, agricultural fields, "rough" areas of golf courses, areas used primarily for educational and/or research purposes so long as the growths are controlled, managed and maintained.

(d) Notice to owner to cut turfgrasses.

- (1) The City Manager or designee, shall cause written notice to be served once each growing season, upon the owners, lessees, tenants or other persons or entities having charge or care of such land(s), notifying the property owner that turfgrass sward is growing in excess of

eight (8) inches on such property and that it shall be cut within seven (7) days after service of such notice and thereafter during the growing season with sufficient frequency to meet the regulations. One notice of violation per calendar year is required to be served for a non-compliant property. If, after such notice, it is determined that one or more subsequent violations has occurred on that lot or parcel during that calendar year, the city may proceed to immediately abate such violation as set forth in this section.

- (2) Service of the notice will be issued by certified and regular U.S. mail to the property owner or person listed in the County Auditor's tax list at the mailing address as shown on such tax list. If such owner or other person having charge of such lands is a nonresident of the subject property, such notice shall also be sent to the subject property address by regular U.S. mail. If the property owner notice is not returned to the sender within ten (10) days, it shall be taken for granted that same has been delivered. If the address of such owner, whether a resident or nonresident, is unknown it shall be sufficient to mail such notice to the subject property address by regular U.S. mail.

(e) Failure of owner to comply. If it has been determined by the City Manager or designee that turfgrass sward is growing in excess of eight (8) inches on land for which a notice has been issued pursuant to these regulations, and that the person having charge or care of the land has neglected or refused to comply with the notice the City Manager or designee may cause such turfgrasses to be mowed by use of the city's forces and equipment or by the hiring of private contractors.

(f) Costs. The property owner shall pay all costs associated with the mowing of turfgrasses. Upon completion of the mowing, the city shall document the cost of such mowing and issue a statement thereof to be mailed to the owner of the land in addition to the lessee, agent, tenant or any other person having charge or care of land if applicable.

- (g) Payment of costs; unpaid costs a lien.

- (1) The property owner may pay such fees as charged in accordance with this chapter within thirty (30) days after the statement of costs is issued without penalty. If the fee is not paid within thirty (30) days after the statement of charges has been mailed to the owner of the land, lessee, agent, tenant, or any other person having charge or care of the land, the Director of Finance or designee shall certify the charges for services to the County Auditor, together with a proper description of the premises. Such amounts shall be entered upon the tax duplicate and shall be a lien upon such lands from the date of entry, and shall be collected as other taxes and returned to the New Albany General Fund as provided by the ORC 731.54. The recovery of costs by the city pursuant to this chapter is a remedy in addition to the penalty as set forth in Section 521.99.
- (2) The costs for the city forces and equipment, or the fee charged by the private contractors contracted by the city, to mow the turfgrasses shall be presented to the Franklin County Auditor. In addition, an administrative processing fee shall be charged by the city and added to the tax duplicate of the County.

(h) Penalty. Any person violating any provision of this section, after receiving a notice of said violation and ignoring or refusing to comply with such order, may be subject to being charged with a minor misdemeanor on the first offense. Each day that a violation occurs or continues shall be deemed a separate offense.

(Ord. O-14-2011. Passed 6-21-11.)

521.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

CHAPTER 525 LAW ENFORCEMENT AND PUBLIC OFFICE*

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525.01 DEFINITIONS.

As used in this chapter:

(a) "Public official" means any elected or appointed officer, or 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 ORC 187.01.

(b) "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 the person is elected or appointed to the office for which the person is a candidate. A person is a candidate for purposes of this subsection if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general or special election, or if the person campaigns as a write-in candidate in any primary, general or special election.

*Cross reference—See sectional histories for similar state law
 Law enforcement officer defined - see GEN. OFF. 501.01(k)
 Misconduct at an emergency - see GEN. OFF. 509.05
 Making false alarms - see GEN. OFF. 509.07
 Personating an officer to defraud - see GEN. OFF. 545.16

(2) The term does not include an employee, officer, or governor-appointed member of the board of directors of the nonprofit corporation formed under ORC 187.01.

(c) "Party official" means any person who holds an elective or appointive post in a political party in the United States or this State, by virtue of which the person directs, conducts or participates in directing or conducting party affairs at any level of responsibility.

(d) "Official proceeding" means any proceeding before a legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with an official proceeding.

(e) "Detention" means 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 a 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 ORC 2945.37, 2945.371, 2945.38, 2945.39 or 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 subsection, 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 ORC 311.29(E) or ORC 5149.03(B). For a person confined in a county jail who participates in a county jail industry program pursuant to ORC 5147.30, "detention" includes time spent at an assigned work site and going to and from the work site.

(f) "Detention facility" means 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 unruly child in this State or another state or under the laws of the United States.

(g) "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.

(h) "Campaign committee," "contribution," "political action committee," "legislative campaign fund," and "political party" have the same meanings as in ORC 3517.01.

(i) "Provider agreement" and "medical assistance program" have the same meanings as in ORC 2913.40.

State law reference—ORC 2921.01

525.02 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 the public official's 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 assistance; retirement benefits or health care coverage from a State retirement system; economic development assistance as defined in ORC 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 that person's 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 ORC 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 ORC 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 ORC 2923.1213.
- (15) The statement is required under ORC 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 ORC 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 ORC 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 subsection (a)(6) hereof 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 any provision of subsection (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) hereof is guilty of falsification, a misdemeanor of the first degree.
- (2) Whoever violates subsection (a)(9) hereof 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 one thousand dollars (\$1,000.00) 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.

- (g) (1) No person who has knowingly failed to maintain proof of financial responsibility in accordance with ORC 4509.101 shall produce any document with the purpose to mislead a peace officer upon the request of a peace officer for proof of financial responsibility made in accordance with ORC 4509.101(D)(2).
- (2) Whoever violates this division (g) is guilty of falsification, a misdemeanor of the first degree.

State law references—ORC 2921.13; ORC 4509.102

525.03 IMPERSONATION OF PEACE OFFICER OR PRIVATE POLICE OFFICER.

(a) As used in this section:

- (1) "Federal law enforcement officer." 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.
- (2) "Impersonate." 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.
- (3) "Investigator of the Bureau of Criminal Identification and Investigation." Has the same meaning as in ORC 2903.11.
- (4) "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 ORC 3735.31(D); a member of a police force employed by a regional transit authority under ORC 306.35(Y); a state university law enforcement officer appointed under ORC 3345.04; a veterans' home police officer appointed under ORC 5907.02; a special police officer employed by a port authority under ORC 4582.04 or ORC 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.
- (5) "Private police officer." 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, or 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 subsection (b) hereof is guilty of a misdemeanor of the fourth degree. Whoever violates subsections (c) or (d) hereof is guilty of a misdemeanor of the first degree. If the purpose of a violation of subsection (d) hereof is to commit or facilitate the commission of a felony, 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.

State law reference—ORC 2921.51

525.04 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 violation of Sections 545.05, 545.07, 545.09 or 545.10(b)(2), or ORC 2913.02, 2913.11, 2913.21(B)(2) or 2913.47, 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 as restitution for the loss caused him by the offense.

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

(d) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree.

State law reference—ORC 2921.21

525.05 FAILURE TO REPORT A CRIME, INJURY OR KNOWLEDGE OF DEATH.

- (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 ORC 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 subsection (e) of this section, no physician, limited practitioner, nurse, or other 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 physician, limited practitioner, nurse, or person, or any serious physical harm to persons that the physician, limited practitioner, nurse, or 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 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.

(d) No person shall fail to provide upon request of the person to whom a report required by subsection (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 the person's knowledge that may have a bearing on the investigation of the death.

(e) (1) As used in this subsection, "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 superheated air;
- C. Any burn injury or wound that may result in death;
- D. Any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noisemakers, and wire sparklers, as each is defined by ORC 3743.01.

- (2) No physician, nurse, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury that is 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, or fire and explosion investigation, bureau, if there is a bureau of this type 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 that is 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, or fire and explosion investigation, bureau, if there is a bureau of this type 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 subsection (e)(2) or (3) of this section shall fail to file, within three (3) 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 comply with the uniform standard developed by the State Fire Marshal pursuant to ORC 3737.22(A)(15).
- (5) Anyone participating in the making of reports under subsection (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 ORC 4731.22, the physician-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 subsection (e) of this section.
- (f) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, professional clinical counselor or professional counselor who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in ORC 3113.31, shall note that knowledge or belief and the basis for it in the patient's or client's records.
- (2) Notwithstanding ORC 4731.22, the doctor-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted under subsection (f)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.
- (g) Subsections (a) and (d) of this section do not require disclosure of information, when any of the following applies:
 - (1) The information is privileged by reason of the relationship between attorney and client; doctor and patient; licensed psychologist or licensed school psychologist and client; 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 ORC 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 that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that member of the clergy.
 - (5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or organization certified pursuant to ORC 3793.06.
 - (6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of ORC 2907.02 or 2907.05 or to victims of felonious sexual penetration in violation of former ORC 2907.12. As used in this subsection, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those 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 subsection (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 subsection (e) of this section is guilty of a minor misdemeanor.
- (2) Whoever knowingly violates subsection (e) of this section is guilty of a misdemeanor of the second degree.

State law references—ORC 2921.13; ORC 2921.22

525.06 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 such 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.

State law reference—ORC 2921.23

525.07 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 subsection (b), 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 and shall be prosecuted under appropriate state law.

State law reference—ORC 2921.31

525.08 OBSTRUCTING JUSTICE.

(a) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for a misdemeanor, or to assist another to benefit from the commission of a misdemeanor, 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 misdemeanor or to assist a child to benefit from the commission of an act that if committed by an adult would be a misdemeanor, 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 misdemeanor, or act, or induce any person to withhold testimony or information or to elude legal process summoning the person 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 subsection (a) hereof, 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 subsection (c) hereof

in determining the penalty for the violation of subsection (a) hereof, 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.

- (c) (1) Whoever violates this section is guilty of obstructing justice.
- (2) 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 misdemeanor 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.
- (d) As used in this section:
 - (1) "Adult" and "child" have the same meanings as in ORC 2151.011.
 - (2) "Delinquent child" has the same meaning as in ORC 2152.02.

State law reference—ORC 2921.32

525.09 RESISTING ARREST.

(a) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person 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) Whoever violates this section is guilty of resisting arrest. A violation of subsection (a) hereof is a misdemeanor of the second degree. A violation of subsection (b) hereof is a misdemeanor of the first degree.

State law reference—ORC 2921.33

525.10 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 one hundred fifty dollars (\$150.00).

(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 five percent (5%) of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed five percent (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 (2) of this section is a felony to be prosecuted under appropriate state law. Violation of division (a)(3), (4), or (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 ORC 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 ORC 733.621 and 2921.421, or for a township law director appointed under ORC 504.15 to appoint assistants and employees in accordance with ORC 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) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) "Chief legal officer" has the same meaning as in ORC 733.621.

(2) "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.

State law reference—ORC 2921.42

525.11 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 is allowed by ORC 102.03(G), (H), and (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, or political action committee 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 Municipality for a period of seven (7) years from the date of conviction.

(f) Subsections (a), (b) and (c) hereof do not prohibit a person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, or political action committee or prohibit a political party, campaign committee, legislative campaign fund, or political action committee from accepting voluntary contributions.

State law reference—ORC 2921.43

525.12 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 of the Municipality shall recklessly create a deficiency, incur a liability or expend a greater sum than is appropriated by the legislative authority of the Municipality 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) As used in this section, "public servant" includes an officer or employee of a contractor as defined in ORC 9.08.

525.13 INTERFERING WITH CIVIL RIGHTS.

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

(b) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.

State law reference—ORC 2921.45

525.14 UNAUTHORIZED DISPLAY OF LAW ENFORCEMENT EMBLEMS ON MOTOR VEHICLES.

(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.

State law reference—ORC 2913.441

525.15 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 harbinger 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 harbinger 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 subsection (a) hereof is guilty of assaulting a police dog or horse. If the violation results in physical harm to the police dog or horse, assaulting a police dog or horse is a misdemeanor of the first degree. If the violation does not result in death, serious physical harm, or physical harm to the police dog or horse, assaulting a police dog or horse

is a misdemeanor of the second degree. If the violation results in death or serious physical harm to the police dog or horse, such violation is a felony and shall be prosecuted under appropriate state law.

- (2) Whoever violates subsection (b) hereof is guilty of harassing a police dog or horse. Except as otherwise provided in this subsection, harassing a police dog or horse is a misdemeanor of the second degree. If the violation results in the death of the police dog or horse or if the violation results in serious physical harm to the police dog or horse but does not result in its death, harassing a police dog or horse is a felony and shall be prosecuted under appropriate state law. 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.
- (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, ORC Ch. 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 police dog or horse or the assistance dog that was the subject of the violation or resulted in serious physical harm to that dog or horse 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 ORC Ch. 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 assistance dog.

(h) As used in this section:

- (1) "Assistance dog", "blind" and "mobility impaired person" have the same meaning as in ORC 955.011.
- (2) "Physical harm" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.
- (3) "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.
- (4) "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.

State law reference—ORC 2921.321

525.16 FALSE ALLEGATION OF PEACE OFFICER MISCONDUCT.

(a) As used in this section, "peace officer" has the same meaning as in ORC 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 this section is guilty of making a false allegation of peace officer misconduct, a misdemeanor of the first degree.

State law reference—ORC 2921.15

PROOFS

CHAPTER 529 LIQUOR CONTROL*

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529.01 DEFINITIONS.

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

(a) "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.

(b) "At retail." For use or consumption by the purchaser and not for resale.

(c) "Beer." Includes all beverages brewed or fermented wholly or in part from malt products and containing 0.5% or more, but not more than twelve percent (12%), of alcohol by volume.

(d) "Cider." All liquids that are fit to use for beverage purposes that contain 0.5% of alcohol by volume, but not more than six percent (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.

(e) "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.

***Cross references**—See sectional histories for similar state law

Prohibiting sale of intoxicating liquor on Sunday - see ORC 4301.22(D)

Local option - see ORC 4301.32 et seq., 4303.29

Disorderly conduct; intoxication - see GEN. OFF. 509.03

Using weapons while intoxicated - see GEN. OFF. 549.03

(f) "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 ORC 351.02;
- (2) An area designated as a community entertainment district pursuant to ORC 4301.80.

(g) "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.

(h) "Hotel." The same meaning as in ORC 3731.01, subject to the exceptions mentioned in ORC 3731.03.

(i) "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. "Intoxicating liquor" and "liquor" include wine even if it contains less than four percent (4%) of alcohol by volume, mixed beverages even if they contain less than four percent (4%) of alcohol by volume, cider, alcohol, and all solids and confections which contain any alcohol.

(j) "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.

(k) "Manufacture." All processes by which beer or intoxicating liquor is produced, whether by distillation, rectifying, fortifying, blending, fermentation, brewing, or in any other manner.

(l) "Manufacturer." Any person engaged in the business of manufacturing beer or intoxicating liquor.

(m) "Mixed beverages." Bottled and prepared cordials, cocktails, and highballs, produced 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 twenty-one percent (21%) of alcohol by volume.

(n) "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.

(o) "Person." Includes firms and corporations.

(p) "Pharmacy." An establishment as defined in ORC 4729.01, that is under the management or control of a licensed pharmacist in accordance with ORC 4729.27.

(q) "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.

(r) "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 ORC 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 ORC 4303.25.

(s) "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. "Sales area or territory" 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.

(t) "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.

(u) "Spirituous liquor." All intoxicating liquors containing more than twenty-one percent (21%) of alcohol by volume.

(v) "Vehicle." All means of transportation by land, by water, or by air, and everything made use of in any way for such transportation.

(w) "Wholesale distributor" and "distributor." A person engaged in the business of selling to retail dealers for purposes of resale.

(x) "Wine." All liquids fit to use for beverage purposes containing not less than 0.5% of alcohol by volume and not more than twenty-one percent (21%) of alcohol by volume, which is made from the fermented juices of grapes, fruits, or other agricultural products. Except as provided in ORC 4301.01(B)(3), the term does not include cider.

State law reference—ORC 4301.01

529.02 SALES TO AND USE BY UNDERAGE PERSONS; SECURING PUBLIC ACCOMMODATIONS.

(a) Except as otherwise provided in this chapter or in ORC Ch. 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 who is not an underage person, 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 ORC 4301.22(A)(1) or a substantially equivalent municipal ordinance.

(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 professionals 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 twenty-one (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 ORC 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 ORC 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, ORC 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 ORC 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 ORC 4301.63, 4301.633, or 4301.634, or any substantially equivalent municipal ordinance.

(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.

- (1) "Drug of abuse" has the same meaning as in ORC 3719.011.
- (2) "Hotel" has the same meaning as in ORC 3731.01.
- (3) "Licensed health professional authorized to prescribe drugs" and "prescription" have the same meanings as in ORC 4729.01.
- (4) "Minor" means a person under the age of eighteen (18) years.
- (5) "Underage person" means a person under the age of twenty-one (21) years.

(i) Except as otherwise provided in this chapter or in ORC Ch. 4301, no person under the age of twenty-one (21) years shall purchase beer or intoxicating liquor.

(j) (EDITOR'S NOTE: Division (j) was repealed because substantially equivalent state law, ORC 4301.632, was repealed in 2002.)

(k) Except as otherwise provided in this chapter or in ORC Ch. 4301, no person shall knowingly furnish any false information as to the name, age, or other identification of any person under twenty-one (21) years of age, for the purpose of obtaining, or with the intent to obtain, beer or intoxicating liquor for a person under twenty-one (21) years of age, by purchase, or as a gift.

(l) Except as otherwise provided in this chapter or in ORC Ch. 4301, no person under the age of twenty-one (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.

(m) Whoever violates division (a) of this section is guilty of a misdemeanor, shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), and in addition to the fine, may be imprisoned for a definite term of not more than six (6) months.

(n) Whoever violates division (b), (c), (d), (e)(1), (f), (g) or (k) of 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 eighteen (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 (6) months. If the offender is fifteen (15) years and six (6) 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 (6) months. If the offender has not attained the age of fifteen (15) years and six (6) months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of sixteen (16) years.

(o) Whoever violates division (i) of this section shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). 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.

(p) (EDITOR'S NOTE: Division (p) was repealed because the penalty for a substantially equivalent state law, ORC 4301.632, was repealed in 2002.)

- (q) (1) Whoever violates division (l) of this section is guilty of a misdemeanor of the first degree. If, in committing a first violation of division (l), 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 two hundred fifty dollars (\$250.00) and not more than one thousand dollars (\$1,000.00), and may be sentenced to a term of imprisonment of not more than six (6) 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 five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), and may be sentenced to a term of imprisonment of not more than six (6) 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 ORC 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 five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), and may be sentenced to a term of imprisonment of not more than six (6) 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 ORC 4510.02(A)(6), and the court may order that the suspension or denial remain in effect until the offender attains the age of twenty-one (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.

State law references—ORC 4301.63; ORC 4301.69; ORC 4301.633; ORC 4301.634; ORC 4301.99(C), (E), (F), (I)

529.021 PURCHASE BY MINOR; MISREPRESENTATION.

Editor's note—This section, which included ORC 4301.63, 4301.633 and 4301.634, was incorporated into Section 529.02 as part of the 2007 updating and revision of these Codified Ordinances. Please see Section 529.02 for these provisions.

529.03 SALES TO INTOXICATED PERSONS.

(a) No permit holder and no agent or employee of a permit holder shall sell or furnish beer or intoxicating liquor to an intoxicated person.

(b) Whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4301.22; ORC 4301.99

529.04 LIQUOR 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 Section 529.07(d).

(b) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the fourth degree.

(c) If an offender who violates this section was under the age of eighteen (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 (6) 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 fifteen (15) years and six (6) 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 (6) months. If the offender has not attained the age of fifteen (15) years and six (6) months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of sixteen (16) years.

State law references—ORC 4301.64; ORC 4301.99

529.05 PERMIT REQUIRED.

(a) (1) No person personally or by the person's clerk, agent or employee shall manufacture, manufacture for sale, offer, keep or possess for sale, furnish or sell, or solicit the purchase or sale of any beer or intoxicating liquor in this Municipality, or transport, import or cause to be transported or imported any beer, intoxicating liquor or alcohol on or into this Municipality for delivery, use or sale, unless the person has fully complied with ORC Chs. 4301 and 4303 or is the holder of a permit issued by the Division of Liquor Control and in force at the time.

(2) No manufacturer, supplier, wholesale distributor, broker, or retailer of beer or intoxicating liquor, or other person shall employ, retain, or otherwise utilize any person in this state to act as an employee, agent, solicitor, or salesperson, or act in any other representative

capacity to sell, solicit, take orders, or receive offers to purchase or expressions of interest to purchase beer or intoxicating liquor from any person, at any location other than a liquor permit premises, except as specifically authorized by ORC Ch. 4301 or ORC Ch. 4303 or rules adopted thereunder. No function, event, or party shall take place at any location other than a liquor permit premises where any person acts in any manner to sell, solicit, take orders, or receive offers to purchase or expressions of intent to purchase beer or intoxicating liquor to or from any person, except as specifically authorized by ORC Ch. 4301 or ORC Ch. 4303 or rules adopted thereunder.

(b) Whoever violates this section is guilty of a minor misdemeanor.

State law reference—ORC 4303.25

529.06 LOW-ALCOHOL BEVERAGES: SALE TO AND PURCHASE BY UNDERAGE PERSONS PROHIBITED.

(a) As used in this section, "underage person" means a person under eighteen (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 the person's name, age, or other identification for the purpose of purchasing or otherwise obtaining any low-alcohol beverage in any place in this Municipality.

(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 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) 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.

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.

(h) 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 the physician's practice or given for established religious purposes.

(i) 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.

(j) Whoever violates any provision of this section for which no other penalty is provided is guilty of a misdemeanor of the fourth degree.

(k) Whoever violates subsection (b) hereof shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). The court imposing a fine for a violation of subsection (b) hereof may order that the fine be paid by the performance of public work at a reasonable hourly rate established by the court. The court shall designate the time within which the public work shall be completed.

State law references—ORC 4301.631; ORC 4301.99

529.07 OPEN CONTAINER PROHIBITED.

(a) As used in this section:

(1) "Chauffeured limousine" means a vehicle registered under ORC 4503.24.

(2) "Street," "highway" and "motor vehicle" have the same meanings as in ORC 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 subsection (c) hereof, 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 subsection (d) or (e) hereof, 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 subsection (d) or (e) hereof, 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-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 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 ORC 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 purpose of a tasting sample, as defined in ORC 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 section, "music festival" means a series of outdoor live musical performances, extending for a period of at least three (3) consecutive days and located on an area of land of at least forty (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:
- 1. "Orchestral performance" means a concert comprised of a group of not fewer than forty (40) musicians playing various musical instruments.
 - 2. "Outdoor performing arts center" means an outdoor performing arts center that is located on not less than one hundred fifty (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 an orchestral performance

and the holder of the F-9 permit 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.

- 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.

(d) This section does not apply to a person who pays all or a portion of the fee imposed for the use of a chauffeured limousine pursuant to a prearranged contract, or the guest of such a 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) Whoever violates this section is guilty of a minor misdemeanor.

State law references—ORC 4301.62; ORC 4301.99(A)

529.08 HOURS OF SALE OR CONSUMPTION.

- (a) This section shall apply to the retail sale of beer, wine, mixed beverages, or spirituous liquor.

(b) No beer, wine, mixed beverages, or spirituous liquor shall be sold or delivered by an A-1, A-2, B-1, B-2, B-4, B-5, C-1, C-2, C-2X, D-1, D-2, D-2X, D-3 when issued without a D-3A, D-3X, D-4, D-5G, D-5H, D-5K, D-8, F, F-1, F-2, F-3, F-4, F-5, F-6, G, or I permit holder:

- (1) From Monday to Saturday between the hours of 1:00 a.m. and 5:30 a.m.
- (2) On Sunday between the hours of 1:00 a.m. and Sunday midnight, unless statutorily authorized otherwise.

- (3) Consumption of beer, wine, mixed beverages, or spirituous liquor is also prohibited during the above hours upon the premises of the above permit holders who are authorized by their permit to sell beer, wine, mixed beverages, or spirituous liquor for on-premises consumption.

(c) No beer, wine, mixed beverages, or spirituous liquor shall be sold or delivered by an A-1A, D-3 when issued with a D-3A, D-4A, D-5, D-5A, D-5B, D-5C, D-5D, D-5E, D-5F, D-5I, D-5J, or D-7 permit holder:

- (1) From Monday to Saturday between the hours of 2:30 a.m. and 5:30 a.m.
- (2) On Sunday between the hours of 2:30 a.m. and Sunday midnight, unless statutorily authorized otherwise.
- (3) Consumption of beer, wine, mixed beverages, or spirituous liquor is also prohibited during the above hours upon the premises of the above permit holders who are authorized by their permit to sell beer, wine, mixed beverages, or spirituous liquor for on-premises consumption.

(d) Permit holders authorized to sell beer, wine, mixed beverages, or spirituous liquor at retail who are not specifically identified in divisions (b) or (c) above shall be subject to the provisions of division (b), unless statutorily authorized otherwise.

(e) The hours on Sunday during which sales, delivery, or consumption of alcoholic beverages may take place are established by statute, but in no event shall they begin prior to 5:30 a.m. (OAC 4301:1-1-49).

(f) No association, corporation, local unit of an association or corporation, or D permit holder who holds an F-2 permit shall sell beer or intoxicating liquor beyond the hours of sale allowed by the permit. This division imposes strict liability on the holder of such permit and on any officer, agent or employee of such permit holder.

(g) No F-8 permit holder shall sell beer or intoxicating liquor beyond the hours of sale allowed by the permit. This division imposes strict liability on the holder of an F-8 permit and on any officer, agent or employee of that permit holder.

(h) Whoever violates divisions (f) or (g) of this section is guilty of a misdemeanor of the fourth degree.

State law references—ORC 4303.202(D)(2); ORC 4303.208(C); ORC 4303.99(D)

529.09 CONVEYING INTOXICATING LIQUOR OR CASH ONTO GROUNDS OF DETENTION FACILITIES OR OTHER SPECIFIED GOVERNMENTAL FACILITIES.

(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, 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 ORC 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 ORC 3719.011.

(3) Any intoxicating liquor, as defined in ORC 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, 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 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 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.

State law reference—ORC 2921.36

529.10 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.
- (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 (5) consecutive years after the first violation, a person is guilty of a misdemeanor of the first degree.
- (2) Whoever violates division (c) of this section is guilty of a minor misdemeanor.

State law references—ORC 4301.65; ORC 4301.99(J); ORC 4301.99(A)

529.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

PROOFS

CHAPTER 531 MINORS' CURFEW*

531.01 NIGHTTIME CURFEW ESTABLISHED.

531.01 NIGHTTIME CURFEW ESTABLISHED.

(a) No minor under the age of eighteen (18) years shall loiter, idle, wander, play, or be in or upon a motor vehicle, in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places and public buildings, places of amusement or entertainment, or vacant lots or other unsupervised places between the hours of 11:30 p.m. and 6:00 a.m. of the following day; Sunday through Thursday. On weekends; Friday and Saturday, the hours shall be 12:00 a.m. through 6:00 a.m. During the summer and vacation times (non-school), the hours shall be 12:00 a.m. through 6:00 a.m. However, the provisions of this subsection shall not apply to a minor when accompanied by his or her parent, guardian or other adult person having the care and custody of such minor, or where such minor is upon an emergency errand or legitimate business directed by his or her parent, guardian, or other adult person having the care or custody of such minor.

(b) Whoever violates this section is guilty of a minor misdemeanor.
(Ord. 50-2001. Passed 11-6-01.)

*Cross reference—Endangering children - see GEN. OFF. 537.07
Contributing to child delinquency - see GEN. OFF. 537.18

CHAPTER 533 OBSCENITY AND SEX OFFENSES*

533.01	DEFINITIONS.
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533.01 DEFINITIONS.

As used in this chapter:

(a) "Sexual conduct" means 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.

(b) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if such person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(c) "Sexual activity" means sexual conduct or sexual contact, or both.

(d) "Prostitute" means 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.

(e) "Harmful to juveniles" means 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.

*Cross reference—See sectional histories for similar state law

Complicity - see GEN. OFF. 501.10

Offensive conduct - see GEN. OFF. 509.03

Telephone harassment - see GEN. OFF. 537.10

Criminal trespass - see GEN. OFF. 541.05

- (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.

(f) 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 such 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 which 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 which 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 interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral or artistic purpose.

(g) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(h) "Nudity" means 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.

(i) "Juvenile" means an unmarried person under the age of eighteen (18).

(j) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, 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.

(k) "Performance" means any motion picture, preview, trailer, play, show, skit, dance or other exhibition performed before an audience.

(l) "Spouse" means 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 authorized by ORC 3103.06;
- (2) During the pendency of an action 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.

(m) "Minor" means a person under the age of eighteen (18) years.

(n) "Mental health client or patient" has the same meaning as in ORC 2305.51.

(o) "Mental health professional" has the same meaning as in ORC 2305.115.

(p) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

State law reference—ORC 2907.01

533.02 PRESUMPTION OF KNOWLEDGE; ACTUAL NOTICE AND DEFENSE.

(a) 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 materials or exhibiting performances, who, in the course of business does any of the acts prohibited by Section 533.11, 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.

(b) 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 jurisdiction in which the person to whom the notice is directed does business. 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.

(c) Section 533.11 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 a 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.

- (d) (1) Sections 533.11, 533.12(a) and 533.13 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.
- (2) Subsection (d)(1) 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 Section 533.11, 533.12 or 533.13, or who knowingly advertises the availability of material of that nature.
- (3) Subsection (d)(1) 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 Section 533.11, 533.12 or 533.13, and that contains content that person has selected and introduced into the electronic method of remotely transferring information or content over which that person exercises editorial control.

(e) An employer is not guilty of a violation of Section 533.11, 533.12, or 533.13 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 employee's or agent's employment or agency, and the employer does either of the following:

- (1) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.
- (2) The employer recklessly disregards the employee's or agent's conduct.

(f) It is an affirmative defense to a charge under Section 533.11 or 533.13 as the section applies to an image transmitted through the internet or another 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.

(g) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

State law reference—ORC 2907.35

533.03 UNLAWFUL SEXUAL CONDUCT WITH A MINOR.

(a) No person, who is eighteen (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 thirteen (13) years of age or older but less than sixteen (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, a misdemeanor of the first degree. If the offender is four (4) years older or more than the other person, or if the offender has previously been convicted of or pleaded guilty to a violation of ORC 2907.02, 2907.03 or 2907.04, or former ORC 2907.12, unlawful sexual conduct with a minor is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2907.04

533.04 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 (2) or more 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 thirteen (13) years of age or older but less than sixteen (16) years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen (18) years of age and four (4) or more years older than such 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 previously has been convicted of a violation of ORC 2907.02, 2907.03, 2907.04, 2907.05, 2907.06 or 2907.12, or a substantially similar municipal ordinance, a violation of this section is a misdemeanor of the first degree.

State law reference—ORC 2907.06

533.05 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 person'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 (2) violations of this section or a substantially equivalent state law 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 (3) 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 (2) or more violations of this section or a substantially equivalent state law 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 (2) or more violations of this section or a substantially equivalent state law 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 municipal ordinance, a violation of division (b)(4) of this section is a felony to be prosecuted under appropriate state law.

(d) A mother is entitled to breast-feed her baby in any location of a place of public accommodation, as defined in ORC 4112.01, wherein the mother otherwise is permitted.

State law references—ORC 2907.09; ORC 3781.55

State law reference—Bail considerations for persons charged, see ORC 2907.41

533.06 VOYEURISM.

(a) No person, for the purpose of sexually arousing or gratifying the person's self, 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 other 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 subsection (a) hereof is a misdemeanor of the third degree.

(2) A violation of subsection (b) hereof 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.

State law reference—ORC 2907.08

533.07 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:
 - (1) "Peace officer" has the same meaning as in ORC 2921.51.
 - (2) "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.
 - (3) "Prosecution" means the prosecution of criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.
 - (4) "Prosecutor" has the same meaning as in ORC 2935.01.
 - (5) "Public official" has the same meaning as in ORC 117.01.
 - (6) "Sex offense" means a violation of any provision of Sections 533.03 to 533.06 or ORC 2907.02 to 2907.09.

State law reference—ORC 2907.10

533.08 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 such 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 eighteen (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 eighteen (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.

State law reference—ORC 2907.23

533.09 SOLICITING.

(a) No person shall solicit another to engage with such other person in sexual activity for hire.

(b) Whoever violates this section is guilty of soliciting, a misdemeanor of the third degree.

(c) If a person is convicted of or pleads guilty to a violation of any provision of this section or an attempt to commit a violation of any provision 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 ORC 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.

State law reference—ORC 2907.24

533.091 LOITERING TO ENGAGE IN SOLICITATION.

(a) 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.

(b) As used in this section:

- (1) "Vehicle" has the same meaning as in ORC 4501.01.
- (2) "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 subsection (b)(2)A. hereof;

C. A place not described in subsection (b)(2)A. or B. hereof that is open to the public.

(c) Whoever violates subsection (a) hereof is guilty of loitering to engage in solicitation, a misdemeanor of the third degree.

State law reference—ORC 2907.241

533.10 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.

State law reference—ORC 2907.25

533.11 DISSEMINATING MATTER HARMFUL TO JUVENILES.

(a) No person, with knowledge of its character or content, shall recklessly do any of the 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 the juvenile's 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 the defendant's agent or employee a draft card, driver's license, birth certificate, marriage license, or other official or apparently official document purporting to show that the juvenile was eighteen (18) years of age or over or married, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of eighteen (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, clergyman, prosecutor, judge or other proper person.
- (2) Except as provided in subsection (b)(3) hereof, 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) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.
- (f) 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 subsection, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, a violation of this section is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2907.31

533.12 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 is the parent, guardian or spouse of such juvenile;

- (2) Furnish such juvenile with any identification or document purporting to show that such juvenile is eighteen (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 is eighteen (18) years of age or over or married;
- (2) Exhibit any identification or document purporting to show that he is eighteen (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 subsection (b) hereof shall be adjudged an unruly child, with such disposition of the case as may be appropriate under ORC Ch. 2151.

State law reference—ORC 2907.33

533.13 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 subsection (a) hereof 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.

State law reference—ORC 2907.311

533.14 UNLAWFUL OPERATION OF VIEWING BOOTHS DEPICTING SEXUAL CONDUCT.

(a) As used in this section:

- (1) "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.

- (2) "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.

State law reference—ORC 2907.38

533.15 JUVENILES ON THE PREMISES OF ADULT ENTERTAINMENT ESTABLISHMENTS PROHIBITED.

(a) As used in this section:

- (1) "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 (5) 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.

(2) "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 ORC 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.

(3) "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.

(4) "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.

- (5) "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 ORC 4731.15, is not an "adult entertainment establishment".
- (6) "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.
- (7) "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.
- (8) "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.
- (9) "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 (3) days in advance of the class and if not more than one nude or seminude model is on the premises at any one time.
- (10) "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.

(11) "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.

(12) "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.

(13) "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 (2) or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities.
2. Two (2) 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 ORC 4731.15, is not a "sexual encounter establishment".

(14) "Specified anatomical areas" means the cleft of the buttocks, anus, male or female genitals, or the female breast.

(15) "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 eighteen (18) years of age on the premises of an adult entertainment establishment.

(c) No individual who is under eighteen (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 establish-

ment a driver's or commercial driver's license or an identification card issued under ORC 4507.50 and 4507.52 showing that the individual was then at least eighteen (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 eighteen (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 ORC 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.

State law reference—ORC 2907.39

533.16 SEXUALLY ORIENTED BUSINESSES; ILLEGAL OPERATION AND ACTIVITY.

(a) As used in this section:

- (1) "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.
- (2) "Adult cabaret" has the same meaning as in ORC 2907.39.

- (3) "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 (5) individuals for any form of consideration.
- (4) "Characterized by" means describing the essential character or quality of an item.
- (5) "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.
- (6) "Nudity", "nude", or "state of nudity" has the same meaning as in ORC 2907.39.
- (7) "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.
- (8) "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.
- (9) "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.
- (10) "Regularly" means consistently or repeatedly.
- (11) "Seminude" or "state of seminudity" has the same meaning as in ORC 2907.39.
- (12) "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.

- (13) "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.
 - (14) "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.
 - (15) "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.
 - (16) "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.
 - (17) "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.
- (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 ORC Ch. 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.

State law reference—ORC 2907.40

State law reference—State indemnification for certain municipal liability stemming from local adult business regulations, see ORC 715.55

533.98 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 ORC 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 ORC 2950.03, and shall require the offender to submit to a DNA specimen collection procedure pursuant to ORC 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 ORC 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 ORC 2950.03(A)(2), the judge shall perform the duties specified in that section or, if required under ORC 2950.03(A)(6), the judge shall perform the duties specified in that division.

State law reference—ORC 2929.23

533.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

CHAPTER 537 OFFENSES AGAINST PERSONS*

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537.01 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 Section 549.01.

(b) Whoever violates this section is guilty of negligent homicide, a misdemeanor of the first degree.

State law reference—ORC 2903.05

***Cross references**—See sectional histories for similar state law
 Physical harm to persons defined - see GEN. OFF. 501.01 (c), (e)
 Fighting; provoking violent response - see GEN. OFF. 509.03

537.02 VEHICULAR HOMICIDE AND 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 ORC 4511.19(A) or of a substantially equivalent municipal ordinance;
 - B. As the proximate result of committing a violation of ORC 1547.11(A) or of a substantially equivalent municipal ordinance;
 - C. As the proximate result of committing a violation of ORC 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 ORC 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 ORC Title 45 that is a minor misdemeanor.
- (b) (1) Whoever violates division (a)(1) or (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 ORC Ch. 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 ORC 507.10 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 ORC 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 ORC 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 ORC 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 ORC Ch. 4510 or any other provision of the 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 ORC 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 ORC 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 ORC 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 ORC 2903.06(E). The court shall impose a mandatory jail term of at least fifteen (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 ORC 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 ORC 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the Director of Transportation under ORC 5501.27. The failure to erect signs of the type described in ORC 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:

- A. "Construction zone" has the same meaning as in ORC 5501.27.
- B. "Mandatory prison term" and "mandatory jail term" have the same meanings as in ORC 2929.01.
- C. "Motor vehicle" has the same meaning as in ORC 4501.01.
- D. "Reckless operation offense" means a violation of ORC 4511.20 or a municipal ordinance substantially equivalent to ORC 4511.20.
- E. "Speeding offense" means a violation of ORC 4511.21 or a municipal ordinance pertaining to speed.
- F. "Traffic-related homicide, manslaughter, or assault offense" means a violation of ORC 2903.04 in circumstances in which division (D) of that section applies, a violation of ORC 2903.06 or 2903.08, or a violation of ORC 2903.06, 2903.07, or 2903.08 as they existed prior to March 23, 2000.
- G. "Traffic-related murder, felonious assault, or attempted murder offense" means a violation of ORC 2903.01 or ORC 2903.02 in circumstances in which the offender used a motor vehicle as the means to commit the violation, a violation of ORC 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 ORC 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 another state or the United States.

(f) The court imposing a sentence upon an offender for any violation of this section also shall impose a 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 ORC 4510.02(B) that is equivalent in length to the suspension required for a violation of ORC 2903.06 under similar circumstances.

State law references—ORC 2903.06; ORC 4510.07

537.021 VEHICULAR ASSAULT IN A CONSTRUCTION ZONE.

(a) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn 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. This subsection applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused 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 subsection (d) hereof.

(b) Whoever violates this section is guilty of vehicular assault. Except as provided in this subsection, vehicular assault is a misdemeanor of the first degree. Vehicular assault is a felony if, at the time of the offense, the offender was driving under a suspension imposed under ORC Ch. 4510, or any other provision of the Ohio Revised Code 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, and shall be prosecuted under appropriate state law.

In addition to any other sanctions imposed, 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 division (A)(4) of ORC 4510.02.

(c) The court shall impose a mandatory jail term of at least seven (7) days on an offender who is convicted of or pleads guilty to a violation of this section and may impose upon the offender a longer jail term as authorized pursuant to Section 501.99.

(d) This section does not apply in a particular construction zone unless signs of the type described in ORC 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the Director of Transportation under ORC 5501.27.

(e) As used in this section:

- (1) "Mandatory jail term" has the same meaning as in ORC 2929.01.
- (2) "Traffic-related homicide, manslaughter or assault offense" has the same meaning as in ORC 2903.06.
- (3) "Construction zone" has the same meaning as in ORC 5501.27.
- (4) "Speeding offense" has the same meaning as in ORC 2903.06.

(f) 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 another state or the United States.

State law reference—ORC 2903.08

537.03 ASSAULT.

(a) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

(b) No person shall recklessly cause serious physical harm to another or to another's unborn.

(c) Whoever violates division (a) or (b) of this section is guilty of assault. Except as provided in ORC 2903.13(C), assault is a misdemeanor of the first degree.

(d) 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 ORC 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 ORC 2929.24(G).

State law reference—ORC 2903.13

State law references—Aggravated and felonious assault, see ORC 2903.11 and 2903.12

Aggravated vehicular assault, felony, see ORC 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 ORC 2903.13(C)

Permitting child abuse, felony offense, see ORC 2903.15

Persons who may seek relief under anti-stalking protection order; ex parte orders, see ORC 2903.214

Protection order as pretrial condition of release, see ORC 2903.213

537.04 NEGLIGENT ASSAULT.

(a) No person shall negligently, by means of a deadly weapon or dangerous ordinance as defined in Section 549.01 cause physical harm to another or to another's unborn.

(b) Whoever violates this section is guilty of negligent assault, a misdemeanor of the third degree.

State law reference—ORC 2903.14

537.05 AGGRAVATED MENACING.

(a) 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, the other person's unborn, or a member of the other person's immediate family.

(b) Whoever violates this section is guilty of aggravated menacing. Except as otherwise provided in this subsection (b), 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, 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, aggravated menacing is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2903.21

537.051 MENACING BY STALKING.

(a) (1) 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 cause mental distress to the other person.

(2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of subsection (a)(1) of this section.

(3) No person, with a sexual motivation, shall violate division (a)(1) or (a)(2) of this section.

(b) Whoever violates this section is guilty of menacing by stalking.

(1) Except as otherwise provided in subsections (b)(2) and (3) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony and shall be prosecuted under appropriate state law if any of the following applies:

A. The offender previously has been convicted of or pleaded guilty to a violation of this section or a violation of Section 541.051.

B. In committing the offense under division (a)(1), (a)(2) or (a)(3) 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 (a)(1)B. or (a)(3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

- C. In committing the offense under division (a)(1), (a)(2) or (a)(3) 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 (a)(1)B. or (a)(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.
 - D. The victim of the offense is a minor.
 - E. The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.
 - F. While committing the offense under division (a)(1)A. of this section or a violation of division (a)(1)C. of this section based on conduct in violation of division (a)(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 (a)(2)B.6. of this section does not apply in determining the penalty for a violation of division (a)(1)B. of this section or a violation of division (a)(1)C. of this section based on conduct in violation of division (a)(1)B. of this section.
 - G. At the time of the commission of the offense, the offender was the subject of a protection order issued under ORC 2903.213 or 2903.214, regardless of whether the person to be protected under the order is the victim of the offense or another person.
 - H. In committing the offense under division (a)(1)A., (a)(1)B. or (a)(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 (a)(1)B. of this section or an offense committed under division (a)(1)C. of this section based on a violation of division (a)(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.
 - I. 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 physical harm, or other evidence of then-present dangerousness.
- (3) 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, 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, menacing by stalking is a felony and shall be prosecuted under appropriate state law.

- (c) ORC 2919.271 applies in relation to a defendant charged with a violation of this section.
- (d) As used in this section:
 - (1) "Pattern of conduct" means two (2) 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. 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 or receipts of information or data through the use of 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".
 - (2) "Mental distress" means any of the following:
 - A. Any mental illness or condition that involves some temporary substantial incapacity;
 - B. 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.
 - (3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in ORC 2133.21.
 - (4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in ORC 2909.04.
 - (5) "Public official" has the same meaning as in ORC 2921.01.
 - (6) "Computer", "computer network", "computer program", "computer system" and "telecommunications device" have the same meanings as in ORC 2913.01.
 - (7) "Post a message" means transferring, sending, posting, publishing, disseminating or otherwise communicating, or attempting to transfer, send, post, publish, disseminate or otherwise communication, 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.
 - (8) "Third person" means, in relation to conduct as described in subsection (a)(2) of this section, an individual who is neither the offender nor the victim of the conduct.
 - (9) "Sexual motivation" has the same meaning as in ORC 2971.01.

(e) The Municipality does not need to prove in a prosecution under 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 subsection (d)(2)B. of this section.

(f) (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 it believes is, or will be sent, in violation of this section.

(2) Subsection (f)(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) Subsection (f)(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.

State law reference—ORC 2903.211

537.06 MENACING.

(a) 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.

(b) Whoever violates this section is guilty of menacing. Except as otherwise provided in this subsection (b), 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, 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, menacing is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2903.22

537.07 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 eighteen (18) years of age or a mentally or physically handicapped child under twenty-one (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 subsection when the parent, guardian, custodian or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(b) No person shall abuse a child under eighteen (18) years of age or a mentally or physically handicapped child under twenty-one (21) years of age.

(c) (1) No person shall operate a vehicle in violation of Section 333.01(a) of the Traffic Code when one or more children under eighteen (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 subsection (c) hereof and a violation of Section 333.01(a) of the Traffic Code that constitutes the basis of the charge of the violation of subsection (c) hereof. For purposes of ORC 4511.191 to 4511.197 and all related provisions of law, a person arrested for a violation of subsection (c) hereof shall be considered to be under arrest for operating a vehicle while under the influence 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 subsection (c)(1) hereof:

A. "Controlled substance" has the same meaning as in ORC 3719.01.

B. "Vehicle" has the same meaning as in ORC 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 pursuing bonafide 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:

A. "Material," "performance," "obscene," and "sexual activity" have the same meanings as in ORC 2907.01.

- B. "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.
 - C. "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., C., or 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 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), (3), (4), (5) or (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 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, ORC 2903.06, 2903.08, 2919.22(C) or former ORC 2903.07 as it existed prior to March 23, 2000, or ORC

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., B. or 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 ORC Ch. 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 ORC 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., B., C. or 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 ORC 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 ORC 4511.19, or a substantially equivalent municipal ordinance, for that violation of ORC 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 (2) or more children under eighteen (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 ORC 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 ORC 4511.19, or a substantially equivalent municipal ordinance, that set forth the penalties and sanctions for a violation of ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 4511.19(A) or a substantially equivalent municipal ordinance, a conviction of or a plea of guilty to a violation of ORC 4511.19(A) or a substantially equivalent municipal ordinance.

State law reference—ORC 2919.22(A)—(E), (H)

537.08 UNLAWFUL RESTRAINT.

- (a) No person, without privilege to do so, shall knowingly restrain another of his 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 ORC 2971.01.

State law reference—ORC 2905.03

537.09 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 calumny against any person;
 - (3) Expose or threaten to expose any matter tending to subject any person to hatred, contempt or ridicule, 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) Subsections (a)(4) and (5) hereof shall not be construed to prohibit a prosecutor or court from doing any of the following in good faith and in the interest of justice:

- (1) Offering or agreeing to grant, or granting immunity from prosecution pursuant to ORC 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 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 subsection (a)(3), (4) or (5) hereof that the actor's conduct was a reasonable response to the circumstances that 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 that 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:

- (1) "Threat" includes a direct threat and a threat by innuendo.
- (2) "Community control sanction" has the same meaning as in ORC 2929.01.

State law reference—ORC 2905.12

537.10 TELECOMMUNICATION HARASSMENT.

(a) No person shall knowingly make or cause to be made a telecommunication, or knowingly permit telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:

- (1) Fails to identify the caller to the recipient of the telecommunication and makes the telecommunication with purpose to harass, 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 ORC 2903.21;
- (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 person at those premises.

(b) 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.

- (c) (1) Whoever violates divisions (a) or (b) of this section is guilty of telecommunications harassment.
- (2) A violation of division (a)(1), (a)(2), (a)(3) or (a)(5) 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 one thousand dollars (\$1,000.00) 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 State against any provider of a telecommunications service or information service, or against any officer, employee, or agent of a telecommunication service 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 or ORC 4931.31. A provider of a telecommunications service or information service, or an officer, employee, or agent of a telecommunications service 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 or ORC 4931.31.

(e) As used in this section:

- (1) "Economic harm" means all direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" 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 for 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.
- (2) "Caller" means the person described in subsection (a) hereof 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.
- (3) "Telecommunication" and "telecommunications device" have the same meanings as in ORC 2913.01.
- (4) "Sexual activity" has the same meaning as in ORC 2907.01.

(f) Nothing in this section prohibits a person from making a telecommunication call to a debtor that is in compliance with the "Fair Debt Collection Practices Act", 91 Stat. 874 (1977), 15 U.S.C. 1692, as amended, or the "Telephone Consumer Protection Act", 105 Stat. 2395 (1991), 47 U.S.C. 227, as amended.

State law reference—ORC 2917.21

537.11 THREATENING OR HARASSING TELEPHONE CALLS.

(a) No person shall, while communicating with any other person over the telephone, threaten to do bodily harm or use or address to such other person any words or language of a lewd, lascivious or indecent character, nature or connotation for the sole purpose of annoying such other person; nor shall any person telephone any other person repeatedly or cause any person to be telephoned repeatedly for the sole purpose of harassing or molesting such other person or his family.

Any use, communication or act prohibited by this section may be deemed to have occurred or to have been committed at either the place at which the telephone call was made or was received.

(b) Whoever violates this section is guilty of a misdemeanor of the third degree.

State law references—ORC 4931.31; ORC 4931.99

537.12 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.

(b) No person shall knowingly use the telephone number of a 9-1-1 system established under ORC Ch. 5507 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 ORC Ch. 5507, 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 Department of Public Safety.
 - (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 Department of Public Safety. 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 Department of Public Safety.
- (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.

State law references—ORC 5507.01(A); ORC 5507.32(E); ORC 5507.99

537.13 ADULTERATING OF OR FURNISHING ADULTERATED FOOD OR CONFECTION.

(a) No person shall do either of the following, knowingly or having reasonable cause to believe that any person may suffer physical harm or be seriously inconvenienced or annoyed thereby:

- (1) Place a pin, needle, 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 subsection (a)(1) hereof.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.

State law references—ORC 3716.11; ORC 3716.99(C)

537.14 DOMESTIC VIOLENCE.

(a) Prohibited conduct.

- (1) No person shall knowingly cause or attempt to cause physical harm to a family or household member.
- (2) No person shall recklessly cause serious physical harm to a family or household member.
- (3) 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.
- (4) A. Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (a)(4)B. to (a)(4)E. of this section.
B. Except as otherwise provided in division (a)(4)C., (a)(4)D. or (a)(4)E. of this section, a violation of division (a)(3) is a misdemeanor of the fourth degree and a violation of division (a)(1) or (a)(2) is a misdemeanor of the first degree.
C. Except as otherwise provided in division (a)(4)D. 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 ORC 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)(1) or (a)(2) is a felony to be prosecuted under appropriate state law, and a violation of division (a)(3) is a misdemeanor of the second degree.

- D. If the offender previously has pleaded guilty to or been convicted of two (2) or more offenses of domestic violence or two (2) or more violations or offenses of the type described in division (a)(4)C. 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)(1) or (a)(2) of this section is a felony to be prosecuted under appropriate state law, and a violation of division (a)(3) of this section is a misdemeanor of the first degree.
 - E. Except as otherwise provided in division (a)(4)C. or (a)(4)D. 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)(1) or (a)(2) of this section is a felony to be prosecuted under appropriate state law, and a violation of division (a)(3) of this section is a misdemeanor of the third degree.
- (5) 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.
- (6) As used in this section:
- A. "Family or household member." Any of the following:
 - 1. Any of the following who is residing or has resided with the offender:
 - a. A spouse, a person living as a spouse as defined below, or a former spouse of the offender;
 - b. A parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender;
 - c. 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.
 - 2. The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.
 - B. "Person living as a spouse." 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 (5) years prior to the date of the alleged commission of the act in question.

(b) Temporary protection order. Consult ORC 2919.26 for current provisions regarding protection orders.

(c) Violating a protection order, consent agreement, anti-stalking protection order or order issued by a court of another state. See 537.15 for current provisions.

State law reference—ORC 2919.25

537.15 TEMPORARY PROTECTION ORDER.

- (a) No person shall recklessly violate the terms of any of the following:
 - (1) A protection order issued or consent agreement approved pursuant to ORC 2919.26 or 3113.31;
 - (2) A protection order issued pursuant to ORC 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 subsection (b)(3) of this section, violating a protection order is a misdemeanor of the first degree.
 - (3) If the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for a violation of a protection order issued pursuant to ORC 2151.34, 2903.213 or 2903.214, two (2) or more violations of ORC 2903.21, 2903.211, 2903.22, or 2911.211 that involved the same person who is the subject of the protection order or consent agreement, or one or more violations of this section, violating a protection order is a felony and shall be prosecuted under appropriate state law.
 - (4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony and shall be prosecuted under appropriate state law.
 - (5) If the protection order violated by the offender was an order issued pursuant to ORC 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 (5) 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 ORC 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 ORC 2743.191. The total amount paid from the Reparations Fund created pursuant to ORC 2743.191 for electronic monitoring under ORC 2151.34, 2903.214 and 2919.27 shall not exceed three hundred thousand dollars (\$300,000.00) per year.
- (c) It is an affirmative defense to a charge under subsection (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) 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. "Protection order issued by a court of another state" does not include an order for support or for custody of a child.

State law reference—ORC 2919.27

537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; TRANSACTION SCANS.

(a) As used in this section:

- (1) "Child" has the same meaning as in ORC 2151.011.
- (2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper, reconstituted cigarette tobacco, homogenized cigarette tobacco, cigarette tobacco sheet, or any similar materials, Cigarette includes clove cigarettes and hand-rolled cigarettes.
- (3) "Distribute" means to furnish, give, or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, or papers used to roll cigarettes.
- (4) "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 ORC 4507.50 to 4507.52 that shows that a person is eighteen (18) years of age or older.
- (5) "Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.
- (6) "Tobacco product" means any product that is made from tobacco, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco cessation product or for other medical purposes and is being marketed and sold solely for that purpose.
- (7) "Alternative nicotine product" means an electronic smoking device 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. "Alter-

native nicotine product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco cessation product or for other medical purposes and is being marketed and sold solely for that purpose.

(8) "Vending machine" has the same meaning as "coin machine" in ORC 2913.01.

(b) 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:

- (1) Give, sell, or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to any child or individual under the age of twenty-one (21);
- (2) 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 an individual under twenty-one (21) years of age is prohibited by law;
- (3) Knowingly furnish any false information regarding the name, age, or other identification of any child or individual under the age of twenty-one (21) with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that child or individual under the age of twenty-one (21).

(c) 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:

- (1) An area within a factory, business, office, or other place not open to the general public;
- (2) An area to which children are not generally permitted access;
- (3) Any other place not identified in subsection (c)(1) or (2) of this section, upon all of the following conditions:
 - A. 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 products, 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.

B. The vending machine is inaccessible to the public when the place is closed.

(d) The following are affirmative defenses to a charge under subsection (b)(1) of this section:

- (1) The child or individual under twenty-one (21) years of age was accompanied by a parent or spouse who is twenty-one (21) years of age or older, or legal guardian of said child or individual.
- (2) The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a child or individual under twenty-one (21) years of age under subsection (b)(1) of this section is a parent or spouse who is twenty-one (21) years of age or older, or legal guardian of said child or individual.

(e) It is not a violation of subsection (b)(1) or (2) of this section for a person to give or otherwise distribute to a child or individual under the age of twenty-one (21) cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the child or individual under the age of twenty-one (21) is participating in a research protocol if all of the following apply:

- (1) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.
- (2) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.
- (3) The child or individual under the age of twenty-one (21) is participating in the research protocol at the facility or location specified in the research protocol.

(f) (1) Whoever violates subsection (b)(1) or (2) or (c) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(1) or (2) or (c) of this section, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(2) Whoever violates subsection (b)(3) of this section is guilty of permitting children and/or individuals under the age of twenty-one (21) to purchase or use cigarettes, other tobacco products, or alternative nicotine products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(3) of this section, permitting children or individuals under the age of twenty-one (21) to purchase or use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(g) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a child or individual under the age of twenty-one (21) in violation of this section and that are used, possessed, purchased, or received by a child in violation of ORC 2151.87 or individual under the age of twenty-one (21) are subject to seizure and forfeiture as contraband under ORC 2981.

(h) Tobacco Product/Alternative Nicotine Product Transaction Scan.

(1) As used in this division and division (i) of this section:

- A. "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.
- B. "Identification card" means an identification card issued under ORC 4507.50 to 4507.52.
- C. "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) through (g) of this section.
- D. "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.
- E. "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 (h)(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 (h)(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 ORC 4301.61(C) apply to the use of transaction scan devices for purposes of this division (h) and division (i) 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 (h)(4)A. of this section, except for purposes of division (i) 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 (i)(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 (i) of this section or another section of these Codified Ordinances or the Ohio Revised Code.
 - (5) Nothing in this division (h) or division (i) 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 (h)(2)B. or (h)(4) of this section is guilty of engaging in an illegal tobacco product/alternative nicotine product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars (\$1,000.00) for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.
- (i) 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) through (g) 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 (i)(1) of this section, the trier of fact in the action for the alleged violation of division (a) through (g) 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) through (g) of this section. For purposes of division (i)(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 twenty-one (21) 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 (i)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under ORC 4507.50 to 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.

(j) Shipment of Tobacco Products and Alternative Nicotine Products.

(1) As used in this division (d):

- A. "Authorized recipient of tobacco products and alternative nicotine products" means a person who is:
 - 1. Licensed as a cigarette wholesale dealer under ORC 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 ORC 5743.71.
- B. "Motor carrier." Has the same meaning as in ORC 4923.01.
- (2) The purpose of this division (j) is to prevent the sale of cigarettes, other tobacco products, and alternative nicotine products to minors and individuals under the age of twenty-one (21) and to ensure compliance with the Master Settlement Agreement, as defined in ORC 1346.01.
- (3) A. No person shall cause to be shipped any cigarettes, other tobacco products, or alternative nicotine products to any person in this Municipality other than an authorized recipient of cigarettes, other tobacco products and/or alternative nicotine products.
- B. No motor carrier or other person shall knowingly transport cigarettes, other tobacco products, or alternative nicotine products to any person in this Municipality that the carrier or other person reasonably believes is not an authorized recipient of cigarettes, tobacco products, and/or alternative nicotine products. If cigarettes, other tobacco products, or alternative nicotine products 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 cigarettes, other tobacco products and/or alternative nicotine products.
- (4) No person engaged in the business of selling cigarettes, other tobacco products, and/or alternative nicotine products who ships or causes to be shipped cigarettes, other tobacco products, and/or alternative nicotine products 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", "tobacco products", and/or "alternative nicotine products".

- (5) A court shall impose a fine of up to one thousand dollars (\$1,000.00) for each violation of division (j)(3)A., (j)(3)B. or (j)(4) of this section.

(Ord. O-42-2015. Passed 11-17-15.)

Editor's note—Ord. O-42-2015, passed Nov. 17, 2015, amended Section 537.16 and in so doing changed the title of said section from "Illegal Distribution of Cigarettes or Other Tobacco Products; Transaction Scans" to "Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternative Nicotine Products; Transaction Scans," as set out herein.

State law references—ORC 2927.021; ORC 2927.022; ORC 2927.023; ORC 2919.25

537.17 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 fourteen (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 of such persons, 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) 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.

(d) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender has previously been convicted of a violation of ORC 2905.05, 2907.02, 2907.03 or 2907.12, or ORC 2905.01 or 2907.05 when the victim of that prior offense was under seventeen (17) years of age at the time of the offense, criminal child enticement is a felony and shall be prosecuted under appropriate state law.

(e) As used in this section:

- (1) "Sexual motivation" has the same meaning as in ORC 2971.01.
- (2) "Vehicle" has the same meaning as in ORC 4501.01.
- (3) "Vessel" has the same meaning as in ORC 1547.01.

State law reference—ORC 2905.05

537.18 CONTRIBUTING TO UNRULINESS OR DELINQUENCY OF A CHILD.

(a) 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 as defined in ORC 2151.022, or a delinquent child as defined in ORC 2152.02.
- (2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child as defined in ORC 2151.022 or a delinquent child as defined in ORC 2152.02.
- (3) If the person is the parent, guardian, or custodian of a child who has the duties under ORC Chs. 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 ORC 2919.121, fail to ensure that the child complies with those duties under ORC Chs. 2152 and 2950.

(b) 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.

State law reference—ORC 2919.24

537.19 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 eighteen (18), or mentally or physically disabled child who is under age twenty-one (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 ORC 2151.04, or a neglected child, as defined in ORC 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 eighteen (18), or was mentally or physically disabled and under age twenty-one (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 twenty-six (26) weeks out of one hundred four (104) consecutive weeks, whether or not the twenty-six (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 ORC 2151.23, 2151.231, 2151.232, 2151.33, 3105.21, 3109.05, 3111.13, 3113.04, 3113.31 or 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.

State law reference—ORC 2919.21

537.20 INTERFERENCE WITH CUSTODY.

(a) No person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep or harbor a person identified in paragraph (a)(1), (2) or (3) hereof from the parent, guardian or custodian of the person identified in paragraph (a)(1), (2) or (3) hereof:

- (1) A child under the age of eighteen (18) or a mentally or physically handicapped child under the age of twenty-one (21);
- (2) A person committed by law to an institution for delinquent, unruly, neglected or dependent children;
- (3) A person committed by law to an institution for the mentally ill or mentally retarded.

(b) 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.

(c) It is an affirmative defense to a charge of enticing or taking under paragraph (a)(1) hereof that the actor reasonably believed that the actor's conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under subsection (a) hereof 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 the actor's shelter, protection or influence.

(d) Whoever violates any of the provisions of paragraph (a)(1) or subsection (b) hereof is guilty of a misdemeanor of the first degree, provided that the child who is the subject of a violation of paragraph (a)(1) hereof is not removed from the State and provided that the offender has not previously been convicted of an offense under this section and provided that the child who is the subject of a violation of paragraph (a)(1) hereof does not suffer physical harm as a result of the violation. A violation of paragraph (a)(2) or (a)(3) hereof is a misdemeanor of the third degree. A violation of subsection (b) hereof is a misdemeanor of the first degree. The penalty shall be as provided in Section 501.99. A separate offense shall be deemed committed each day during or on which a violation of subsection (b) hereof occurs or continues.

State law reference—ORC 2919.23

537.21 HAZING.

(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, which act causes or creates a substantial risk of causing mental or physical harm to any person.

(b) No person shall recklessly participate in the hazing of another.

(c) 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.

(d) Any person who is subjected to hazing, as defined in subsection (a) hereof, may commence a civil action for injury or damages, including mental and physical pain and suffering, that result from the hazing. The action may be brought against any participants in the hazing, any organization whose local or national directors, trustees or officers authorized, requested, commanded or tolerated the hazing, and any local or national director, trustee or officer of the organization who authorized, requested, commanded or tolerated the hazing. If the hazing involves students in a primary, secondary or post-secondary school, university, college or any other educational institution, an action may also be brought against any administrator, employee or faculty member of the school, university, college or other educational institution who knew or reasonably should have known of the hazing and who did not make reasonable attempts to prevent it and against the school, university, college or other educational institution. If an administrator, employee or faculty member is found liable in a civil action for hazing, then notwithstanding ORC Ch. 2743, the school, university, college or other educational institution that employed the administrator, employee or faculty member may also be held liable.

The negligence or consent of the plaintiff or any assumption of the risk by the plaintiff is not a defense to an action brought pursuant to this section. If an action against a school, university, college or other educational institution, it is an affirmative defense that the school, university, college or other institution was actively enforcing a policy against hazing at the time the cause of action arose.

(e) Whoever violates any of the provisions of this section is guilty of hazing, a misdemeanor of the fourth degree, and shall be subject to the penalty provided in Section 501.99.

(f) The penalty provided for in subsection (a) hereof shall be in addition to the civil remedy provided for in subsection (d) hereof.

State law references—ORC 2307.44; ORC 2903.31

537.22 INTIMIDATION IN CONNECTION WITH HOUSING.

(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 ORC 4112.01, national origin, military status as defined in that section, handicap, 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, 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 ORC 4112.01, military status as defined in that section, national origin, handicap, as defined in that section, or ancestry, in any of the activities, services, organizations or facilities described in paragraph (a)(1) hereof;
 - 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 ORC 4112.01, national origin, military status as defined in that section, handicap, as defined in that section, or ancestry, in any of the activities, services, organizations or facilities described in paragraph (a)(1) hereof, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(b) Whoever violates subsection (a) hereof is guilty of a misdemeanor of the first degree and shall be subject to the penalty provided in Section 501.99.

State law reference—ORC 2927.03

537.23 FAILING TO PROVIDE FOR A FUNCTIONALLY IMPAIRED PERSON.

(a) As used in this section and Section 537.03:

- (1) "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. "Caretaker" does not include a person who owns, operates or administers, or who is an agent or employee of, a care facility, as defined in ORC 2903.33.
- (2) "Functionally impaired person" means any person who has a physical or mental impairment that prevents him or her from providing for his or her own care or protection, or whose infirmities caused by aging prevent him or her from providing for his or her own care or protection.

(b) No caretaker shall knowingly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods or service that is necessary to maintain the health or safety of the functionally impaired person when such failure results in physical harm or serious physical harm to the functionally impaired person.

(c) No caretaker shall recklessly fail to provide a functionally impaired person under the caretaker's care with any treatment, care, goods or service that is necessary to maintain the health or safety of the functionally impaired person when such failure results in serious physical harm to the functionally impaired person.

(d) Whoever violates subsection (b) hereof is guilty of knowingly failing to provide for a functionally impaired person, a misdemeanor of the first degree, provided the functionally impaired person under the offender's care does not suffer serious physical harm as a result of the violation. The penalty shall be as provided in Section 501.99.

(e) Whoever violates subsection (c) hereof is guilty of recklessly failing to provide for a functionally impaired person, a misdemeanor of the second degree, provided the functionally impaired person under the offender's care does not suffer serious physical harm as a result of the violation. The penalty shall be as provided in Section 501.99.

State law references—ORC 2903.10; ORC 2903.16

537.24 FAILURE TO PERFORM VIABILITY TESTING.

(a) 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.

(b) 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 (a) of this section and the associated findings of the medical examination and tests in the medical record of the pregnant woman.

(c) Whoever violates this section is guilty of failure to perform viability testing, a misdemeanor of the fourth degree.

(d) The State Medical Board shall suspend a physician's license to practice medicine in this state for a period of not less than six (6) months if the physician violates this section.

State law reference—ORC 2919.18

537.25 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 ORC 1547.111(A)(1) or ORC 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 ORC 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 ORC 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.

State law reference—ORC 2927.15

537.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

PROOFS

CHAPTER 541 PROPERTY OFFENSES*

541.01	DETERMINING PROPERTY VALUE IN ARSON.
541.02	ARSON.
541.03	CRIMINAL DAMAGING OR ENDANGERING.
541.04	CRIMINAL MISCHIEF.
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541.06	DESTRUCTION OF SHRUBS, TREES OR CROPS.
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541.08	ETHNIC INTIMIDATION.
541.09	VEHICULAR VANDALISM.
541.99	PENALTY.

541.01 DETERMINING PROPERTY VALUE IN ARSON.

(a) The following criteria shall be used in determining the value of property or amount of physical harm involved in a violation of Section 541.02.

- (1) 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.
- (2) If the property is not covered under subsection (a)(1) hereof, 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.
- (3) If the property is not covered under subsection (a)(1) hereof, 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.

(b) As used in this section, "fair market value" has the same meaning as in Section 545.02(c)(3).

(c) Prima-facie evidence of the value of property, as provided in Section 545.02(d) may be used to establish the value of property pursuant to this section.

State law reference—ORC 2909.11

***Cross reference**—See sectional histories for similar state law

Parents' liability for destructive acts of their children - see ORC 3109.09

Physical harm to property defined - see GEN. OFF. 501.01(d), (f)

Reimbursement for investigation or prosecution costs - see GEN. OFF. 501.99(a)

Damage to sidewalks - see GEN. OFF. 521.04

Vehicle trespass - see GEN. OFF. 545.06

541.02 ARSON.

(a) No person, by means of fire or explosion, shall knowingly cause or create a substantial risk of physical harm to any property of another without the other person's consent.

(b) Whoever violates this section is guilty of arson. Except as otherwise provided in this division, violation of this section is a misdemeanor of the first degree. If the value of the property or the amount of physical harm involved is one thousand dollars (\$1,000.00) or more, then the violation is a felony to be prosecuted under appropriate state law.

State law reference—ORC 2909.03

State law reference—Aggravated arson, felony provisions, see ORC 2909.02

Arson, felony provisions generally, see ORC 2909.03

Convicted arsonist to make restitution to public agency, see ORC 2929.28

541.03 CRIMINAL DAMAGING OR ENDANGERING.

(a) No person shall cause, or create a substantial risk of physical harm to any property of another without the other person's consent:

- (1) Knowingly, by any means;
- (2) Recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.

(b) Whoever violates this section is guilty of criminal damaging or endangering, a misdemeanor of the second degree. If violation of this section 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 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 or if the property involved in a violation is an occupied aircraft, criminal damaging or endangering is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2909.06

541.04 CRIMINAL MISCHIEF.

(a) No person shall:

- (1) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper with the property of another;
- (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, all as defined in ORC 2909.01, 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) (1) Whoever violates this section is guilty of criminal mischief, and shall be punished as provided in subsection (c)(2) or (3) of this section.
- (2) Except as otherwise provided in this subsection, criminal mischief committed in violation of subsection (a)(1), (2), (3), (4) or (5) of this section is a misdemeanor of the third degree. Except as otherwise provided in this subsection, if the violation of subsection (a)(1), (2), (3), (4) or (5) of this section creates a risk of physical harm to any person, criminal mischief committed in violation of subsection (a)(1), (2), (3), (4) or (5) of this section is a misdemeanor of the first degree. If the property involved in the violation of subsection (a)(1), (2), (3), (4) or (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, criminal mischief committed in violation of subsection (a)(1), (2), (3), (4) or (5) of this section is a felony and shall be prosecuted under appropriate state law.

- (3) Except as otherwise provided in this subsection, criminal mischief committed in violation of subsection (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 subsection (a)(6) of this section or the loss to the victim resulting from the violation is one thousand dollars (\$1,000.00) or more, or if the computer, computer system, computer network, computer software, computer program or data involved in the violation of subsection (a)(6) of this section is used or intended to be used in the operation of an aircraft and the violation creates a risk of physical harm to any person, criminal mischief committed in violation of subsection (a)(6) of this section is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2909.07

541.05 CRIMINAL 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 such 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 ORC 2929.28, if the person, in committing the violation of this section, used a snowmobile, off-highway motorcycle or an all-purpose vehicle, the court shall impose a fine of two (2) times the usual amount imposed for the violation.
- (3) If an offender previously has been convicted of or pleaded guilty to two (2) or more violations of this section, ORC 2911.21 or a substantially equivalent municipal ordinance, and the offender, in committing each violation, used a snowmobile, off-highway motorcy-

cle 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 sixty (60) days. In such a case, ORC 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 ORC 4519.11.

(f) As used in this section:

- (1) "All-purpose vehicle," "off-highway motorcycle" and "snowmobile" have the same meanings as in ORC 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.

State law reference—ORC 2911.21

541.051 AGGRAVATED TRESPASS.

(a) 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.

(b) Whoever violates this section is guilty of aggravated trespass, a misdemeanor of the first degree.

State law reference—ORC 2911.211

541.06 DESTRUCTION OF SHRUBS, 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 any penalty provided, whoever violates this section is liable in treble damages for the injury caused.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

State law references—ORC 901.51; ORC 901.99(A)

541.07 DESECRATION.

(a) No person, without privilege to do so, shall purposely deface, damage, pollute or otherwise physically mistreat any of the following:

- (1) Any public monument;
- (2) Any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery, thing or site of great historical or archeological interest;

- (3) A place of worship, its furnishings, or religious artifacts or sacred texts within the place of worship or within the grounds upon which the place of worship is located;
- (4) A work of art or museum piece;
- (5) Any other object of reverence or sacred devotion.

(b) As used in this section, "cemetery" means any place of burial and includes burial sites that contain American Indian burial objects placed with or containing American Indian human remains.

(c) Whoever violates this section is guilty of desecration. A violation of division (a)(1), (2), (4) or (5) of this section is a misdemeanor of the second degree. A violation of division (a)(3) of this section is a felony to be prosecuted under appropriate state law.

State law reference—ORC 2927.11

541.08 ETHNIC INTIMIDATION.

(a) No person shall violate ORC 2903.21, 2903.22, 2909.06, 2909.07 or 2917.21(A)(3) to (5) or Sections 537.05, 537.06, 537.10(a)(3) to (5), 541.03 or 541.04 of the General Offenses Code 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.

State law reference—ORC 2927.12

541.09 VEHICULAR VANDALISM.

(a) As used in this section:

- (1) "Highway" means any highway as defined in Section 301.42 of the Traffic Code or any lane, road, street, alley, bridge, or overpass.
- (2) "Alley", "street", and "vehicle" have the same meanings as in Chapter 301 of the Traffic Code.
- (3) "Vessel" and "waters in this State" have the same meanings as in ORC 1547.01.

(b) No person shall knowingly, and by any means, drop or throw any object at, onto, or in the path of any of the following:

- (1) Any vehicle on a highway;
- (2) Any boat or vessel on any of the waters in this State that are located in the Municipality.

(c) Whoever violates this section is guilty of vehicular vandalism. Except as otherwise provided in this subsection, vehicular vandalism is a misdemeanor of the first degree. If the violation of this section creates a substantial risk of physical harm to any person, serious physical harm to property, physical harm to any person or serious physical harm to any person, vehicular vandalism is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2909.09

541.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

CHAPTER 545 THEFT AND FRAUD*

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545.01 DEFINITIONS.

As used in this chapter, unless the context requires that a term be given a different meaning:

(a) "Deception" means knowingly deceiving another or causing 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.

(b) "Defraud" means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

(c) "Deprive" means to do any of the following:

- (1) Withhold property of another permanently, or for such 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;

*Cross reference—See sectional histories for similar state law
 roperty defined - see GEN. OFF. 501.01(j)
 heating - see GEN. OFF. 517.05
 Falsification - see GEN. OFF. 525.02
 Impersonating a public servant - see GEN. OFF. 525.03

- (2) Dispose of property so as to make it unlikely that the owner will recover it;
- (3) 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.

(d) "Owner" means, 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.

(e) "Services" include labor, personal services, professional services, rental services, public utility services, including wireless service as defined in ORC 5507.01(F)(1), common carrier services, and food, drink, transportation, entertainment and cable television services.

(f) "Writing" means any computer software, document, letter, memorandum, note, paper, plate, data, film or other thing having in or upon it any written, typewritten or printed matter, and any token, stamp, seal, credit card, badge, trademark, label or other symbol of value, right, privilege, license or identification.

(g) "Forge" means 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.

(h) "Utter" means to issue, publish, transfer, use, put or send into circulation, deliver or display.

(i) "Coin machine" means any mechanical or electronic device designed to do both of the following:

- (1) Receive a coin, 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.

(j) "Slug" means 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.

(k) "Theft offense" means any of the following:

- (1) A violation of ORC 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 to 2913.45, 2913.47, 2913.48, former ORC 2913.47 or 2913.47, ORC 2913.51, 2915.05, or 2921.41, or ORC 4737.04(B)(2).
- (2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in subsection (k)(1) hereof or a violation of ORC 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 or attempt to commit, or complicity in committing any offense under subsection (k)(1), (2) or (3) hereof.

(l) "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.

(m) "Computer" means an electronic device that performs logical, arithmetic and memory functions by the manipulation of electronic or magnetic impulses. "Computer" 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.

(n) "Computer system" means 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.

(o) "Computer network" means 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.

(p) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(q) "Computer software" means computer programs, procedures and other documentation associated with the operation of a computer system.

(r) "Data" means 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. For purposes of Section 545.07, "data" has the additional meaning set forth in subsection (a) of that section.

(s) "Cable television service" means 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.

(t) "Gain access" means 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 ORC 2913.04.

(u) "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 ORC 301.29.

(v) "Electronic fund transfer" has the same meaning as in 92 Stat. 3728, 15 U.S.C.A. 1693a, as amended.

(w) "Rented property" means 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 generally is determined by the duration of possession of the property.

(x) "Telecommunication" means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence or any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method.

(y) "Telecommunications device" means 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.

(z) "Telecommunications service" means the providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system.

(aa) "Counterfeit telecommunications device" means 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. "Counterfeit telecommunications device" 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.

(bb) (1) "Information service" means, subject to subsection (bb)(2) hereof, 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) "Information service" does not include any use of a capability of a type described in subsection (bb)(1) hereof for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(cc) "Elderly person" means a person who is sixty-five (65) years of age or older.

(dd) "Disabled adult" means a person who is eighteen (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 twelve (12) months without any present indication of recovery from the impairment, or who is eighteen (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.

(ee) "Firearm" and "dangerous ordnance" have the same meanings as in ORC 2923.11.

(ff) "Motor vehicle" has the same meaning as in ORC 4501.01.

(gg) "Dangerous drug" has the same meaning as in ORC 4729.01.

(hh) "Drug abuse offense" has the same meaning as in ORC 2925.01.

(ii) "Police dog or horse" has the same meaning as in ORC 2921.321.

(jj) "Anhydrous ammonia" is a compound formed by the combination of two (2) gaseous elements, nitrogen and hydrogen, in the manner described in this subsection. Anhydrous ammonia is one part nitrogen to three (3) parts hydrogen (NH₃). Anhydrous ammonia by weight is fourteen (14) parts nitrogen to three (3) parts hydrogen, which is approximately eighty-two percent (82%) nitrogen to eighteen percent (18%) hydrogen.

(kk) "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.

(II) "Computer hacking."

(1) "Computer hacking" 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 known 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) "Computer hacking" does not include the introduction of a computer contaminant, as defined in this section, into a computer, computer system, computer program, or computer network.

(mm) "Emergency personnel." Means any of the following persons:

- (1) A peace officer, as defined in ORC 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 ORC 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.

(nn) "Internet." Has the same meaning as in ORC 341.42.

(oo) "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 or 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.

(pp) "Assistance dog" has the same meaning as in ORC 955.011.

(qq) "Federally-licensed firearms dealer." Has the same meaning as in ORC 5502.63.

State law reference—ORC 2909.01, 2913.01

545.02 DETERMINING PROPERTY VALUE IN THEFT OFFENSE.

(a) If more than one item of property or services is involved in a theft offense or in a violation of ORC 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 ORC 2913.61(A) is the aggregate value of all property or services involved in the offense.

- (b) (1) When a series of offenses under ORC 2913.02, or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of ORC 1716.14(A), 2913.02, 2913.03 or 2913.04, 2913.21(B)(1) or (B)(2), or 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. The value of the property or services involved in the series of offenses for the purpose of determining the value as required by ORC 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 ORC 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 ORC 1716.14(A), 2913.02, 2913.03 or 2913.04, 2913.21(B)(1) or (B)(2), or 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 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 ORC 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 (2) or more offenses under ORC 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 ORC 2913.61(A) is the aggregate value of all property and services involved in all of the offenses in the series of two (2) 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 ORC 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 the 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.

State law reference—ORC 2913.61(B)—(E)

545.03 PROPERTY EXCEPTIONS AS FELONY OFFENSE.

Regardless of the value of the property involved, and regardless of whether the offender has previously been convicted of a theft offense, the provisions of Section 545.05 or 545.18 do not apply 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 firearm or dangerous ordnance as defined in ORC 2923.11;

(d) A motor vehicle identification license plate as prescribed by ORC 4503.22, a temporary license placard or windshield sticker as prescribed by ORC 4503.182, or any comparable license plate, placard or sticker as prescribed by the applicable law of another state or the United States;

(e) A blank form for a certificate of title or a manufacturer's or importer's certificate to a motor vehicle, as prescribed by ORC 4505.07;

(f) A blank form for any license listed in ORC 4507.01(A).

State law reference—ORC 2913.71

545.04 DETENTION OF SHOPLIFTERS AND THOSE COMMITTING MOTION PICTURE PIRACY; RIGHTS OF MUSEUMS AND LIBRARIES.

(a) A merchant, or an employee or agent of a merchant, who has probable cause to believe that items offered for sale by a mercantile establishment have been unlawfully taken by a person, may, for the purposes set forth in subsection (c) hereof, detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity.

(b) Any officer, employee or agent of a library, museum or archival institution may, for the purposes set forth in subsection (c) hereof or for the purpose of conducting a reasonable investigation of a belief that the person has acted in a manner described in subsections (b)(1) and (2) hereof, 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 either:

- (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.

(c) An officer, agent or employee of a library, museum or archival institution pursuant to subsection (b) hereof or a merchant or an employee or agent of a merchant pursuant to subsection (a) hereof 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.

(d) 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 ORC 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.

(e) The officer, agent or employee of the library, museum or archival institution, or the merchant or an employee or agent of a merchant, or the owner, lessee, employee, or agent of the facility acting under subsection (a), (b) or (d) hereof 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.

(f) Any peace officer may arrest without a warrant any person that the officer has probable cause to believe has committed any act described in subsection (b)(1) or (2) hereof, 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 ORC 2913.07. An arrest under this subsection shall be made within a reasonable time after the commission of the act or unlawful taking.

(g) As used in this section:

- (1) "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.
- (2) "Audiovisual recording function" and "facility." Have the same meaning as in ORC 2913.07.
- (3) "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.
- (4) "Pretrial diversion program." Means a rehabilitative, educational program designed to reduce recidivism and promote personal responsibility that is at least four (4) hours in length and that has been approved by any court in this state.

State law reference—ORC 2935.041

545.05 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. 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 or services stolen is one thousand dollars (\$1,000.00) or more;
- (2) If the property stolen is any of the property listed in ORC 2913.71;
- (3) The victim of the offense is an elderly person or disabled adult;
- (4) The property stolen is a firearm or dangerous ordnance;
- (5) The property stolen is a motor vehicle;
- (6) The property stolen is any dangerous drug;
- (7) 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; or
- (8) The property stolen is anhydrous ammonia.

(c) In addition to the penalties described in subsection (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 subsection (c)(2) of this section applies, suspend for not more than six (6) months the offender's 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 subsection (c)(1) of this section, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in ORC 4510.02(A)(7), provided that the suspension shall be for at least six (6) 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 ORC 2929.18 or ORC 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 ORC 2913.72.

(e) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under subsection (c) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with ORC Ch. 4510.

State law reference—ORC 2913.02

State law reference—Felony theft provisions, see ORC 2913.02(B)

545.06 UNAUTHORIZED USE OF A VEHICLE; VEHICLE TRESPASS.

(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) This section does not apply to property removed from the State or if possession is kept for more than forty-eight (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 the actor 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) No person shall knowingly enter into or upon a motor vehicle, motorcycle or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.

(e) Whoever violates subsection (a) hereof is guilty of unauthorized use of a vehicle, 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 subsection (a) hereof is a felony and shall be prosecuted under appropriate state law.

(f) Whoever violates subsection (d) hereof is guilty of vehicle trespass, a misdemeanor of the fourth degree.

State law reference—ORC 2913.03

545.07 INSURANCE FRAUD.

(a) As used in this section:

- (1) "Data" has the same meaning as in Section 545.01 and additionally includes any other representation of information, knowledge, facts, concepts or instructions that are being or have been prepared in a formalized manner.
- (2) "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.
- (3) "Insurer" means any person that is authorized to engage in the business of insurance in this State under ORC Tit. XXXIX; The Ohio Fair Plan Underwriting Association created under ORC 3929.43; any health insuring corporation; and any legal entity that is self-insured and provides benefits to its employees or members.
- (4) "Policy" means a policy, certificate, contract or plan that is issued by an insurer.
- (5) "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.

(b) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do either of the following:

- (1) 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;
- (2) 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.

(c) Whoever violates this section 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 one thousand dollars (\$1,000.00) or more, insurance fraud is a felony to be prosecuted under appropriate state law.

(d) This section shall not be construed to abrogate, waive or modify ORC 2317.02(A).

State law reference—ORC 2913.47

545.08 UNAUTHORIZED USE OF 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) 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 ORC 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 ORC 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 ORC 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 \$500 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) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) "Cable operator." 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.

(2) "Cable service." 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 (f)(2)A. above;
- C. Any cable television service.

(3) "Cable system." 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. "Cable system" 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.

State law reference—ORC 2913.04

545.09 PASSING BAD CHECKS.

(a) As used in this section:

(1) "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 nonnegotiable 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.

(2) "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 had 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 thirty (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 (10) 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 ORC 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 the drawer has not been issued a valid driver's or commercial driver's license or identification card issued under ORC 4507.50;
- (2) Furnishing such 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 subsection (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 subsection (a) of this section within a period of one hundred eighty (180) consecutive days.

(f) Whoever violates this section is guilty of passing bad checks. Except as otherwise provided in this subsection, 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 one thousand dollars (\$1,000.00) 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 one thousand five hundred dollars (\$1,500.00) or more, passing bad checks is a felony to be prosecuted under appropriate state law.

State law reference—ORC 2913.11

545.10 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 ninety (90) consecutive days commencing on the date of the first violation, is one thousand dollars (\$1,000.00) 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.

State law reference—ORC 2913.21

545.11 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.

State law reference—ORC 2913.33

545.12 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 has previously been convicted of a violation of ORC 2911.32 or of any theft offense, tampering with coin machines is a felony and shall be prosecuted under appropriate state law.

State law reference—ORC 2911.32

545.13 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 ORC Chs. 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 ORC Chs. 4301 and 4303, or use more than once any wrapper, label, stamp, cork, or cap prescribed by the Liquor Control Commission under ORC Chs. 4301 and 4303.

- (4) Utter, or possess with purpose to utter, any object that the person knows to have been simulated as provided in subsection (a)(1), (2) or (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 one thousand dollars (\$1,000.00) or more, criminal simulation is a felony to be prosecuted under appropriate state law.

State law reference—ORC 2913.32

545.14 TAMPERING WITH RECORDS.

(a) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person 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 subsection (a)(1) hereof.

(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 one thousand dollars (\$1,000.00) 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 seven thousand five hundred dollars (\$7,500.00) 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.

State law reference—ORC 2913.42

545.15 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 one thousand dollars (\$1,000.00) or more, securing writings by deception is a felony to be prosecuted under appropriate state law. If the victim of the offense is an elderly person or disabled adult, securing writings by deception is a felony to be prosecuted under appropriate state law.

State law reference—ORC 2913.43

545.16 PERSONATING AN OFFICER.

(a) No person, with purpose to defraud or knowing that he 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.

State law reference—ORC 2913.44

545.17 DEFRAUDING CREDITORS.

(a) No person, with purpose to defraud one or more of the person's creditors, shall do any of the following:

- (1) Remove, conceal, destroy, encumber, convey or otherwise deal with any of the person's property.
- (2) Misrepresent or refuse to disclose to a fiduciary appointed to administer or manage the person's affairs or estate, the existence, amount or location of any of the person's property, or any other information regarding such property that the person 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 one thousand dollars (\$1,000.00) or more, defrauding creditors is a felony to be prosecuted under appropriate state law.

State law reference—ORC 2913.45

545.18 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 one thousand dollars (\$1,000.00) or more;
- (2) The property involved is any of the property listed in ORC 2913.71;
- (3) The property involved is a firearm or dangerous ordnance, as defined in ORC 2923.11;
- (4) The property involved is a motor vehicle as defined in ORC 4501.01; or
- (5) The property involved is any dangerous drug, as defined in ORC 4729.01.

State law reference—ORC 2913.51

545.19 POSSESSION OF CRIMINAL TOOLS.

(a) No person shall possess or have under the person's 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 dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials, or parts are intended for 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, 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 and shall be prosecuted under appropriate state law.

State law reference—ORC 2923.24

545.20 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 to have been forged.

- (3) 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.

(b) Whoever violates subsection (a) hereof is guilty of forging identification cards or selling or distributing forged identification cards. Except as otherwise provided in this subsection, forging 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 this section or ORC 2913.31 (B), 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 of not less than two hundred fifty dollars (\$250.00).

State law reference—ORC 2913.31

545.21 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 ORC Ch. 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 ORC Ch. 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 five hundred dollars (\$500.00) or more, interference with or diminishing forfeitable property is a felony to be prosecuted under appropriate state law.

State law reference—ORC 2981.07

545.22 MISCONDUCT INVOLVING A PUBLIC TRANSPORTATION SYSTEM.

(a) As used in this section, "public transportation system" means a county transit system operated in accordance with ORC 306.01 to 306.13, a regional transit authority operated in accordance with ORC 306.30 to 306.71, or a regional transit commission operated in accordance with ORC 306.80 to 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. A violation of subsection (b), (c), (d) or (f) hereof is a misdemeanor of the fourth degree. A violation of subsection (e) hereof is a misdemeanor of the third degree. The penalty shall be as provided in Section 501.99. Notwithstanding any other provision of law, seventy-five percent (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 twenty-five percent (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 percent (100%) of each fine shall be deposited into the Treasury of the County.

State law reference—ORC 2917.41

545.23 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) Subsection (a) hereof 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.

(d) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor and shall be subject to the penalty provided in Section 501.99.

State law references—ORC 1349.17; ORC 1349.99

545.24 MOTION PICTURE PIRACY.

(a) As used in this section:

- (1) "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.
- (2) "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.

State law reference—ORC 2913.07

545.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

PROOFS

CHAPTER 549 WEAPONS AND EXPLOSIVES*

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549.01 DEFINITIONS.

As used in this chapter:

- (a) "Deadly weapon" means 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.
- (b) (1) "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" 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.
- (c) "Handgun" means 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 subsection (c)(1) of this section can be assembled.

*Cross reference—See sectional histories for similar state law

Return of surrendered firearms by law enforcement - see ORC 2923.163

License or permit to possess dangerous ordnance - see ORC 2923.18

Hunting prohibited - see GEN. OFF. 505.11

Reporting gunshot and stab wounds - see GEN. OFF. 525.05(b)

Property destruction by tear gas device, etc. - see GEN. OFF. 541.04

(d) "Semi-automatic firearm" means 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.

(e) "Automatic firearm" means any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. "Automatic firearm" also means any semi-automatic firearm designed or specially adapted to fire more than thirty-one (31) cartridges without reloading, other than a firearm chambering only .22 caliber short, long or long-rifle cartridges.

(f) "Sawed-off firearm" means a shotgun with a barrel less than eighteen (18) inches long, or a rifle with a barrel less than sixteen (16) inches long, or a shotgun or rifle less than twenty-six (26) inches long overall.

(g) "Zip-gun" means any of the following:

- (1) Any firearm of crude and extemporized manufacture;
- (2) Any device, including without limitation a starter's pistol, that is not designed as a firearm, but that is specially adapted for use as a firearm;
- (3) Any industrial tool, signalling device or safety device, that is not designed as a firearm, but that as designed is capable of use as such, when possessed, carried or used as a firearm.

(h) "Explosive device" means 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. "Explosive device" 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.

(i) "Incendiary device" means 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 agency and a means to ignite it.

(j) "Ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(k) "Dangerous ordnance" means any of the following, except as provided in subsection (l) hereof:

- (1) Any automatic or sawed-off firearm, zip-gun or ballistic knife;
- (2) Any explosive device or incendiary device;
- (3) 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;

- (4) 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;
- (5) Any firearm muffler or silencer;
- (6) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.
- (l) "Dangerous ordnance" does not include any of the following:
 - (1) 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;
 - (2) 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;
 - (3) 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;
 - (4) Black powder, priming quills and percussion caps possessed and lawfully used to fire a cannon of a type defined in subsection (l)(3) hereof 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;
 - (5) 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.
 - (6) Any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C.921(a)(4), as amended, and regulations issued under that Act.

(m) "Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" 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. "Explosives" does not include "fireworks," as defined in ORC 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 ORC 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including, but not limited to, the provisions of ORC 3743.80 and the rules of the Fire Marshal adopted pursuant to ORC 3737.82.

(n) "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 ORC 2923.125 or ORC 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 ORC 109.69.

(2) A reference in any provision of this Code to a concealed handgun license issued under ORC 2923.125 or a license to carry a concealed handgun issued under ORC 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 ORC 2923.1213, a license to carry a concealed handgun issued under ORC 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 ORC 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 ORC 109.69.

(o) "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 ORC 2923.128(A)(1), under ORC 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 ORC 2923.128(B)(1), under ORC 2923.1213, or under a revocation provision of the state other than this state in which the license was issued.

State law reference—ORC 2923.11

549.02 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 ORC 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 ORC 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 ORC 2923.11(G) to (M), in the actor's own home for any lawful purpose.
- (2) Subsection (a)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid concealed handgun license, unless the person knowingly is in a place described in ORC 2923.126(B).

(d) It is an affirmative defense to a charge under subsection (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 division (f)(2) 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 division (f)(2) 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 division (f)(2) 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) If a person being arrested for a violation of subsection (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 ORC 2923.126(B), the officer shall not arrest the person for a violation of that subsection. 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 subsection, 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 ten (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 ORC 2923.126(B).
 - B. The offender shall be guilty of a misdemeanor and shall be fined five hundred dollars (\$500.00) if all of the following apply:
 1. The offender previously had been issued a concealed handgun license, and that license expired within the two (2) years immediately preceding the arrest.
 2. Within forty-five (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 ORC 2945.71.
 3. At the time of the commission of the offense, the offender was not knowingly in a place described in ORC 2923.126(B).
 - C. If neither division (f)(2)A. nor (f)(2)B. of this section applies, the offender shall be punished under division (f)(2) 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 ORC 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 ORC 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 ORC 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.
- (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, ORC 2923.163(B) applies.

State law reference—ORC 2923.12

549.03 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.

State law reference—ORC 2923.15

549.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.

(a) No person shall knowingly discharge a firearm while in or on a motor vehicle.

(b) Unless in compliance with ORC 2923.16, 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 twenty-four (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 eighteen (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 ORC 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, 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 ORC 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 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 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 ORC 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 ORC 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 ORC 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 ORC 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 carrying a valid concealed handgun license.
 - B. The person transporting or possessing the handgun is not knowingly in a place described in ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 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 ORC 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, ORC 2923.163(B) applies.

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

- (1) "Agriculture." Has the same meaning as in ORC 519.01.
- (2) "Commercial motor vehicle." Has the same meaning as in ORC 4506.25(A).
- (3) "Motor carrier enforcement unit." The Motor Carrier Enforcement Unit in the Department of Public Safety, Division of State Highway Patrol, that is created by ORC 5503.34.
- (4) "Motor vehicle," "street" and "highway." Have the same meaning as in ORC 4511.01.
- (5) "Occupied structure." Has the same meaning as in ORC 2909.01.
- (6) "Tenant." Has the same meaning as in ORC 1531.01.
- (7) "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.

(Ord. O-07-2014. Passed 3-18-14.)

State law reference—ORC 2923.16

549.05 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 secure dangerous ordnance, a misdemeanor of the second degree.

State law reference—ORC 2923.19

549.06 UNLAWFUL TRANSACTIONS IN WEAPONS.

(a) No person shall:

- (1) Recklessly sell, lend, give, or furnish any firearm to any person prohibited by ORC 2923.13 or 2923.15 from acquiring or using any firearm, or recklessly sell, lend, give, or furnish any dangerous ordnance to any person prohibited by ORC 2923.13, 2923.15, or 2923.17 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) 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 to be authorized to acquire dangerous ordnance pursuant to ORC 2923.17, or negligently fail to take a complete record of the transaction and forthwith forward a copy of that 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 or under the person's control.

(b) Whoever violates this section is guilty of unlawful transactions in weapons. A violation of division (a)(1) or (2) of this section is a felony to be prosecuted under appropriate state law. A violation of division (a)(3) or (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.

(Ord. O-07-2014. Passed 3-18-14.)

State law reference—ORC 2923.20

549.07 UNDERAGE PURCHASE OF FIREARM.

(a) No person under eighteen (18) years of age shall purchase or attempt to purchase a firearm.

(b) No person under twenty-one (21) years of age shall purchase or attempt to purchase a handgun, provided that this subsection does not apply to the purchase or attempted purchase of a handgun by a person eighteen (18) years of age or older and under twenty-one (21) years of age if the person eighteen (18) years of age or older and under twenty-one (21) years of age is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the Ohio Peace Officer Training Council or equivalent firearms training.

(c) Whoever violates subsection (a) hereof is guilty of underage purchase of a firearm, a delinquent act that would be a felony of the fourth degree if it could be committed by an adult. Whoever violates subsection (b) hereof is guilty of underage purchase of a handgun, a misdemeanor of the second degree.

State law reference—ORC 2923.211

549.08 DISCHARGING FIREARMS.

(a) No person shall discharge any air gun, rifle, shotgun, revolver, pistol or other firearm within the corporate limits of the Municipality.

(b) This section does not apply when firearms are used in self defense, in the discharge of official duty or when otherwise lawfully authorized.

(c) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

549.09 THROWING OR SHOOTING MISSILES.

(a) No person shall throw, shoot or propel an arrow, missile, pellet, stone, metal or other similar substance capable of causing physical harm to persons or property, in or on any public place, in or on the property of another, or from any private property into or onto any public place or the property of another. This section does not apply to supervised archery ranges or instruction nor when otherwise lawfully authorized.

(b) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

549.10 POSSESSING REPLICA FIREARM IN SCHOOL.

(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, or a law enforcement officer, who is authorized to carry deadly weapons or dangerous ordinance and is acting within the scope of the officer's, agent's, or employee's duties, 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. The person is carrying a valid concealed handgun license.

(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, reenactment, or other dramatic presentation, 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 license or temporary emergency license to carry a concealed handgun issued to the person under ORC 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another State with which the Attorney General has entered into a reciprocity agreement under ORC 109.69.

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 ORC 2923.126(B)(1) or (B)(3) to (10).

(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.

B. The person is the driver or passenger in a motor vehicle and is in the school safety zone while immediately in the process of picking up or dropping off a child.

C. The person is not in violation of ORC 2923.16.

(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 subsection, 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 ORC 2923.122, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony and shall 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 subsection (d)(2) of this section, if the offender has not attained nineteen (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 ORC 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 division (A)(4) of ORC 4510.02 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 division (A)(4) of ORC 4510.02.

- (2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits, or privileges specified in subsection (d)(1) of this section or deny the issuance of one of the temporary instruction permits specified in that subsection, the court in its discretion may choose not to impose the suspension, revocation, or denial required in that subsection, 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.

State law reference—ORC 2923.122(C)—(G)

549.11 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.

(b) Additional Restrictions. Pursuant to ORC 2923.126:

- (1) A. A concealed handgun license that is issued under ORC 2923.125 shall expire five (5) years after the date of issuance. A licensee who has been issued a license under that

section shall be granted a grace period of thirty (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 ORC 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 forty-five (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 ORC 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 ORC 5503.04 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 ORC 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 ORC 2923.12(B) or in any manner prohibited under ORC 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, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to ORC 5119.02(A) or ORC 5123.03(A)(1);
 - B. A school safety zone if the licensee's carrying the concealed handgun is in violation of ORC 2923.122;
 - C. A courthouse or another building or structure in which a courtroom is located, in violation of ORC 2923.123;
 - D. Any premises or open air arena for which a D permit has been issued under ORC Ch. 4303 if the licensee's carrying the concealed handgun is in violation of ORC 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;
 - 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. A child day-care center, a type A family day-care home, or a type B family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home, or a type B family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;
 - H. An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;
 - I. 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;

- J. 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. As used in this division, "private employer" includes a private college, university, or other institution of higher education.
2. A political subdivision shall be immune from liability in a civil action, to the extent and in the manner provided in ORC Ch. 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 ORC 2744.01.
- C. 1. 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 ORC 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 in violation of ORC 2911.21(A)(4) and instead is subject only to a civil cause of action for trespass based on the violation.

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:
 - a. "Residential premises" has the same meaning as in ORC 5321.01, except "residential premises" does not include a dwelling unit that is owned or operated by a college or university.
 - b. "Landlord", "tenant", and "rental agreement" have the same meanings as in ORC 5321.01.

(4) A person who holds a concealed handgun license issued by another State that is recognized by the Attorney General pursuant to a reciprocity agreement entered into pursuant to ORC 109.69 has the same right to carry a concealed handgun in this State as a person who was issued a concealed handgun license under ORC 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that section.

(5) 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 ORC 2923.125. For purposes of reciprocity with other States, a peace officer shall be considered to be a licensee in this State.

;(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 ORC 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 fifteen (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 ORC 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 ORC 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 (5) 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 (5) 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 ORC 109.801 may be required to pay the cost of the program.
- A. "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 ORC Ch. 4503 that is used to perform deputy registrar functions.
- B. "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.

- C. "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.

(c) Posting of Signs Prohibiting Possession. Pursuant to ORC 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 ORC 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 ORC 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 ORC 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 ORC 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.

State law references—ORC 2923.126; ORC 2923.1211(B), (C); ORC 2923.1212

549.12 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.

State law reference—ORC 2923.201

549.99 PENALTY.

Editor's note—See Section 501.99 for penalties applicable to any misdemeanor classification.

PART SEVEN - BUSINESS REGULATION CODE

Chapter 705	Alarm Systems
Chapter 733	Mechanical Amusement Devices
Chapter 739	Peddlers and Solicitors
Chapter 741	Seasonal Businesses
Chapter 743	Sexually Oriented Business Establishments
Chapter 745	Smoking Prohibitions
Chapter 747	Sales Prohibitions to Individuals Under Age Twenty-one (21)

CHAPTER 705 ALARM SYSTEMS*

705.01	DEFINITIONS.
705.02	ALARM USER PERMIT REQUIRED.
705.03	PERMIT APPLICATION.
705.04	SYSTEM STANDARDS.
705.05	ALARM VALIDITY DETERMINATION.
705.06	FALSE ALARM PROHIBITED.
705.07	PERMIT REVOCATION.
705.08	EXEMPTIONS.
705.99	PENALTY.

705.01 DEFINITIONS.

The following words and phrases, when used in this chapter, shall have the following meanings respectively ascribed to them in this section:

(a) "Alarm system" means any assembly of equipment, mechanical or electrical, arranged to signal audibly, visibly or electronically, to a location outside the structures protected by the system or to a monitoring station that in turn notifies the appropriate agency, the occurrence of an illegal entry or other activity requiring urgent attention to which the Police Department must respond.

(b) "Alarm user" means the person, partnership, corporation or any other entity in control of any building, structure or facility, or any portion thereof, which is protected by an alarm system.

(c) "Audible alarm" means any alarm system that has been designed to emit its signal by bell, whistle, siren or other device to the immediate area near the structure that it protects. An audible alarm shall be considered as such if it transmits a signal to an additional location.

(d) "Automatic dialer" means any alarm system that has been designed to emit its signal directly to the Police Department by means of dialing a telephone number at the Police Department and giving a tape recorded message or synthesized voice message, intended to elicit a response.

(e) "False alarm" means an alarm system signal or message eliciting an urgent response by the Police Department when a situation requiring such response by the police does not exist. An alarm that was activated because of testing or repair shall not be considered as a false alarm if prior notification was given on the day of the repairs or test to the Police Department.

(f) "Interconnected alarm system" means an alarm system that directly or indirectly, automatically or manually, uses a telephone line to transmit an alarm or message upon activation of the alarm system, including automatic dialing devices and building alarms connected to a private central operator who reports alarm calls to the Police Department.

(Ord. 33-93. Passed 7-6-93.)

705.02 ALARM USER PERMIT REQUIRED.

(a) No person shall install, operate or allow in the premises under his control the operation of an alarm system unless such person first obtains a valid alarm user permit. This requirement shall be the responsibility of the owner unless the occupant of the property is different from the owner, in which case it shall be the responsibility of both.

*Cross reference—Making false alarms - see GEN. OFF. 509.07

(b) If an alarm user has more than one alarm system protecting two (2) or more separate structures having different addresses, a separate permit shall be required for each system. All addresses shall be stated on the alarm user application.

(c) No posting of the alarm user permit or the posting of any other evidence of registration shall be required.

(Ord. 33-93. Passed 7-6-93.)

705.03 PERMIT APPLICATION.

(a) Applications for alarm user permits shall be made on forms provided by the Chief of Police or his designee. The application shall include the name, address and telephone number of the property to be serviced by the alarm, and the name, address, and telephone number of the owner of the property (including business phone number) and central station phone number of applicant's alarm company, if any.

(b) Each application for an alarm user permit for an alarm system that pertains to a residence shall provide at least one other name and telephone number of a person to be contacted in an emergency when the user is unavailable. Each application for an alarm user permit for any alarm system that pertains to a building, structure or facility other than a residence shall provide at least three (3) such names, unless such facility employs less than three (3) persons. An alarm monitoring company name may be substituted for a required name, if a contractual arrangement exists between the user and the monitoring company.

(c) Each holder of an alarm user permit shall, within ten (10) days of any change of the information on the alarm user permit application, notify the Chief of Police in writing of any changes in the information on the application.

(d) Each application for an alarm user permit shall contain an agreement to submit to the assessment schedule given in Section 705.06. Failure to agree to this provision shall be cause to deny issuance of an alarm user permit or, if one was issued, shall be cause to revoke any such alarm user permit.

(e) No person, organization or business shall remove or otherwise terminate an alarm system in the Municipality without notifying the Chief of Police or his designee, in writing, of removal or termination of the given alarm system, within thirty (30) days of termination.

(f) When there has occurred any material change in the information previously submitted with respect to such alarm system it shall be the duty of the occupant of a building, served by an alarm system, within ten (10) days after a change of information previously submitted to the Municipality to file an application supplement containing accurate, current information with respect to the data required by the Chief of Police or his designee.

(g) The information contained in an alarm user permit application shall be securely maintained and restricted to inspection by the Chief of Police or his designated representatives.

(Ord. 10-2003. Passed 2-18-03.)

705.04 SYSTEM STANDARDS.

(a) The Chief of Police, or his designee, shall have the authority, at reasonable times and upon oral notice, to enter upon any premises within the Municipality to inspect only the installation and operation of an alarm system the purpose of which is to report an emergency to the police.

In the event the premise to be inspected is a private dwelling such inspection shall only be done between the hours of 8:00 a.m. and 8:00 p.m. and only if the notice is in written form addressed to the permit holder and presented to a responsible adult. Under this chapter, such residences are only subject to the above inspection after three (3) false alarms have originated from them. The written notice shall cite the specific false alarm history of that permit. Failure to allow reasonable inspection of an alarm system may be grounds for revocation of the alarm permit.

(b) The Chief of Police, or his designee, may require that repairs or adjustments be made whenever he has determined that such repairs are necessary to assure proper operation. Failure to make such repairs or adjustments may be grounds for revocation of the alarm permit.

(c) No alarm user permit shall be issued for any alarm system that can be activated by a failure in the electrical current from the utility. Systems shall be equipped with a secondary power source that shall hold the alarm readiness for a minimum of one hundred twenty (120) minutes or shall be rendered inoperable by such power interruption.

(d) No alarm user permit shall be issued or renewed for any audible alarm or automatic dialer alarm system designed to detect an intrusion that does not have an automatic cutoff that ceases the alarm signals within fifteen (15) minutes after activation.

(e) No alarm user permit shall be issued by the Police Department for an installation of an automatic dialer alarm system.

(f) The equipment shall meet standards as set forth by the State and the Chief of Police and the applicants may be required to submit evidence of the reliability and suitability of the equipment to be installed.

(Ord. 33-93. Passed 7-6-93.)

705.05 ALARM VALIDITY DETERMINATION.

(a) Whenever an alarm is activated, requiring an emergency response to the location by the Police Department, a police officer shall inspect the areas protected by the system and shall determine whether the emergency response was required as suggested by the alarm system.

(b) If the inspecting police officer finds the signal to be a false alarm, the police officer shall make a report of the false alarm to the Chief of Police. A warning citation will be issued to the holder of the user's permit after the second false alarm in a calendar year.

(Ord. 33-93. Passed 7-6-93.)

705.06 FALSE ALARM PROHIBITED.

(a) Each false alarm response shall constitute a separate false alarm. Any response to a false alarm to a municipal address by another agency, in lieu of response by New Albany Police because of mutual aid or automatic response agreements, shall constitute a false alarm.

(b) No service fee shall be assessed for the first three (3) false alarms per calendar year for each alarm user permit.

(c) Each false alarm in excess of three (3) in a calendar year shall be assessed by the Chief or his designee, and a service fee shall be charged in accordance with the Village of New Albany Schedule of Fees and Services Charges.

(d) No person who is either the holder of an alarm user permit or responsible for the alarm system operation shall negligently allow such alarm to register nine (9) or more false alarms within a calendar year.

(Ord. 10-2003. Passed 2-18-03.)

705.07 PERMIT REVOCATION.

(a) An alarm user permit shall be reviewed for possible revocation by the Chief or his designee for any of the following reasons:

- (1) Any false alarms in excess of six (6) false alarms in a calendar year.
- (2) Failure to remit the service fee required by Section 705.06 within thirty (30) days of receipt of invoice.
- (3) Falsification of any information on an application for issuance of renewal of an alarm user permit.
- (4) Failure to notify the Chief of changes in permit information as required by Section 705.03 (c).

(b) Before an alarm user's permit may be revoked a hearing must be held before the Chief of Police or his designee. A notice setting forth the time, place and nature of the hearing shall be sent out to the alarm permit holder not less than seven (7) days before such hearing.

(c) After such hearing the Chief of Police, or his designee, shall either dismiss the case or shall forward a recommendation of revocation or suspension to the Administrator. Within ten (10) days after receiving a recommendation, the Administrator shall approve or disapprove the recommendation and notify the permit holder accordingly.

(d) At the end of the revocation or suspension period the alarm permit holder will be required, if the holder intends to continue using his or her alarm system, to refile an application and have it approved by the Chief of Police, or his designee.

(Ord. 33-93. Passed 7-6-93.)

705.08 EXEMPTIONS.

The provisions of this chapter are not applicable to home burglary alarms not intended to be heard outside the dwelling unit.

(Ord. 33-93. Passed 7-6-93.)

705.99 PENALTY.

(a) Whoever violates Section 705.02 (a) is guilty of a minor misdemeanor.

(b) Whoever violates Section 705.06 (e) is guilty of a misdemeanor of the fourth degree.

(c) Whoever violates Section 705.06 (c) or (d) shall be assessed the fee stated in that section and shall face further penalties as outlined in Section 705.07.

(d) All other violations of sections in the chapter shall be grounds for suspension or revocation of alarm user permits and shall carry no other penalty.

(Ord. 33-93. Passed 7-6-93.)

CHAPTER 733 MECHANICAL AMUSEMENT DEVICES*

733.01	DEFINITIONS.
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733.03	LICENSE ISSUANCE; RENEWALS.
733.04	LICENSE DENIAL.
733.05	EXEMPTIONS.
733.06	LICENSE APPLICATION.
733.07	ISSUANCE RESTRICTIONS.
733.08	LICENSE FOR ONE DEVICE OR FOR GROUP OF DEVICES.
733.09	LICENSE PER ARCADE.
733.10	FEES.
733.11	ADDITIONAL DEVICES AND ARCADES.
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733.14	LICENSE AND REGISTRATION INFORMATION.
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733.17	TAG TO BE DISPLAYED ON EACH MACHINE.
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733.19	PROHIBITED DEVICES.
733.20	RECORDS.
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733.22	TRANSFER OF LICENSE AND REGISTRATION.
733.23	GENERAL PROHIBITIONS.
733.99	PENALTY.

733.01 DEFINITIONS.

For the purposes of this chapter, the following words are defined and shall have the meaning ascribed to them as hereafter set forth unless the context clearly requires a different meaning:

(a) "Amusement arcade" means any place of business at which five (5) or more mechanical or electrically operated amusement devices are located for the use of entertainment of persons patronizing the place of business.

(b) "Exhibitor" means any person owning and exhibiting or contracting or permitting any mechanical amusement device as defined in subsection (d) hereof, to be installed, used and exhibited in his own place of business irrespective of the ownership of such device.

(c) "Good moral character" means not having been convicted of a crime involving moral turpitude within five (5) years next preceding the date of the application.

(d) "Mechanical" or "electrically operated amusement device" means a machine, device or instrument which, upon the insertion of a coin, token or slug, operates or may be operated for use as a game, contest of skill or amusement of any description, and which in no way tends to encourage gambling and which in no way violates Chapter 517 as the same is now enacted or as such chapter may hereafter be amended. This definition is not intended to and does not include merchandise vending machines.

*Cross reference—Making or using slugs - see GEN. OFF. 545.11
 Tampering with coin machines - see GEN. OFF. 545.12

(e) "Owner" means any person having title to any mechanical amusement device or amusement arcade as hereinabove defined.

(Ord. 10-82. Passed 5-25-82.)

733.02 LICENSE REQUIRED.

No owner or exhibitor shall install or permit the use of any coin-operated mechanical amusement device, or "skill pool" devices, and no owner or other person shall operate an amusement arcade without first obtaining an exhibitor's license or an amusement arcade license from the Administrator or his designee.

(Ord. 10-82. Passed 5-25-82.)

733.03 LICENSE ISSUANCE; RENEWALS.

The Administrator or his designee is authorized to issue licenses to owners and exhibitors of coin-operated mechanical amusement devices, upon compliance with the requirements set forth in this chapter. This is to include coin-operated pool or billiard tables, commonly known as "skill pool" tables. No license shall be issued under the provisions of this chapter to any applicant unless the Administrator or his designee has found that such applicant is of good moral character. The lack of such qualification on the part of the applicant shall be deemed grounds for denial or revocation of such license by the Administrator or his designee.

License(s) may be renewed for one year upon reapplication, payment of the fees established in Section 733.10 and upon a finding of past compliance with the provisions of this chapter.

(Ord. 10-82. Passed 5-25-82.)

733.04 LICENSE DENIAL.

The Administrator or his designee is authorized and empowered to deny, for reasonable cause, applications for licenses.

(Ord. 10-82. Passed 5-25-82.)

733.05 EXEMPTIONS.

No license fee shall be charged for mechanical amusement devices exhibited or amusement arcades operated solely for the benefit of a charitable, benevolent, religious or eleemosynary institution.

(Ord. 10-82. Passed 5-25-82.)

733.06 LICENSE APPLICATION.

Every owner or other person, corporation, lodge or association desiring to obtain any exhibitor's license or licenses shall file an application with the Administrator or his designee upon a form to be prescribed by him, prior to the receiving of any such license or licenses, stating the number of

coin-operated machines intended to be exhibited and including information as to the applicant's arrest record over the five (5) year period immediately prior to the date of application, such application to include also an affidavit as to the good moral character of the applicant.
(Ord. 10-82. Passed 5-25-82.)

733.07 ISSUANCE RESTRICTIONS.

The Administrator or his designee is authorized and empowered to establish, adopt and enforce, or cause to be enforced, such rules and regulations governing the issuance of the licenses and registrations required under this chapter as he may deem reasonable and necessary and not inconsistent with the provisions of this chapter.

Applicants for licenses under this chapter, as provided in Section 733.03 shall be of good moral character. The Administrator or his designee shall adopt and enforce a rule or regulation requiring an affidavit by each applicant relative to any arrest or conviction of such applicant for any crime involving morals or moral turpitude within a period of five (5) years immediately preceding the date of application.
(Ord. 10-82. Passed 5-25-82.)

733.08 LICENSE FOR ONE DEVICE OR FOR GROUP OF DEVICES.

The Administrator or his designee may issue licenses for one coin-operated mechanical amusement device or skill pool table or for more than one such device on the same license blank, in case one person or company is the owner of several machines, which it desires to exhibit at different locations. However, for each machine licensed, a numbered tag shall be issued to the licensee for each machine so covered. Such tags are to be provided by the Administrator or his designee, one for each machine so licensed, and one is to be attached to each machine exhibited, for identification purposes.

In addition thereto, each owner requesting a group license shall file with his application a list of the machines to be licensed, showing the names of each exhibitor, the address of each exhibitor, the number of machines to be exhibited at each address, the nature of the business to be conducted at each place of exhibit, the make, name, model and other identifying information relative to the machines to be exhibited. Each group license issued shall show the numbers of the tags issued to cover such licensed machines. The license fee for a group license shall be the product of the number of machines licensed, times the fee for one license.
(Ord. 10-82. Passed 5-25-82.)

733.09 LICENSE PER ARCADE.

Each amusement arcade shall be licensed and registered as such amusement arcade and a license and registration therefor shall be required in addition to, and independent of, the license and registration required herein for individual mechanical amusement devices.
(Ord. 10-82. Passed 5-25-82.)

733.10 FEES.

(a) The fees for licenses and registrations shall be paid at the time of the issuance and shall be as follows:

- (1) Mechanical or electrically operated amusement devices: in accordance with the Village of New Albany Schedule of Fees and Service Charges.
- (2) Amusement Arcade: a fee in accordance with the Village of New Albany Schedule of Fees and Service Charges per year for each place of business. Such fee shall be in addition to and independent of machine or exhibitor's fees.

(b) The license fees paid for a calendar year for mechanical or electronically operated amusement devices licensed under subsection (a) hereof shall be prorated as follows:

- (1) If such application is filed and the device placed on exhibit prior to April 1, the fee shall be in accordance with the Village of New Albany Schedule of Fees and Service Charges for the full year.
- (2) If such application is filed and the device placed on exhibit after April 1, and prior to July 1, the fees shall be in accordance with Village of New Albany Schedule of Fees and Service Charges to cover the nine (9) month period of the year.
- (3) If such application is filed and the device placed on exhibit after July 1 and prior to October 1, the fee shall be in accordance with the Village of New Albany Schedule of Fees and Service Charges to cover the six (6) month period of the year.
- (4) If the application is filed and the device is placed on exhibit after October 1, the fee shall be in accordance with the Village of New Albany Schedule of Fees and Service Charges for the balance of the year.

(Ord. 43-2002. Passed 12-10-02.)

733.11 ADDITIONAL DEVICES AND ARCADES.

A licensee, desiring to exhibit additional mechanical amusement devices or operate additional amusement arcades during the license period, shall apply for a license and registration to cover the exhibition of such additional mechanical amusement devices or the operation of such additional amusement arcades in the manner above set forth, and shall pay the fees required by Section 733.10 for the exhibition of any such additional mechanical amusement device or the operation of any such additional amusement arcades.

(Ord. 10-82. Passed 5-25-82.)

733.12 AFFIDAVIT REQUIRED; FALSE AFFIDAVIT.

The exhibitor shall be required to furnish the Administrator or his designee with the name of the owner of each mechanical amusement device. In the event the exhibitor is also the owner of such device, he shall file an affidavit with the Administrator or his designee setting forth that he is the

actual bona fide owner of such mechanical amusement device and that, as such owner, he receives all the benefits from the operation thereof and that no other person has any actual or beneficial interest therein, either directly or indirectly.

Any person who swears falsely in any affidavit required to be made under the terms of this chapter shall be subject to the penalties provided therefor by state law.

(Ord. 10-82. Passed 5-25-82.)

733.13 GAMBLING DEVICES.

The Administrator or his designee shall not issue a license or a registration to any exhibitor, person or entity for any machine, device or instrument without first having received a certificate from the Chief of Police that the machine, device or instrument is not in any manner in violation of Chapter 517 or as such chapter may hereafter be amended.

(Ord. 10-82. Passed 5-25-82.)

733.14 LICENSE AND REGISTRATION INFORMATION.

Upon payment of the fees required by Section 733.10, the Administrator or his designee shall issue a license and registration which shall contain the name and address of the licensee, the number of mechanical amusement devices exhibited or amusement arcades intended to be operated, the address at which it is desired to exhibit and operate the devices, the nature of the business conducted at such place, the make, name, model and other identifying information with reference to the particular devices desired to be exhibited, the serial number of the license, and such other further information as the Administrator or his designee, in his discretion may require.

(Ord. 10-82. Passed 5-25-82.)

733.15 LICENSE EXPIRATION.

All licenses for one year shall expire on December 31 of each year unless earlier revoked by the Administrator or his designee. All amusement arcade licenses issued for a one hundred eighty-two (182) day period shall expire at the close of business on the one hundred and eighty-second (182nd) day after issuance, unless earlier revoked by the Administrator or his designee.

(Ord. 10-82. Passed 5-25-82.)

733.16 SUSPENSION OR REVOCATION; HEARINGS.

The license of any person violating any of the terms of this chapter or any of the rules and regulations established and adopted by the Administrator or his designee as provided in Section 733.07 except those relating to the exhibition or operation of such machine, device, or amusement arcade for gambling, shall, for the first violation, be suspended by the Administrator or his designee for not less than ten (10) nor more than thirty (30) days; for the second violation the license shall be suspended by the Administrator or his designee for not less than thirty (30) nor more than sixty (60) days; for the third violation, the license shall be revoked by the Administrator or his designee. For the violation of the terms of this chapter or the rules and regulations

established and adopted by the Administrator or his designee relating to the exhibition or operation of such machine, device or amusement arcade for gambling, such license shall be revoked by the Administrator or his designee.

In case of any hearing before the Administrator or his designee involving the denial of a license to an applicant therefor, as provided by Section 733.04, or involving the suspension or revocation of a license of a licensee, as provided herein, the Administrator or his designee shall notify such applicant or licensee of such hearing by registered mail directed to the last address of such applicant or licensee on file with the Administrator or his designee. In the event such license is denied, suspended or revoked, the Administrator or his designee shall notify such applicant or licensee of such denial, suspension or revocation in the same manner as provided above for notification of hearings.

(Ord. 10-82. Passed 5-25-82.)

733.17 TAG TO BE DISPLAYED ON EACH MACHINE.

One of the tags issued by the Administrator or his designee, as required by this chapter, shall be attached to each device on the front adjacent to the coin slot of such mechanical amusement device or "skill pool" table licensed, so that the fact that the machine is licensed can be readily determined by municipal authorities at a glance.

(Ord. 10-82. Passed 5-25-82.)

733.18 UNLICENSED OR UNREGISTERED DEVICES.

No person shall keep, maintain, permit or allow any unlicensed and unregistered device to be in or upon any public place or place of business under the control, supervision or direction of such person, except such device as in this chapter may be exempted from license and registration.

(Ord. 10-82. Passed 5-25-82.)

733.19 PROHIBITED DEVICES.

Any machine, device, instrument, apparatus or contrivance which tends to encourage gambling and may be used in a manner violative of Chapter 517 shall be seized, destroyed or demolished.

(Ord. 10-82. Passed 5-25-82.)

733.20 RECORDS.

The Administrator or his designee shall keep and maintain on file in his office a full and complete list of all licensees licensed under the provisions of this chapter, and also a full and complete list of all mechanical amusement devices and amusement arcades which are licensed and registered under the provisions of this chapter together with a cross index showing the location of each such licensed and registered mechanical amusement device and amusement arcade.

(Ord. 10-82. Passed 5-25-82.)

733.21 COIN-OPERATED BILLIARD TABLES.

(a) Notwithstanding any other provision of the Codified Ordinances or other ordinances, the exhibition and operation of coin-operated tables resembling pool or billiard tables sometimes known as "skill pool", shall be permitted within the Municipality when licensed under the provisions of this chapter and exhibited or operated in conformity with this chapter.

(b) No exhibitor shall install or permit the use of the aforesaid tables without first obtaining a license therefor from the Administrator or his designee.

(c) The Administrator or his designee is authorized and directed to issue licenses to exhibitors of such tables, provided that no license shall be issued to an applicant until the Administrator or his designee has found that such applicant is of good moral character, and unless the application is accompanied by the license fee in accordance with the Village of New Albany Schedule of Fees and Service Charges, per table per full year.

(d) The license fee shall be prorated in the event that the license is not issued for a full calendar year.

(Ord. 10-82. Passed 5-25-82; Ord. 43-2002. Passed 12-10-02.)

733.22 TRANSFER OF LICENSE AND REGISTRATION.

The license and registration required by this chapter shall not be transferable to any other person, but may be transferred to another device of the same classification.

Upon transfer of ownership of a licensed device or upon the removal of such device out of the corporate limits of the Municipality, the license and registration of such device shall expire and the original owner in case of a sale or owner in case of a transfer outside of the corporate limits shall remove either the registration slip or sticker. Should the original owner in the case of a sale or owners in case of a transfer make application for the licensing and registration of another device as required by this section during the remainder of the current year, he may file an application for transfer of registration and license accompanied by a transfer fee in accordance with the Village of New Albany Schedule of Fees and Service Charges and the original license and registration. The Administrator or his designee shall thereupon transfer the license and the registration to the new device provided the applicant has in all other respects qualified for the issuance of a license and registration as set forth in this chapter.

(Ord. 43-2002. Passed 12-10-02.)

733.23 GENERAL PROHIBITIONS.

No amusement arcade or place of business where coin-operated billiard tables or mechanical or electrically operated amusement devices are located shall:

(a) Permit any indecent, immoral or disorderly conduct in or about the premises.

(b) Permit an intoxicated person to loiter on or about the premises.

(c) Permit the premises to become overcrowded so as to constitute a hazard to the health or safety of persons therein or to be in violation of any of the Municipality's fire, health or sanitation codes.

(d) Be operated in such a manner as to constitute a public nuisance.

(e) Permit any violation of an ordinance of the Municipality or statute of the State for which a criminal penalty may be invoked to take place at any amusement arcade operated by such operator. (Ord. 10-82. Passed 5-25-82.)

733.99 PENALTY.

Whoever violates the provisions of Section 733.02 shall be guilty of a misdemeanor of the fourth degree for each day of operation which said individual is specifically requested by the municipal officials to cease and desist and any person violating Sections 733.09 and 733.21 shall be guilty of a misdemeanor of the third degree for each day of operation after they have been requested by the appropriate municipal officials to cease and desist operation. Anyone violating Section 733.17 shall be guilty of a minor misdemeanor for each machine not properly tagged and for each day of operation after the individual is warned by the proper municipal officials to cease and desist operations. Further, any person violating any other section of this chapter not specifically mentioned herein shall be guilty of a misdemeanor of the fourth degree for each day of operation after they have been warned to cease and desist said operation or to correct said omission or commission by appropriate municipal officials. (Ord. 13-82. Passed 6-8-82.)

CHAPTER 739 PEDDLERS AND SOLICITORS*

739.01	DEFINITIONS.
739.02	REGISTRATION OR LICENSE REQUIRED.
739.03	REGISTRATION FOR CHARITABLE OR RELIGIOUS PURPOSE.
739.04	LICENSE APPLICATION AND REQUIREMENTS.
739.05	LICENSE FEES AND TERMS.
739.06	APPEALS.
739.07	CARRYING AND EXHIBITING LICENSE.
739.08	BUSINESS HOURS RESTRICTED.
739.09	NOTICE PROHIBITING PEDDLERS OR SOLICITORS.
739.10	EMPLOYEE PEDDLERS TO BE LICENSED.
739.11	LICENSE REVOCATION.
739.12	USE OF HIGHWAY FOR SOLICITING.
739.99	PENALTY.

739.01 DEFINITIONS.

As used in this chapter:

(a) "Peddler" means any person who carries with him for the purpose of sale at retail and immediate or future delivery, goods, wares, food or merchandise; or any person who in person as principal or agent, canvasses, sells or otherwise obtains orders or commitments for the sale, repair or exchange of goods, wares, food or merchandise, or services.

(b) "Solicitor" means any person who obtains or seeks to obtain funds for any cause whatsoever by means of canvassing from place to place.

(c) "Charitable" includes the words patriotic, philanthropic, social service, welfare, eleemosynary, benevolent, educational, civic, fraternal, veteran's medical and social research, either actual or purported.

(d) "Canvasser" means any person who seeks to disseminate any lawful message by means of traveling from place to place without soliciting funds or donations.

(Ord. O-02-2005. Passed 3-1-05.)

739.02 REGISTRATION OR LICENSE REQUIRED.

Subject to subsections (b) and (c) hereof, no person shall engage in the business or activity of peddler or solicitor as defined in Section 739.01 in the Village without first obtaining a license as provided in Section 739.03.

(a) Subject to subsections (b) and (c) hereof, all persons acting for or hired by another as a peddler or solicitor in the Village shall obtain a license as provided in Section 739.03 prior to acting as a peddler or solicitor.

***Cross reference**—Home solicitation sales - see ORC Ch. 1345

Charitable solicitations - see ORC Ch. 1716

Door-to-door sales activity of minors restricted - see ORC 4109.21

(b) No license shall be required of any individual who, without compensation, acts as a peddler or solicitor on behalf of and for any recognized religious or charitable not-for-profit organization. However, subject to subsection (c) hereof, no individual shall act as a solicitor or peddler on behalf of or for such organization without first having registered with the New Albany Police Department pursuant to Section 739.03.

(c) No license or registration shall be required of any person for the following:

- (1) Peddling or soliciting only for wholesale delivery to merchants, manufacturers or other business or manufacturing establishments.
- (2) Peddling or soliciting only the purchase of or subscription for newspapers having their principal sale or distribution in this Village or Franklin, Delaware or Licking Counties;
- (3) Peddling or soliciting at the invitation or request of the person contacted;
- (4) Peddling or soliciting conducted only among the members of the entity or organization conducting the peddling or soliciting;
- (5) Peddling or soliciting in the form of collections or contributions at the regular assemblies, meetings or services of any recognized charitable or religious not-for-profit organization;
- (6) Soliciting or peddling by juveniles on behalf of and for any locally recognized educational or civic organization, without compensation to the individual solicitor or peddler.
- (7) Acting as a canvasser, as defined in Section 739.01, in order to disseminate ideas, thoughts, or messages regarding any cause, issue, religion, or political candidate as long as such canvassing does not involve the violation of any local, state, or federal law.

(Ord. O-02-2005. Passed 3-1-05.)

739.03 REGISTRATION FOR CHARITABLE OR RELIGIOUS PURPOSE.

(a) Applications for registration certificates shall be filed with the Police Chief or his designee on a form furnished by the Police Department. Each application shall contain:

- (1) The name, address and the telephone number of the person completing the application;
- (2) The name of an officer or official of the organization;
- (3) The nature of the charitable or religious purpose to which the contributions, donations or sale proceeds will be applied; and
- (4) Such other information as the Police Chief may require.

(b) An organization which desires to place a number of peddlers or solicitors in the Village simultaneously may make a group application to cover all of them; however, separate registration certificates shall be issued to each or, in lieu of separate registration certificates, separate information cards shall be issued to each peddler or solicitor by the organization. Such information cards shall include, at a minimum:

- (1) The name of the organization;

- (2) A description of the purpose of the peddling or solicitation;
- (3) The period for which the registration certificate was issued;
- (4) The name of the peddler or solicitor;
- (5) A brief description of the peddler or solicitor, such as age, weight, and height; and
- (6) The signatures of the peddler or solicitor and an officer or official of the organization.

(c) A registration certificate shall be valid for no more than a one-year period. The registration certificate shall state the expiration date.

(d) No fee shall be required for a registration certificate.
(Ord. O-02-2005. Passed 3-1-05.)

739.04 LICENSE APPLICATION AND REQUIREMENTS.

(a) Applications for licenses for peddlers or solicitors shall be filed, at least forty-eight (48) hours ahead of the intended peddling or soliciting activity, with the New Albany Police Department on a form to be furnished by the Department, which shall require, but shall not be limited to, the following information:

- (1) Name of the applicant and his/her physical description;
- (2) The home address of the applicant and his social security number;
- (3) The name and address of the person employing the applicant, or for whom he is soliciting;
- (4) The length of the applicant's service with such employer or person for whom he is soliciting;
- (5) All places of residence of the applicant and all employment during the preceding year;
- (6) The nature and character of the goods to be sold or services to be furnished by the applicant or the purpose for which funds are being solicited;
- (7) The names of other municipalities in which the applicant has recently conducted activities for which a license is herein required;
- (8) Verification that the applicant or his employer has complied with the requirements of ORC Ch. 1716 pertaining to charitable solicitation, if applicable.

(b) The applicant shall furnish a photograph, taken within the last year, of himself, and/or any other person working with him in the proposed peddling or soliciting activity.

(c) If the Police Department determines after an investigation that the information furnished under the requirements of subsection (a) herein is correct, that the applicant proposes to engage in lawful commercial or professional enterprise and neither applicant nor the enterprise upon which the applicant proposes to engage constitutes a clear and present danger to the residents of the City, a license shall be issued to the applicant. Items which constitute a "clear and present danger" on the part of the applicant, its employees or agents shall include, but not be limited to the following: having a history or pattern of consumer complaints involving high pressure tactics, misrepresen-

tation; violations of applicable consumer protection legislation; being the subject of enforcement actions brought by state or federal regulatory agencies; misleading consumers; deceptive trade practices; having a solicitor's license or similar permit denied or revoked by any state or local jurisdiction; and/or entering into settlement agreement regarding any of the foregoing with any state or local agency with jurisdiction over consumer protection related matters.

(d) No license shall be required for any person who acts as a canvasser on behalf of a religious or charitable organization if no donations or any other type of contributions are sought by the canvasser.

(Ord. O-02-2005. Passed 3-1-05; Ord. O-18-2011. Passed 8-16-11.)

739.05 LICENSE FEES AND TERMS.

The license fees charged by the Municipality for the license required by this chapter shall be in accordance with the Village of New Albany Schedule of Fees and Services Charges. All annual licenses issued under the provisions shall expire on December 31 in the year when issued. Other licenses shall expire on the date specified in the license.

(Ord. O-02-2005. Passed 3-1-05.)

739.06 APPEALS.

Any applicant who has applied for a license in accordance with this chapter and to whom the Police Department, after an investigation, denied a license may appeal to Council. Notice of such appeal shall be filed with the Clerk within five (5) days after the denial by the Police Department. Council shall hear such appeal at the next regular Council meeting and its decision shall be final.

(Ord. O-02-2005. Passed 3-1-05.)

739.07 CARRYING AND EXHIBITING LICENSE.

The license issued under the provisions of this chapter shall be carried by any peddler or solicitor at all times when peddling or soliciting inside the corporate boundaries of the Municipality, and shall be exhibited to any person being solicited and, on request, to any police officer.

(Ord. O-02-2005. Passed 3-1-05.)

739.08 BUSINESS HOURS RESTRICTED.

No person shall peddle, solicit or conduct market research door to door at dwelling houses or businesses at random, on sidewalks or streets, at public places, at private meeting places or in any other manner or place in the Municipality between 9:00 p.m. and 9:00 a.m., or on any Sunday or holiday unless the activities are part of an event sanctioned to include these activities, such as community-wide events, school events, or events sponsored by nationally or locally recognized charitable, civic or business organizations.

This section does not apply to invitees or national charitable corporations licensed to do business in Ohio with recognized periods for campaigns, provided the organizations have been licensed to solicit by the Village Administrator.

(Ord. O-02-2005. Passed 3-1-05.)

739.09 NOTICE PROHIBITING PEDDLERS OR SOLICITORS.

(a) The owners or occupants of any residence or place of business may evidence a determination to refuse to receive any uninvited peddlers or solicitors by displaying a weatherproof card, decal or sign not less than three (3) inches by four (4) inches in size nor more than one square foot in total surface area upon or near the main entrance door to the residence or place of business, containing the words "No Peddlers or Solicitors Invited" with letters at least one-third inch in height. Any such weatherproof card, decal or sign which complies with the requirements of this section shall be exempt from any additional or different requirements contained in the provisions of Chapter 1169, Zoning Code.

(b) No person shall go upon any premises and ring the doorbell, rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of any occupant of such residence or place of business for the purpose of securing an audience with the occupants thereof and engage in peddling or solicitation in defiance of a notice displayed pursuant to subsection (a) hereof.

(Ord. O-02-2005. Passed 3-1-05.)

739.10 EMPLOYEE PEDDLERS TO BE LICENSED.

No person shall be hired by another to sell goods, wares, food merchandise or services, or to canvass residents and businesses door to door unless such person so hired has been duly licensed as provided in this chapter.

(Ord. O-02-2005. Passed 3-1-05.)

739.11 LICENSE REVOCATION.

Any license issued under the provisions of this chapter may be revoked at any time by the Police Department, if the licensee is guilty of fraud, misrepresentation or any unlawful act in connection with his business or application required under Section 739.03; or if the licensee violates any provision of this chapter.

(Ord. O-02-2005. Passed 3-1-05.)

739.12 USE OF HIGHWAY FOR SOLICITING.

Use of the highway for the purpose of soliciting contributions shall comply with the provisions of Section 371.06.

(Ord. O-02-2005. Passed 3-1-05.)

739.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the fourth degree. Each day on which solicitation is conducted in violation of this chapter shall constitute a separate offense.

(Ord. O-02-2005. Passed 3-1-05.)

PROOFS

CHAPTER 741 SEASONAL BUSINESSES*

741.01	AUTHORIZATION; USES.
741.02	LICENSE REQUIRED; APPLICATION.
741.03	LICENSE FEE AND TERMS.
741.04	LICENSE FEE EXEMPTION.
741.05	APPEAL FROM LICENSE DENIAL.
741.06	OUTDOOR SITE REQUIREMENTS.
741.99	PENALTY.

741.01 AUTHORIZATION; USES.

(a) Authorization. Seasonal uses are permitted only as expressly provided in this chapter and shall comply with the requirements of the Codified Ordinances of the Village.

(b) Permitted Seasonal Uses. The following are seasonal uses that are subject to the requirements specified in this Chapter.

- (1) Display and open lot sales of Christmas trees.
 - (2) Display and open lot sales of arts, crafts, rugs, flowers, and various sundry items.
 - (3) Display and open lot sales of seasonal farm produce.
- (Ord. 41-2001. Passed 10-2-01.)

741.02 LICENSE REQUIRED; APPLICATION.

(a) License Required. No person, firm or corporation shall engage in the business or activity of operating a seasonal business in this Municipality without first obtaining a license as provided in this chapter.

(b) License Application and Requirements.

- (1) Application for licenses for seasonal business operation shall be filed with the Village Administrator or his designee on a form to be furnished by the Municipality, which shall require at least the following information:
 - A. A written statement from the property owner giving his permission for such use;
 - B. The name or names of the person or persons having the management or supervision of the applicant's business during the time that it is proposed to be carried out in the Municipality;
 - C. The local and permanent address or addresses of such person or persons while engaged in such business;
 - D. The capacity in which such person or persons will act (that is, whether as proprietor, agent or otherwise);

*Cross reference—Falsification - see GEN. OFF. 525.02
Temporary or seasonal sales - see P. & Z. 1149.03

- E. The name and address of the firm or corporation on whose account the business will be carried on, if any; and if a corporation, under the laws of what state the same is incorporated;
- F. The place or places within the Municipality where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that the business shall be conducted;
- G. A list of former municipalities and/or locations where such seasonal business has been previously conducted;
- H. A sketch or site plan showing the actual location on the lot or site, or portion thereof, where the seasonal business shall be conducted, and a statement by the applicant indicating compliance with the site requirements set forth herein.

(2) If the Village Administrator or his designee determines after an investigation that the information furnished under the requirements set forth herein is correct, that the applicant proposes to engage in lawful, seasonal business enterprises and that the site and location for the operation of such business is in compliance with the Municipality's zoning regulations and the site requirements set forth herein, he shall issue a license to the applicant.

(3) A Certificate of Appropriateness shall not be required as set forth in Chapter 1157 of the Village's Zoning Code.

(Ord. 41-2001. Passed 10-2-01.)

741.03 LICENSE FEE AND TERMS.

The license fee charged by the Village Administrator for the license required in this chapter shall be as set forth from time to time by ordinance and any such license issued shall contain a specific expiration date of not more than forty-five (45) days, which may be issued no more than two (2) times in any given year. The Village Administrator may revoke any license issued under the provisions of this chapter at any time if the licensee is guilty of fraud, misrepresentation, or any unlawful act in connection with the business, or if the licensee violates any provisions of this chapter.

(Ord. 41-2001. Passed 10-2-01.)

741.04 LICENSE FEE EXEMPTION.

A charitable 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 Section 501(c)(3) of the Internal Revenue Code as amended shall be exempt from the license fee in Section 741.03.

(Ord. 41-2001. Passed 10-2-01.)

741.05 APPEAL FROM LICENSE DENIAL.

Any applicant who has applied for a license in accordance with this chapter and to whom the Village Administrator or his designee has, after an investigation, denied a license may appeal to

Council. Notice of appeal should be filed with the Clerk within five (5) days after the denial by the Village Administrator or his designee. Council shall hear such appeal at the next regular meeting and its decision shall be final.

(Ord. 41-2001. Passed 10-2-01.)

741.06 OUTDOOR SITE REQUIREMENTS.

Seasonal business operations may not be located within a residential zoning district. A license may be issued for a seasonal business operation at an outdoor site provided the following requirements are met:

- (a) The outdoor site provides adequate on-site parking entirely out of the public right-of-way;
- (b) The outdoor site provides safe and controlled access for both pedestrian and vehicular traffic;
- (c) All other applicable provisions of the New Albany Codified Ordinances, including but not limited to the sign regulations contained in the Village's Zoning Code, are complied with;
- (d) Within seventy-two (72) hours or the earlier of either the expiration of the seasonal license or the cessation of business on an outdoor site, the applicant shall cause the site to be returned to its original condition including, but not limited to, the removal of all seasonal sales related items, fixtures, equipment and litter. The failure to do so will result in denial of additional seasonal business licenses.

(Ord. 41-2001. Passed 10-2-01.)

741.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a minor misdemeanor and be assessed a fine of not more than one hundred dollars (\$100.00). Each day during which seasonal business sales or activities operate in violation of this chapter shall constitute a separate offense.

(Ord. 41-2001. Passed 10-2-01.)

CHAPTER 743 SEXUALLY ORIENTED BUSINESS ESTABLISHMENTS*

743.01	PURPOSE.
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743.03	SEXUALLY ORIENTED BUSINESS USE COMMISSIONER.
743.04	SEXUALLY ORIENTED BUSINESS LICENSES GENERALLY.
743.05	FORM AND SUBMITTAL OF LICENSE APPLICATION.
743.06	PROCESSING OF LICENSE APPLICATION.
743.07	STANDARDS FOR ISSUANCE OR DENIAL OF LICENSE.
743.08	INSPECTION BY THE VILLAGE.
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743.10	REGULATIONS APPLICABLE TO ALL SEXUALLY ORIENTED BUSINESSES.
743.11	SPECIAL REGULATIONS FOR ADULT BOOTHS.
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743.14	SPECIAL REGULATIONS FOR ADULT THEATERS.
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743.01 PURPOSE.

(a) The purpose of this chapter is to establish reasonable and uniform regulations to minimize and control the negative secondary effects of Sexually Oriented Businesses with the Village in order to promote the health, safety, and welfare of the citizens of the Village. The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials or communication, including sexually oriented entertainment. Similarly, it is not the purpose or effect of this chapter to restrict or deny access by adults to sexually oriented entertainment protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. Furthermore, it is not the intent or effect of this chapter to condone or legitimize the distribution or exhibition of entertainment that is obscene.

(b) Findings. Based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community presented to the Council; on findings incorporated in the cases of the City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986), Young v. American Mini Theaters, 426 U.S. 50 (1976); and on studies in other cities, this Council finds:

- (1) Sexually Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities.
- (2) Sexual acts, including masturbation and oral and anal sex, occur at Sexually Oriented Businesses, especially those that provide private or semi-private booths or rooms for

*Cross reference—Obscenity and sex offenses - see GEN. OFF. Ch. 533

viewing films, videos, or live sexually-oriented entertainment. Such activities may result in spreading communicable diseases such as syphilis, gonorrhea, and human immunodeficiency virus (HIV).

- (3) Offering sexually oriented entertainment under conditions that encourage such activities creates unhealthy conditions.
- (4) Sanitary conditions in some Sexually Oriented Businesses are unhealthy, in part because of the failure of owners and operators to regulate those activities and maintain their facilities.
- (5) Numerous studies and reports have determined that semen is found in the areas of Sexually Oriented Businesses where persons view sexually oriented films.
- (6) The findings noted in subsections (1) through (5) raise substantial governmental concerns.
- (7) Sexually Oriented Businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns.
- (8) A reasonable licensing procedure is an appropriate mechanism to regulate the owners and operators of Sexually Oriented Businesses. Further, such a licensing procedure that will place a heretofore nonexistent incentive on operators to see that Sexually Oriented Businesses are run in a manner consistent with the health, safety and welfare of patrons and employees, as well as the citizens of the Village. It is appropriate to require reasonable assurances that the licensee is the actual operator of the Sexually Oriented Businesses, and fully in possession and control of the premises and activities occurring therein.
- (9) The regulation of nudity in Sexually Oriented Businesses will further the substantial governmental interests in preventing prostitution and other sex- related crimes, including illegal sex acts, and protecting the public health, safety and welfare.
- (10) Removal of doors, curtains, partitions, drapes, or any other obstruction whatsoever that would be capable of wholly or partially obscuring the view from outside a viewing booth of any person inside a viewing booth in a Sexually Oriented Business and requiring sufficient lighting on premises with viewing booths will advance the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult arcades and theaters and will facilitate enforcement of the provisions of this chapter and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.
- (11) Requiring sufficient lighting in all Sexually Oriented Businesses will advance the substantial governmental interest in curbing illegal sexual activity on the premises of the Sexually Oriented Businesses, and will facilitate enforcement of the provisions of this chapter and other federal, state and local laws, thereby furthering the substantial governmental interest on protecting the public health, safety, and welfare.

(12) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of Sexually Oriented Businesses, and by employees of such businesses, will facilitate the enforcement of the provisions of this chapter and other federal, state and local laws, and will thereby further the substantial governmental interest in protecting the public health, safety and welfare.

(13) A person who recently has been convicted of a sexually related crime is not an appropriate individual to operate or be employed in a Sexually Oriented Business.

(Ord. 37-2003. Passed 12-2-03.)

743.02 DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, and words shall have the meanings given to them herein.

(a) "Adult arcade" means any place to which the public is permitted or invited where either or both:

- (1) Motion picture machines, projectors, video or laser disc players, or
- (2) Other video or image-producing devices are available, run via coin, token, or any form of consideration, to show images to five (5) or fewer persons at one time; and where the images shown and/or live entertainment presented are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(b) "Adult bookstore", "adult novelty store", or "adult video store" means a commercial establishment that devotes a significant portion of its interior business or advertising (twenty-five percent (25%) or more of its retail floor space) to the sale or rental, for any form of consideration, of any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" as defined herein.
- (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.

(c) "Adult booth" means any area of a sexually oriented business establishment set off from the remainder of such establishment by one or more walls or other dividers or partitions and used to show, play, or otherwise demonstrate any adult materials or to view any live performance that is distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas or the conduct or simulation of specified sexual activities.

(d) "Adult cabaret" means any commercial establishment that as a substantial or significant portion of its business features or provides any of the following:

- (1) Persons who regularly appear in a state of nudity.

- (2) Live performances that are distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas or the conduct or simulation of specified sexual activities.
- (3) Films, motion pictures, video or audio cassettes, slides, computer displays, or other visual representations or recordings of any kind that are distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas, or the conduct or simulation of specified sexual activities.
- (e) "Adult material" means any of the following, whether new or used:
 - (1) Books, magazines, periodicals, or other printed matter, or digitally stored materials that are distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas or the conduct or simulation of specified sexual activities.
 - (2) Films, motion pictures, video or audio cassettes, slides, computer displays, or other visual representations or recordings of any kind that are distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas or the conduct or simulation of specified sexual activities.
 - (3) Instruments, novelties, devices, or paraphernalia that are designed for use in connection with specified sexual activities, or that depict or describe specified anatomical areas.
- (f) "Commercial establishment" means any place where admission, services, performances, or products are provided for or upon payment of any form of consideration.
- (g) "Days" means calendar days, unless otherwise specifically set forth in this chapter.
- (h) "Employee" (See "Sexually Oriented Business Establishment Employee".)
- (i) "Escort agency" means a person or business association, who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (j) "Licensed premises" means the place or location described in the sexually oriented business establishment license where a sexually oriented business establishment is authorized to operate. No sidewalks, streets, parking areas, public rights-of-way, or grounds adjacent to any such place or location shall be included within the licensed premises.
- (k) "Licensee" means any person or entity that has been issued a sexually oriented business license pursuant to the provisions of this chapter.
- (l) "Massage parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of or in connection with Specified Sexual Activities, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her Specified Anatomical Areas. The definition of Massage Parlor shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a

licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program not by any Licensed Massage Therapist licensed in the State of Ohio pursuant to ORC 4731.15.

(m) "Nude" or "state of nudity" means a state of dress or undress that exposes to view:

- (1) Less than completely and opaquely covered human genitals; pubic region; anus; or female breast below a point immediately above the top of the areolae, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered, or any device or covering that, when worn, simulates human male genitals in a discernibly turgid state.

(n) "Reviewing departments" means the Village Administrator, Police Department, Building and Zoning Department, and Law Director's Office.

(o) "Semi-nude" means a state of dress or undress in which clothing covers no more than the human genitals, anus, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices or by other minor accessory apparel such as hats, gloves, and socks.

(p) "Sexually Oriented Business Commissioner" means the Village Administrator, or his designee, shall be the Sexually Oriented Business Use Commissioner.

(q) "Sexually oriented business establishment" means any of the following commercial establishments, as defined herein:

- (1) Adult cabaret. Any commercial establishment that as a substantial or significant portion of its business features or provides any of the following:
 - A. Persons who appear nude or semi-nude.
 - B. Live performances that are distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas or the conduct or simulation of specified sexual activities.
 - C. Films, motion pictures, video or audio cassettes, slides, computer displays, or other visual representations or recordings of any kind that are distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas, or the conduct or simulation of specified sexual activities.
- (2) Adult Store. Any commercial establishment that:
 - A. Contains one or more adult booths;
 - B. As a substantial or significant portion of its business offers for sale, rental, or viewing any adult materials; or

C. Has a segment or section devoted to the sale or display of adult materials.

- (3) Adult Theater. Any commercial establishment that as a substantial or significant portion of its business features or provides films, motion pictures, video or audio cassettes, slides, or other visual representations or recordings of any kind that are distinguished or characterized by an emphasis on the exposure, depiction, or description of specified anatomical areas, or the conduct or simulation of specified sexual activities.

(r) "Sexually oriented business establishment employee" means any individual, including entertainers, who work in or at, or render any services directly related to the operation of an adult entertainment establishment; provided, however, that this definition shall not include persons delivering goods, materials (other than adult materials), food and beverages, or performing maintenance or, repairs, to the licensed premises.

(s) "Sexually oriented business establishment license" means a license issued for a sexually oriented business establishment pursuant to the provisions of this chapter.

(t) "Sexually oriented business establishment patron" means a sexually oriented business establishment employee, present in or at any sexually oriented business establishment at any time when such sexually oriented business establishment is open for business; provided, however, that this definition shall not include persons delivering goods, materials (other than adult materials), food and beverages, or performing maintenance or repairs, to the licensed premises.

(u) "Specified anatomical areas" means any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areola, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed.
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered, or any device or covering that, when worn, simulates human male genitals in a discernibly turgid state.

(v) "Specified criminal act" means any unlawful, lewd, indecent, or immoral criminal conduct.

(w) "Specified sexual activities" means any of the following:

- (1) Fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.
- (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy.
- (3) Masturbation, actual or simulated.
- (4) Human genitals in a state of sexual stimulation, arousal, or tumescence.
- (5) Excretory functions as part of or in connection with any of the activities set forth in subsections (w)(1) through (4) hereof.

(x) "Straddle dance" means the use by any person, including specifically but without limitation, a sexually oriented business establishment employee, of any part of his or her body to touch the genitals, pubic region, buttock, anus or female breast of any sexually oriented business establishment patron or any other person, or the touching of the genitals, pubic region, buttock, anus, or female breast of any person by any sexually oriented business establishment patron. Conduct shall be a "straddle dance" regardless of whether the "touch" or "touching" occurs while the person is displaying or exposing any specified anatomical area. Conduct shall also be a "straddle dance" regardless of whether the "touch" or "touching" is direct or through a medium. Conduct commonly referred to by the slang terms "lap dance," "table dance," and "face dance" shall be included within this definition of "straddle dance".

(y) "Village Zoning Ordinances" means the part of the New Albany Codified Ordinances known and referred to as the New Albany Zoning Code or New Albany Codified Ordinances, as it may be amended from time to time.
(Ord. 37-2003. Passed 12-2-03.)

743.03 SEXUALLY ORIENTED BUSINESS USE COMMISSIONER.

The Village Administrator, or his designee, is designated the Sexually Oriented Business Use Commissioner. The Sexually Oriented Business Use Commissioner shall have the following powers and duties:

(a) To administer and rule upon the applications for, and the issuance, renewal, suspension, and revocation of sexually oriented business licenses as set forth in this chapter.

(b) To conduct or provide for such inspection of sexually oriented businesses as shall be necessary to determine and ensure compliance with the provisions of this chapter and other applicable provisions of law.

(c) To periodically review the provisions of this chapter and the conduct and operation of sexually oriented business establishments, and to make such related reports and recommendations to the Village Council, as the Sexually Oriented Business Use Commissioner shall deem necessary.

(d) To conduct such hearings, studies, and reports on sexually oriented businesses as the Sexually Oriented Business Use Commissioner shall deem necessary, and to conduct such hearings on the revocation or suspension of a sexually oriented business license as required pursuant to this chapter.

(e) To take such further actions as the Sexually Oriented Business Use Commissioner deems necessary to carry out the purpose and intent of this chapter and to exercise such additional powers in furtherance thereof as are implied by the powers and duties expressly set forth in this chapter.

(Ord. 37-2003. Passed 12-2-03.)

743.04 SEXUALLY ORIENTED BUSINESS LICENSES GENERALLY.

(a) Sexually Oriented Business License Required. A sexually oriented business license shall be required to establish, operate, or maintain a sexually oriented business within the Village.

(b) Operation Without License Prohibited. It shall be unlawful for any person not having a current and valid sexually oriented business license to establish, operate, or maintain a sexually oriented business within the Village at any time after the effective date of this chapter.

(c) Operation in Violation of License Prohibited. It shall be unlawful for any licensee to establish, operate, or maintain a sexually oriented business within the Village except in the manner authorized by, and in compliance with, the provisions of this chapter and the licensee's sexually oriented business license.

(d) Content and Display of License. Every sexually oriented business license shall be provided by the Village and shall, at a minimum, prominently display on its face the name of the licensee, the expiration date, and the address of the sexually oriented business. Every licensee shall display the license at all times in plain view in a conspicuous place on the licensed premises so that it can be easily seen and read at any time by any person entering the licensed premises.

(e) License Term. Sexually oriented business licenses shall be operative and valid, unless first terminated, suspended, or revoked, for a term of one year commencing on the date of issuance and may be renewed only by making an application. Application for renewal should be made at least forty-five (45) days before the expiration date.

(Ord. 37-2003. Passed 12-2-03.)

743.05 FORM AND SUBMITTAL OF LICENSE APPLICATION.

(a) Required Form. An application for a sexually oriented business license, or the renewal thereof, shall be made in writing to the Sexually Oriented Business Use Commissioner on a form prescribed by the Sexually Oriented Business Use Commissioner and shall be signed by:

- (1) The applicant, if the applicant is an individual;
- (2) At least one of the persons entitled to share in the profits of the organization and having unlimited personal liability for the obligations of the organization and the right to bind all other such persons, if the applicant is a partnership (general or limited), joint venture, or any other type of organization; or
- (3) By a duly authorized agent, if the applicant is a corporation.

Each application shall specifically identify the applicant and the licensed premises for which a sexually oriented business license is sought. Each initial or renewal application shall include ten (10) identical copies.

(b) Administrative Processing Fee. Every applicant for a sexually oriented business license shall pay an administrative processing fee in accordance with the Village of New Albany Schedule of Fees and Service Charges. The administrative processing fee shall in all cases be non-refundable.

(c) Required Information and Documents. Each application shall include the following information and documents:

(1) Names of applicants.

- A. Individuals. The applicant's legal name, all of the applicant's aliases, the applicant's business address and social security number, written proof of the applicant's age, the citizenship and place of birth of the applicant and, if a naturalized citizen, the time and place of the applicant's naturalization.
 - B. Corporations. The applicant corporation's complete name and official business address; the legal name, all aliases, and the ages, business addresses, and social security numbers of all the directors, officers, and managers of the corporation and of every person owning or controlling more than fifty percent (50%) of the voting shares of the corporation; the corporation's date and place of incorporation and the objects for which it was formed; proof that the corporation is a corporation in good standing and authorized to conduct business in the State of Ohio; and the name of the registered corporate agent and the address of the registered office for service of process.
 - C. Partnerships (general or limited), joint ventures, or any other type of organization where two (2) or more persons share in the profits and liabilities of the organization. The applicant organization's complete name and official business address; the legal name, all aliases, and the ages, business addresses, and social security numbers of each partner (other than limited partners) or any other person entitled to share in the profits of the organization, whether or not any such person is also obligated to share in the liabilities of the organization.
- (2) The general character and nature of the business of the applicant.
 - (3) The location, including street address and legal description, and telephone number, of the premises for which the sexually oriented business license is sought.
 - (4) The specific name of the business that is to be operated under the sexually oriented business license.
 - (5) The identity of each fee simple owner of the licensed premises.
 - (6) A diagram showing the internal and external configuration of the licensed premises, including all doors, windows, entrances, exits, and the fixed structural internal features of the licensed premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six (6) inches and sufficient to show clear compliance with the provisions of this chapter. The requirements of this division shall not apply for renewal applications if the applicant adopts a diagram that was previously submitted for the license sought to be renewed and if the

licensee certifies that the licensed premises has not been altered since the immediately preceding issuance of the license and that the previous diagram continues to accurately depict the exterior and interior layouts of the licensed premises. The approval or use of the diagram required pursuant to this division shall not be deemed to be, and shall not be interpreted or construed to constitute, any other Village approval otherwise required pursuant to applicable Village ordinances and regulations.

- (7) The specific type or types of sexually oriented businesses that the applicant proposes to operate in the licensed premises.
 - (8) A copy of each sexually oriented business license, liquor license, and gaming license currently held by the applicant or any of the individuals identified in the application.
 - (9) The name of the individual or individuals who shall be the day-to-day, on-site managers of the proposed sexually oriented business.
 - (10) Any application for a sexually oriented business license that does not include all of the information and documents required pursuant to this section shall be deemed to be incomplete and shall not be acted on or processed by the Village. The Sexually Oriented Business Use Commissioner shall, within five (5) days of such submittal, return the incomplete application to the applicant along with a written explanation of the reasons why the application is incomplete.
- (Ord. 37-2003. Passed 12-2-03.)

743.06 PROCESSING OF LICENSE APPLICATION.

(a) Upon the filing of an application for a sexually oriented business license, the Sexually Oriented Business Use Commissioner shall refer the application to the appropriate Village departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of submission of the completed application. After the investigation, the Sexually Oriented Business Use Commissioner shall issue a license unless the requirements set forth herein are not met.

(b) Appeal. An applicant may appeal any decision of the Sexually Oriented Business Use Commissioner denying an application to the New Albany Village Council. The procedure set forth in Section 743.16(c) shall apply.

(Ord. 37-2003. Passed 12-2-03.)

743.07 STANDARDS FOR ISSUANCE OR DENIAL OF LICENSE.

(a) The Sexually Oriented Business Use Commissioner shall issue a sexually oriented business license to an applicant if, but only if, the Sexually Oriented Business Use Commissioner finds and determines all of the following based on the reports, investigations, and inspections conducted by

the Sexually Oriented Business Use Commissioner and any Reviewing Departments and on any other credible information on which it is reasonable for the Sexually Oriented Business Use Commissioner to rely.

- (1) All information and documents required by this chapter for issuance of a sexually oriented business license have been properly provided and the material statements made in the application are true and correct.
- (2) No person identified in the application has been convicted of, or pleaded no contest to, any felony within five (5) years immediately preceding the date of the application.
- (3) No person identified in the application is overdue on payment to the Village of taxes, fees, fines, or penalties assessed against or imposed on any such individual in connection with any sexually oriented business.
- (4) The sexually oriented business and the licensed premises comply with all then-applicable building, health, and safety codes and have received all necessary zoning approvals required pursuant to the then-applicable provisions of the New Albany Zoning Code.
- (5) The applicant has confirmed in writing and under oath as part of the application that the applicant has read this chapter and all provisions of the Village Zoning Ordinance applicable to sexually oriented businesses, that the applicant is familiar with their terms and conditions, and that the licensed premises and the proposed sexually oriented business establishment and its proposed operation are and shall be in compliance therewith.

(b) Denial. If the Sexually Oriented Business Use Commissioner determines that the applicant has not met any one or more of the conditions set forth herein, then the Sexually Oriented Business Use Commissioner shall deny issuance of the sexually oriented business license and shall give the applicant a written notification and explanation of such denial.

(c) License Deemed Issued. If the Sexually Oriented Business Use Commissioner does not issue or deny the sexually oriented business license within thirty (30) days after the properly completed application is submitted, then the sexually oriented business license applied for shall be deemed to have been issued.

(d) License Fee. The annual fee for a sexually oriented business license shall be in accordance with the Village of New Albany Schedule of Fees and Service Charges.
(Ord. 37-2003. Passed 12-2-03.)

743.08 INSPECTION BY THE VILLAGE.

(a) Authority. The Sexually Oriented Business Use Commissioner and other village representatives and departments with jurisdiction shall periodically inspect all sexually oriented businesses as shall be necessary to determine compliance with the provisions of this chapter and all other applicable law.

(b) Licensee Cooperation. A licensee shall permit representatives of the village to inspect all public areas of the licensed premises and the sexually oriented business establishment for the purpose of determining compliance with the provisions of this chapter and all other applicable law at any time during which the licensed premises is occupied or the sexually oriented business establishment is open for business.

(c) Interference or Refusal Illegal. It shall be unlawful for the licensee, any sexually oriented business employee, or any other person to prohibit, interfere with, or refuse to allow, any lawful inspection conducted by the village pursuant to this chapter or any other authority.

(d) Suspension or Revocation. Any such prohibition, interference, or refusal shall be grounds for suspension or revocation of the sexually oriented business license.
(Ord. 37-2003. Passed 12-2-03.)

743.09 CHANGE IN INFORMATION.

During the pendency of any application for, or during the term of, any Sexually Oriented Business License, the Applicant or Licensee shall promptly notify the Sexually Oriented Business Use Commissioner in writing of any change in any material information given by the Applicant or Licensee in the application for such license, including specifically, but without limitation, any change in managers of the Sexually Oriented Business Establishment or in the individuals identified in the application pursuant to this chapter; or if any of the events constituting grounds for suspension or revocation pursuant to this chapter occur.
(Ord. 37-2003. Passed 12-2-03.)

743.10 REGULATIONS APPLICABLE TO ALL SEXUALLY ORIENTED BUSINESSES.

(a) General Compliance. All licensed premises and sexually oriented business establishments shall comply with the provisions of this chapter, and with the provisions of all other applicable Village ordinances, resolutions, rules, and regulations and all other applicable federal, state, and local laws.

(b) Hours of Operation.

- (1) No Sexually Oriented Business Establishment shall be open for business at any time on any State of Ohio or federal holiday.
- (2) No Sexually Oriented Business Establishment shall be open for business between the hours of 1:00 a.m. and 9:00 a.m. on any day.
- (3) If a Sexually Oriented Business Establishment holds a liquor license issued by the State of Ohio that permits the establishment to serve alcoholic beverages outside of the time parameters listed in subsection (b)(1) and (2) hereof, such Sexually Oriented Business Establishment shall not be subject to these time parameters. However, all Sexually Oriented

Business entertainment, such as live erotic dancing and the display of films and other adult materials shall take place only during the times permitted in subsection (b)(1) and (2) hereof.

(c) Animals. No animals, except Seeing Eye dogs required to assist the blind, shall be permitted at any time at or in any sexually oriented business establishment or licensed premises.

(d) Restrooms. All restrooms in sexually oriented business establishments shall be equipped with standard toilets, sinks, and other traditional lavatory facilities. No adult materials or live performances shall be provided or allowed at any time in the restrooms of a sexually oriented business establishment. Separate male and female restrooms shall be provided for and used by sexually oriented business establishment employees and patrons.

(e) Restricted Access. No sexually oriented business establishment patron shall be permitted at any time to enter into any of the non-public portions of any sexually oriented business establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of sexually oriented business employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the licensed premises. These persons shall remain in the non-public areas only for the purposes and to the extent and time necessary to perform their job duties.

(f) Specific Prohibited Acts.

(1) No sexually oriented business employee or any other person at any sexually oriented business establishment, other than a sexually oriented business employee employed to provide adult entertainment in accordance with the regulations in this chapter shall appear, be present, or perform while nude or semi-nude; further, no such employee shall appear, be present, or perform while nude at any sexually oriented business establishment that serves or otherwise provides alcoholic liquor pursuant to a license issued by the State of Ohio.

(2) No sexually oriented business employee or any other person at any sexually oriented business establishment shall perform or conduct any specified sexual activity with or for any sexually oriented business patron or any other person at any sexually oriented business establishment, or any other sexually oriented business employee, or any other person. No sexually oriented business establishment patron or any other person at any sexually oriented business establishment shall perform or conduct any specified sexual activity with or for any sexually oriented business establishment employee or patron or any other person.

(3) Straddle dances shall be prohibited at all sexually oriented business establishments.

(g) Exterior Display. No sexually oriented business establishment shall be maintained or operated in any manner that causes, creates, or allows public viewing of any adult material, or any entertainment depicting, describing, or relating to specified sexual activities or specified anatomical areas, from any sidewalk, public or private right-of-way, or any property other than the lot on which the licensed premises is located. No portion of the exterior of a sexually oriented business establishment shall utilize or contain any flashing lights, search lights, or spotlights, or any other

similar lighting systems, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent specifically allowed pursuant to this chapter with regard to signs. This subsection shall apply to any advertisement, display, promotional material, decoration, or sign; to any performance or show; and to any window, door, or other opening.

(h) Noise. No loudspeakers or sound equipment audible beyond the licensed premises shall be used at any time.

(i) Gambling and Related Devices Prohibited. No sexually oriented business establishment shall contain any video, pinball, slot, bagatelle, pigeon-holed, pool, or any other games, machines, tables, or implements.

(j) Manager's Station. Each sexually oriented business establishment shall have one or more manager's stations. The interior of each sexually oriented business establishment shall be configured in such a manner that there is a direct and substantially unobstructed view from at least one manager's station to every part of each area, except restrooms, of the establishment to which any sexually oriented business establishment patron is permitted access for any purpose.

(k) Alcohol Prohibition. No sexually oriented business establishment that serves or otherwise provides alcoholic liquor pursuant to a liquor license shall provide or allow sexually oriented business establishment employees that appear, are present, or perform while nude.

(Ord. 37-2003. Passed 12-2-03.)

743.11 SPECIAL REGULATIONS FOR ADULT BOOTHS.

(a) Prohibited Except in Adult Stores. Adult booths shall be prohibited in all sexually oriented business establishments except adult stores.

(b) Occupancy and Prohibited Acts. Only one individual shall occupy an adult booth at any time. No individual occupying an adult booth shall engage in any specified sexual activities. No individual shall damage or deface any portion of an adult booth.

(c) Open Booth Requirement. In addition to satisfying the manager station requirements of this chapter, all adult stores containing adult booths shall be physically arranged in such a manner that the entire interior portion of each adult booth shall be visible from the common area of the adult store. To satisfy this requirement, there shall be a permanently open and unobstructed entranceway for each adult booth and for the entranceway from the area of the adult store that provides other adult materials to the area of the adult store containing the adult booths. Each of these entranceways shall not be capable of being closed or obstructed, entirely or partially, by any door, curtain, partition, drapes, or any other obstruction whatsoever that would be capable of wholly or partially obscuring the area of the adult store containing the adult booths or any person situated in an adult booth. It shall be unlawful to install adult booths within a sexually oriented business establishment for the purpose of providing secluded viewing or adult materials or live performances.

(d) Aisle Required. There shall be one continuous lighted main aisle alongside the adult booths provided in any adult store. Each person situated in a booth shall be visible at all times from the aisle.

(e) Holes Prohibited. Except for the open booth entranceway, the walls and partitions of each adult booth shall be constructed and maintained of solid walls or partitions without any holes or openings whatsoever.

(f) Signage. A sign shall be posted in a conspicuous place at or near the entranceway to each adult booth that states:

- (1) That only one person is allowed in an adult booth at any one time,
- (2) That it is unlawful to engage in any specified sexual activities while in an adult booth, and
- (3) That it is unlawful to damage or deface any portion of an adult booth.

(g) Age Limitations.

- (1) No sexually oriented business establishment employee or sexually oriented business establishment patron at an adult booth or a licensed premises that includes an adult booth shall be under the age of eighteen (18).
- (2) No person under the age of eighteen (18) shall be admitted to any adult booth or any licensed premises that includes an adult booth.
- (3) No person under the age of eighteen (18) shall be allowed or permitted to remain at any adult booth or at any licensed premises that includes an adult booth.
- (4) No person under the age of eighteen (18) shall be allowed or permitted to purchase or receive, whether for consideration of not, any adult material or other goods or services at or from any adult booth or any licensed premises that includes an adult booth.

(Ord. 37-2003. Passed 12-2-03.)

743.12 SPECIAL REGULATIONS FOR ADULT CABARETS.

(a) Performance Area. The performance area of an adult cabaret shall be limited to one or more stages or platforms permanently anchored to the floor (a "Cabaret Stage"). Each Cabaret Stage shall be elevated above the level of, and separate from, the patron seating areas. Each Cabaret Stage shall be separated by a distance of at least eighteen (18) inches from all areas of the premises to which sexually oriented business establishment patrons have access. A continuous barrier at least two (2) feet in height and located at least eighteen (18) inches from all points of each Cabaret Stage shall separate each Cabaret Stage from all patron seating areas. No adult patron shall be allowed at any time on any Cabaret Stage.

(b) Lighting. Sufficient lighting shall be provided and equally distributed throughout the public areas of the adult cabaret so that all objects are plainly visible at all times. A minimum lighting level of not less than thirty (30) lux horizontal, measured at thirty (30) inches from the floor and on 10-foot centers shall be maintained at all times for all areas of the adult cabaret where sexually oriented business establishment patrons are admitted.

(c) Tipping. No sexually oriented business establishment patron shall offer, and no sexually oriented business establishment employee having performed on any Cabaret Stage shall accept any form of tip or gratuity offered directly or personally to the employee by the sexually oriented business establishment patron. Rather, all tips and gratuities to sexually oriented business establishment employees performing on any Cabaret Stage shall be placed into a receptacle provided for receipt of such tips and gratuities by the sexually oriented business establishment or shall be placed by the sexually oriented business establishment patron on the Cabaret Stage on which the sexually oriented business establishment employee is performing.

(d) Notice of Select Rules. A sign at least two (2) feet by two (2) feet, with letters of at least one inch high shall be conspicuously displayed on or adjacent to every Cabaret Stage stating the following:

THE VILLAGE OF NEW ALBANY REGULATES THIS ADULT CABARET. ENTERTAINERS ARE:

- (1) NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT.
- (2) NOT PERMITTED TO ACCEPT ANY TIPS DIRECTLY OR PERSONALLY FROM PATRONS. ANY SUCH TIPS MUST BE PLACED INTO THE RECEPTACLE PROVIDED BY MANAGEMENT OR MUST BE PLACED DIRECTLY ON THE CABARET STAGE.

For adult cabarets with a liquor license, the following third rule shall also be included in the sign required by this subsection:

- (3) NOT PERMITTED TO APPEAR IN A STATE OF NUDITY.

(e) Age Limitations.

- (1) No sexually oriented business establishment employee or sexually oriented business establishment patron at an adult cabaret or a licensed premises used for an adult cabaret shall be under the age of twenty-one (21).
- (2) No person under the age of twenty-one (21) shall be admitted to any adult cabaret or to any licensed premises used for an adult cabaret.
- (3) No person under the age of twenty-one (21) shall be allowed or permitted to remain at any adult cabaret or any licensed premises used for an adult cabaret.

- (4) No person under the age of twenty-one (21) shall be allowed or permitted to purchase or receive, whether for consideration or not, any adult material or other goods or services at or from any adult cabaret or any licensed premises used for an adult cabaret.

(Ord. 37-2003. Passed 12-2-03.)

743.13 SPECIAL REGULATION FOR ADULT STORES.

- (a) Windows. Window areas for adult stores shall not be covered or obstructed in any way.
- (b) Age Limitations.
 - (1) No sexually oriented business establishment employee or sexually oriented business establishment patron at an adult store or a licensed premises used for an adult store shall be under the age of eighteen (18).
 - (2) No person under the age of eighteen (18) shall be admitted to any adult store or to any licensed premises used for an adult store.
 - (3) No person under the age of eighteen (18) shall be allowed or permitted to remain at any adult store or any licensed premises used for an adult store.
 - (4) No person under the age of eighteen (18) shall be allowed or permitted to purchase or receive, whether for consideration or not, any adult material or other goods or services at or from any adult store or any licensed premises used for an adult store.

(Ord. 37-2003. Passed 12-2-03.)

743.14 SPECIAL REGULATIONS FOR ADULT THEATERS.

(a) Seating. Each adult theater shall provide seating only in individual chairs with arms or in seats separated from each other by immovable arms and not on couches, benches, or any other multiple person seating structures. The number of seats shall equal the maximum number of persons who may occupy the adult theater.

(b) Aisle. Each adult theater shall have a continuous main aisle alongside the seating area in order that each person seated in the adult theater shall be visible from the aisle at all times.

(c) Sign. Each adult theater shall have a sign posted in a conspicuous place at or near each entranceway to the auditorium or similar area that lists the maximum number of persons who may occupy the auditorium area, which number shall not exceed the number of seats in the auditorium area.

(d) Age Limitations.

- (1) No sexually oriented business establishment employee or sexually oriented business establishment patron at an adult theater or a licensed premises used for an adult theater shall be under the age of eighteen (18).
- (2) No person under the age of eighteen (18) shall be admitted to any adult theater or to any licensed premises used for an adult theater.

- (3) No person under the age of eighteen (18) shall be allowed or permitted to remain at any adult theater or any licensed premises used for an adult theater.
- (4) No person under the age of eighteen (18) shall be allowed or permitted to purchase or receive, whether for consideration or not, any adult material or other goods or services at or from any adult theater or any licensed premises used for an adult theater.

(Ord. 37-2003. Passed 12-2-03.)

743.15 LICENSEE RESPONSIBILITY FOR EMPLOYEES.

Every act or omission by a sexually oriented business establishment employee constituting a violation of the provisions of this chapter shall be deemed to be the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee, or as a result of the licensee's negligent failure to supervise the sexually oriented business establishment employee. The licensee shall be punished for any such act or omission in the same manner as if the licensee committed the act or caused the omission. Accordingly, any such act or omission of any such employee constituting a violation of the provisions of this chapter shall be deemed, for purposes of determining whether the licensee's sexually oriented business establishment license shall be revoked, suspended, or renewed, to be the act or omission of the licensee.

(Ord. 37-2003. Passed 12-2-03.)

743.16 LICENSE REVOCATION OR SUSPENSION.

(a) Grounds. Pursuant to the procedures set forth in this section, the Sexually Oriented Business Use Commissioner may suspend for not more than thirty (30) days, or revoke, any sexually oriented business establishment license if the Commissioner, based on credible and reasonably reliable information and evidence, determines that any one or more of the following has occurred:

- (1) The licensee has violated any of the provisions or requirements of this chapter or the sexually oriented business establishment license issued pursuant hereto, or the provisions of the Village Zoning Code applicable to the licensed premises or the sexually oriented business establishment.
- (2) The licensee:
 - A. Knowingly or negligently furnished false or misleading information or withheld information on any application or other document submitted to the Village for the issuance or renewal of any sexually oriented business establishment license or
 - B. Knowingly or negligently caused or suffered any other person to furnish or withhold any such information on the licensee's behalf.
- (3) The licensee has committed a felony or specified criminal act on the licensed premises.

- (4) The licensee authorizes, approves, or, as a result of the licensee's negligent failure to supervise the licensed premises or the sexually oriented business establishment, allows a sexually oriented business establishment employee, a sexually oriented business establishment patron, or any other person to:
- A. Violate any of the provisions or requirements of this chapter or of the provisions or requirements of the sexually oriented business establishment license issued pursuant hereto, or
 - B. Commit any felony or specified criminal act on the licensed premises. The licensee, or any person identified in this chapter becomes disqualified for the issuance of a sexually oriented business establishment license at any time during the term of the license at issue.

(b) Procedure. A sexually oriented business establishment license may be suspended for not more than thirty (30) days or revoked pursuant to the terms and conditions set forth in this subsection.

- (1) Notice. Upon determining that one or more of the grounds for suspension or revocation under subsection (a)(1) hereof may exist, the Sexually Oriented Business Use Commissioner shall serve a written notice on the licensee in person or by certified mail, postage prepaid, return receipt requested, addressed to the licensee's address as set forth in the licensee's application. The written notice shall, at a minimum:
- A. State that the Sexually Oriented Business Use Commissioner has determined that the sexually oriented business establishment license may be subject to suspension or revocation pursuant to this chapter;
 - B. Identify the specific grounds for the commissioner's determination; and
 - C. Set a date for a hearing regarding the commissioner's determination as to the possibility of suspension or revocation of the sexually oriented business establishment license.

The date of the hearing shall be no less than five (5) days after service of the Commissioner's notice, unless the licensee and the Sexually Oriented Business Use Commissioner agree on an earlier or later date.

- (2) Hearing. The Sexually Oriented Business Use Commissioner shall conduct the hearing. At the hearing, the licensee may present and submit evidence and witnesses to refute the grounds cited by the Sexually Oriented Business Use Commissioner for suspending or revoking the license and the Village and any other persons may submit evidence to sustain such grounds. The administrative record compiled on the sexually oriented business establishment pursuant to this chapter shall be made part of the hearing record. Within three (3) days after the close of the hearing, the Sexually Oriented Business Use Commis-

sioner shall, having considered the record made at the hearing, render a decision in writing, setting forth the reasons for the decision. The action taken by the Sexually Oriented Business Use Commissioner shall be final and shall be subject to judicial review.

- (3) Notice and effective date of suspension or revocation. The Sexually Oriented Business Use Commissioner's written decision shall be served on the licensee in person or by certified U.S. mail, postage prepaid, return receipt requested, addressed to the licensee's address as set forth in the licensee's application. Any suspension or revocation, as the case may be, shall take effect on the day that the Sexually Oriented Business Use Commissioner's written decision is delivered in person or three (3) days after it is placed in the U.S. mail as provided in this subsection.
- (4) Surrender of license. Upon the suspension or revocation of sexually oriented business establishment license pursuant to this chapter, the Sexually Oriented Business Use Commissioner shall take custody of the suspended or revoked license.

(c) Appeal Rights. Any denial, suspension, or revocation of a new or renewal license under this chapter may be appealed to the Village Council by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Village Council shall hold a hearing on the appeal within thirty (30) days and shall issue a decision affirming or reversing the denial, suspension, or revocation within seven (7) days after the hearing.

- (1) Any decision by the Village Council shall be a final appealable order, and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.
- (2) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this chapter, the applicant or licensee shall provide written notice of such appeal to the Village of New Albany in advance of or at the time of the filing of the appeal. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Village shall transmit to the court in which appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order.
- (3) Subject to the provisions of subsection (c)(6) hereof, any licensee lawfully operating a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to operate said business during the pendency of an appeal of a decision rendered under this Chapter to the Village Council or to a court.
- (4) Subject to the provisions of subsection (c)(6) hereof, any licensee lawfully acting as an employee in a Sexually Oriented Business prior to the denial of a license renewal applica-

tion, or the suspension or revocation of a licensee may continue to serve in such capacity during the pendency of an appeal of a decision rendered under this chapter to the Village Council or to a court.

- (5) In the event that an applicant for a new Sexually Oriented Business license or a new Sexually Oriented Business employee license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within thirty (30) days of the date the appeal was filed, the City will issue such applicant a provisional sexually oriented business license or Sexually Oriented Business Employee license upon request of the applicant. The provisional license:
 - A. Will allow an applicant for a Sexually Oriented Business license to operate the Sexually Oriented Business named in the license application under the same terms as a normal Sexually Oriented Business license issued pursuant to this chapter for the period of time specified in subsection (c)(6) hereof; and
 - B. Will allow an applicant for a Sexually Oriented Business employee license to act as an employee on the premises of a Sexually Oriented Business under the same terms as a normal Sexually Oriented Business employee license issued pursuant to this chapter for the period of time specified in subsection (c)(7) hereof; and
 - C. Will be subject to the same requirements as a normal Sexually Oriented Business license or Sexually Oriented Business employee license issued under this chapter.
- (6) A provisional license will expire on whichever of the following three (3) dates is earliest:
 - A. The date that a judicial decision is issued upholding the license denial;
 - B. The date on which a non-provisional Sexually Oriented Business license or Sexually Oriented Business employee license is issued to the applicant pursuant to a judicial decision overturning the license denial; or
 - C. The date one year from the issuance of the provisional license.
- (7) In the event that judicial review of the denial of a new license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the Sexually Oriented Business Use Commissioner. The Sexually Oriented Business Use Commissioner shall grant an application for renewal of a provisional license unless it is determined that new grounds exist for denial of a license application, which did not exist at the time of the original license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial; the City has the right to consolidate such review with the pending judicial appeal of the previous license denial.

(Ord. 37-2003. Passed 12-2-03.)

743.17 ADMINISTRATIVE RECORD.

The Sexually Oriented Business Use Commissioner shall cause to be kept in the Commissioner's office an accurate record of every sexually oriented business establishment license application

received and acted on, together with all relevant information and material pertaining to such application, any sexually oriented business establishment license issued pursuant thereto, and any sexually oriented business establishment operated pursuant to such sexually oriented business establishment license.

(Ord. 37-2003. Passed 12-2-03.)

743.18 RECORD KEEPING BY LICENSEE.

The licensee of every sexually oriented business establishment shall maintain a register of all of its sexually oriented business establishment employees. For each such employee, the register shall include the following information:

- (a) Legal name.
- (b) Any and all aliases.
- (c) Date of birth.
- (d) Gender.
- (e) Social security number.
- (f) Date of commencement of employment.
- (g) Date of employment termination, if applicable.
- (h) Specific job or employment duties.

The register shall be maintained for all current employees and all employees employed at any time during the preceding thirty-six (36) months. The licensee shall make the register of its sexually oriented business establishment employees available for inspection by the Village immediately upon demand at all reasonable times.

(Ord. 37-2003. Passed 12-2-03.)

743.19 PENALTY.

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions or requirements of this chapter or of any of the provisions or requirements of any sexually oriented business establishment license, shall be fined not more than five hundred dollars (\$500.00) for each such violation. Each day such violation continues shall constitute a separate offense. The Sexually Oriented Business Use Commissioner shall give written notice to any such person of any such violation and the fine imposed by serving a citation in person or by certified U.S. mail, postage prepaid, return receipt requested, addressed to the licensee's address as set forth in the licensee's application.

(Ord. 37-2003. Passed 12-2-03.)

743.20 NUISANCE DECLARED.

Any sexually oriented business establishment established, operated, or maintained in violation of any of the provisions or requirements of this chapter or of any sexually oriented business establishment license shall be, and the same is, declared to be unlawful and a public nuisance. The Village may, in addition to or in lieu of any other remedies set forth in this chapter, commence an action to enjoin, remove, or abate such nuisance in the manner provided by law and shall take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from establishing, operating, or maintaining a sexually oriented business establishment contrary to the provisions of this chapter.

(Ord. 37-2003. Passed 12-2-03.)

743.21 COMPUTATION OF TIME.

Unless otherwise specifically set forth in this chapter, the time within which any act required by this chapter is to be done shall be computed by excluding the first day and including the last day, unless the last day is Saturday, Sunday or a Federal or State of Ohio holiday, in which case it shall also be excluded. If the day immediately following such Saturday, Sunday, or holiday is also a Saturday, Sunday, or holiday, then such succeeding day shall also be excluded.

(Ord. 37-2003. Passed 12-2-03.)

CHAPTER 745 SMOKING PROHIBITIONS

745.01	DEFINITIONS.
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745.01 DEFINITIONS.

For purposes of this chapter:

(a) "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or any limited liability form of any of the foregoing, or any other entity formed for any legal purpose, whether for profit, not-for-profit or charitable purposes, including, but not limited to retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, financial, counseling, or other professional or consumer services are provided.

(b) "Employee" means a person who is employed by an employer, or who contracts with an employer or who contracts with a third person to perform services for an employer, or who otherwise performs services for an employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services to such employer for no monetary compensation.

(c) "Employer" means an individual person, business, partnership, association, corporation, including a municipal corporation, trust, or any nonprofit entity that accepts the provision of services from one or more employees in a place of employment.

(d) "Enclosed Area" means all space closed in by a roof or other overhead covering of any kind and walls or other side coverings of any kind on at least three (3) sides with openings for ingress and egress. "Enclosed" area shall not include designated smoking shelters provided by an employer when such shelters are located more than ten (10) feet from any point of ingress, egress, ventilation system operable window or other opening which could provide a means for smoke to enter into the place of employment or public place.

(e) "Outdoor Patio" means an outdoor area, open to the air at all times, that is either:

- (1) Enclosed by a roof or other overhead covering and not more than two (2) walls or other side coverings; or
- (2) Has no roof or other overhead covering at all regardless of the number of walls or other side coverings.

(f) "Place of Employment" means that portion of any enclosed, public place under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, such areas in office work places, factories, warehouses and laboratories. An enclosed area as described herein is a "Place of employment" without regard to time of day or actual presence of employees. "Place of employment" only includes private residences, whether single or multi-family, if used as a child care, adult day care, or health care facility, or if a person uses a private residence in any way otherwise qualifying that person as an employer with respect to the use of that private residence; provided, however, that private residences are exempt from this chapter to the extent that the services being provided include housecleaning, home maintenance, cable or telephone repair, personal care services, domestic services, or food and beverage services in the private residence. Persons utilizing a private residence in a home occupation wherein no employees are present or in which employees are present infrequently are not a "place of employment", provided that no employee shall be required to enter into the private residence within fifteen (15) minutes of a person smoking.

(g) "Private Club" means a club as that term is defined in ORC 4301.01(B)(13) and that is organized as not-for-profit.

(h) "Proprietor" means the owner, manager, operator, liquor permit holder, or other person in charge or control of a public place or place of employment.

(i) "Public Place" means an enclosed area to which the public is invited or in which the public is permitted and includes service lines.

(j) "Retail Tobacco Store" means a retail store used primarily for the sale of smoking materials and smoking accessories in which the sale of other products is incidental and where smoking is permitted within the public place. "Retail tobacco store" does not include a tobacco department of a larger commercial establishment such as a department store, discount store, or bar or retail stores used primarily for the sale of smoking materials where no provisions for smoking within the public place are provided or permitted.

(k) "Service Line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(l) "Smoke" or "Smoking" means inhaling, exhaling or carrying any lighted and/or burning smoking materials. "Smoking" does not include the burning or carrying of incense in a religious ceremony or the use of matches or lighters for non-smoking purposes. "Smoke" shall also mean the by-product of the burning of any smoking materials.

(m) "Smoker" means a person or persons smoking.

(n) "Smoking Materials" means any cigar, cigarette, pipe, weed, plant or other organic substance grown, manufactured or processed which is intended to be used for smoking in any form. "Smoking materials" do not include candles, incense or other similar items.

(o) "Work Area" means any room, desk, station or other area normally occupied by an employee while carrying out his or her primary work function.
(Ord. 08-2005. Passed 5-17-05.)

745.02 PROHIBITIONS.

(a) No proprietor of a public place or employer of a place of employment shall negligently permit smoking in said public place or place of employment within the Village, except as provided in Section 745.04.

(b) All enclosed areas, including buildings and vehicles owned, leased, or operated by the Village shall be subject to the provisions of this chapter.

(c) All areas within ten (10) feet of the ventilation intake system, any ingress, egress, windows or any other means of access capable of being opened that are part of any enclosed area shall be subject to the provisions of this chapter so as to ensure that smoke does not enter the enclosed area through entrances, windows, ventilation systems, or other means.
(Ord. 08-2005. Passed 5-17-05.)

745.03 SMOKING IN PROHIBITED AREAS.

(a) No person shall smoke in a public place, or place of employment within the Village, except as provided in Section 745.04.

(b) No person shall smoke in any business or outdoor area that has been declared nonsmoking pursuant to Section 745.06.
(Ord. 08-2005. Passed 5-17-05.)

745.04 AREAS WHERE SMOKING IS NOT REGULATED.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the prohibitions in Sections 745.02 and 745.03:

(a) Private residences used for that purpose or as home occupations as defined in 1105.02(x) and 1165.08 of the Village Code, except if used as a licensed childcare, adult day care, or health care facility.

(b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than fifteen percent (15%) of rooms rented to guests in a hotel or motel may be so designated.

(c) Any home, as defined in ORC 3721.10(A), but only to the extent necessary to comply with ORC 3721.13(A)(18) and rules promulgated according to that section.

(d) Retail tobacco stores as defined in Section 745.01 in operation prior to the effective date of this chapter. Any new retail tobacco store or any existing retail tobacco store that relocates to another site may only qualify for this exemption if: (i) completely enclosed on all sides by solid floor-to-roof deck walls; (ii) comply with all applicable fire and building code requirements; and

(iii) have a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back-streaming of second-hand smoke into adjoining areas located in a freestanding structure.

(e) Outdoor patios as defined in Section 745.01. If the outdoor patio has a structure capable of being enclosed by walls, covers, solid surface fencing, or tents, regardless of the materials or the removable nature of the walls, covers, solid surface fencing, or tents, the space will be considered enclosed, when the walls, covers, fences, or tents are in place. All outdoor patios shall be physically separated from an enclosed area. If sliding or folding windows or doors or other windows or doors forms any part of the border to the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If sliding or folding windows or doors or other windows or doors does not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this chapter.

(f) Family-owned and operated businesses in which all employees are related to the owner, and offices of self-employed persons in which all employees are related to the self-employed person, but only if the enclosed areas the businesses and offices occupy are not open to the public, are not in the same building with other enclosed areas subject to this regulation, and smoke from these businesses and offices does not infiltrate into enclosed areas where smoking is prohibited under the provisions of this chapter.

(g) Private clubs as defined in Section 745.01, provided that the following apply:

- (1) That there are no non-members present;
- (2) That smoking will be limited to a specific designated smoking area in which no person under the age of twenty-one (21) is permitted and which has a separate ventilation system whereby air from such space is immediately exhausted to an outdoor area, not recirculated inside, and is negatively pressurized to prevent back-streaming of second-hand smoke into adjoining areas.
- (3) That the private club is the holder of a valid D-4 liquor permit pursuant to ORC 4303.17, if alcoholic beverages are to be served.

(Ord. 08-2005. Passed 5-17-05.)

745.05 CONSTRUCTION; OTHER APPLICABLE LAWS.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws, and shall be liberally construed so as to further its purposes.

(Ord. 08-2005. Passed 5-17-05.)

745.06 DECLARATION OF ESTABLISHMENT AS NON-SMOKING.

Notwithstanding any other provision of this chapter, the proprietor of a business or outdoor area which does not otherwise qualify as a public place or place of employment or any public place

or place of employment otherwise exempt from the provisions of Sections 745.02 and 745.03 may declare such location as a non-smoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 745.07 is posted.

(Ord. 08-2005. Passed 5-17-05.)

745.07 POSTING OF SIGNS; PROHIBITION OF ASHTRAYS; RESPONSIBILITIES OF PROPRIETORS.

In addition to the prohibitions contained in Section 745.02, the proprietor of a public place or place of employment shall comply with the following requirements:

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted at the entrance to every public place and place of employment and within such spaces where smoking is prohibited by this chapter. A sign shall be of sufficient size to be clearly legible to persons entering or frequenting the area it is intended to mark. All signs shall contain a telephone number for reporting violations.

(b) All ashtrays and other receptacles used for disposing of smoking materials shall be removed from any area where smoking is prohibited by this chapter.

(c) By December 31, 2005, every employer subject to the provisions of this chapter shall adopt, implement, make known, maintain and update to reflect any changes, a written smoking policy which shall contain at a minimum the following requirements:

- (1) The prohibition of smoking except in accordance with the provisions of this chapter, and the description of the smoking restrictions adopted or implemented;
- (2) That (i) no person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee applicant for employment or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter; and (ii) the establishment of a procedure to provide for adequate redress of any such adverse personnel action taken against an employee in retaliation for that employee's attempt to exercise his or her rights under this chapter with respect to the place of employment.

(d) Employers shall prominently post the smoking policy in the workplace, and shall, within three (3) weeks of its adoption and any modification, disseminate the policy to all employees and to new employees when hired.

(e) Employers shall supply a written copy of the smoking policy upon request to any employee or prospective employee.

(f) This section shall not be construed to permit smoking in any area in which smoking is prohibited pursuant to Section 745.02.

(Ord. 08-2005. Passed 5-17-05.)

745.08 ENFORCEMENT.

This chapter shall be enforced by the Mayor and his or her designee(s).
(Ord. 08-2005. Passed 5-17-05.)

745.99 PENALTIES.

(a) Upon a first violation, in a 12-month period, of any provision of this chapter, the Administrator and his or her designee(s) shall issue a warning letter to the individual or proprietor. Thereafter, the penalties contained in divisions (b), (c) and (d) of this section shall apply.

(b) If, within one year of the offense, the individual or proprietor previously has been issued a warning letter pursuant to division (a) of this section and has not been convicted of or pleaded guilty to a violation of any provision of this chapter, a fine of not more than two hundred and fifty dollars (\$250.00) and up to thirty (30) hours of community service;

(c) If, within one year of the offense, the individual or proprietor previously has been issued a warning letter pursuant to division (a) of this section and been convicted of or pleaded guilty to one violation of any provision of this chapter, a fine of not more than five hundred dollars (\$500.00) and up to thirty (30) hours of community service;

(d) If, within one year of the offense, the individual or proprietor previously has been issued a warning letter pursuant to division (a) of this section and been convicted of or pleaded guilty to two (2) or more violations of any provision of this chapter, a fine of not more than one thousand dollars (\$1,000.00) and up to thirty (30) hours of community service;

(e) It is an affirmative defense for the proprietor to any charge under Section 745.02(c) if the violation does not occur on or within the property boundaries of the proprietors public place or place of employment.

(f) It is an affirmative defense for an individual to any charge under Section 745.03 if the proprietor or other person in charge or control of a public place or place of employment fails to comply with the requirements of Section 745.07(a) or (b).

(Ord. 08-2005. Passed 5-17-05.)

CHAPTER 747 SALES PROHIBITIONS TO INDIVIDUALS UNDER AGE TWENTY-ONE (21)

747.01	DEFINITIONS.
747.02	PROHIBITIONS.
747.03	AFFIRMATIVE DEFENSES
747.04	EXEMPTIONS.
747.05	POSTING OF SIGNS; RESPONSIBILITIES OF PROPRIETORS.
747.06	CONSTRUCTION; OTHER APPLICABLE LAWS.
747.07	SEVERABILITY.
747.99	PENALTIES.

747.01 DEFINITIONS.

For purposes of this chapter:

- (1) "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or any limited liability form of any of the foregoing, or any other entity formed for any legal purpose, whether for profit, not for profit or charitable purposes, including, but not limited to retail establishments where goods or services are sold.
- (2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper, reconstituted cigarette tobacco, homogenized cigarette tobacco, cigarette tobacco sheet, or any similar materials, Cigarette includes clove cigarettes and hand-rolled cigarettes.
- (3) "Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.
- (4) "Tobacco product" means any product that is made from tobacco, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" does not include any product that has been approved by the US Food and Drug Administration, pursuant to its authority, over drugs and devices, for sale as a tobacco cessation product or for other medical purposes and is being marketed and sold solely for that purpose.
- (5) "Alternative nicotine product" means an electronic smoking device 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. "Alternative nicotine product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco cessation product or for other medical purposes and is being marketed and sold solely for that purpose.

- (6) "Distribute" means to furnish, give, or provide, whether gratuitous or for compensation in money, barter or in kind.
- (7) "Retailer" means any person or business that operates a store, stand, booth, concession, or other place at which sales of tobacco products or alternative nicotine products are made to purchasers for consumption or use.
- (8) "Proprietor" means an owner, manager, operator, or other person who operates a place of business in which cigarettes, tobacco products, or alternative tobacco products are sold, including sales through vending machines.

(Ord. O-41-2015. Passed 11-17-15)

747.02 PROHIBITIONS.

(a) No person, business, retailer, or other establishment shall distribute, sell, permit to be sold, or offer for sale to any individual under twenty-one (21) years of age any cigarettes, tobacco products, or alternative tobacco products.

(b) Before distributing or selling any cigarette, tobacco product, or alternative nicotine product to another person, the person distributing or selling any cigarette, tobacco product, or alternative nicotine product shall verify the person is twenty-one (21) years of age or older by:

- (1) examining from any person that appears to be under thirty (30) years of age a government-issued photographic identification that establishes the person is at least twenty-one (21) years of age; or
- (2) for sales made through the Internet or other remote sales methods, performing an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered or provided by the person during the ordering process, that establishes that the person is twenty-one (21) years of age or older.

(c) A violator of this section includes the person who distributes, sells, permits to be sold, or offers for sale any such product to an individual under the age of twenty-one (21) as well as his or her employer and any person who controls the person who sells, permits to be sold, or offers for sale any such product to an individual under twenty-one (21) years of age.

(d) No individual under the age of twenty-one (21) shall knowingly furnish false information concerning his or her name, age, or other identification for the purpose of obtaining cigarettes, tobacco products, or alternative tobacco products.

(Ord. O-41-2015. Passed 11-17-15)

747.03 AFFIRMATIVE DEFENSES

(a) A seller or an agent or employee of a seller, business, retailer, or establishment may not be found guilty of a charge of a violation of this section if the seller, agent, or employee raises and proves as an affirmative defense that the conditions and circumstances set forth in Section 537.16 subsections (d)(1)(2) or (e) have been met.

(b) A seller or an agent or employee of a seller, business, retailer, or establishment may not be found guilty of a charge of a violation of this section if the seller, agent, or employee raises and proves as an affirmative defense that they performed a Tobacco Product/Alternative Nicotine Product Transaction Scan as defined and set forth in Section 537.16 subsections (h) and (i).
(Ord. O-41-2015. Passed 11-17-15)

747.04 EXEMPTIONS.

It shall not be a violation of this section to distribute, sell, permit to be sold, or offer for sale to any individual under twenty-one (21) years of age in this City any product that has been approved as a tobacco cessation aid by the United States Food and Drug Administration.
(Ord. O-41-2015. Passed 11-17-15)

747.05 POSTING OF SIGNS; RESPONSIBILITIES OF PROPRIETORS.

In addition to the prohibitions contained in Section 747.02 of this Chapter, the proprietor of a business in which cigarettes, tobacco products, and/or alternative nicotine products are sold, including sales through vending machines, shall comply with the following requirements:

Effective January 1, 2016, proprietors shall post a sign stating "Under 21 Sales of Nicotine Prohibited by Law" and "Pursuant to Chapters 537.16 and 747 of the New Albany, Ohio Code of Ordinances." The sign shall contain a graphic showing a cigarette surrounded by a circle with a bar through it, indicating the ban. The sign shall be printed on a white background with red or black font. The font for "Under 21 Sales of Nicotine Prohibited by Law" shall be no smaller than 1/2 inch in height. The font for "Pursuant to Chapters 537.16 and 747 of the New Albany, Ohio Code of Ordinances" shall be no smaller than one sixteenth (1/16) of an inch in height. See example sign attached as Exhibit A. The sign shall be clearly and conspicuously posted at or near the point of sale of any location and on or near any vending machine where tobacco products or alternative nicotine products are sold.

Exhibit A

(Ord. O-41-2015. Passed 11-17-15)

747.06 CONSTRUCTION; OTHER APPLICABLE LAWS.

This Chapter shall not be interpreted or construed to permit sales of cigarettes, tobacco products, and/or alternative nicotine products where they are otherwise restricted by other applicable laws, and shall be liberally construed so as to further the purposes of this Chapter.

(Ord. O-41-2015. Passed 11-17-15)

747.07 SEVERABILITY.

If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

(Ord. O-41-2015. Passed 11-17-15)

747.99 PENALTIES.

(a) Whoever violates section 747.02 (A), (B), or (C) or section 747.05 is guilty of illegal distribution of cigarettes, tobacco products, or alternative nicotine products to individuals under the age of twenty-one (21), a misdemeanor of the fourth degree. If the offender previously has

been convicted of a violation of section 747.02 or section 537.16 subsections b(1) or b(2), permitting children or individuals under the age of twenty-one (21) to purchase or use cigarettes, tobacco products, or alternative nicotine products, the violation is a misdemeanor of the third degree.

(b) Whoever violates 747.02 (D) of this section is guilty of permitting children and/or individuals under the age of twenty-one (21) to purchase or use cigarettes, tobacco products, or alternative nicotine products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of section 537.16 (b)(3) of this section, permitting children or individuals under the age of twenty-one (21) to purchase or use cigarettes, tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(c) Any cigarette, tobacco product, or alternative nicotine product that is distributed, sold, permitted to be sold or offered for sale in violation of this section is subject to seizure and forfeiture, and disposal.

(Ord. O-41-2015. Passed 11-17-15)

PART NINE - BUSINESS REGULATION CODE

Chapter 905	Driveway and Sidewalk Construction
Chapter 907	Rights-of-Way Ordinance
Chapter 909	Construction Policy
Chapter 931	Protection of Storm Sewers
Chapter 933	Extension of Sanitary Sewers
Chapter 935	Water Regulations and Charges
Chapter 939	Water Lines and Fire Hydrants

CHAPTER 905 DRIVEWAY AND SIDEWALK CONSTRUCTION*

905.01	REGISTRATION FEE REQUIRED.
905.02	CONSTRUCTION CROSSING CURB, TREE LAWN OR SIDEWALK.
905.03	TIME LIMITATION.
905.04	CONSTRUCTION STANDARDS.
905.99	PENALTY.

905.01 REGISTRATION FEE REQUIRED.

No person shall proceed with any sidewalk or driveway construction or repair work within the public right-of-way limits of the Municipality, unless such person has registered with the Building Inspector and paid the annual fee in accordance with the Village of New Albany Schedule of Fees and Service Charges or has received a valid building permit.
(Ord. 43-2002. Passed 12-10-02.)

905.02 CONSTRUCTION CROSSING CURB, TREE LAWN OR SIDEWALK.

Before proceeding with any construction project in which it is desired or may be necessary to drive across a curb, tree lawn or sidewalk, the permit holder shall saw cut the curb for a sufficient width at the location of the contemplated permanent driveway so as to prevent damage to the remainder of the curb, and if there is no curbing, he shall install in the ditch paralleling the street, 70602 Class 4 concrete pipe of sufficient size, but not less than twelve (12) inches, to prevent the backing up of water in the ditch and shall cover the tile with crushed stone or gravel to the level of the existing road for a width sufficient to allow trucks carrying building supplies to pass over. Thereafter no vehicle shall be driven across the curb, tree lawn, sidewalk or ditch except by way of the curb cut and proposed driveway. Such person installing the driveway shall take such further action as may be necessary to prevent the formation of ruts, depressions, or other obstacles or hazards, including mud, in the roadway, the tree lawn, or in pedestrian walking areas. All of the work shall be done under the supervision and satisfaction of the Building Inspector, who shall have the authority to determine the width, depth and manner of cutting the curb or laying tile and type of protection of the sidewalk and tree lawn.
(Ord. 14-92. Passed 3-3-92.)

905.03 TIME LIMITATION.

Prior to commencement of construction, the owner shall have constructed a crushed stone working surface extending from the side of the road nearest the site a distance of forty (40) feet or to the building setback line. When the structure is completed, the driveway shall be completed in compliance with the laws of the Municipality.
(Ord. 14-92. Passed 3-3-92.)

***Cross reference**—Construction or repair at owner's expense - see ORC 729.01 et seq.
Notice to construct or repair - see ORC 729.03

905.04 CONSTRUCTION STANDARDS.

(a) Compliance with Subdivision Regulations. All driveways shall conform with the Subdivision Regulations of the Municipality, and its amendments.

(b) Location. The driveway shall be so located that all portions thereof shall come within the limits of lot lines extended to the existing curb or pavement, unless Council, by special resolution, shall authorize a different location. Such resolution shall specify the location authorized. In case water hydrants, light standards, telephone poles or other existing structures conflict with the location decided upon, the Building Inspector may approve removal of such structure or structures, provided that removal is practicable.

The property owner shall deposit in advance with the owner of such structures a sum sufficient to cover the full cost of removal and relocation.

(c) Removal of Curb. The minimum length of removal of existing curb shall be sixteen (16) feet. Where applicable in saw cutting the existing curb, care shall be taken so that the saw cut shall be vertical and at right angles to the line of curb. Five (5) feet shall be the minimum length of the block or blocks of curb left in place, otherwise a full block of existing curb shall be removed and replaced. In areas where continuous poured curbs have been installed, a horizontal saw cut may be used, providing that the undisturbed balance of the curb is a minimum of one foot in depth. Replaced work shall conform in all respects in character and kind to existing work. The minimum width of the driveway, from the curb line to the lot line, shall be twelve (12) feet.

(d) Character of Work. All driveways shall be paved with concrete from the back of the curb line, or, if there is no curb, from the street pavement to the lot line. Asphaltic concrete will be permitted where there are no curbs. Concrete shall comply with the standards mandated by the Municipal Engineer, and shall have a minimum depth of six (6) inches throughout. Asphaltic concrete shall be of a type and depth as to have sufficient stability to withstand the use to which the driveway may be put (six (6) inches of gravel and two (2) inches of concrete is the minimum recommended). Where concrete sidewalks are in place in front of the property, that portion of the driveway approach between the curb or street and the sidewalk section shall be constructed of concrete a minimum of six (6) inches in depth. To provide for expansion, a one-half inch pre-molded expansion joint extending the full section width of the curb and gutter shall be placed at each side where the driveway joins the existing curb and also in the center of the curb and gutter section. Where continuous poured curbs are horizontally sawed, one-half-inch expansion joints shall be used at the sawed curb and at the sidewalk.

All work shall be subject to inspection by the Building Inspector of the Municipality.
(Ord. 14-92. Passed 3-3-92.)

905.99 PENALTY.

Editor's note—See Section 101.99 for general Codified Ordinances penalty.

CHAPTER 907 RIGHTS-OF-WAY

907.01	DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS.
907.02	RIGHTS-OF-WAY ADMINISTRATION.
907.03	CERTIFICATE OF REGISTRATION APPLICATIONS.
907.04	REPORTING REQUIREMENTS.
907.05	COMPENSATION FOR CERTIFICATE OF REGISTRATION.
907.06	OVERSIGHT AND REGULATION.
907.07	REGISTRATION TERM.
907.08	INDEMNITY.
907.09	CIVIL FORFEITURES.
907.10	TERMINATION OF CERTIFICATE OF REGISTRATION.
907.11	UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.
907.12	ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.
907.13	CONSTRUCTION PERMITS.
907.14	CONSTRUCTION, RELOCATION AND RESTORATION.
907.15	MINOR MAINTENANCE PERMIT.
907.16	ENFORCEMENT OF PERMIT OBLIGATION.
907.17	CONSTRUCTION AND REMOVAL BONDS.
907.18	INDEMNIFICATION AND LIABILITY.
907.19	GENERAL PROVISIONS.
907.99	PENALTIES.

907.01 DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS.

(a) Findings and purpose.

- (1) The City of New Albany, Ohio (the "City") is vitally concerned with the use of all Rights-of-way in the City as such Rights-of-way are a valuable and limited resource.
- (2) Changes in the public utilities and communication industries have increased the demand and need for access to Rights-of-way and placement of facilities and structures therein.
- (3) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights-of-way.
- (4) The City has authority under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4 and 7, to regulate public and private entities which use the Rights-of-way.

(b) Scope. The provisions of this Chapter shall apply to all users of the Rights-of-way as provided herein. To the extent that anything in this Chapter 907 conflicts with other sections of the Code, then the provisions of this Chapter 907 shall control.

(c) Definitions. For the purposes of Chapter 907 the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words 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. The words "shall" and "will" are

mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this Chapter. Defined terms remain defined terms whether or not capitalized.

- (1) "AFFILIATE" means each Person who falls into one or more of the following categories: (a) each Person having, directly or indirectly, a controlling interest in a Provider, (b) each Person in which a Provider has, directly or indirectly a controlling interest, (c) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent (15%) or more, joint venturer or joint venture partner, of a Provider, and (d) each Person, directly or indirectly, controlling, controlled by, or under common control with the Provider; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such Provider, or any creditor of such Provider solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Provider.
- (2) "APPLICANT" means any Person who seeks to obtain a Certificate of Registration and/or a Permit.
- (3) "APPLICATION" means the process by which an Applicant submits a request to obtain Certificate of Registration and/or a Permit.
- (4) "APPLICATION FEE" means the fee paid to the City for application for a Certificate of Registration pursuant to Section 907.03(A).
- (5) "BANKRUPTCY CODE" means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.
- (6) "BEST EFFORT(S)" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable Laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.
- (7) "CABLE FRANCHISE" means the same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (8) "CABLE OPERATOR" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (9) "CABLE SERVICE" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (10) "CERTIFICATE OF REGISTRATION" means the document issued to each Provider and its unique System to occupy the Rights-of-way within the City that outlines the terms of that occupancy of the Rights-of-way.
- (11) "CITY" means The City of New Albany, Ohio.
- (12) "CITY COUNCIL" means the governing body of the City of New Albany, Ohio.

- (13) "CITY OF COLUMBUS" means the City of Columbus, Ohio and/or its divisions or departments.
- (14) "CITY MANAGER" means the duly appointed City Manager of the City of New Albany, Ohio.
- (15) "CODE (or C.O.)" means the codified ordinances of New Albany, Ohio.
- (16) "CONFIDENTIAL/PROPRIETARY INFORMATION" means all information that has been either identified or clearly marked as confidential/proprietary by the Provider prior to any submission.
- (17) "CONSTRUCT" means, but not be limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the Right-of-way.
- (18) "CONSTRUCTION" means, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-way. Construction shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is part of the Right-of-way.
- (19) "CONSTRUCTION BOND" means a bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Rights-of-way pursuant to a Permit.
- (20) "CONSTRUCTION AND MAJOR MAINTENANCE PLAN" means a written plan including maps of the expected location, design, other related equipment and Facilities of a Provider which describes in full the Construction intended to be accomplished by the Provider in the Rights-of-way over the next calendar year.
- (21) "CONSTRUCTION PERMIT" means the Permit specified in Section 907.13 et seq. which must be obtained before a Person may Construct in, locate in, occupy, maintain, move or remove Facilities from, in or on the Rights-of-way.
- (22) "COUNTY" means Franklin County, Ohio or Licking County, Ohio. County specifically excludes any and all contractors, agents or other Persons acting on behalf of said County(s).
- (23) "CREDIBLE" means worthy of being believed.
- (24) "DIRECTOR OF FINANCE" means the duly appointed Director of Finance of the City of New Albany, Ohio.
- (25) "DIRECTOR OF PUBLIC SERVICE" means the duly appointed Director of Public Service of the City of New Albany, Ohio or his/her designee.

- (26) "EMERGENCY" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.
- (27) "FACILITY(IES)" means any tangible thing located in any Rights-of-way within the City; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights-of-way between a Person's property and the street edge of pavement.
- (28) "FCC" means the Federal Communications Commission, or any successor thereto.
- (29) "FERC" means the Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.
- (30) "FINANCE DIRECTOR" means the duly appointed Finance Director of the City of New Albany, Ohio.
- (31) "FULL" means unable to accommodate any additional Facilities as determined by the Director of Public Service following a reasonable analysis taking into consideration all applicable Law; commonly accepted industry standards; and routine engineering practices.
- (32) "IN" when used in conjunction with Rights-of-way, means in, on, above, within, over, below, under or through a Rights-of-way.
- (33) "INSPECTOR" means any Person authorized by the Director of Public Service to carry out inspections related to the provisions of Chapter 907.
- (34) "LAW" means any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of Chapter 907 or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights-of-way.
- (35) "LAW DIRECTOR" means the duly appointed Law Director of the City of New Albany, Ohio.
- (36) "MINOR MAINTENANCE PERMIT" means a Permit, which must be obtained before a Person can perform minor maintenance, as set forth in Section 907.15, in or on the Rights-of-way.
- (37) "OMUTCD" means the Ohio Manual of Uniform Traffic Control Devices which is the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to ORC 4511.09.
- (38) "ORC" means the Revised Code of the State of Ohio.
- (39) "OHIO UTILITY PROTECTION SERVICE" means the utility protection service as defined in ORC 153.64 and/or Section 3781.26 or a statutory successor thereto.

- (40) "OPEN VIDEO SERVICE" means any video programming Services provided to any Person through the use of Rights-of-way, which Person is certified by the FCC to operate an Open Video System pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.
- (41) "PERMIT" means a Construction Permit or a Minor Maintenance Permit, as the context requires.
- (42) "PERMIT COST" means all direct, incidental and indirect costs actually incurred or realized by the City for Permit issuance, Permit oversight and pavement degradation resulting from Construction activity.
- (43) "PERMIT FEE" means money paid to the City for a Permit to Construct in the Rights-of-way as required by Chapter 907.
- (44) "PERMITTEE" means any Person to whom a Construction Permit and/or, Minor Maintenance Permit has been granted by the City and not revoked.
- (45) "PERSON" means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- (46) "PROVIDER" means a Person who owns or operates a System and has a valid Certificate of Registration. The City, County, Schools, Cable Operators operating pursuant to a valid Cable Franchise, or Video Service Provider operating pursuant to a valid Video Service Authorization shall also be considered Providers.
- (47) "PUCO" means the Public Utilities Commission of Ohio as defined in ORC 4901.02.
- (48) "REGISTRATION MAINTENANCE FEE" means the money paid to the City to maintain a Certificate of Registration and compensate the City for all actual costs incurred by the City in the management, administration and control of the Rights-of-way of the City, and which are not reasonably recoverable by the City through Construction Permit Fees or other approved recovery mechanisms.
- (49) "REMOVAL BOND" means a bond posted to ensure the availability of sufficient funds to remove a Provider's Facilities upon abandonment or disuse, or discontinuance of a Provider's use or occupation of the Rights-of-way.
- (50) "RESTORATION" means the process and the resultant effects by which a Rights-of-way is returned to a condition as good as or better than its condition immediately prior to the Construction. Restoration shall occur in accordance with the Rules and Regulations as may be enacted or amended from time to time.
- (51) "RIGHT(S) OF WAY" means the surface and space in, above, within, over below, under or through any real property in which the City has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to

any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a System. Rights-of-way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or by Law.

- (52) "RIGHT(S) OF WAY COST" means all direct, incidental and indirect costs borne by the City for the management and administration of the Rights-of-way and this Chapter.
- (53) "RULE(S) AND REGULATION(S)" means any rules or regulations adopted by the Director of Public Service pursuant to Section 907.06(E).
- (54) "SCHOOLS" means the New Albany- Plain Local School District. Schools specifically exclude any and all contractors, agents or other Persons acting on behalf of said Schools.
- (55) "SERVICE(S)" means the offering of any service or Utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or Utility between two (2) or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Director of Public Service constitutes a service.
- (56) "SUPPLEMENTARY APPLICATION" means any application made to Construct on or in more of the Rights-of-way than previously allowed, to extend a Permit that had already been issued, or to otherwise modify or amend the specifics of a Permit application.
- (57) "SYSTEM" means any System of conduit, cables, ducts, pipes, wires, lines, towers, antennae, wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Services within the City. A System shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.
- (58) "SYSTEM REPRESENTATIVE" means the specifically identified agent/employee of a Provider who is authorized to direct field activities of that Provider and serve as official notice agent for System related information. Any such System Representative shall be required to be available at all times to receive notice of and immediately direct response to System related emergencies or situations.
- (59) "TRANSFER" means the disposal by the Provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the System, or fifty-one percent

(51%) cumulatively over the term of a Certificate of Registration of such interests to a corporation, partnership, limited partnership, trust, or association or Person or group of Persons acting in concert.

- (60) "TRENCHLESS TECHNOLOGY" means, but not be limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-way as possible.
 - (61) "UNDERGROUND FACILITY(IES)" means all lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights-of-way.
 - (62) "UNUSED FACILITY(IES)" means facilities located in the Rights-of-way which have remained unused for twelve (12) months and for which the Provider is unable to provide the City with a Credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months, or that it has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve (12) months, or that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.
 - (63) "UTILITY(IES)" means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunications, signal communications, cable television or video service provider conduit, fiber, wire, cable, or an operator thereof.
 - (64) "UTILITY CORRIDOR(S)" means those specific areas of the Rights-of-way designated as such by the Director of Public Service pursuant to Section 907.03(E)(1).
 - (65) "VIDEO SERVICE" means the same as "video service" in ORC 1332.21(J).
 - (66) "VIDEO SERVICE AUTHORIZATION (or VSA)" means a "video service authorization" as issued to a Video Service Provider by the Director of the Ohio Department of Commerce in accordance ORC 1332.24(A)(1).
 - (67) "VIDEO SERVICE NETWORK" means the same as "video service network" in ORC 1332.21(L).
 - (68) "VIDEO SERVICE PROVIDER (or VSP)" means the same as "video service provider" in ORC 1332.21(M).
 - (69) "WORKING DAY" means any Monday, Tuesday, Wednesday, Thursday, or Friday, but excluding legal holidays observed by the City.
- (Ord. O-06-2014. Passed 3-18-14.)

907.02 RIGHTS-OF-WAY ADMINISTRATION.

(a) Administration. The City Manager shall be the principal City official responsible for the administration of Chapter 907, except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Director of Public Service or other designee.

(b) Rights-of-Way Occupancy. Each Person who occupies, uses or seeks to occupy or use the Rights-of-way to operate a System located in the Rights-of-way, or who has, or seeks to have, a System located in any Rights-of-way, shall apply for and obtain a Certificate of Registration pursuant to Chapter 907. Any Person owning, operating or maintaining a System in the Rights-of-way without a Certificate of Registration, including Persons operating under a permit, license or franchise issued by the City prior to the effective date of Chapter 907 shall apply for and obtain a Certificate of Registration from the City, unless exempted by Section 907.02(D). Application will consist of providing the information set forth in Section 907.03 and as reasonably required by the Director of Public Service.

(c) No Construction Without a Certificate of Registration. Following the effective date of Chapter 907, no Person shall Construct or perform any work on or in, or use any System or any part thereof located on or in any Rights-of-way without first obtaining a Certificate of Registration. Whoever violates this section is guilty of a misdemeanor of the fourth (4th) degree as provided for in Section 907.99.

(d) Exceptions.

- (1) The following entities are not obligated to obtain a Certificate of Registration: the City and resellers of Services or Persons that do not own any System or Facilities in the Rights-of-way.
- (2) The following entities are required to participate in the Certificate of Registration process, but shall be exempt from the financial obligations of the Application Fee required by Section 907.03(A) and the Registration Maintenance Fee required by Section 907.05(A): Cable Operators for the purpose of providing only Cable Service and operating pursuant to a valid Cable Franchise; Video Service Provider for the purpose of providing only Video Service and operating pursuant to a valid Video Service authorization issued in accordance with ORC 1332.24; any entity which possesses an existing and valid non-terminable, non-amendable or non-revocable written privilege or authority previously granted by the City for the use or occupancy of the Right-of-way, whereby such exemption shall be limited to for specific term and limited conditions or obligations as previously granted; the Schools; the City of Columbus; and the County. In addition, Cable Operators shall be exempt from any requirement of the Certificate of Registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid Cable Franchise with the City.

(e) Systems in Place Without a Certificate of Registration. Any System or part of a System found in the Rights-of-way for which a Certificate of Registration has not been obtained or an exemption has been otherwise authorized by Chapter 907, shall be deemed to be a nuisance and an unauthorized use of the Rights-of-way. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to abating the nuisance; taking possession of the Facilities and/or non-complying portion of such System; and/or prosecuting the violator.

(f) Future Uses. In allowing Providers and Permittees to place Facilities in the Rights-of-way, the City shall not be liable for any damages caused thereby to any Provider's Facilities that are already in place or that shall be placed in the Rights-of-way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the City. No Provider is entitled to rely on the provisions of this Chapter as creating a special duty to any Provider.

(g) Discontinuance of Operations, Abandoned and Unused Facilities.

(1) A Provider who has discontinued or is discontinuing its operations of any System in the City shall:

- A. Provide information satisfactory to the City that the Provider's obligations for its System in the Rights-of-way under this section and any other sections in the Code have been lawfully assumed by another Applicant and/or Provider; or
- B. Submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-way capacity. Such proposal must be approved or denied by the Director of Public Service. The Director of Public Service's denial of a proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-way capacity shall be done in writing and describe the Director of Public Service's reasons for such a denial. The denial may be appealed by the Provider to the City Manager. The decision of the City Manager shall be final; or
- C. Submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. The Director of Public Service must approve or deny said proposal. The Director of Public Service's denial of a proposal to abandon facilities in place shall be done in writing and describe the Engineers reasons for such a denial. The denial may be appealed by the Provider to the City Manager. The decision of the City Manager shall be final; or
- D. Completely remove all specifically identified portion(s) of its System in a manner acceptable to the City within a reasonable amount of time if the City believes that there exists a reasonable justification for such removal; or
- E. Submit to the City within a reasonable amount of time and in accordance with ORC 4905.20 and 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option where lawful:
 1. purchase the Facilities; or
 2. unless a valid removal bond has already been posted pursuant to Section 907.17(B), require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.

- (2) Facilities of a Provider who fail to comply with this Section and which remain Unused Facilities shall be deemed to be abandoned. Abandoned Facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to:
 - A. abating the nuisance;
 - B. taking possession of the Facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of ORC 4905.20 and 4905.21; or
 - C. requiring removal of the Facilities by the Provider or by the Provider's surety.
- (3) If the City requires a Provider to remove Unused Facilities in any Rights-of-way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the Rights-of-way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in ORC 715.261.

(h) Nature of Issuance. A Certificate of Registration shall not convey equitable or legal title in the Rights-of-way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights-of-way in the City, for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with Chapter 907 of the Code. The rights to occupy the Right-of-way may not be subdivided or subleased; provided, however, that two (2) or more Providers may collocate Facilities in the same area of the Rights-of-way so long as each such Provider complies with the provisions of Chapter 907. Collocating Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of Chapter 907. A Certificate of Registration does not excuse a Provider from complying with any provisions of the Code or other applicable Law.

(i) Other Approvals, Permits, and Agreements. In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such Services from the appropriate federal, state and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City. Further, a Certificate of Registration issued pursuant to Chapter 907 shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.

(Ord. O-06-2014. Passed 3-18-14)

907.03 CERTIFICATE OF REGISTRATION APPLICATIONS.

(a) Certificate of Registration Applications. To obtain a Certificate of Registration to construct, own, or maintain any system within the City, or to obtain a renewal of a Certificate of Registration issued pursuant to this Chapter, an Application must be filed with the City on the

form adopted by the City which is hereby incorporated by reference. For all Applications the City shall collect an Application Fee. The Application Fee shall be equal to all the actual and direct costs incurred by the City that are associated with receiving, reviewing, processing and granting (or denying) an Application. At the time of its decision to either grant or deny an Application the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Application and provide a written invoice to the Applicant for the appropriate amount. The City shall require that the Applicant remit all Application Fee amounts invoiced within thirty (30) days of its decision to either grant or deny a Certificate of Registration. Any Applicant who fails to timely remit such invoiced Application Fee amounts shall be subject to the penalties of this Chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration having been issued.

Information Required for Application to Obtain a Certificate of Registration.

- (1) The Applicant shall keep all of the information required in this section current at all times, provided further that Applicant or Provider shall notify the City of any changes to the information required by this section within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:
 - A. Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address and e-mail address, if applicable, and telephone and facsimile numbers; and
 - B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a System Representative. The System Representative shall be available at all times. Current information regarding how to contact the System Representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and
 - C. A certificate of insurance where required to be provided to meet the requirements of this Section shall:
 1. Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;
 2. Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:
 - (i) Use and occupancy of the Rights-of-way by the Applicant, its officers, agents, employees and contractors; and
 - (ii) Placement and use of Facilities in the Rights-of-way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of Underground Facilities and collapse of property;

3. Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverage, as is required within Chapter 907;
4. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:
 - (i) "It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the Director of Public Service or her/his designee of such intent to cancel, diminish or not to renew."

Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and furnish to the Director of Public Service a certificate of insurance evidencing replacement insurance policies.

5. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:
 - (i) Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

(1) Bodily injury:	
Each occurrence -	One Million Dollars (US \$1,000,000.00)
Annual aggregate -	Three Million Dollars (US \$3,000,000.00)
(2) Property damage:	
Each occurrence -	One Million Dollars (US \$1,000,000.00)
Annual aggregate -	Three Million Dollars (US \$3,000,000.00)
(3) Personal Injury:	
Annual aggregate -	Three Million Dollars (US \$3,000,000.00)
(4) Completed operations and products liability shall be maintained for six (6) months after the termination of a Certificate of Registration.	

- (5) Property damage liability insurance shall include coverage for the following hazards: E — explosion, C — collapse, U — underground.
- (ii) Comprehensive auto liability insurance: Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of Applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the Director of Public Service or his/her designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:
- | | | |
|-----|--------------------|---------------------------------------------|
| (1) | Bodily injury: | |
| | Each occurrence - | One Million Dollars
(US\$1,000,000.00) |
| | Annual aggregate - | Three Million Dollars
(US\$3,000,000.00) |
| (2) | Property damage: | |
| | Each occurrence - | One Million Dollars
(US\$1,000,000.00) |
| | Annual aggregate - | Three Million Dollars
(US\$3,000,000.00) |
- (2) Additional insurance: The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by Applicant.
- (3) Self-insurance: Those Applicants maintaining a book value in excess of fifty million dollars (\$50,000,000.00) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this Section. This statement shall include:
- A. Audited financial statements for the previous year; and
 - B. A description of the Applicant's self-insurance program; and
 - C. A listing of any and all actions against or claims made against Applicant for amounts over one million dollars (\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above fifty million dollars (\$50,000,000.00).
 - D. The Director of Public Service may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The Director of Public Service may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.

- (4) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with Chapter 907 shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under Chapter 907.
 - (5) Documentation that Applicant or Provider maintains standard workers' compensation coverage as required by Law. Similarly, Provider shall require any subcontractor to provide workers' compensation coverage in amounts required by Law for all of the subcontractor's employees.
 - (6) If the Person is a corporation, upon specific request of the City, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.
 - (7) A copy of the Person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the Person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in Section 907.02(I).
 - (8) Upon request of the City, a narrative (or if applicable PUCO/FCC/FERC application information) describing Applicant's proposed activities in the City including Credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under Chapter 907 and carry on Applicant's proposed activities.
- (b) Criteria for Issuance of a Certificate of Registration.
- (1) In deciding whether to issue a Certificate of Registration, the City shall consider:
 - A. Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.
 - B. Whether issuing of the Certificate of Registration will be consistent with Chapter 907.
 - C. Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by Law in order to Construct and operate a System in the manner proposed by the Applicant.
 - D. Whether the Applicant is delinquent on any taxes or other obligations owed to the City, County or State of Ohio.
 - E. Unless Applicant is otherwise exempted from such consideration by ORC 4939.03(c)(5), whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Chapter and the issuance of a Certificate of Registration.
 - F. Any other applicable Law.

(c) Grant or Denial of an Application for a Certificate of Registration.

- (1) The City, not later than sixty (60) days after the date of filing by an Applicant of a completed Application, shall grant or deny the Application.
- (2) If an Application for a Certificate of Registration is denied, the City shall provide to the Applicant, in writing, the reasons for denying the Application and such other information as the Applicant may reasonably request to obtain consent.

(d) Obligations of a Provider Upon Receipt of a Certificate of Registration. In addition to the other requirements set forth herein and in the Rules and Regulations each Provider shall:

- (1) Use its Best Efforts to cooperate with other Providers and users of the Rights-of-way and the City for the best, most efficient, and least obtrusive use of Rights-of-way, consistent with safety, and to minimize traffic and other disruptions; and
- (2) When possible, participate in joint planning, Construction and advance notification of Rights-of-way work, as may be required by the City; and
- (3) Upon reasonable written notice, and at the direction of the Director of Public Service, promptly remove or rearrange Facilities as necessary for public safety; and
- (4) Perform all work, Construction, maintenance or removal of Facilities within the Rights-of-way, in accordance with good engineering, construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and Law and use Best Efforts to repair and replace any street, curb or other portion of the Rights-of-way, or Facilities located therein, to a condition to be determined by the Director of Public Service to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Providers, all in accordance with all applicable provisions of this Chapter, any Rules and Regulations the City may adopt and the Code; and
- (5) Construct, install, operate and maintain its Facilities and System in a manner consistent with all applicable Laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local regulations; and
- (6) Be on notice that removal of trees, or the use of vegetation management programs within the Rights-of-way of the City require prior written approval by the Director of Public Service or his/her designee. Any such activities, unless an Emergency, shall only be performed following the prior written approval of the Director of Public Service or his/her designee and must be performed in accordance with the then most current standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as may be required by the City. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and

guidelines shall be described in the Rules and Regulations adopted by the Director of Public Service pursuant to Section 907.06(E). Emergency removal of trees or the use of vegetation management programs within the Rights-of-way of the City may be performed in Rights-of-way as described herein and in accordance with the Rules and Regulations, but the Director of Public Service shall be provided notice of such Emergency work being performed within two (2) Business Days of the start of the work. Any non-emergency tree removal or the use of vegetation management programs within the Rights-of-way that is performed without the Director of Public Service or designee's written permission shall subject a Person to the penalties of Section 907.99 and may further require that the tree or vegetation be replaced, at the sole expense of the responsible Person, with a healthy tree or vegetation of like kind and quality; and

- (7) Warrant that all worker facilities, conditions and procedures that are used during Construction, installation, operation and maintenance of the Provider's Facilities within the Rights-of-way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and
- (8) Use its Best Efforts to cooperate with the City in any Emergencies involving the Rights-of-way; and
- (9) Provider shall, weather permitting, remove all graffiti within ten (10) calendar days of notice. Provider shall use all reasonable efforts to remove any and all graffiti on any of the Provider's Facilities located within the City Rights-of-way. Should the Provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Provider for the cost thereof; and
- (10) Providers shall use all reasonable efforts to field identify their Facilities in the Rights-of-way whenever Providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the Construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights-of-way as defined in this Chapter. The City shall notify the Providers of the City's date to begin the process at least thirty (30) days prior to the commencement of said activities. In field identifying Facilities:
 - A. Providers shall identify all Facilities that are within the affected Rights-of-way using customary industry standards and distinct identification; and
 - B. Facilities will be so marked as to identify the Provider responsible for said Facilities; and
 - C. Should any such marking interfere with the Facilities function, create a safety problem or violate any safety code, alternative methods of marking the Facilities may be approved by the Director of Public Service; and
 - D. All marking should be clearly readable from the ground and include the product name or logo only. No advertising will be permitted.

- (11) A Provider that is replacing an existing utility pole shall be responsible to coordinate with all other Providers to ensure the orderly transfer of all lines or cables to the replacement utility pole, the removal of the existing utility pole, and the restoration of the Rights-of-way within thirty (30) days weather permitting after the replacement utility pole is installed. Upon request, the Director of Public Service may grant the Provider additional time for good cause.

(e) Establishment of Utility Corridors.

- (1) The Director of Public Service may assign specific corridors within the Rights-of-way, or any particular segment thereof as may be necessary, for each type of Facilities that are, or that the Director of Public Service expects, may someday be, located within the Rights-of-way.
- (2) Any Provider whose Facilities are in the Rights-of-way and are in a position at variance with Utility Corridors established by the Director of Public Service shall at the time of the next Construction of the area, excluding normal maintenance activities, move such Facilities to their assigned position within the Rights-of-way. Existing underground Facilities located within a designated Utility Corridor shall not be required to relocate into adjacent or alternative portions of the Rights-of-way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Director of Public Service for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such underground Facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements by the Director of Public Service, the Provider may appeal the denial to the City Manager. The decision of the City Manager shall be final
- (3) The Director of Public Service shall make every good faith attempt to accommodate all existing and potential users of the Rights-of-way as set forth in this Chapter.
- (4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use Best Efforts to install their Facilities within the Rights-of-way.
- (5) No Facility placed in any Rights-of-way shall be placed in such a manner that interferes with normal travel on such Rights-of-way.
- (6) Unless otherwise stated in a Certificate of Registration or Permit, or Section 907.03(F)(6)(c) all Facilities within the Rights-of-way shall be Constructed and located in accordance with the Code and with the following provision:
- A. Whenever all existing Facilities that have been traditionally located overhead are located underground in a certain area within the City, a Provider who desires to place its Facilities in the same area must also locate its Facilities underground.

- B. Whenever a Provider is required to locate or re-locate Facilities underground within a certain area of the City, every Provider with Facilities within the same area of the City shall concurrently re-locate their Facilities underground.
- C. The above requirements must be waived by the City for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such undergrounding of Facilities; and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Director of Public Service to the City Manager.

(Ord. O-06-2014. Passed 3-18-14.)

907.04 REPORTING REQUIREMENTS.

(a) Construction and Major Maintenance Plan. Each Provider shall, at the time of initial Application and by January 1 of each following year, file a Construction and Major Maintenance Plan with the Director of Public Service. Such Construction and Major Maintenance Plan shall be provided for all geographical areas requested by the Director of Public Service, up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the Provider and the City and shall contain the information determined by the Director of Public Service to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights-of-way. The Construction and Major Maintenance Plan shall include, but not be limited to, all currently scheduled and/or anticipated Construction projects for the next calendar year, if none are scheduled or anticipated then the Plan shall so state. The Provider shall use its Best Efforts in supplying this information and shall update the Construction and Major Maintenance Plan on file with the Director of Public Service whenever there is a material change in scheduled and/or anticipated Construction projects. In an effort to assist Providers with the completion of their annual Construction and Major Maintenance Plan, the Director of Public Service, on or before October 1 of each year, will send each Provider's System Representative a descriptive narrative (and any mapping information reasonably available) for all the planned Right-of-way improvements and/or scheduled maintenance that the City then currently intends to undertake during the next calendar year. The City may, in its sole discretion, update and/or modify the descriptive narrative and mapping information provided.

(b) Mapping Data. With the filing of its Application for a Certificate of Registration, a Provider shall be required to accurately inform the City of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then currently occupies and begin submitting to the City all information that currently exists and which can be provided regarding the location of its Facilities in the Right-of-way in hard copy or in the most advanced format (including, but not limited to, electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. Unless otherwise required by Section 907.13(B), a Provider shall have up to one year from the date of the Provider's initial filing of an Application for a Certificate of Registration to

completely submit all the mapping data for a Provider's System in the entire geographical area of the City which it owns or over which it has control that are located in any Rights-of-way of the City in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City. Anytime after the issuance of a Certificate of Registration, and upon the reasonable request of the Director of Public Service, a Provider shall be required to provide to the City any additional location information for any Facilities which it owns or over which it has control that are located in any Rights-of-way of the City required by the City. Any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a Provider's mapping information to comport with the City's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the Provider. Failure to pay such mapping costs within sixty (60) days of receipt of an invoice shall subject an Applicant or Provider to revocation of its Certificate of Registration and the penalties of Section 907.99. Further, each Provider that has been issued a Certificate of Registration shall accurately inform the City on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then occupied as of the immediately previous December 1. The Director of Public Service may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the Law regarding public disclosure of a Provider's mapping information. When the City modifies and/or amends the mapping data requirements, the City shall use Best Efforts to avoid unreasonably increasing the burden to the Providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements of Section 907.04(B) are amended, each Provider shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the System Representative identified in each Certificate of Registration and in accordance with Section 907.19(D); provided, however, that any failure of any Provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

(c) Exemption from Disclosure. In the event that the City receives a request from a third party for the disclosure of information a provider has clearly marked as Confidential/Proprietary Information, then the City shall respond in accordance with ORC Ch. 149. However, the City will endeavor to notify the Provider of any such the request prior to making the subject document(s) available for inspection or copying, at which point it will be the Provider's sole and exclusive responsibility to take whatever steps it deems necessary to protect such documents from disclosure. (Ord. O-06-2014. Passed 3-18-14.)

907.05 COMPENSATION FOR CERTIFICATE OF REGISTRATION.

(a) Compensation. As compensation for the City's costs to administer Chapter 907, manage, administer and control the Rights-of-way and maintain each Certificate of Registration issued, every Provider or any Person operating a System shall pay to the City a Registration Maintenance Fee. The Registration Maintenance Fee shall be determined and assessed to Providers and other Persons operating a System or otherwise using and occupying the Rights-of-way in accordance with the following process and formula:

- (1) The City by February 28 of each year, shall calculate all actual and incurred costs associated with Rights-of-way management, administration and control for the previous calendar year that the City was not able to reasonably recover through Construction Permit Fees or other recovery mechanisms provided for in Chapter 907.
- (2) Providers and Applicants, as required in Section 907.04(B), shall accurately inform the City upon application for a Certificate of Registration and on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then occupied as of the immediately previous December 1.
- (3) The City shall total the entire number of miles of Right-of-way reported as being used or occupied by all Providers.
- (4) The City shall divide the calculated costs referenced in Section 907.05(A)(1) by the total number of miles of Right-of-way reported as being used or occupied by all Providers as referenced in Section 907.05(A)(3) to arrive at a per-mile cost number.
- (5) The City shall then multiply each Provider's mileage calculation as referenced in Section 907.05(A)(2) by the per-mile cost calculation referenced in Section 907.05(A)(4). The product shall be a Provider's then current annual Registration Maintenance Fee.
- (6) The City shall perform its annual calculation of Registration Maintenance Fees following receipt of the Providers required December 1 mileage report. Registration Maintenance Fees shall be invoiced to Providers on or about March 1 of each calendar year and shall be due thirty (30) days following receipt.
- (7) Cable companies operating under non-exclusive Cable Franchises for the purposes of providing Cable Service, Video Services Provider operating under a VSA for the purpose of providing Video Services, and providers of Open Video System services, which compensate the City under other mechanisms in an amount equal to or greater than the Annual Registration Maintenance Fee that would normally be required for their Right-of-way use in The City, shall have the mileage of the Right-of-way they use and/or occupy included in the calculations described in Section 907.05, but shall not be required to contribute to the recovery of Rights-of-way Costs as defined by Chapter 907 with the exception of Permit Costs.
- (8) The City may by separate legislation enacted by City Council on or about February 28 of each year, in accordance with the results of Section 907.05(A)(4), enact an initial and

thereafter a new annual Registration Maintenance Fee (per mile) by appropriately increasing or decreasing the previous year(s) Registration Maintenance Fee (per mile). Revised Registration Maintenance Fees shall be effective upon passage.

(b) Timing. Registration Maintenance Fees shall be paid each calendar year in accordance with Section 907.05(A)(6). Registration Maintenance Fees shall be paid in full for the first year of the registration as a condition of the Certificate of Registration becoming effective. Fees may be prorated from the effective date of the Certificate of Registration to the end of the calendar year if less than one full year.

(c) Taxes and Assessments. To the extent taxes or other assessments are imposed by any taxing authority or community authority on the use of City property as a result of a Provider's use or occupation of the Rights-of-way, the Provider shall be responsible for payment of such taxes or assessments. Such payments shall be in addition to any other fees payable pursuant to Chapter 907 and shall not be considered an offset to, or in lieu of, the fees and charges listed in Chapter 907. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in Chapter 907, or as required by applicable Law.

(d) Interest on Late Payments. In the event that any Registration Maintenance Fee is not paid to the City by April 1, the Provider shall pay a monthly late charge of one percent of the unpaid balance for each month or any portion thereof for which payment is not made.

(e) No Accord and Satisfaction. No acceptance by the City of any Registration Maintenance Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Registration Maintenance Fee payment be construed as a release of any claim the City may have for additional sums payable.

(f) Cost of Publication. A Provider shall assume all actual and direct newspaper or other appropriate publication costs of up to one thousand dollars (\$1,000.00) associated with its certificate of Registration that may be required by Law or that may otherwise be required by its Application for a Certificate of Registration or other Permit as provided for herein.
(Ord. O-06-2014. Passed 3-18-14.)

907.06 OVERSIGHT AND REGULATION.

(a) Reports. Upon reasonable request of the Director of Public Service, a Provider shall provide the City with a list of any and all material communications, public reports, petitions, or other filings, either received from or submitted to any municipal, county, state or federal agency or official (and any response thereto submitted by or received by a Provider), and any other information or report reasonably related to a Provider's obligations under Chapter 907 which in any way materially effects the operation of the System or a Provider's representations and warranties set forth herein, but not including tax returns or other filings which are confidential. Upon request, a Provider shall promptly, but in no case later than thirty (30) business days following the request, deliver to the City a complete copy of any item on said list. Upon the request of the City, a Provider shall promptly submit to the City any information or report reasonably

related to a Provider's obligations under Chapter 907, its business and operations with respect to the System or its operation, in such form and containing such information as the City shall specify. Such information or report shall be accurate and complete and supplied within thirty (30) days.

(b) Confidentiality. All information submitted to the City that is considered Confidential Information, trade secret and/or proprietary information or information that upon public its disclosure would be highly likely to place critical portions of the Provider's System in real danger of vandalism, sabotage or an act of terrorism, must be clearly marked as such when submitted. The City shall exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by Law. The City shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a Provider, endeavor to use reasonable Best Efforts to timely place the Provider's System Representative on notice that such a request for public disclosure has been made.

(c) Provider's Expense. All reports and records required under Chapter 907 shall be furnished at the sole expense of a Provider.

(d) Right of Inspection and Audit. The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a Provider under the circumstances; documents, records, or other information which pertain to a Provider's operation of a System within the City that are related to its obligations under Chapter 907. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit.

(e) Rules and Regulations. The Director of Public Service may propose and adopt (and from time to time amend) the Rules and Regulations regarding Chapter 907, Construction standards and occupancy requirements of the Right-of-way. Prior to the initial adoption of the Rules and Regulations, the Director of Public Service shall provide written notice and a copy of the proposed language of such adoption, via United States Regular Mail, to each Provider who holds a then current Certificate of Registration. Each Provider shall then have thirty (30) days following the date of the City's mailing to provide written comment regarding the proposed language to the Director of Public Service. At least forty-five (45) days, but not more than sixty (60) days following the date of the City's mailing, the Director of Public Service shall schedule and hold a meeting, to make available a forum at which all then current Providers may address any questions, concerns and make reasonable suggestions regarding the proposed new Rules and Regulations to the Director of Public Service. The Director of Public Service shall, following said meeting and the review of the Providers' comments and suggestions, adopt the Rules and Regulations in a manner that best serves the City.

(Ord. O-06-2014. Passed 3-18-14.)

907.07 REGISTRATION TERM.

The term of each Certificate of Registration granted under Chapter 907 shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

(Ord. O-06-2014. Passed 3-18-14.)

907.08 INDEMNITY.

(a) Indemnity Required. Each Certificate of Registration issued pursuant to Chapter 907 shall contain provisions whereby Providers agree to defend, indemnify and hold the City and its agents, officers, elected officials, employees, volunteers, and subcontractors harmless from and against all damages, costs, losses or expenses:

- (1) For the repair, replacement, or restoration of City property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of such Provider's acts or omissions; and
- (2) From and against any and all claims, demands, suits, causes of action, and judgments:
 - A. for damage to or loss of the property of any Person, and/or the death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any Person;
 - B. arising out of, incident to, concerning or resulting from the act or omissions of such Provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Certificate of Registration, no matter how, or to whom, such loss may occur.
- (3) In any event, all Persons using or occupying the Rights-of-way agree to defend, indemnify and hold harmless the City as set forth above as a condition of their use and occupancy of the Rights-of-way.

(Ord. O-06-2014. Passed 3-18-14.)

907.09 CIVIL FORFEITURES.

In addition to any other penalties set forth in this Chapter 907 and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Director of Public Service may assess an additional penalty of civil forfeiture for failure to comply with any provision of Chapter 907. Such penalty shall be a monetary sum, payable to the City, in the amount of five hundred dollars (\$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing said penalty, the City will provide written notice to the Provider detailing the failure to comply with a specific provision of Chapter 907. Such notice shall also indicate that said penalty shall be assessed in fifteen (15) calendar days subsequent to the date of receipt if compliance is not achieved. If a Provider desires to challenge such penalty, Provider must request a hearing before the City Manager within ten (10) days of service of the notice. Such hearing shall be held within thirty (30) days of the Provider's request. If Provider requests such hearing before the City Manager, such penalty shall be temporarily suspended. However, if, after the hearing, the City Manager determines that Provider failed to comply with the specific provision(s) of Chapter 907 referenced in the notice, such penalty shall be assessed starting with the fifteen (15) calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the City Manager shall be final. The Provider may file an administrative appeal pursuant to

ORC Ch. 2506. The penalty shall continue to accrue during the appeal unless the Provider obtains a stay and posts a supersede as bond pursuant to ORC 2505.09 or the Provider comes into full compliance with Chapter 907.

(Ord. O-06-2014. Passed 3-18-14.)

907.10 TERMINATION OF CERTIFICATE OF REGISTRATION.

(a) Default Notice Provided. The City through its Director of Public Service shall give written notice of default to a Provider if the City, in its sole discretion, determines that a Provider has:

- (1) Violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any Law and failed to cure as may be required; or
- (2) Attempted to evade any provision of the issuance of a Certificate of Registration or the acceptance of it; or
- (3) Practiced any fraud or deceit upon City; or
- (4) Made a material misrepresentation of fact in the Application for a Certificate of Registration.

(b) Cure Required. If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the City then such default shall be a material default and City may exercise any remedies or rights it has at Law or in equity to terminate the Certificate of Registration. If the Director of Public Service decides there is cause or reason to terminate, the following procedure shall be followed:

- (1) City shall serve a Provider with a written notice of the reason or cause for proposed termination and shall allow a Provider a minimum of ten (10) calendar days to cure its breach.
- (2) If the Provider fails to cure within ten (10) calendar days, the Director of Public Service may declare the Certificate of Registration terminated.
- (3) The Provider shall have ten (10) calendar days to appeal the termination to the City Manager. All such appeals shall be in writing. If the City Manager determines there was not a breach, then the City Manager shall overturn the decision of the Director of Public Service. Otherwise, the City Manager shall affirm the decision of the Director of Public Service to terminate. The determination of the City Manager shall be final.

(Ord. O-06-2014. Passed 3-18-14.)

907.11 UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.

(a) No Use Without Authorization. No Person shall use the Rights-of-way to operate a System that has not been authorized by the City in accordance with the terms of Chapter 907 and been issued a Certificate of Registration.

(b) No Use Without Certificate of Registration. No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights-of-way, unless allowed under Chapter 907 or having been issued a Certificate of Registration.

(c) Unauthorized Use a Violation. Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of Chapter 907 continues shall constitute a distinct and separate offense.

(d) Distinct and Separate Offense. No Person shall fail to comply with the provisions of Chapter 907. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of Chapter 907 continues shall constitute a distinct and separate offense.

(e) Penalty Assessed. The violation of any provision of Chapter 907 shall be unlawful and a misdemeanor offense. The penalty for any violation of Chapter 907 shall be as provided in Section 907.99.

(Ord. O-06-2014. Passed 3-18-14.)

907.12 ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.

(a) Assignment or Transfer Approval Required. A Certificate of Registration shall not be assigned or transferred, either in whole or in part, other than to an Affiliate, without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or transfer of Certificate of Registration, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the City.

(b) Procedure to Request Assignment or Transfer Approval. The parties to the assignment or transfer of Certificate of Registration shall make a written request to the City for its consent in the form of the Certificate of Registration Application. The City shall reply in writing within sixty (60) days of actual receipt of the request and shall indicate its approval of the request or its determination that a hearing is necessary. City may conduct a hearing on the request within thirty (30) days of such determination if it determines that a sale or transfer of the Certificate of Registration adversely affects the City.

(c) Notice and Hearing. Notice of a hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) Review by City. The City will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the existing Certificate of Registration. City will make its decision in writing setting forth any conditions for assignment or transfer. Within one hundred twenty (120) days of actual receipt of the request for assignment or transfer, the City shall approve or deny such assignment or transfer request in writing.

(e) Fundamental Corporate Change. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.

(f) Certificate of Registration and Assignee/Transferee Replacement Issuance Required. In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement Certificate of Registration within ninety (90) days of transfer or assignment.

(g) Not a Transfer. Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any Person controlling, controlled by or under the same common control of the original holder of the Certificate of Registration.

(Ord. O-06-2014. Passed 3-18-14.)

907.13 CONSTRUCTION PERMITS.

(a) Construction Permit Requirement. Except as otherwise provided in the Code, no Person may Construct in any Rights-of-way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirements set forth in the Code.

- (1) A Construction Permit allows the Permittee to Construct in that part of the Rights-of-way described in such Construction Permit and to obstruct travel over the specified portion of the Rights-of-way by placing Facilities described therein, to the extent and for the duration specified therein.
- (2) A Construction Permit is valid only for the dates and the area of Rights-of-way specified in the Construction Permit itself and shall in no event be valid for more than one hundred eighty (180) days from the construction start date.
- (3) No Permittee may Construct in the Rights-of-way beyond the date or dates specified in the Construction Permit unless such Permittee:
 - A. Submits a Supplementary Application for another Construction Permit before the expiration of the initial Construction Permit; and
 - B. Is granted a new Construction Permit or Construction Permit Extension.
- (4) Original Construction Permits issued pursuant to Section 907.13 shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by Inspectors and authorized City personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the

original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this Section, Business Hour shall mean the hours between 8:00 a.m. and 5:00 p.m. during a Business Day.

(b) Construction Permit Applications.

1. Application for a Construction Permit, unless an Emergency shall be made to the Director of Public Service no less than fourteen (14) Business Days prior to the requested start of Construction.
2. All Construction Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
 - A. Credible evidence that the Applicant (where required) has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has been issued a Certificate of Registration; and
 - B. Submission of a completed Construction Permit Application in the form required by the Director of Public Service, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street crossings, and the location of all then known existing and proposed Facilities of the Applicant or Provider within the proposed project area. All drawings, plans and specifications submitted with the Application shall comply with applicable technical codes, Rules and Regulations and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Service. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The City reserves the right, in circumstances that the Director of Public Service considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and
 - C. A City approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the OMUTCD, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - D. If the Applicant wants to install new Facilities, evidence that there is no surplus space and evidence that the Applicant has received an appropriate Permit and is adhering to the City's Rules and Regulations; and
 - E. If Applicant is proposing an above ground installation on existing poles within the Rights-of-way, the applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:
 1. The size and height of the existing poles; and

2. Based on the facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and
 3. Based on the facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and
- F. If the Applicant proposes to install new poles within the Rights-of-way, the Applicant shall provide:
1. Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and
 2. Credible evidence to the City that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and
 3. the location, size, height, color, and material of the proposed poles; and
 4. Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable Laws concerning the installation of new poles.
- G. If Applicant is proposing an underground installation in existing ducts or conduits within the Rights-of-way, the Applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:
1. based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of Applicant's Facilities; and
 2. based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of Applicant's Facilities.
- H. If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights-of-way, the Applicant must provide Credible information satisfactory to the City to sufficiently detail and identify:
1. the location, depth, size, and quantity of proposed new ducts or conduits; and
 2. the excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of Applicant's Facilities.
- I. A preliminary Construction schedule and completion date; and
- J. Payment of all money then due to the City for:
1. Permit Fees;
 2. Any loss, damage, or expense suffered by the City as a result of Applicant's prior Construction in the Rights-of-way or any Emergency actions taken by the City.
 3. Any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed.

4. Any other money due to the City from the Applicant/Person whose Facilities are being Constructed.
- K. When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a Construction Bond and Removal Bond, acceptable to the City and subject to Chapter 907, for the additional Systems or any part of a System is required.
- L. Upon request, the Director of Public Service may modify or waive the information requirements if they are not necessary in evaluating the Construction Permit application. The Director of Public Service may request applicable and pertinent additional information if it is necessary in evaluating the Construction Permit application.

(c) Issuance of Permit; Conditions.

- (1) If the City determines that the Applicant has satisfied the requirements of Chapter 907 and the Construction Permit process, the Director of Public Service shall issue a Construction Permit subject to the provisions of Section 907.13(C)(2).
- (2) The City may impose reasonable conditions upon the issuance of the Construction Permit and the performance of the Permittee thereunder in order to protect the City's investment in the Right-of-way, protect the public health, safety and welfare, to insure the structural integrity of the Rights-of-way, to protect the property and safety of other users of the Rights-of-way, or to minimize the disruption and inconvenience to the traveling public.

(d) Construction Permit Fees.

1. The City shall collect a Construction Permit Fee equal to the actual and direct cost incurred by the City that is associated with receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or the Construction work associated therewith. Following completion of the Construction work for which a Construction Permit has been granted (or at the time of the denial of Construction Permit) the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or Construction Work associated therewith. Quarterly, the City will cause the Director of Finance to issue a written invoice to a Provider that lists and summarizes the costs for each Construction Permit issued to and/or completed by the Provider over the previous ninety (90) days. The Provider shall remit payment to the City for the original quarterly invoice within thirty (30) days after the Director of Finance issues such invoice. Any Applicant who fails to timely remit such invoiced Construction Permit Fee amounts shall be subject to the penalties of this Chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration or Construction Permit having been issued.

2. The City may in addition to these direct and actual costs listed in subsection (D)(1) may include in the Construction Permit Fee the cost of the value of degradation and reduction in the useful life of the Rights-of-way that will result from Construction that has taken place therein. "Degradation and the reduction in the useful life" for the purpose of this Section means the accelerated depreciation of the Rights-of-way caused by Construction in or disturbance of the Rights-of-way, resulting in the need to reconstruct or repair such Rights-of-way earlier than would be required if the Construction did not occur.
3. Except as otherwise provided herein, no future Construction Permits shall be issued to an Applicant without payment of all outstanding Construction Permit Fee invoices within thirty (30) days of the issuance of the original invoice. The City shall be exempt from payment of Construction Permit Fees. Construction Permit Fees that were paid for a Permit that the City has revoked due to breach and in accordance with the terms of Section 907.10 or Section 907.16(E) are not refundable.

(e) Joint Applications. Applicants are encouraged to submit joint Applications for Construction Permits to work in the Rights-of-way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.

(f) Exceptions to Permit Requirements.

(1) The following shall be excluded from the requirements of Section 907.13:

- A. The repairing or improvement of streets or other public places under or by virtue of a contract with the City.
- B. The maintenance, planting or removal of trees and shrubs from within the Right-of-way.
- C. The addition of an overhead customer service line for any Utility, which service line does not cross across the edge of pavement limits or extend over pavement at a height of less than fifteen (15) feet above the pavement.

(Ord. O-06-2014. Passed 3-18-14.)

907.14 CONSTRUCTION, RELOCATION AND RESTORATION.

(a) Utility Engineering Study Required.

- (1) Prior to commencement of any initial Construction, extension, or relocation of Facilities in the Rights-of-way, except for repair, maintenance or replacement with like Facilities or relocations requested or caused by a third party (excluding the City) or another Permittee, a Permittee shall conduct a utility engineering study on the proposed route of Construction expansion or relocation if requested by the Director of Public Service. Where such Construction and/or relocation is requested or caused by a third party, every Permittee located within the Rights-of-way at issue or involved with the work shall use all Best Efforts

to cooperate and assist any other Permittee or person who is directed by the City to perform the required utility engineering study. A utility engineering study consists of, at minimum, completion of the following tasks:

- A. Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all Facilities along the proposed Construction route.
- B. Visibly survey and record the location and dimensions of any Facilities along the proposed Construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs.
- C. Determine and record the presence and precise location of all Underground Facilities the Applicant or Person on whose behalf the Permit was applied for owns or controls in the Rights-of-way along the proposed System route. Upon request of the Director of Public Service, a Permittee shall also record and identify the general location of all other Facilities in the Rights-of-way along the proposed System route. For the purposes of this Section, general location shall mean the alignment of other Facilities in the Rights-of-way, but shall not necessarily mean the depth of other Facilities in the Rights-of-way.
- D. Plot and incorporate the data obtained from completion of the tasks described in Section 907.14(A)(1)(a)—(c) on the Construction Permittee's proposed System route maps and Construction plans.
- E. Where the proposed location of Facilities and the location of existing Underground Facilities appear to conflict on the plans drafted in accordance with Section 907.14(A)(1)(d), Permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting Underground Facilities, or re-designing the Construction plans to eliminate the apparent conflict. Unless waived by the Director of Public Service, a Permittee shall not excavate more than a three (3) feet by three (3) feet square hole in the Rights-of-way to complete this task.
- F. Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed System design to avoid the need to relocate other Underground Facilities.

- (2) The Director of Public Service may modify the scope of the utility engineering study as necessary depending on the proposed Construction plans.

(b) Copy to City. Upon completion of the tasks described in Section 907.14(A), the Construction Permittee shall submit the proposed System route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently

capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City.

(c) Qualified Firm. All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Director of Public Service the Construction Permittee is qualified to complete the project itself, alternatively utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.

(d) Cost of Study. The Permittee shall bear the cost of compliance with Section 907.14(A)—(C).

(e) Construction Schedule. Unless otherwise provided for in Chapter 907 or in the Rules and Regulations, or unless the Director of Public Service waives any of the requirements of this Section due to unique or unusual circumstances, a Permittee shall be required to submit a written Construction schedule to the City fourteen (14) Working Days before commencing any work in or about the Rights-of-way, and shall further notify the City not less than two (2) Working Day in advance of any excavation in the Rights-of-way. This Section shall apply to all situations with the exception of circumstances under Section 907.16(D)(1) (Emergency Situations) and Section 907.15 (Minor Maintenance).

(f) Location of Facilities.

- (1) The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable Laws and the City's Rules and Regulations.
- (2) The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Rights-of-way if the Right-of-way is Full. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Rights-of-way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Rights-of-way, future City and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among Providers.

(g) Least Disruptive Technology. All Construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Rights-of-way. Specifically, every Permittee when performing underground Construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling.

In addition, all cable, wire or fiber optic cable installed in the subsurface Rights-of-way pursuant to Chapter 907 may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to Chapter 907 using "direct bury" techniques.

(h) Special Exceptions. The City, in its sole discretion, may grant a special exception to the requirements of Section 907.14(F) and 907.14(G) if a Permittee, upon application, demonstrates with written evidence that:

- (1) The exception will not create any threat to the City's investment or in the Rights-of-way, the public health, safety or welfare.
- (2) Permittee demonstrates that the increased economic burden and the potential adverse impact on the Permittee's Construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the Permittee to provide Services in the City.
- (3) The Permittee demonstrates that the requirement unreasonably discriminates against the Permittee in favor of another Person.
- (4) The requirements requested by the City herein create an unreasonable economic burden for the Permittee that outweighs any potential benefit to the City.

(i) Relocation of Facilities.

- (1) A Provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its Facilities in the Rights-of-way whenever the City finds it necessary to request such removal and relocation. In instances where the City requests removal and/or relocation, the City shall waive all applicable Construction Permit Fees. Upon removal and/or relocation, the Provider shall restore the Rights-of-way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or similar size. In accordance with Law, the Director of Public Service may request relocation and/or removal in order to prevent unreasonable interference by the Provider's Facilities with:
 - A. A public improvement undertaken or approved by the City.
 - B. The City's investment in the Right-of-way.
 - C. When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the Rights-of-way.
 - D. The sale, conveyance, vacation, or narrowing of all or any part of a Right-of-way.
- (2) Notwithstanding the foregoing, a Provider who has Facilities in the Right-of-way subject to a vacation or narrowing that is not required for the purposes of the City, shall have a permanent easement in such a vacated portion or excess portion in conformity with ORC 723.041.

- (3) If, in the reasonable judgment of the City, a Provider fails to commence removal and/or relocation of its Facilities as designated by the City, within thirty (30) days after the City's removal order, or if a Provider fails to substantially complete such removal, including all associated repair of the Rights-of-way of the City, within twelve (12) months thereafter, then, to the extent not inconsistent with applicable Law, the City shall have the right to:
- A. Declare that all rights, title and interest to the Facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the Facilities or to effect a transfer of all right, title and interest in the Facilities to another Person for operation; or
 - B. Authorize removal of the Facilities installed by the Provider in, on, over or under the Rights-of-way of the City at Provider's cost and expense, by another Person; however, the City shall have no liability for any damage caused by such action and the Provider shall be liable to the City for all reasonable costs incurred by the City in such action; and
 - C. To the extent consistent with applicable Law, any portion of the Provider's Facilities in, on, over or under the Rights-of-way of the City designated by the City for removal and not timely removed by the Provider shall belong to and become the property of the City without payment to the Provider, and the Provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.
- (j) Pre-Excavation Facilities Location.
- (1) Before the start date of any Rights-of-way excavation, each Provider who has Facilities located in the area to be excavated shall, to the best of its ability, mark the horizontal and approximate vertical placement of all its Facilities.
 - (2) All Providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its Facilities and the best procedure for excavation.
- (k) Rights-of-way Restoration.
- (1) The work to be done under the Permit, and the Restoration of the Rights-of-way as required herein, weather permitting, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with the Code and Rules and Regulations. If a Permittee is unable to timely complete the restoration of Rights-of-way due to unreasonable inclement weather conditions, the Permittee shall complete the restoration of the Rights-of-way as soon as weather conditions make it possible to do so and upon said completion notify the City.
 - (2) In approving an Application for a Construction Permit, the City may choose either to have the Permittee restore the Rights-of-way or alternatively to restore the Rights-of-way itself if the Permittee has in the past not abided by requirements of Chapter 907.

- (3) If the City chooses to allow Permittee to restore the Right-of-way, the Permittee shall at the time of Application for a Construction Permit post a Construction Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Rights-of-way to its approximate pre-excavation condition. If, twelve (12) months after completion of the Restoration of the Right-of-way, the City determines that the Rights-of-way have been properly restored, the surety on the Construction Bond shall be released.
- (4) The Permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the Rights-of-way; the traffic volume carried by the Rights-of-way; the character of the neighborhood surrounding the Rights-of-way; the pre-excavation condition of the Rights-of-way; the remaining life-expectancy of the Rights-of-way affected by the excavation; whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Rights-of-way that would otherwise result from the excavation, disturbance or damage to the Rights-of-way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Rights-of-way that would otherwise take place. Methods of Restoration may include, but are not limited to, patching the affected area, replacement of the Rights-of-way base at the affected area, and in the most severe cases; milling, overlay and/or street reconstruction of the entire area of the Rights-of-way affected by the work.
- (5) By restoring the Rights-of-way itself, the Permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the Director of Public Service, correct all Restoration work to the extent necessary using the method required by the Director of Public Service. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Director of Public Service, unless otherwise extended by the Director of Public Service.
- (6) If the Permittee fails to restore the Rights-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City, at its option, may do such work. In that event, the Permittee shall pay to the City, within thirty (30) days of billing, the Restoration cost of restoring the Rights-of-way and any other costs incurred by the City. Upon failure to pay, the City may call upon any bond or letter of credit posted by Permittee and/or pursue any and all legal and equitable remedies.
- (7) If the work to be done under the Permit is being done at the same location and the same period of time as work by the City and/or another Permittee(s), then the Director of Public Service may reasonably apportion the Restoration responsibility among the City, Providers and/or other Persons.

(l) Damage to Other Facilities.

- (1) In the case of an Emergency, and if possible after reasonable efforts to contact the Provider seeking a timely response, when the City performs work in the Rights-of-way and finds it necessary to maintain, support, or move a Provider's Facilities to protect those Facilities, the costs associated therewith will be billed to that Provider and shall be paid within thirty (30) days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies in the event a Provider does not pay or the City may call upon any bond or letter of credit posted by the Permittee and pursue any and all legal or equitable remedies. Each Provider shall be responsible for the cost of repairing any damage to the Facilities of another Provider caused during the City's response to an Emergency occasioned by that Provider's Facilities.
- (2) Each Provider shall be responsible for the cost of repairing any City-owned Facilities in the Rights-of-way which the Provider or its Facilities damage.

(m) Rights-of-way Vacation.

- (1) If the City sells or otherwise transfers a Right-of-way which contains the Facilities of a Provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to ORC 723.041.

(n) Installation Requirements. The excavation, backfilling, Restoration, and all other work performed in the Rights-of-way shall be performed in conformance with all applicable Laws, Rules and Regulations, other standards as may be promulgated by the Director of Public Service.

(o) Inspection. When the Construction under any Permit hereunder is completed, the Permittee shall notify the Director of Public Service.

- (1) The Permittee shall make the Construction site available to the Inspector and to all others as authorized by Law for inspection at all reasonable times during the execution and upon completion of the Construction.
- (2) At the time of inspection, the Inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, violates any law or which violates the term and conditions of the Permit and/or Chapter 907. The City may inspect the work, however; the failure of the City to inspect the work does not alleviate the responsibility of the Permittee to complete the work in accordance with the approved Permit and the requirements of Chapter 907.
- (3) The Inspector may issue an order to the Permittee for any work which does not conform to the Permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. The order may be served on the Permittee as provided in Section 907.19(D). An order may be appealed to the Director of Public Service. The decision of the Director of Public Service may be appealed to the City Manager whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Provider shall present proof to the Director of Public

Service that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Service may revoke the Permit pursuant to Section 907.16(E).

(p) Other Obligations.

- (1) Obtaining a Construction Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, and authority and to pay all fees required by any other Laws.
- (2) Permittee shall comply with all requirements of all Laws, including the Ohio Utility Protection Service.
- (3) Permittee shall perform all work in conformance with all applicable Laws and standards, and is responsible for all work done in the Rights-of-way pursuant to its Permit, regardless of who performs the work.
- (4) No Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in Section 907.16(D)(1).
- (5) Permittee shall not obstruct a Right-of-way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The Director of Public Service may waive this requirement if it is technically or economically unreasonable in the circumstances.
- (6) Private vehicles other than necessary Construction vehicles may not be parked within or adjacent to a Permit area. The loading or unloading of trucks adjacent to a Permit area is prohibited unless specifically authorized by the Permit.

(q) Undergrounding Required. Any owner of property abutting upon a street or alley where Service Facilities are now located underground and where the Service connection is at the property line, shall install or cause others to install underground any Service delivery infrastructure from the property line to the buildings or other structures on such property to which such Service is supplied. Where not otherwise required to be placed underground by Chapter 907, a Provider shall locate Facilities underground at the request of an adjacent property owner, provided that such placement of Facilities underground is consistent with the Provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical Facilities are borne directly by the property owner making the request. A Provider, under any circumstance shall, upon the reasonable request of the City, always use Best Efforts to place Facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and Facilities installed), all Facilities to be installed by a Provider under the Right-of-way shall be installed in conduit.

(Ord. O-06-2014. Passed 3-18-14.)

907.15 MINOR MAINTENANCE PERMIT.

(a) Right-of-way Minor Maintenance Permit Requirement. No Person shall perform Minor Maintenance of Facilities in the Rights-of-way without first having obtained a Right-of-way Minor Maintenance Permit as set forth in this Chapter. Minor Maintenance means: (i) the routine repair or replacement of Facilities with like Facilities not involving Construction and not requiring traffic control for more than two (2) hours at any one location; (ii) or the routine repair or replacement of Facilities with like Facilities not involving Construction and taking place on thoroughfares and arteries between the hours of 9:00 A.M. and 3:00 P.M.; (iii) or the routine repair or replacement of Facilities with like Facilities not involving construction on all Rights-of-ways, other than thoroughfares and arterials, that does not impede traffic and is for a period of less than eight (8) contiguous hours; (iv) or Construction other than on thoroughfares and arterials that takes less than eight (8) contiguous hours to complete, does not impede traffic and does not involve a pavement cut. The Director of Public Service may adopt Rules and Regulations pursuant to Section 907.06(E) that clarify the definition of Minor Maintenance and/or provide a process for a Provider to determine whether particular activity constitutes Minor Maintenance.

- (1) A Right-of-way Minor Maintenance Permit allows the Right-of-way Minor Maintenance Permittee to perform all minor maintenance in any part of the Rights-of-way as required.
- (2) A Right-of-way Minor Maintenance Permit is valid from the date of issuance until revoked by the Director of Public Service.
- (3) A Right-of-way Minor Maintenance permit must be displayed or upon request produced within twelve (12) business hours.
- (4) A Right-of-way Minor Maintenance Permit by itself shall under no circumstances provide a Permittee with the ability to cut pavement without seeking additional authority from the Director of Public Service.

(b) Right-of-way Minor Maintenance Permit Applications. Application for a Right-of-way Minor Maintenance Permit shall be made to the Director of Public Service. In addition to any information required by the Director of Public Service, all Right-of-way Minor Maintenance Permit Applications shall contain, and will only be considered complete upon compliance with the following provisions:

- (1) Credible evidence that the Applicant has obtained a Certificate of Registration or proof that the Applicant has written authority to apply for a Right-of-way Minor Maintenance Permit on behalf of a party that has been issued a Certificate of Registration.
- (2) Submission of a completed Right-of-way Minor Maintenance Permit Application in the form required by the Director of Public Service.
- (3) A statement that the Applicant will employ protective measures and devices that, consistent with the OMUTCD, will prevent injury or damage to Persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.

(c) Issuance of Right-of-way Minor Maintenance Permits; Conditions.

- (1) If the Director of Public Service determines that the Applicant has satisfied the requirements of this Chapter and the Right-of-way Minor Maintenance Permit process, the Director of Public Service shall issue a Right-of-way Minor Maintenance Permit subject to the provisions of this Chapter.
- (2) The City may impose reasonable conditions, in addition to the Rules and Regulations enacted by the Director of Public Service, upon the issuance of the Right-of-way Minor Maintenance Permit and the performance of the Right-of-way Minor Maintenance Permit thereunder in order to protect the public health, safety, and welfare, to insure the structural integrity of the Rights-of-way, to protect the property and safety of other users of the Rights-of-way, to protect the City's investment in the Right-of-way, or to minimize the disruption and inconvenience to the traveling public.

(d) Right-of-way Minor Maintenance Permit Fees. The Director of Public Service shall not charge a fee for the issuance of the Right-of-way Minor Maintenance Permit but may revoke the Right-of-way Minor Maintenance Permit as any other Permit may be revoked under this Chapter. (Ord. O-06-2014. Passed 3-18-14.)

907.16 ENFORCEMENT OF PERMIT OBLIGATION.

(a) Mandatory Denial of Permit. Except in the case of an Emergency, no Permit will be granted:

- (1) To any Person who has not yet made an Application; or
- (2) To any Person who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the City Director of Finance and the Law Director; or
- (3) To any Person as to whom there exists grounds for the revocation of a Permit; or
- (4) If, in the discretion of the Director of Public Service, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Director of Public Service, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Rights-of-way considerations relating to the public health, safety and welfare and/or the City's investment in the Right-of-way.

(b) Permissive Denial of Permit. The Director of Public Service may deny a Permit in order to protect the public health, safety and welfare, and/or protect the City's investment in the Right-of-way to prevent interference with the safety and convenience of ordinary travel over the Rights-of-way, or when necessary to protect the Rights-of-way and its users.

- (1) The Director of Public Service, in his/her discretion, may consider one or more of the following factors:
 - A. The extent to which Rights-of-way space where the Permit is sought is available; and/or

- B. The competing demands for the particular space in the Rights-of-way; and/or
 - C. The availability of other locations in the Rights-of-way or in other Rights-of-way for the proposed Facilities; and/or
 - D. The applicability of Chapter 907 or other regulations of the Rights-of-way that affect location of Facilities in the Rights-of-way; and/or
 - E. The degree of compliance of the Provider with the terms and conditions of its Certificate of Registration, Chapter 907, and other applicable ordinances and regulations; and/or
 - F. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-way; and/or
 - G. The condition and age of the Rights-of-way, and whether and when it is scheduled for total or partial re-construction; and/or
 - H. The balancing of the costs of disruption to the public and damage to the Rights-of-way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-way; and/or
 - I. Whether such Applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance with, the requirements of Chapter 907 or, if applicable, any other Law.
- (2) Under no circumstances will open cutting take place on any street except where:
- A. An absolute emergency situation constitutes that an open cut is necessary; and/or
 - B. Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such services; and/or
 - C. The Director of Public Service determines it is in the best interests of the City that such an open cut take place.
- (c) Discretionary Issuance of Permit.
- (1) Notwithstanding the provisions of Sections 907.16(A)(1) and 907.16(A)(2), the Director of Public Service may issue a Permit in any case where the Permit is necessary;
- A. To prevent substantial economic hardship to a customer of the Permit Applicant, if established by Credible evidence satisfactory to the City; or
 - B. To allow such customer to materially improve its Service; or
 - C. To allow a new economic development project to be granted a Permit under this section.
- (2) To be granted a Permit under this Section, the Permit Applicant must not have had knowledge of the hardship, the plans for improvement of Service, or the development project when it was required to submit its list of next year projects.

(d) Work Done Without A Permit in Emergency Situations.

- (1) Each Provider shall, as soon as is practicable, immediately notify the Director of Public Service of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency. Within five (5) business days, unless otherwise extended by the Director of Public Service, after the occurrence or discovery of the Emergency (whichever is later), the Provider shall apply for the necessary Permits, pay the fees associated therewith or have those fees attributed to its quarterly invoice balance in accordance with Sections 907.13(D) and fulfill the rest of the requirements necessary to bring itself into compliance with Chapter 907 for any and all actions taken in response to the Emergency. In the event that the City becomes aware of an Emergency regarding a Provider's Facilities, the City may use Best Efforts to contact the Provider or the System Representative of each Provider affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Provider whose Facilities caused the Emergency.
- (2) Except in the case of an Emergency, any Provider who Constructs in, on, above, within, over, below or through a Rights-of-way without a valid Permit must subsequently obtain a Permit, pay double the calculated fee for said Permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the Rights-of-way and comply with all of the requirements of Chapter 907.

(e) Revocation of Permits.

- (1) Permittees hold Permits issued pursuant to the Code as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any Law, or any provision or condition of the Permit. A substantial breach by Permittee shall include, but shall not be limited to, the following:
 - A. The violation of any provision or condition of the Permit; or
 - B. An evasion or attempt to evade any provision or condition of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or
 - C. Any material misrepresentation of fact in the Application for a Permit; or
 - D. The failure to maintain the required Construction or Removal Bonds and/or insurance; or
 - E. The failure to obtain and/or maintain, when required, a Certificate of Registration; or
 - F. The failure to complete the Construction in a timely manner; or
 - G. The failure to correct a condition of an order issued pursuant to Section 907.16(O)(3).

- (2) If the Director of Public Service determines that the Permittee has committed a substantial breach of a term or condition of any Law or any condition of the Permit, the Director of Public Service shall serve a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. Upon a substantial breach, as stated above, the Director of Public Service may place additional or revised conditions on the Permit.
 - (3) By the close of the next business day following receipt of notification of the breach, Permittee shall contact the Director of Public Service with a plan, acceptable to the Director of Public Service, for its correction. Permittee's failure to so contact the Director of Public Service, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the Permit.
 - (4) If a Permittee commits a second substantial default as outlined above, Permittee's Permit will automatically be revoked and the Permittee will not be allowed further Permits for up to and including one full year, except for Emergency repairs.
 - (5) If a Permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.
- (Ord. O-06-2014. Passed 3-18-14.)

907.17 CONSTRUCTION AND REMOVAL BONDS.

(a) Construction Bond. Prior to the commencement of any Construction, a Construction Permittee, excluding the County, shall deposit with the Finance Director an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Director of Public Service to be appropriate based upon fair and reasonable criteria. Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Service shall serve written notice to the Construction Permittee detailing the Construction default, problem or deficiency. If the Director of Public Service determines that correction or repair of the Construction default, problem or deficiency has not occurred or has not been substantially initiated within ten (10) calendar days after the date following service and notification and detailing the Construction default, problem or deficiency, then the City may attach the letter of credit or surety bond. Upon attachment, written notice shall be served on the Construction Permittee by the Director of Public Service.

(b) Removal Bond. Upon issuance of a Certificate of Registration and continuously thereafter, and until one hundred twenty (120) days after a Provider's Facilities have been removed from the Rights-of-way, (unless the Director of Public Service notifies the Provider that a reasonably longer period shall apply), a Provider shall deposit with the Finance Director and maintain an irrevocable, unconditional letter of credit or surety bond in an amount equal to or greater than one hundred thousand dollars (\$100,000.00), the director of public Service shall make all reasonable

efforts to allow Provider a period of five (5) calendar days after serving notification in writing to correct or repair any default, problem or deficiency prior to the Director of Public Service attachment of the letter of credit or surety bond regarding the removal of Facilities. Upon attachment, written notice shall be provided to the Provider by the Director of Public Service.

(c) Blanket Bond.

- (1) In lieu of the Construction Bond required by Section 907.19(A) and the Removal Bond required by Section 907.17(B), Provider may deposit with the Finance Director an irrevocable, unconditional letter of credit and/or surety bond in the amount of five million dollars (\$5,000,000.00). Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Service shall make all reasonable effort to allow Permittee a period of five (5) calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Director of Public Service's attachment of the letter of credit or surety bond.

(d) Self-Bonding. In lieu of the Construction Bond required by Section 907.17(A), the Removal Bond required by Section 907.19(B) and the Blanket Bond required by Section 907.17(C), those Providers maintaining a book value in excess of fifty million dollars (\$50,000,000.00) may submit a statement to the Finance Director requesting to self-bond. If approval to self-bond is granted, a Provider shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing Provider with the types and amounts of bonds detailed in the above named Sections. This statement shall include:

- (1) Audited financial statements for the previous year; and
- (2) A description of the Applicant's self-bonding program.
- (3) Other applicable and pertinent information as reasonably requested by the Director of Public Service.

(e) Purposes.

- (1) The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:
 - A. The faithful performance by the Permittee or Provider of all terms, conditions and obligations of Chapter 907; and
 - B. Any expenditure, damage, or loss incurred by the City occasioned by the Permittee or Provider's violation of Chapter 907 or its failure to comply with all rules, regulations, orders, Permits and other directives of the City issued pursuant to Chapter 907; and
 - C. The payment of all compensation due to the City, including Permit Fees; and
 - D. The payment of premiums (if any) for the liability insurance required pursuant to Chapter 907; and
 - E. The removal of Facilities from the Rights-of-way pursuant to Chapter 907; and

- F. The payment to the City of any amounts for which the Permittee or Provider is liable that are not paid by its insurance or other surety; and
- G. The payment of any other amounts which become due to the City pursuant to Chapter 907 or the Law.

(f) Form. The bond documents required by this Section and any replacement bond documents shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) days after completion of Construction of the Facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least ninety (90) days' written notice to City of surety's intention to cancel or not renew this bond. (Ord. O-06-2014. Passed 3-18-14.)

907.18 INDEMNIFICATION AND LIABILITY.

(a) City Does Not Accept Liability.

- (1) By reason of the acceptance of an Application, the grant of a Permit or the issuance of a Certificate of Registration, the City does not assume any liability:
 - A. For injuries to Persons, damage to property, or loss of Service claims; or
 - B. For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of Facilities.

(b) Indemnification.

- (1) By applying for and being issued a Certificate of Registration with the City a Provider is required, or by accepting a Permit a Permittee is required to defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the Construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near on a Rights-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit. A Provider or Permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Rights-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Section is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider, Permittee or to the City; and the Provider or Permittee, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:
 - A. To the fullest extent permitted by Law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected

officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the City in connection therewith); and

1. Persons or property, in any way arising out of or through the acts or omissions of Provider or Permittee, its subcontractors, agents or employees attributable to the occupation by the Provider or Permittee of the Rights-of-way, to which Provider's or Permittee's negligence shall in any way contribute, and regardless of whether the City's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and
 2. Arising out of any claim for invasion of the right of privacy, for defamation of 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 and corporation by the Provider, but excluding claims arising out of or related to The City's actions; and
 3. Arising out of Provider or Permittee's failure to comply with the provisions of Law applicable to Provider or Permittee in its business hereunder.
- B. The foregoing indemnification is conditioned upon the City:
1. Giving Provider or Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought; and
 2. Affording the Provider or Permittee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
 3. Cooperate in the defense of such claim and making available to the Provider or Permittee all pertinent information under the City's control.
- C. The City 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 Provider or Permittee shall pay all reasonable fees and expenses of such separate counsel if employed.

(Ord. O-06-2014. Passed 3-18-14.)

907.19 GENERAL PROVISIONS.

(a) Non-exclusive Remedy. The remedies provided in Chapter 907 are not exclusive or in lieu of other rights and remedies that the City may have at Law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the public Rights-of-way, including damages to the Rights-of-way, whether caused by a violation of any of the provisions of Chapter 907 or other provisions of the Code.

(b) Severability. If any section, subsection, sentence, clause, phrase, or portion of Chapter 907 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit, right or any portions of this section are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a revocable Permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the City to issue such revocable Permit and the power to revoke it.

(c) Reservation of Regulatory and Police Powers. The City, by the granting of a Permit or by issuing a Certificate of Registration pursuant to Chapter 907, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Ohio and under the Charter of the City of New Albany to regulate the use of the Rights-of-way. The Permittee by its acceptance of a Permit, or Provider by applying for and being issued a Certificate of Registration, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A Permittee or Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general Laws and ordinances enacted by the City pursuant to such powers.

(d) Method of Service. Any notice or order of the Director of Public Service or the City Manager shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally; or
- (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
- (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is eighteen (18) years of age or older; or
- (4) Sent by certified, preposted U.S. mail to the last known address; or
- (5) If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S.; or

- (6) If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.
- (e) Applies to All Providers. Chapter 907 shall apply to all Providers and all Permittees unless expressly exempted.
- (f) Police Powers. All Persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All persons shall comply with all applicable Laws enacted by the City pursuant to its police powers. In particular, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities.
- (g) Compliance. No Person shall be relieved of its obligation to comply with any of the provisions of Chapter 907 by reason of any failure of the City to enforce prompt compliance.
- (h) Foreclosure and Receivership.
- (1) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against any Provider and/or Permittee, or any action for foreclosure or other judicial sale of the Provider and/or Permittee Facilities located within the Rights-of-way, the Provider and/or Permittee shall so notify the Director of Public Service within fourteen (14) calendar days thereof and the Provider and/or Permittee's Certificate of Registration or Permit (as applicable) shall be deemed void and of no further force and effect.
 - (2) The City shall have the right to revoke, pursuant to the provisions of the Code, any Certificate of Registration or Permit granted pursuant to Chapter 907, subject to any applicable provisions of Law, including the Bankruptcy Code, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Provider and/or 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 said one hundred and twenty (120) days or unless:
 - A. Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Certificate of Registration, any outstanding Permit, Chapter 907, and remedied all defaults thereunder; and
 - B. Said receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by a court having jurisdiction over the Facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant Certificate of Registration, Permit and Chapter 907.
- (i) Choice of Law and Forum. This Chapter 907 and the terms and conditions of any Certificate of Registration or Permit shall be construed and enforced in accordance with the substantive Laws of the City, State of Ohio and United States, in that order. As a condition of the grant of any Permit or issuance of any Certificate of Registration all disputes shall be resolved in a court of competent jurisdiction for Franklin County, Ohio.

(j) Force Majeure. In the event any Person's performance of any of the terms, conditions or obligations required by Chapter 907 is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(k) No Warranty. The City makes no representation or warranty regarding its right to authorize the Construction of Facilities on any particular Rights-of-way. The burden and responsibility for making such determination shall be upon the Person installing Facilities in the Rights-of-way.

(l) Continuing Obligation and Holdover. In the event a Provider or Permittee continues to operate all or any part of the Facilities after the termination, lapse, or revocation of a Certificate of Registration, such Provider or Permittee shall continue to comply with all applicable provisions of this Chapter and other Laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a Certificate of Registration or of a Permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.

(m) Appeals. All appeals provided for by this Chapter and any notification to the City required by this Chapter shall be in writing and sent via certified U.S. mail to the City Manager or Director of Public Service as specified in this Chapter 907.

(n) City Facilities. As part of City required standards wherever Rights-of-way are under Construction, if deemed advisable and practicable by the Director of Public Service, the City may install all such Facilities deemed necessary to accommodate future Provider needs. Any such installed Facilities shall be City property and may be conveyed to any Person under such terms and conditions as are deemed advisable by the City.

(o) Section Headings. Section headings are for convenience only and shall not be used to interpret any portion of this Chapter.

(Ord. O-06-2014. Passed 3-18-14.)

907.99 PENALTIES.

In addition to any other penalties set forth in this Chapter, and the remedy of specific performance which may be enforced in a court of competent jurisdiction the following penalties shall apply:

(1) Any Person violating the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. Each day such violation continued shall be deemed a separate offense.
(Ord. O-06-2014. Passed 3-18-14.)

CHAPTER 909 CONSTRUCTION POLICY*

909.01	POLICIES IMPLEMENTED.
909.02	CONFORMANCE WITH OTHER POLICIES.
909.03	CONTRACTORS TO BE LICENSED AND BONDED "TAPPERS."
909.04	CONSTRUCTION INSPECTION SERVICES FOR STREET, WATER AND SANITARY SEWER LINE, EROSION CONTROL DETENTION/RETENTION FACILITIES.
909.05	PIPE STANDARDS.
909.06	SANITARY HOUSE CONNECTION SERVICE.

909.01 POLICIES IMPLEMENTED.

In order to establish a uniform policy for new construction within the Municipality, the following policies shall be implemented:

All construction plans relating to grading (changing existing surface conditions), storm sewer, sanitary sewers, water lines, etc., shall be submitted for review and approval by the Municipal Engineer. Supporting design documentation shall be submitted with the plans and the plans shall be prepared by a registered professional engineer, his signature and seal affixed to the plans. Upon approval of the plans, the municipal officials will sign the plans (see signature block to be placed on plans attached to original Ordinance 64-91). The above shall exclude construction of a single family residence or two (2) car garage on an existing lot or tract of land, the acreage being the same as that prior to January 1990.

(Ord. 64-91. Passed 8-6-91.)

909.02 CONFORMANCE WITH OTHER POLICIES.

All construction shall conform to the following:

(a) City of Columbus, current Construction and Material Specifications.

(b) Standard drawings and policies as developed by the City of Columbus Division of Engineering and Construction, Division of Water and the Division of Sewerage and Drainage. Any conflict between the above standard and the New Albany Subdivision Regulations, the New Albany Subdivision Regulations shall prevail.

(c) Fiber laterals from/to a commercial building to Blue Albany Networks shall be constructed in accordance with the Village of New Albany standard. Such connection(s) shall be subject to Village or its consultants' plan review, inspection and approval.

(Ord. 64-91. Passed 8-6-91; Ord. 19-2009. Passed 6-16-09.)

909.03 CONTRACTORS TO BE LICENSED AND BONDED "TAPPERS."

All contractors constructing sanitary and storm sewers, sanitary house connection services and water lines shall be licensed and bonded "tappers" as required by the City of Columbus. A current list of qualified tappers will be on file at the Zoning Office.

(Ord. 64-91. Passed 8-6-91.)

*Cross reference—Improvements in new subdivisions - see P. & Z. Ch. 1187

909.04 CONSTRUCTION INSPECTION SERVICES FOR STREET, WATER AND SANITARY SEWER LINE, EROSION CONTROL DETENTION/RETENTION FACILITIES.

(a) The developer prior to construction shall provide the Financial Director with a "letter of credit" without contingencies in the amount of one hundred percent (100%) of the construction cost estimate as prepared by the Municipal Engineer. The Municipal Engineer shall use average industry current unit prices in determining the construction cost estimate. It may be necessary to use the LC if construction inspection fees are insufficient.

(b) A fee shall be paid to the Finance Director based on the following for construction inspections:

- (1) Construction cost estimate under one hundred thousand dollars (\$100,000.00). Eleven percent (11%) fee will be required.
- (2) Construction cost estimate over one hundred thousand dollars (\$100,000.00). Seven percent (7%) will be required.
- (3) If fees are insufficient, to cover unanticipated delays (i.e., rock, excessive water, stop work orders, etc.) or change orders, an additional fee will be required. This additional fee will be calculated by applying the applicable percentage used in the calculation of the inspection fee to the amount of the Village Engineer's estimate of changed construction cost.

(c) A certified check in the amount of two and one-half percent (2.5%) of the initial inspection fee shall also be provided to the Village prior to acceptance of the subdivision. This check will be applied toward the two-year maintenance inspection by the Village.

(Ord. 33-99. Passed 11-16-99; Ord. 43-2002. Passed 12-10-02; Ord. 35-2008. Passed 10-21-08.)

909.05 PIPE STANDARDS.

(a) PVC pipe acceptable to the City of Columbus will be acceptable to the Municipality.

(b) All concrete pipe installed shall be inspected, approved and stamped (C.O.C.) at the manufacturer's plant prior to delivery at the job site. The contractor, manufacturer or developer shall pay for any costs incurred for the above inspection.

(Ord. 64-91. Passed 8-6-91.)

909.06 SANITARY HOUSE CONNECTION SERVICE.

For commercial or residential structures constructed after January 1990 which require a house service connection in excess of one hundred (100) feet, the following will apply: Standby inspection will be required. Fee deposit shall be determined based on a charge determined in accordance with the Village of New Albany Schedule of Fees and Service Charges, and the deposit shall be made at the time permit fees are paid. The length shall be measured from the mainline sewer wye to within

five (5) feet of the building. Connections less than one hundred (100) feet shall be charged a flat rate in accordance with the Village of New Albany Schedule of Fees and Service Charges. Insufficient deposits and refunds are the same as indicated in Section 909.04(a). (Ord. 43-2002. Passed 12-10-02.)

PROOFS

CHAPTER 931 PROTECTION OF STORM SEWERS*

931.01	OBSTRUCTING DRAINAGE DITCH PROHIBITED.
931.02	DRAINAGE UNDER DRIVEWAYS; PERMIT AND FEE.
931.03	PROHIBITED CONNECTIONS.
931.04	PERMITTED DRAINAGE CONNECTIONS; VIOLATIONS.
931.05	INTERFERENCE WITH SEWERS OR WASTE TREATMENT FACILITY PROHIBITED.
931.06	DELETERIOUS WATERS OR WASTES.
931.07	INSPECTIONS; SAMPLING; REPAIR AND MAINTENANCE.
931.08	SEWER LINE CONNECTIONS LIMITED; SEWER TAP PERMIT.
931.09	SEWER CONNECTIONS; PROPERTY OWNER'S RESPONSIBILITIES.
931.10	CLEANING SEWER LINES; COSTS.
931.11	DAMAGING OR TAMPERING WITH SEWAGE DISPOSAL SYSTEM PROHIBITED; PEN- ALTY.
931.99	PENALTY.

931.01 OBSTRUCTING DRAINAGE DITCH PROHIBITED.

No person shall obstruct a drainage ditch, storm sewer or any other storm drainage device in this Village or permit or cause the same to be obstructed in any manner which will interfere with the free flow of water therein.

(Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.02 DRAINAGE UNDER DRIVEWAYS; PERMIT AND FEE.

No person shall construct or install or cause to be constructed or installed, any driveway or approach to any lot across a drainage ditch, without first obtaining a permit to do so from the Community Development Department. The application for such permit shall show the details of the proposed construction including the location, size and type of drainage pipe to be used under such driveway or approach. All driveway drainage pipe shall be installed and maintained at the expense of the property owner according to specifications prepared by the Director of Public Service. The fee for such permit shall be as specified in the New Albany Schedule of Fees and Service Charges.

(Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.03 PROHIBITED CONNECTIONS.

No person shall connect or cause to be connected any roof, foundation, areaway, parking lot, roadway or other surface runoff or groundwater drains to any sewer that is connected to a wastewater treatment facility.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.04 PERMITTED DRAINAGE CONNECTIONS; VIOLATIONS.

Stormwater, surface drainage, subsurface drainage, groundwater, roof runoff, cooling water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as

*Cross reference—Compulsory sewer connections - see ORC 729.06

Regulations to control sewers - see ORC 729.51

Household sewage disposal systems - see OAC Ch. 3701-29

storm sewers or to a natural outlet approved by the Municipality through its Engineer or by New Albany's most current Ohio Environmental Protection Agency (OEPA) National Pollutant discharge Elimination Systems (NPDES) Phase II Permit. Violations to this section or Section 931.03 shall be treated as follows:

If the Municipality determines that a connection prohibited by this chapter has been made to the sanitary sewer system, the Municipality may charge the owner for labor, material and equipment costs incurred to remove the illegal connection. Such charges may be placed on the property owner's property tax bill.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.05 INTERFERENCE WITH SEWERS OR WASTE TREATMENT FACILITY PROHIBITED.

No person shall discharge or cause to be discharged, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the sanitary sewer system, waste treatment facility or receiving waters, or is prohibited by Section 1 of the Agreement Between the City of Columbus, Ohio and the Village of New Albany, Ohio for Sewage Disposal from the Village of New Albany, Ohio.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.06 DELETERIOUS WATERS OR WASTES.

If any waters or wastes are discharged or are proposed to be discharged into the public sewers, which waters contain the substance or possess the characteristics which in the judgement of the Municipal Engineer, may have a deleterious effect upon the sanitary sewer system, waste treatment facility or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Engineer may:

(a) Reject the wastes;

(b) Require pretreatment to an acceptable condition or take such other corrective measures as determined by the owners of the wastewater treatment facility to which the sewer is joined.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.07 INSPECTIONS; SAMPLING; REPAIR AND MAINTENANCE.

Inspectors of the Municipality bearing proper credentials and identification shall have access to private property so long as they remain within easements duly negotiated by the Municipality, for the purpose of but not limited to inspection, observation, measurement, sampling, repair and maintenance of any portion of the sanitary sewer system lying within such easement. All entry and subsequent work, if any, on such easement shall be done within the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 2-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.08 SEWER LINE CONNECTIONS LIMITED; SEWER TAP PERMIT.

The Municipality shall limit connections into sewer lines if sufficient capacity to handle and treat additional wastewater is unavailable in the system.

(a) Any person applying for a permit to connect to a public sewer shall provide, with the application for said sewer tap permit, sufficient data, as required by the Municipality and its Engineer, regarding the location, type of wastewater and amount of flow to be conveyed to the public sewer.

(b) Any costs associated with sewer connection activities described herein shall be borne by the person applying for the sewer tap permit.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.09 SEWER CONNECTIONS; PROPERTY OWNER'S RESPONSIBILITIES.

Following construction of a sewer connection to a structure, the property owner shall own, maintain, repair or replace the connection line from the building foundation to the publicly owned sewer.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.10 CLEANING SEWER LINES; COSTS.

If the Municipality receives a service call for a property to investigate a sewage backup and performs services to clean a sewer line for which the owner is responsible, the Municipality may charge the owner for labor, material and equipment costs incurred. Such charges may be placed on the property owner's property tax bill.

(Ord. 43-2002. Passed 12-10-02; Ord. O-02-2011. Passed 2-15-11.)

931.11 DAMAGING OR TAMPERING WITH SEWAGE DISPOSAL SYSTEM PROHIBITED; PENALTY.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the sewage disposal system. Any person violating this provision shall be subject to immediate arrest under a charge of disorderly conduct and shall be required to make restitution for said damages, along with payment of any fines and/or costs associated with the charge.

(Ord. 21-94. Passed 4-19-94; Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

931.99 PENALTY.

Whoever violates any section of this chapter is guilty of a minor misdemeanor. Each day that the violation continues shall constitute a separate offense.

(Ord. 52-2001. Passed 12-4-01; Ord. O-02-2011. Passed 2-15-11.)

CHAPTER 933 EXTENSION OF SANITARY SEWERS

933.01	DEFINITIONS.
933.02	REIMBURSEMENT FOR CERTAIN COSTS.
933.03	CONTRACTUAL AGREEMENTS.
933.04	REQUIRED AGREEMENT.
933.05	EASEMENTS.
933.06	SEWER COST RECOVERY FUND.
933.07	SANITARY SEWERS LESS THAN EIGHTEEN (18) INCHES.
933.08	PERMITS REQUIRED.
933.09	FRONT FOOTAGE FEES.
933.10	SANITARY SEWER REQUIRED TAP IN.

933.01 DEFINITIONS.

(a) "Agreement" shall be the sewer subtrunk agreement entered into by the Municipality and the private sector developer wishing to extend a sanitary sewer subtrunk.

(b) "Carrying charge" shall be the percentage of the outstanding balance of the "total cost of construction" compounded annually as specified in the Agreement.

(c) "Total Cost of Construction" shall consist of the following items:

- (1) Actual total bid contract price for construction of the extension of the subtrunk shall incorporate a "per unit cost basis" instead of a lump sum amount. The original contract bid price shall require a minimum of three (3) competitive bids from qualified City of Columbus contractors utilizing the "per unit cost basis". Bids shall be opened and read in the presence of the Municipal Engineer. In order to derive the "per unit cost basis" the bid shall be segregated into material costs, and labor costs (the latter of which shall include all other costs including equipment costs, overhead, and profit). This method will insure construction costs will be based upon actual quantities for construction overhead rather than estimated quantities.

After completion of project, the developer and contractors must present certified documentation of actual construction cost based on per unit cost to the satisfaction of the Municipal Engineer. The necessary documentation shall include, but will not necessarily be limited to:

1. certified payroll;
2. notarized affidavit and/or certification of materials costs; and
3. notarized affidavit and/or certification of actual per unit cost.

	LABOR (plus Equip., Overhead-Profit)	MATERIALS TOTAL
AT TIME OF BID (per unit)		
CERTIFIED COST		
AFTER CONST.		

The Developer's administrative costs are not eligible for inclusion in this reimbursement policy. In order to be eligible for reimbursement, any other developer costs, in excess of their contractor's certified costs, said developer costs must be approved by the Municipal Engineer and Council. Once the contractor's and/or developer's costs are certified and approved, that cost basis will be subject to this reimbursement policy, except as otherwise provided herein.

Any extraordinary exclusions provided in the bid contract price (i.e. unforeseen circumstances which inflate the actual contract bid price) which necessitate a modification in the bid price must be submitted to the Municipal Engineer for approval.

- (2) Actual cost of all materials and supplies if contracted separately from the total contract price for construction.
- (3) Engineering Design, plan review and construction inspection fees.
- (4) Actual cost of environmental remedial work required by applicable Federal laws or the laws of the State of Ohio in control, cleanup and disposal of hazardous substances or waste and solid waste.
- (5) The fair market value or actual purchase price, whichever is less, of all easements necessary for the extension of the subtrunk.
- (6) The cost of complying with any bonding requirements.

Provided, however, the actual Total Cost of Construction shall in no event be in excess of one hundred and ten (110%) percent of the estimate of the total cost of construction or the bid for the construction as approved by the Village Engineer, whichever is less.

(d) "Cost recovery fee" shall mean the reimbursement fee collected by the Municipality on behalf of the developer who constructed a sewer subtrunk line.

(e) "Engineering cost" shall mean the actual total cost of engineering and surveying necessary to complete the plans and specifications for the portion of the subtrunk being extended, including engineering costs incurred in establishing the tributary Area.

(f) "Exempt parcel" shall mean any parcel, seven (7.000) acres or less in size, used for a single-family residential purpose unless or until said parcel is rezoned, subdivided, and/or developed.

(g) "Household service line" shall mean any lateral six (6) inches in diameter sewer, serving one single family home.

(h) "Reimbursement district" means the tributary area that is to be included when reimbursement costs are calculated.

(i) "Sewer lateral" shall mean any sewer line smaller than eighteen (18) inches in diameter but larger than household service line.

(j) "Parcel" shall mean a tract of real property assigned a separate and unique tax number by the County Auditor.

(k) "Subtrunk" shall mean a sanitary sewer line eighteen (18) inches in diameter or larger and/or forced main sanitary sewer line equivalent in size to an eighteen (18) inch or larger gravity sanitary sewer line as determined by the Municipal Engineer.

(l) "Tributary area" shall mean that area served by the extension of the subtrunk without further extension thereof, as determined by the Municipal Engineer at the time of the approval of the plans and specifications of the extension of the Subtrunk.

(Ord. 21-96. Passed 7-2-96.)

933.02 REIMBURSEMENT FOR CERTAIN COSTS.

That, upon a finding by the Council that it is in the best interest of the Municipality, the Council shall allow reimbursement for certain cost when a sanitary sewer subtrunk eighteen (18) inches or larger is required and is constructed by a private sector developer. Such reimbursement shall be made by the imposition of a cost recovery fee, which shall be based on the total cost of construction, and shall be collected from all property owners benefiting from the construction of the sanitary sewer within the tributary area served by the sanitary sewer, except owners of exempt parcels or owners who have only a household service. Benefiting property owners shall pay the cost recovery fee at the time they connect to the sanitary sewer.

(Ord. 21-96. Passed 7-2-96.)

933.03 CONTRACTUAL AGREEMENTS.

The terms by which a reimbursement for extension of sanitary sewer lines eighteen (18) inches or larger shall be permitted and eligibility for same shall be described in contractual agreements which shall be executed by the private sector developer and the Municipality prior to construction of any sewer subtrunk extension for which reimbursement is contemplated.

(Ord. 21-96. Passed 7-2-96.)

933.04 REQUIRED AGREEMENT.

Prior to execution of a sanitary sewer line reimbursement Agreement the party desiring reimbursement shall agree to the following:

(a) To extend sanitary sewer through the reimbursement district at the time of development including extension of laterals to all upstream abutting property as required and directed by the Municipality. If a sewer abuts properties with residences, a six (6) inch house service wye shall be provided for each house. There shall be no reimbursement for extension of laterals and six (6) inch household service lines.

(b) That the sewer subtrunk(s) and lateral(s) shall be constructed based on design criteria established by the City of Columbus and the Municipality, and final design and location of the subtrunk(s) and lateral(s) shall be approved by the Municipal Engineer.

(c) To dedicate to the Municipality a permanent easement centered on the centerline of the constructed sewer subtrunk(s) and lateral(s). If the sewer subtrunk is scheduled to be developed in phases, prior to the beginning of construction of the first phase, the developer shall also dedicate to the Municipality permanent and temporary easements of sufficient width to allow construction of future phases across all property that he owns. These easements shall be approved by the Municipal Engineer and shall be recorded prior to construction of the sewer subtrunk.

(d) To agree to be reimbursed based on a cost recovery fee, which shall be calculated based on acreage and/or allowable development densities within the reimbursement district. Any exempt parcels shall be specified in the Agreement.

(e) Notification is required to all property owners in the upstream tributary area of the proposed sewer. Pursuant to Civ. R. 4.1(1), notification shall "affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered". If service by certified mail cannot be accomplished, mailing by regular U.S. Mail delivery will be attempted. Should the resident be out-of-state, service will be mailed pursuant to Civ. R. 4.3(A), which provides that "service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state". In the event that the resident is in a foreign country, Civ. R. 4.5(A)(5) states "by any form of mailing requiring a signed receipt, when the ... addresses and dispatches this mail to the party to be served On request the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(Ord. 21-96. Passed 7-2-96.)

933.05 EASEMENTS.

Parties desiring to construct a sanitary sewer subtrunk under this reimbursement policy shall obtain easements for the subtrunk, if such easements are required. Nothing in this section shall preclude or prevent the Municipality from acquiring easements or from using its power of eminent domain to complete such acquisition. Prior to any action by the Council to acquire any easement(s) by eminent domain, the party desiring to construct a sewer pursuant to this policy shall have demonstrated to the satisfaction of the Council that he has made every reasonable effort to acquire said easement(s). The Council shall be reimbursed in full for the cost of any easement(s) it acquires under any Agreement executed pursuant to this policy.

(Ord. 21-96. Passed 7-2-96.)

933.06 SEWER COST RECOVERY FUND.

No reimbursement moneys shall be paid directly to the party constructing a sanitary sewer subtrunk pursuant to this policy by a property owner within the tributary area served by the subtrunk extension. Instead, upon execution of an Agreement pursuant to this policy, a Sewer Cost Recovery Fund shall be established, into which all reimbursement moneys shall be paid. The Finance Director shall pay the same to the party constructing a sanitary sewer subtrunk on a quarterly basis.

(Ord. 21-96. Passed 7-2-96.)

933.07 SANITARY SEWERS LESS THAN EIGHTEEN (18) INCHES.

No reimbursement shall be made to any party for sanitary sewers smaller than eighteen (18) inches in diameter. All developers constructing sanitary sewers across their property shall be required, whenever directed to do so, to extend laterals up to eighteen (18) inches (and/or six (6) inch connections if abutting property is occupied by a single family residential dwelling) to adjacent parcels.

(Ord. 21-96. Passed 7-2-96.)

933.08 PERMITS REQUIRED.

Parties desiring to construct a sanitary sewer subtrunk under this reimbursement policy shall in no way be exempt from obtaining and paying for permits for service for each service connection on their property. Such parties shall pay all such connection costs, including tap fees, permit costs, inspection charges and construction costs for each service connection and the Municipality reserves the right to inspect and approve any service connection. All such moneys shall be paid at the time the permit application is submitted.

(Ord. 21-96. Passed 7-2-96.)

933.09 FRONT FOOTAGE FEES.

(a) Before the Municipality shall issue any permit to connect to the sanitary sewer lines constructed by the Municipality, a charge in accordance with the Village of New Albany Schedule of Fees and Service Charges shall be made and collected, provided that such property has not been specifically assessed for the construction of the sanitary sewer line to be tapped, or provided that such sanitary sewer line is not constructed under a private sewer line agreement. Said charge shall be reviewed annually by Village Council, but if for any reason it is not timely reviewed, shall remain in effect until said review is performed.

(b) When determining front footage fees, the following criteria shall be used:

- (1) Lots or parcels which have the same width front and rear and the same depth on each side shall be charged on the basis of actual frontage.

- (2) On corner parcels, charges shall be based on the shortest frontage so abutting unless the building being served faces on, or is addressed on, the longest frontage so abutting; then the charge will be one-half the total frontage.
- (3) Front foot shall be measured at the building setback line where lots are irregular in shape.
- (4) When the property to be served does not abut on a street right-of-way, "front foot" means the smaller of the parcel dimensions.
- (5) In the case of "flag lots," front foot shall be an amount equal to the frontage requirements mandated by the zoning of that parcel, as outlined in the Zoning Ordinance and its amendments.

(Ord. 19-2003. Passed 6-17-03.)

933.10 SANITARY SEWER REQUIRED TAP IN.

(a) Owners of commercial or residential structures located within two hundred (200) feet of the public sanitary sewer system, whose private sanitary systems are deemed by the Franklin County Health Department not to pose an immediate risk to the public health and welfare, shall be required to abandon any and all systems and connect to said public system within one hundred eighty (180) calendar days of its availability.

(b) Owners of commercial or residential structures located within two hundred (200) feet of the public sanitary sewer system, whose private sanitary systems are deemed by the Franklin County Health Department to pose an immediate risk to the public health, safety and welfare, shall be required to abandon any and all systems and connect to said public system within thirty (30) calendar days of its availability.

(c) Financial hardship shall not constitute grounds for an exception to this section. The Village shall maintain the right to require that the costs associated with the connection to the public sewer system be assessed to the property owner.

(d) Whoever violates any provision of this chapter is guilty of a minor misdemeanor, with each day of violation as a separate offense.

(e) This section may be enforced by the Franklin County Board of Health or the Village.
(Ord. 06-2000. Passed 5-16-00.)

CHAPTER 935 WATER REGULATIONS AND CHARGES*

935.01	DEFINITIONS.
935.02	WATER MAIN CONNECTIONS; PERMIT; FEES.
935.03	WATER TAPS.
935.04	FRONT FOOTAGE FEES.
935.05	GENERAL PROVISIONS.

935.01 DEFINITIONS.

(a) "Front foot" means the frontage of any lot or parcel which abuts on the street right-of-way or has access to the street right-of-way.

(b) "Owner" means any person, group of persons, corporation, partnership or firm which holds title to a lot or parcel of land adjacent to the water system or which desires to connect to the water system.

(c) "Water main" (also called "water line") means the pipe located in a street or alley right-of-way, or in an easement, through which the domestic water supply is made available and from which the water supply is delivered through a water service connection pipe to the building being served.

(d) "Water service connection" means the water service pipe extending from the water main through the curb box to the connection with the plumbing at the building being served.
(Ord. 36-94. Passed 10-4-94.)

935.02 WATER MAIN CONNECTIONS; PERMIT; FEES.

Pursuant to the current ordinance establishing water tap-in fees of the Municipality, no connection to the water main lines within the Municipality shall begin until a permit is obtained from the Municipality and all fees listed in the current ordinance establishing water tap-in fees, this chapter and corresponding ordinances of the City of Columbus regarding water connection charges are paid. Further, no multiple use connections shall be permitted. Each structure to which water service is desired shall have a separate water service connection, even if the structures are owned by the same person. Structures which are accessory to a single family residential structure, such as a barn or garage, may be served from the tap installed for the main structure. Multifamily dwellings shall have separate connections to each dwelling unit, unless a single connection is recommended by the Engineer and approved by the Municipality and the City of Columbus Division of Water.

(Ord. 36-94. Passed 10-4-94.)

935.03 WATER TAPS.

(a) All water taps in new subdivisions or new developments shall be installed at the time the water mains are installed.

*Cross reference—Power to provide and regulate water system - ORC 715.08, 717.01, 743.01
Compulsory water connections - see ORC 729.06, 743.23

(b) When it is necessary for the Municipality to construct water lines within the pavement of an existing street, the Municipality shall at the same time construct water service connection lines from the water main to the curb box for all existing occupied structures. The Municipal Engineer will calculate the recommended tap size for each structure and request an acknowledgement letter from each property owner where a tap larger than three-quarter ($\frac{3}{4}$) inch is recommended. If no letter is received within fifteen (15) days of the request, a three-quarter ($\frac{3}{4}$)-inch tap will be installed. A list of addresses of structures to which taps have been provided containing the size and the cost of each tap installed shall be maintained by the appropriate municipal office. At the time each property owner for which a tap has been provided applies for permits and connection permission from the curb box to the structure, the property owner shall pay to the Municipality the cost of the tap. All such fees shall be paid before connection to the main line shall be permitted.

(c) Water taps may be installed by any qualified contractor as determined by the City of Columbus approved "tapper's list." Such installation must conform to all standards set by the City of Columbus and the Municipality of New Albany.
(Ord. 36-94. Passed 10-4-94.)

935.04 FRONT FOOTAGE FEES.

(a) Before the Municipality shall issue any permit to connect to the water supply main lines constructed by the Municipality, a charge per front foot of the property to be served shall be made in accordance with the Village of New Albany Schedule of Fees and Service Charges, and collected, provided that such property has not been specifically assessed for the construction of the water main to be tapped, or provided that such water main is not constructed under a private water line agreement.

(b) When determining front footage fees, the following criteria shall be used:

- (1) Lots or parcels which have the same width front and rear and the same depth on each side shall be charged on the basis of actual frontage.
- (2) On corner parcels, charges shall be based on the shortest frontage so abutting unless the building being served faces on, or is addressed on, the longest frontage so abutting; then the charge will be one-half the total frontage.
- (3) Front foot shall be measured at the building setback line where lots are irregular in shape.
- (4) When the property to be served does not abut on a street right-of-way, "front foot" means the smaller of the parcel dimensions.
- (5) In the case of "flag lots," front foot shall be an amount equal to the frontage requirements mandated by the zoning of that parcel, as outlined in the Zoning Ordinance and its amendments.

(c) Amounts collected for front footage shall be deposited to the Capital Improvement Fund. Such amounts shall be used only to defray the cost of water main line construction and shall be accounted for in a separate line item account within the Capital Improvement Fund. (Ord. 36-94. Passed 10-4-94; Ord. 20-2003. Passed 6-17-03.)

935.05 GENERAL PROVISIONS.

(a) It shall be the responsibility of the property owner to install the water service connection and to maintain it in proper working order and to repair it when necessary. The Municipality, its agents and employees shall have no liability for any damage arising from the installation or use of the water service connection.

(b) The owner shall maintain the service pipe from the curb box to the meter, prevent damage to the meter and permit inspection and testing at reasonable times by duly authorized representatives of the City of Columbus or the Municipality of New Albany. In the event the service pipe is determined to be defective and leaking, the City of Columbus and the Municipality of New Albany have the right to discontinue service until repair or replacement of such pipe is made.

(c) All work disturbing Municipality street rights-of-way in the process of connecting a water line service pipe to a water main shall be repaired as nearly as possible to the same condition in which it was found, including the removal of all rubbish and excess material. Additionally, the tapper shall maintain the area until all possibility of trench settlement has taken place.

(d) The tapper shall use care not to injure or break any other pipe, drain tile or conduit encountered during construction. In case any such pipes, conduit or tiles are damaged, they shall be restored or replaced in as good condition as originally found, at the expense of the water tapper.

(e) The owner or water tapper shall at all times have the responsibility of protecting each opening or excavation made by the tapper in the public streets or alleys or rights-of-way thereof with such safety control devices as to effectively guard the public from accidents and damages.

(f) All connections shall be strictly in accordance with Municipality of New Albany construction policies and ordinances and City of Columbus codes regulating same. (Ord. 36-94. Passed 10-4-94.)

CHAPTER 939 WATER LINES AND FIRE HYDRANTS*

939.01	WATER LINES.
939.02	FIRE HYDRANTS.

939.01 WATER LINES.

(a) All water line and fire hydrant construction, material and specifications shall be in accordance with "City of Columbus Construction and Material Specifications" latest edition and the Division of Water standard drawings or the Village of New Albany standards when promulgated and adopted as approved by the City of Columbus.

(b) All public water lines within a right-of-way, dedicated, highway easement or utility easement shall be maintained as per the water contract agreements with the City of Columbus then in force. Private water lines will not be maintained by the City of Columbus and will not be permitted in a public right-of-way.

(c) A developer for the purpose of this section shall be any individual or entity who improves land for subdivision(s), commercial, industrial, institutional, recreational or other purpose. The developer shall construct a water line, consistent with the Master Water Line Plan then in effect, along the entire length of the development abutting any existing road or street with or without access to that road or street. Where the Master Water Line Plan indicates a line larger than would be required by the development contemplated by the developer, and there is an immediate benefit to the community as determined by the Public Utilities Committee, the Village Council may authorize an expenditure of up to one hundred ten percent (110%) of the difference in the cost of the pipe, fittings and valves between the size pipe required for the development and the size pipe required by the Master Water Line Plan.

(d) Water customers will be responsible for determining the size of the service line from the service box to their house or business. The minimum service tap for multi-dwelling units shall be in accordance with Division of Water Rule and Regulation 91-1.

(e) When no other water service (line two (2) inches or less) is available, water service lines constructed through new subdivision lots within a private easement to undeveloped adjacent existing residential parcels shall be permitted on the following basis:

- (1) The abutting property owner makes a written request to both the Village and the developer and agrees to pay for engineering plans and construction related to the water service line.
- (2) The request from the abutting property owner is received prior to or during the engineering plan development stage.
- (3) The developer agrees to work with the Village in good faith and with best efforts to provide the requested service.
- (4) The Village of New Albany and City of Columbus grant approval.

*Cross reference—Water regulations and charges - see S.U. & P.S. Ch. 935

(f) Water lines after the master meter pit into the commercial, industrial, institutional or other developments shall be private water lines including the fire hydrants and are to be maintained by the owner. The owner shall be responsible to winterize the fire hydrants (pump water out of the fire hydrant barrel before freezing temperatures).

(g) The developer shall be responsible to pay for all chlorination charges assessed by the City of Columbus.

(h) Minimum width of water line easements shall be thirty (30) feet with no permanent structure closer than twenty (20) feet to a water line.

(i) Public water lines will not be permitted in a dead-end easement.

(j) Water lines constructed in a dedicated right-of-way shall be a minimum of seven and one-half (7.5) feet from the right-of-way line for six-inch and eight-inch lines and eight (8) feet for twelve-inch lines and over or unless provided by a dedicated utility easement.

(k) Backflow prevention devices may be required by the City of Columbus in conformance with their regulations, Rules and Regulations No. 93-5 dated December 9, 1993 and all costs incurred shall be the responsibility of the owner.

(l) If a homeowner taps into a water line constructed by a developer outside a subdivision and along an existing road, the developer shall be reimbursed by the Village front footage charges assessed to the homeowner. The frontage charge will be established by Village Council or if none is established by Village Council, then the charge will be the same rate as charged by the City of Columbus.

(m) If a developer (Developer "A") develops a tract of land abutting an existing street where a previous developer (Developer "B") constructed the water line, then Developer "B" shall be reimbursed by Developer "A" one-half the project cost of the water line which includes engineering plan preparation, inspection, easements cost etc. All documented costs shall be submitted to the Village Engineer.

(n) Appeals to Village Council concerning the interpretation or administration of this policy may be taken by any person aggrieved in a letter to the Village Administrator specifying the appeal being taken. Such appeal shall be taken within twenty (20) days after such interpretation or administrative decision has been formally given.

(Ord. 5-99. Passed 4-6-99.)

939.02 FIRE HYDRANTS.

(a) The New Albany fire hydrant shall consist of the following:

- (1) Four-inch pumper nozzle - Columbus Thread.
- (2) Two—two and one-half (2—2 ½) hose nozzle - NST Thread.
- (3) Non-draining.

(4) Color - New Albany Red (Federal Color Book 595, Color 11105).

(5) Mueller Centurion, Clow Eddy or American Darling.

(b) For each construction project where three (3) or more fire hydrants are specified, a developer shall pay to the Village an amount equal to the cost of a fire hydrant.

(c) If a fire hydrant is located a distance greater than ten (10) feet from the water line, an additional six-inch valve will be installed next to the hydrant in accordance with fire hydrant standard drawings.

(d) Prior to using water from a fire hydrant, a permit shall be issued and user fees paid to the City of Columbus and Village of New Albany. The City of Columbus will provide a special connection that includes a backflow preventer and meter.

(e) All newly installed fire hydrants are to be inspected by either the Plain Township Fire Department or a certified fire hydrant inspection company approved by the Village prior to acceptance by the Village. Inspection reports shall be furnished to the Village. Any inspection fees associated with the above shall be paid by the developer.

(f) All fire hydrants within the right-of-way (dedicated or highway easement) or utility easement shall be owned and maintained by the Village of New Albany. Plain Township Fire Department will periodically flush hydrants and winterize all public fire hydrants before freezing temperatures in the fall.

(g) The maximum fire hydrant spacing shall be four hundred (400) feet and at such other locations as directed by the Village Engineer in accordance with standards that may be adopted by Village Council.

(Ord. 5-99. Passed 4-6-99.)

PART ELEVEN - PLANNING AND ZONING CODE*

TITLE ONE - ZONING ADMINISTRATION

- Chapter 1103 General Provisions
- Chapter 1105 Definitions
- Chapter 1107 Administration
- Chapter 1109 Enforcement and Penalty
- Chapter 1111 Amendments
- Chapter 1113 Appeals, Variances and Waivers
- Chapter 1115 Conditional Uses
- Chapter 1117 Nonconforming Uses

TITLE THREE - ZONING DISTRICTS AND REGULATIONS

- Chapter 1125 Districts Established; Zoning Map
- Chapter 1127 General Regulations
- Chapter 1129 Agricultural District
- Chapter 1131 R-1 Residential Estate District
- Chapter 1133 R-2, R-3 and R-4 Single-Family Residential Districts
- Chapter 1135 R-5 Historic Village Single-Family Residential District
- Chapter 1137 R-6 Two-Family Residential District
- Chapter 1139 R-7 Urban Density Residential District
- Chapter 1140 UC Urban Center District
- Chapter 1141 Or Office-Residential District
- Chapter 1143 O Office District
- Chapter 1144 OCD Office Campus District
- CHAPTER 1145C-1 NEIGHBORHOOD BUSINESS DISTRICT
- Chapter 1147 C-2 General Business (Commercial) District
- Chapter 1149 C-3 Highway Business District
- Chapter 1151 CF Community Facilities District
- Chapter 1153 LI Limited Industrial and GE General Employment Districts
- Chapter 1155 FP Flood Plain Overlay District
- Chapter 1157 ARD Architectural Review Overlay District
- Chapter 1158 UCO Urban Center Overlay District
- Chapter 1159 PUD Planned Unit Development District
- Chapter 1160 Limited Overlay District

TITLE FIVE - ADDITIONAL ZONING REQUIREMENTS

- Chapter 1165 General Development Standards
- Chapter 1167 Off-Street Parking and Loading
- Chapter 1169 Display Signs and Outdoor Advertising
- Chapter 1171 Landscaping

***Editor's note**—The Zoning Ordinance codified as Titles One to Five of this Part Eleven - Planning and Zoning Code was adopted by Ordinance 20-90, passed June 19, 1990. Amendments to Ordinance 20-90 are indicated by legislative histories placed at the end of the new or amended sections.

NEW ALBANY CODE

- Chapter 1173 Private Swimming Pools
- Chapter 1175 Fences and Hedges
- Chapter 1177 Satellite Signal Receiving Antennas
- Chapter 1178 Rights-of-Way
- Chapter 1179 Wireless Telecommunication Facilities

TITLE SEVEN - SOIL EROSION AND STORMWATER MANAGEMENT

- Chapter 1181 Stormwater Management and Runoff Control
- Chapter 1183 Soil Erosion and Sediment Pollution

TITLE NINE - SUBDIVISION CONTROL

- Chapter 1187 Subdivision Regulations

TITLE TEN - CABLE AND OTHER UTILITY SERVICES

- Chapter 1191 Video Service Authorization

TITLE ONE

ZONING ADMINISTRATION

Chapter 1103	General Provisions
Chapter 1105	Definitions
Chapter 1107	Administration
Chapter 1109	Enforcement and Penalty
Chapter 1111	Amendments
Chapter 1113	Appeals, Variances and Waivers
Chapter 1115	Conditional Uses
Chapter 1117	Nonconforming Uses

CHAPTER 1103 GENERAL PROVISIONS*

1103.01	TITLE.
1103.02	PURPOSE.
1103.03	INTERPRETATION AND APPLICABILITY.
1103.04	PROVISIONS CUMULATIVE.
1103.05	APPLICABILITY.
1103.06	SEPARABILITY.

1103.01 TITLE.

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the Village of New Albany, Ohio." Unless otherwise provided herein or by the law or implication required, the same rules of construction, definition, and application shall govern the interpretation of the Ordinance as those governing the interpretation of the Ohio Revised Code.

1103.02 PURPOSE.

This Zoning Ordinance is adopted to promote and protect the public health, safety, comfort, prosperity and general welfare by regulating and limiting the use of land areas and building and the erection, restoration and alteration of buildings and the use thereof for residential, business and industrial purposes; to regulate the area dimensions of land, yards and open spaces so as to secure adequate light, air and safety from fire and other dangers; to lessen or avoid congestion in the public streets; to regulate and restrict the bulk, height, design, percent of lot occupancy and the location of buildings; to protect the character of the existing agricultural, residential, business, industrial, and institutional areas and to assure their orderly and beneficial development; to provide for the orderly growth and development of lands, and for the purpose of dividing the Municipality into various districts.

1103.03 INTERPRETATION AND APPLICABILITY.

The provisions of this Ordinance shall be held to be minimum requirements, adopted for the promotion of public health, safety, and the general welfare. It is not intended that this Ordinance shall interfere with, abrogate, or annul any easements, covenants, or other agreements between parties unless they violate this Ordinance. When two (2) specific provisions of this Ordinance, or a provision of this Ordinance conflicts with any other lawfully adopted rules, regulations, ordinances, or resolutions, the most restrictive, or that imposing the higher standards shall apply.

1103.04 PROVISIONS CUMULATIVE.

The provisions hereof are cumulative and additional limitations on all other laws and ordinances heretofore passed or which may be hereafter passed governing any subject matter of this Ordinance. Nothing herein shall be deemed or constructed to repeal, amend, modify, alter or change any other ordinance or any part hereof not specifically repealed, amended, modified, altered or changed herein, except in such particulars or matters as the Zoning Ordinance is more

*Cross reference—Rules of construction generally - see ADM. Ch. 101

restrictive than such other ordinances or parts thereof and that in all particulars wherein the Zoning Ordinance is not more restrictive, each such other ordinance shall continue and shall be in full force and effect.

1103.05 APPLICABILITY.

The regulations set forth in this Zoning Ordinance shall be applicable to all buildings, structures, uses and land of any political subdivision, district, taxing unit or bond-issuing authority located within the corporate limits of the Village of New Albany.

1103.06 SEPARABILITY.

The invalidation of any clause, sentence, paragraph, or section of this Ordinance by a court of competent judgment shall not affect the validity of the remainder of this Ordinance either in whole or in part.

CHAPTER 1105 DEFINITIONS*

1105.01 INTERPRETATION.
1105.02 DEFINITIONS.

1105.01 INTERPRETATION.

For the purpose of this Zoning Ordinance, certain terms and words are to be defined as found in this chapter. Words and terms specifically defined carry their customarily understood meanings. Words used in the present tense include the future tense. The singular form shall include plural and plural shall include singular. The word "shall" is intended to be mandatory. "Occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied."

Specific terms related to swimming pools, signs, and landscaping, are defined within the specific sections of the Zoning Ordinance where those requirements are found.

(Ord. 08-2006. Passed 9-5-06.)

1105.02 DEFINITIONS.

As used in this Zoning Ordinance, the following terms shall be defined as follows:

(a) "Accessory use" means a use subordinate, secondary, incidental to, and customary in connection with the principal building or use and located on the same lot as the principal building or use.

(b) "Accessory building" or "accessory structure" means a building or structure occupied by an accessory use.

(c) "Administrative and business offices" means offices which carry on no retail trade with the public and maintain no stock of goods for sale to customers.

(d) "Agriculture" means the use of land for growing crops in the open, dairying, pasturage, horticulture, floriculture and necessary accessory uses, as further defined and specified in Section 1129.02.

(e) "Alley" means a public right-of-way ten (10) to twenty (20) feet wide which provides only secondary means of access to abutting property.

(Ord. 20-90. Passed 6-19-90.)

(f) "Appurtenance" means something that belongs to or goes with another thing.

(g) "Basement" means a story whose floor level is two (2) feet or more below grade level, but having less than half its clear height above grade level.

*Cross reference—General definitions - see ADM. 101.02

(h) "Building" means a structure permanently affixed to the land with one or more floors and a roof supported by columns or walls, used or intended to be used for shelter or enclosure of persons, animals and/or property.

(1) "Height of building" means:

- A. The vertical distance from the average existing grade level around the foundation of the new work to the highest point of the coping of a flat roof or mansard roof or to the top of the highest ridge line of gable, hip or gambrel roofs on the new work. The average existing grade level is determined by measuring at four (4) specific points around the foundation, as follows: two (2) front corners and two (2) rear corners.
- B. For new work not requiring a grading plan and spot elevations, building height shall be determined by measuring from the average existing contact ground level for each building elevation to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the top of the highest ridge line for gable, hip or gambrel roofs on that building elevation. The highest as measured for each building elevation shall then be combined and divided by the number of measurements taken to determine the height of the building in relation to this subsection.

(2) "Building line" means the front yard setback line established by this Zoning Ordinance generally parallel with and measured perpendicularly from the front lot line, defining the limits of a front yard in which no building or structure may be located as provided by this Zoning Ordinance.

(i) "Principal building" means a building in which is conducted the main or principal use of the property on which such building is located.

(j) "Business services" means any profit-making activity which renders services primarily to other commercial, institutional, or industrial enterprises, or which services and repairs appliances and machines used in other businesses.

(k) "Cemetery" means land used or intended to be used for the burial of human dead.

(l) "Certificate of occupancy" means a certificate issued by the Zoning Inspector, pursuant to Section 1109.09, confirming that the requirements of this Zoning Code have been met, and the building can be occupied.

(m) "Clinic, human" means an establishment where patients who are not lodged overnight are admitted for examination and/or treatment by a physician or group of physicians.

(n) "Conditional use" means an uncommon or infrequent use which may be permitted in specific zoning districts subject to compliance with certain standards, explicit conditions, and the granting of a conditional use permit as specified in Chapter 1115.

(o) "Data Center" means real and personal property consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limita-

tion, power and cooling equipment, used primarily to provide, as a service to persons other than the company operating the data center, data and transaction processing services, outsource information technology services and computer equipment colocation services, or, used primarily to provide, to a single user, including the user's affiliates, customers, lessees, vendors and other persons authorized by the user, data and transaction processing services.

(p) "Drive-through facilities" mean a designated place, in conjunction with a retail or service establishment, from which persons can conduct the major portion of their business without leaving their motor vehicle.

(q) "Dwelling" or "residence" means any building or portion thereof which is designed or used for residential purposes, but not including a cabin, hotel, motel, rooming house, or other such accommodation used for transient occupancy.

- (1) "Multiple-family dwelling" or "multiple-family residence" means a building designed or used as a residence for three (3) or more families living independently and doing their own cooking therein.
- (2) "Single family dwelling" or "single family residence" means a building designed for or occupied exclusively by one family.
- (3) "Two-family dwelling" or "two-family residence" means a building designed for or occupied exclusively by two families living independently.

(r) "Essential services" means the erection, construction, alteration, or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam, or water transmission or distribution systems; collection, communication, supply, or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, traffic signals, hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health, safety, or general welfare, but not including buildings.

(s) "Failure of delivery" means that a particular notice was not received, due to circumstances beyond the control of the Village, and does not include the lack of mailing of the subject notices in the matter specified in the Zoning Code.

(t) "Floor area" of a building means the sum of the gross horizontal areas of the building floors, measured from the exterior faces of exterior walls. "Floor area" shall not include basements, elevator and stair bulkheads, unfinished attic spaces, terraces, breezeways, open porches, uncovered steps, or garages.

(u) "Frontage" or "lot frontage" means that portion of the lot that directly abuts the street, and has direct access thereto. "Lot frontage" shall be measured along the minimum building setback line for the district within which such lot is located.

(v) "Garage, private" means a building, or portion of building, designed or used for the storage of motor-driven vehicles owned and/or used by the occupants of the principal use of the property.

(w) "Gasoline service station" means any building or land used for the sale, offering for sale, and/or dispensing of any vehicular fuels, oils or accessories, including the lubrication of automobiles or motor vehicles and replacement or installation of minor parts and accessories, but not including major repair work, such as motor replacement, body and fender repair, or painting and finishing.

(x) "Gross density" means a unit of measurement of the number of dwelling units per acre of land divided by the total number of dwelling units within the particular project, development or subdivision excluding all dedicated public streets therein.

(y) "Home occupations" means any occupation or profession conducted primarily by immediate resident family members, which is clearly incidental and secondary to the dwelling's residential use. A home occupation must meet the standards and requirements specified in Section 1165.09.

(z) "Hospital" means a building or structure containing beds for at least four (4) patients allowing for overnight or continuous care, diagnosis and treatment of human ailments.

(aa) "Hotel" or "motel" means a building in which lodging is provided or offered to the public for compensation and which is open to transient guests, in contradiction to a boarding house or lodging house operated on a membership basis.

(bb) "Institution" means an organization providing social, cultural, educational, religious or health services to member agencies, organizations, and individuals, or to the general public.

(cc) "Loading space" is a space within the main building or on the same lot therewith, providing for the standing, loading, or unloading of trucks.

(dd) "Lot" means a division of land separated from other divisions for purposes of sale, lease, or separate use, described on recorded subdivision plat, recorded map or by metes and bound, and includes the terms "plat" and "parcel."

- (1) "Corner lot" means any lot at the junction of and abutting on two (2) or more intersecting streets, where the angle of intersection is not more than one hundred thirty-five (135) degrees.
- (2) "Lot coverage" means the ratio of enclosed ground floor area of all buildings on a lot to the horizontally projected area of the lot, expressed as a percentage.
- (3) "Rear lot line" means that lot line which is opposite and furthest removed from the front lot line. In such a lot where the side lot lines meet to the rear of the lot, or where the rear lot line is less than ten (10) feet, the minimum rear yard shall be computed from the point of intersection of the side lot lines on an imaginary line that is at equal angles from each side lot line. In the case of a corner lot, the rear lot line is opposite and furthest removed from the front lot line of least dimension.

- (4) "Side lot line" means the lot line running from the front lot line to the rear lot line. This line is also the line dividing two (2) interior lots.
- (5) "Lot of record" means any lot which individually or as a part of a subdivision has been recorded in the Office of the Recorder, Franklin County, Ohio, as of the effective date of this Zoning Code.
- (6) "Minimum area of lot" means the area of a lot computed exclusive of any portion of the right-of-way or any public thoroughfare.
- (7) "Lot width" is the width of a lot at the building setback line measured at right angles to its depth.

(ee) "Manufacturing" means any production or industrial process, including food processing, which combines one or more raw materials or components into a product or which changes the nature of the materials entering the process, and which by the nature of the materials, equipment and/or process utilized is not objectionable by reason of odor, noise, vibration, gas fumes, dust, smoke, refuse, or water-carried wastes.

(ff) "Nonconforming use" means the use of land or a building, or a portion thereof, which does not conform with the use regulations of the district in which it is situated, which use was lawful prior to the enactment of this Zoning Ordinance.

(gg) "Nonresidential use" means a premises not used primarily for human habitation.

(hh) "Nursery" or "day care center" means a facility which temporarily assumes responsibility for more than four (4) children other than those related to the resident of the premises. Such responsibility shall consist of administering to the needs of those children during any part of a twenty-four (24) hour day for a period of two (2) consecutive days.

(ii) "Nursing home" includes convalescent and extended care facilities; an establishment which specializes in providing necessary care, shelter and nursing services and services to those unable to be responsible for themselves.

(jj) "Open space" means that part of a zoned property, including courts or yards, which is open and unobstructed from its lowest level to the sky, accessible to all tenants upon the zoning property.

(kk) "Off-street parking space" means any parking space located wholly off any street, alley, or sidewalk, either in an enclosed building or on an open lot and where each parking space conforms to the standards as specified in Chapter 1167.

(ll) "Park" is a public area of land, usually in a natural state, having facilities for rest and recreation.

(mm) "Parking area" or "parking lot" means any area other than street, drive, or alley used or intended to be used for the storage of motor vehicles, with or without a fee.

(nn) "Personal services" means any enterprise, conducted for gain, which primarily offers services to the general public such as shoe repair, watch repair, retail dry cleaning, barber and beauty shops, and related activities.

(oo) "Private road" means a strip of privately owned land providing access to abutting properties.

(pp) "Professional offices" means the offices which engage in the providing to the general public services of a professional nature such as legal, medical, accounting, and architectural services.

(qq) "Recreational facilities" means public or privately-operated uses such as country clubs, golf courses, swimming pools, or other areas maintained for the purpose of providing active and passive recreation.

(rr) "Religious exercise facility" means any use, building or conversion of real property for the purpose of any exercise of religion, whether or not compelled by, or central to a system of religious belief and shall be considered to be religious exercise of a person or entity that uses or intends to use the property for that purpose.

(ss) "Residence" - see "Dwelling."

(tt) "Restaurant" means a business establishment where food and beverages are prepared and presented for human consumption on the premises.

(uu) "Retail stores" means stores primarily engaged in selling merchandise for personal or household consumption and in rendering services incidental to the sale of goods.

(vv) "Right-of-way" means 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.

(ww) "Similar use" means a use not specifically listed in any of the permitted building or use classifications of any district, but which may be found analogous and added to the classification, according to the procedures and requirements of Section 1127.02(e).

(xx) "Street" or "thoroughfare" means a public way for the purpose of vehicular travel, including the entire area within the right-of-way.

(yy) "Structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground, including, among other things, walls, buildings, and patios. "Structure" does not include fences.

(zz) "Structural alteration" means any change which would replace or tend to prolong the life of a supporting member of a structure, such as bearing walls, columns, beams, or girders.

(aaa) "Use" means the purpose for which a building is arranged, designed, or intended, or for which either land, lot, piece or parcel thereof or a building located thereon or may be occupied or maintained.

(bbb) "Variance" means a modification from 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 action by the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.

(ccc) "Yard" means a required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three (3) feet above the general level of the graded lot upward.

- (1) "Front yard" means that portion of a lot extending across the front of the lot between the side lot lines and being the minimum horizontal distance between the street right-of-way and the front of the building or structure.
- (2) "Rear yard" means that portion of a lot extending across the rear of the lot between the side lot lines and being the required minimum horizontal distance between the rear lot line and the rear of the building or structure.

(ddd) "Side yard" means that portion of a lot that is located between the side lot line and the nearest building or structure.

(eee) "Zoning permit" means an official statement certifying that a proposed building or use complies with all the provisions of this Zoning Code.

(fff) "Zoning district" means a portion of the Village within which certain regulations and requirements or various combinations thereof apply under the provisions of this Zoning Code.

(ggg) "Zoning district map" means the zoning district of the Village, together with all amendments subsequently adopted by Village Council.

(hhh) "Zoning Inspector" means the zoning enforcement officer of the Village, hired by the Village Council who is charged with the duty of enforcing the provisions of the Zoning Code.

(iii) "Zoning Ordinance" or "this Ordinance" means Ordinance 20-90, passed June 19, 1990, as amended, which is codified as Titles One to Five of this Part Eleven - Planning and Zoning Code. (Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 30-2001. Passed 8-21-01; Ord. 08-2006. Passed 9-5-06; ; Ord. O-07-2015. Passed 3-3-15.)

CHAPTER 1107 ADMINISTRATION*

1107.01	ZONING OFFICER.
1107.02	MUNICIPAL PLANNING COMMISSION.
1107.03	BOARD OF ZONING APPEALS.
1107.04	POWERS OF THE ZONING OFFICER, BOARD OF ZONING APPEALS AND COUNCIL ON MATTERS OF APPEALS.

1107.01 ZONING OFFICER.

(a) Zoning Officer. The Zoning Officer, who shall be hired by the Administrator, shall enforce the Zoning Ordinance. All officials and employees of the Municipality shall assist the Zoning Officer by reporting to him or her any new construction, or apparent violations of this Ordinance.

(b) Duties of the Zoning Officer. For the purposes of the Ordinance, the Zoning Officer shall have the following duties:

- (1) Issue zoning permits and certificates of occupancy when the procedures and standards of this Ordinance have been followed.
- (2) Upon finding that any of the provisions of the Ordinance are being violated, he or she shall notify in writing the person responsible for such violation(s), ordering such action(s) as necessary to correct such violations.
- (3) Order discontinuance of illegal uses of land, buildings or structures.
- (4) Order removal of illegal buildings or structures or illegal additions or structural alterations.
- (5) Order discontinuance of any illegal work being done.
- (6) Take any other action authorized by this Ordinance to ensure compliance with or to prevent violation(s) of this Ordinance. This includes the keeping of any records, permits and certificates as are necessary for the performance of these duties

(Ord. 30-93. Passed 5-18-93.)

1107.02 MUNICIPAL PLANNING COMMISSION.

(a) Organization and Members. The Municipal Planning Commission shall organize and adopt rules in accordance with the requirements of the Charter of the Village of New Albany. Meetings of the Commission shall be held at the call of the Chairperson, and at such times as the Commission determines. All meetings of the Planning Commission shall be open to the public. The Planning Commission shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep public records or its actions.

The Planning Commission shall consist of six (6) members. Five (5) of these members shall be voting members and shall serve overlapping three-year terms. The sixth shall be a Council member appointed by Council. This Council member shall be a nonvoting member of the

*Cross reference—Planning Commission - see CHTR. 10.01 et seq.;
Board of Zoning Appeals - see CHTR. 10.03 et seq.

Planning Commission. Three (3) voting members shall constitute a quorum. The powers and duties shall be as provided in the Village Charter and as provided by ordinances and resolutions of Council.

(b) Powers and Duties. The Planning Commission shall have the following powers and duties:

- (1) Recommend to Council a master plan, official map, area plans, and development standards for the Municipality.
- (2) Recommend to Council the disposition of requests for subdivision platting.
- (3) Recommend to Council amendments to the zoning plan and Zoning Ordinance of the Municipality.
- (4) Prepare and present a zoning plan for a newly annexed territory, pursuant to Section 1125.04.
- (5) Review all proposed amendments to this Zoning Ordinance in accordance with Chapter 1111 and make recommendations to Council.
- (6) Grant zoning permits for conditional uses as specified in the district regulations and establish such additional safeguards as will uphold the intent of this Ordinance.
- (7) Review all changes in the fee schedule established in Section 1109.10 and make recommendations to Council.
- (8) Determine the similarity of uses pursuant to Section 1127.02(e).
- (9) Perform such other duties, not inconsistent with the Charter, as may be required by this Ordinance.

(Ord. 30-93. Passed 5-18-93; Ord. 53-2009. Passed 12-1-09.)

1107.03 BOARD OF ZONING APPEALS.

(a) Organization and Members. The Board of Zoning Appeals shall organize and adopt rules in accordance with the Zoning Ordinance. Meetings of the Board shall be held at the call of the Chairperson, and at such other times as the Board determines. The Chairperson, or in his or her absence, the acting Chairperson, may administer oaths, and the Board of Zoning Appeals may compel the attendance of witnesses. The Board of Zoning Appeals shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of Council and shall be a public record. The Board of Zoning Appeals shall consist of five (5) members, one of whom shall be a member of the Municipal Planning Commission designated by it annually.

(b) Powers and Duties. The Board of Zoning Appeals shall have the following power and duties:

- (1) Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination stemming from the refusal, issuance, or revocation of a building permit, occupancy permit, or certification of compliance by a municipal official.
- (2) Authorize such variances from the terms of this Ordinance as will not be contrary to public interest, where, owing to the special conditions, a literal enforcement of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be preserved.
- (3) Subpoena witnesses, administer oaths and may require the production of documents, under such regulations as it may establish.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1107.04 POWERS OF THE ZONING OFFICER, BOARD OF ZONING APPEALS AND COUNCIL ON MATTERS OF APPEALS.

It is the intent of this Ordinance that questions of interpretation and enforcement shall be first presented to the Zoning Officer, and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the decision of the Zoning Officer and that recourse from the decisions of the Board shall be to the courts as provided by law. It is further the intent of this Ordinance that the powers of Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. Council shall not have the authority to overrule the decisions of the Board of Zoning Appeals and/or the Zoning Officer on matters of appeals or variance. The procedure for deciding such questions shall be as stated in Chapter 1113.

(Ord. 30-93. Passed 5-18-93.)

CHAPTER 1109 ENFORCEMENT AND PENALTY*

1109.01	ENFORCEMENT.
1109.02	ZONING PERMITS.
1109.03	CONDITIONS UNDER WHICH A ZONING PERMIT IS REQUIRED.
1109.04	APPLICATION FOR ZONING PERMIT.
1109.05	APPROVAL OF ZONING PERMITS.
1109.06	SUBMISSION TO THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.
1109.07	RECORD OF ZONING PERMIT.
1109.08	EXPIRATION OF ZONING PERMITS.
1109.09	CERTIFICATE OF ZONING COMPLIANCE.
1109.10	SCHEDULE OF FEES, CHARGES AND EXPENSES.
1109.11	VIOLATIONS.
1109.99	PENALTY.

1109.01 ENFORCEMENT.

It shall be the duty of the Zoning Inspector and the Planning Commission and Zoning Board of Appeals to enforce this Ordinance in accordance with the provisions hereof. All officials and public employees of the Municipality of New Albany shall conform to the provisions of this Ordinance, and shall not issue any permit or license for any use, building, or purpose in conflict with the provisions of this Ordinance.

1109.02 ZONING PERMITS.

No building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefor, issued by the Zoning Inspector. Zoning permits shall be issued only in conformity with the provisions of this Ordinance unless the Zoning Inspector receives a written order from the Planning Commission and Zoning Board of Appeals, deciding on appeal, conditional use, or variance, as provided by this Ordinance.

1109.03 CONDITIONS UNDER WHICH A ZONING PERMIT IS REQUIRED.

A zoning permit is required for any of the following:

- (a) Construction or structural alteration of any building, including accessory buildings.
- (b) Change in use of an existing building or accessory building to a use not listed as a permitted use in the zoning district where the building is located.
- (c) Occupancy and use of vacant land.
- (d) Change in the use of land to use not listed as a permitted use in the zoning district where the land is located.
- (e) Any change in the use of a nonconforming use.

*Cross reference—Violations of zoning ordinances - see ORC 713.13

1109.04 APPLICATION FOR ZONING PERMIT.

Three (3) copies of an application for a zoning permit shall be signed by the owner or applicant attesting to the truth and exactness of all information supplied on the application. Each application shall clearly state that the permit shall expire and shall be revoked if work has not begun within one year, and substantially completed within two and one-half (2 1/2) years. At a minimum, the application shall contain the following information:

- (a) Name, address, and telephone number of the applicant.
- (b) Legal description of property, as recorded in Franklin County Recorder's office.
- (c) Existing use.
- (d) Proposed use.
- (e) Zoning district in which property is located.

(f) Plans in triplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact dimensions and location of existing buildings of the lot, if any; and location and dimensions of the proposed building(s) or alteration.

- (g) Height of proposed buildings.
- (h) Number and dimensions of existing and proposed off-street parking or loading spaces.
- (i) Number of proposed dwelling units.

(j) In every case where the lot is not provided with public water supply and/or disposal of sanitary wastes by means of public sewers, the application shall be accompanied by a certificate of approval by the Franklin County Health Department of the proposed method of water supply and for disposal of sanitary wastes prior to approval by the Zoning Inspector.

(k) Such other material as may be requested by the Zoning Inspector to determine conformance with, and provide for the enforcement of this Ordinance.

Where complete and accurate information is not readily available from existing records, the Zoning Inspector may require the applicant to furnish a survey of the lot by a registered surveyor.

1109.05 APPROVAL OF ZONING PERMITS.

Within thirty (30) days after the receipt, the application shall be either approved or disapproved by the Zoning Inspector, in conformance with the provisions of this Ordinance. All zoning permits shall, however, be conditional upon the commencement of work within one year. One copy of the application shall be returned to the applicant by the Zoning Inspector, after such copy is marked as either approved or disapproved and attested to same by the signature of the Zoning Inspector, or his/her designated agent on such copy. In the case of disapproval, the Zoning Inspector shall state on the returned plans the specific reasons for disapproval. Two (2) copies of plans, similarly marked, shall be retained by the Zoning Inspector. One copy retained by the Zoning Inspector shall be forwarded to the County Auditor upon issuance of a certificate of occupancy along with

one copy of the application. The Zoning Inspector shall issue a placard, to be posted in a conspicuous place on the property in question, attesting to the fact that the use or alteration is in conformance with the provisions of this Ordinance.

1109.06 SUBMISSION TO THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION.

Before any zoning permit is issued affecting any land within three hundred (300) feet of the centerline of a proposed new highway or a highway for which changes are proposed as described in the certification to local officials by the Director of the Department of Transportation, or any land within a radius of five hundred (500) feet from the point of intersection of said centerline with any public road or highway, the Zoning Inspector shall give notice, by registered or certified mail to the Director of the Department of Transportation.

The Zoning Inspector shall not issue a zoning permit for one hundred twenty (120) days from the date the notice is received by the Director of the Department of Transportation. If the Director of the Department of Transportation notifies the Zoning Inspector that he shall proceed to acquire the land needed, then the Zoning Inspector shall refuse to issue the zoning permit. If the Director of the Department of Transportation notifies the Zoning Inspector that acquisition at this time is not in the public interest thereof agreed upon by the Director of the Department of Transportation and the property owner, the Zoning Inspector shall, if the application is in conformance with all provision of this Ordinance, issue the zoning permit in conformance with the provisions of Section 1109.05.

1109.07 RECORD OF ZONING PERMIT.

A record of all zoning permits shall be kept on file in the office of the Zoning Inspector or his agent and copies shall be furnished upon request to any persons having proprietary or tenancy interest in the building or land affected.

1109.08 EXPIRATION OF ZONING PERMITS.

If the work described in any zoning permit has not begun within one year from the date of issuance thereof, or has not been completed within two and one-half (2 1/2) years from the date of issuance thereof, said permit shall expire; it shall be revoked by the Zoning Inspector, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the expired permit shall not proceed unless and until a new zoning certificate has been obtained or extension granted.

1109.09 CERTIFICATE OF ZONING COMPLIANCE.

(a) Certificate of Zoning Compliance Required. It shall be unlawful to use or occupy 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 Zoning Inspector stating that the proposed use of the building or land conforms to the requirements of this Ordinance.

(b) Application for Certificate of Zoning Compliance. Certificates of zoning compliance shall be applied for by the applicant giving written notice to the Zoning Inspector that the land use, erection or structural alteration of any building shall have been completed in conformance with the provisions of this Ordinance.

(c) Record of Certificate of Zoning Compliance. The Zoning Inspector shall maintain a record of all certificates of zoning compliance and a copy of any individual certificate shall be furnished upon request to the occupant or his legally authorized representative.

(Ord. 52-93. Passed 10-19-93.)

1109.10 SCHEDULE OF FEES, CHARGES AND EXPENSES.

Council shall establish, by separate ordinance, a schedule of fees, charges, and expenses and a collection procedure for zoning permits, certificates of zoning compliance, appeals, and other matters pertaining to this Ordinance. The schedule of fees shall be available at the Building and Zoning office. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application.

(Ord. 52-93. Passed 10-19-93.)

1109.11 VIOLATIONS.

(a) Failure to Obtain a Zoning Permit, Certificate of Zoning Compliance or Similar Permit. Failure to obtain a zoning permit, certificate of zoning compliance or other permit as required by specific sections of this Ordinance shall be a violation of this Ordinance and punishable under Section 1109.99.

(b) Construction and Use to Be As Provided in Applications, Plans, Permits, and Certificates. Zoning permits or certificates of zoning compliance issued on the basis of plans and applications approved by the Zoning Inspector authorize only the use and arrangement set forth in such approved plans and applications or amendments thereto. Any use, arrangement or construction not in conformance with that authorized shall be deemed a violation of this Ordinance, and punishable as provided in Section 1109.99.

(c) Complaints Regarding Violations. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the causes and basis thereof, and shall be filed with the Zoning Inspector. The Zoning Inspector shall record properly such complaint, immediately investigate, and take such appropriate action thereon as may be necessary and provided for by this Ordinance.

(d) Void Zoning Permit. A zoning permit shall be void if any of the following conditions exist:

- (1) The zoning permit was issued contrary to the provisions of this Ordinance by the Zoning Inspector.
- (2) The zoning permit was issued based upon a false statement by the applicant.
- (3) The zoning permit has been assigned or transferred.

When a zoning permit has been declared void for any of the above reasons by the Planning Commission pursuant to Section 1107.02(b), written notice of its revocation shall be given by certified mail to applicant, sent to the address as it appears on the application. Such notices shall also include a statement that all work upon or use of the building, structure, or land cease unless, and until, a new zoning permit has been issued.

(Ord. 52-93. Passed 10-19-93.)

1109.99 PENALTY.

Violation of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in various sections of this Ordinance) shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall be fined not more than two hundred dollars (\$200.00) and in addition shall pay all costs and expenses involved in the case. Each day such violation continues, after receipt of violation notice, shall be considered a separate offense. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided. Nothing herein contained shall prevent the Municipality from such other lawful action as is necessary to prevent or remedy any violations.

Penalties as above shall apply unless penalties are defined for specific section of this Ordinance, in which case the penalties so defined in those sections shall apply.

CHAPTER 1111 AMENDMENTS*

1111.01	POWER OF COUNCIL.
1111.02	INITIATION OF ZONING AMENDMENTS.
1111.03	CONTENTS OF APPLICATION.
1111.04	TRANSMITTAL OF RESOLUTION TO PLANNING COMMISSION.
1111.05	RECOMMENDATION BY THE PLANNING COMMISSION.
1111.06	DECISION OF PLANNING COMMISSION.
1111.07	ACTION BY COUNCIL.

1111.01 POWER OF COUNCIL.

Whenever the public necessity, convenience, general welfare or good zoning practices require, Council may, by ordinance, after receipt of a recommendation thereon from the Planning Commission and subject to the procedures provided by law, amend, supplement or change the regulations, district boundaries or classifications of property, now or hereafter established by this Ordinance or amendments thereof. The Planning Commission shall submit its recommendation regarding all applications or proposals for amendments or supplements to Council.

(Ord. 23-98. Passed 9-1-98.)

1111.02 INITIATION OF ZONING AMENDMENTS.

An amendment, supplement, reclassification or change in zoning may be initiated by motion of Council, or by motion of the Planning Commission. A reclassification to the Zoning Map may be proposed by one or more owners of the property to be changed by the proposed reclassification by filing a verified application with the Municipality.

The Zoning Department may also propose amendments to these regulations. Such proposed amendments shall be submitted to the Planning Commission for its review and recommendation prior to being acted upon by Council.

(Ord. 23-98. Passed 9-1-98.)

1111.03 CONTENTS OF APPLICATION.

An application for amendment shall be transmitted by the applicant to the Municipality at its public office upon such forms and shall be accompanied by such data and information as may be prescribed for that purpose by the Zoning Officer, so as to assure the fullest practicable presentation of facts for the permanent record. Each proposal for a zoning change shall be accompanied by, at a minimum, the following information:

(a) Names, addresses, and phone numbers of the applicants and owners. Each application shall be signed by at least one of the owners or lessees of property within the area proposed to be reclassified, attesting to the truth and correctness of all facts and information presented with the application.

*Cross reference—Council may amend districting or zoning - see ORC 713.10

(b) Proposed amendment to the text and/or a current and accurate legal description of the property affected.

(c) A written statement of the existing use and zoning district.

(d) A written statement of the proposed use and zoning district.

(e) A reproducible vicinity map drawn to scale of not less than one hundred (100) feet to the inch, showing property lines, ownership, street addresses when known, streets, existing and proposed zoning within the area sought to be rezoned, and natural features such as riparian corridors, wetlands, and tree masses on the subject site and on adjacent properties. The map shall also depict all land within three hundred (300) feet of the boundaries of the area to be rezoned, showing property lines, ownership, streets and street addresses when known. Such map shall be subject to later amendments at the request of the Planning Commission to supply additional information as it may require.

(f) An affidavit of the applicant listing all property owners within two hundred (200) feet of the parcel(s) proposed to be rezoned and their addresses as appearing on the Franklin County Auditor's current tax list. The requirement for addresses may be waived when more than ten (10) parcels are proposed to be rezoned.

(g) A statement as to how the proposed amendments will impact adjacent and proximate properties.

(h) A written statement regarding the potential impact of the proposed use on the student population of the local school district(s).

(i) Any deed restrictions, easements, covenants and encumbrances to be imposed to control the use, development and maintenance of the area to be rezoned.

(j) In appropriate cases, at the request of the Zoning Officer, Village Planner or Village Engineer, an estimate of potential traffic generation in the area should the amendment be adopted; and/or an estimate of the utility requirements of the area, should the amendment be adopted, including sewer, water and electricity.

(k) Any other information as may be requested by the Zoning Officer, the Planning Commission, and Council to determine conformance with, and provide for enforcement of this Zoning Ordinance.

(Ord. 21-2003. Passed 9-16-03; Ord. 53-2009. Passed 12-1-09.)

1111.04 TRANSMITTAL OF RESOLUTION TO PLANNING COMMISSION.

Upon referral of the proposed ordinance by Council, or the filing of an application by at least one owner or lessee of the property, or their designated agent, said proposed amendment or application shall be transmitted to the Planning Commission.

(Ord. 23-98. Passed 9-1-98.)

1111.05 RECOMMENDATION BY THE PLANNING COMMISSION.

Within sixty (60) days after the first regular meeting of the Planning Commission after the receipt of the proposed amendment or unless extended by majority vote of the Commission, the Commission shall recommend to Council that the amendment be approved as requested; recommend the application be granted with modifications; or recommend denial of the request for amendment consideration. A public hearing shall be held by the Planning Commission for consideration of the proposed amendment to the Zoning Ordinance or Map. In accordance with the Ohio Revised Code, notice of the time, place and purpose of such hearing shall be published once at least seven (7) days before the hearing in a newspaper of general circulation in the Municipality. In addition, advertisement of the public hearing shall also be published in a local community publication that is issued weekly.

In addition to the publication of notice required by this section, the Zoning Officer shall notify the applicants, all owners of the parcel or parcels proposed to be rezoned and all owners of neighboring properties as set out in the applicant's affidavit, of the time and place of the public meeting at which such application will be considered. Such notices, which shall include the additional information required in the published notice hereinabove provided for, shall be served by first class mail posted at least ten (10) days before the date of the proposed hearing.

In addition to the written and published notification above, the Municipality shall post one sign per public street frontage of the parcel proposed for a zoning change. The sign shall be installed at least ten (10) days before the public hearing at which the Planning Commission hears the rezoning change application. New zoning at the time of annexation shall not be required to be posted. The sign shall be consistent with diagram in Figure 1, attached to original Ordinance 23-98. The exact design and content of the sign shall be determined and approved by the Zoning Officer in accordance with the intent and spirit of this section.

(Ord. 23-98. Passed 9-1-98.)

1111.06 DECISION OF PLANNING COMMISSION.

In deciding on the change, the Planning Commission shall consider, among other things, the following elements of the case:

- (a) Adjacent land use.
- (b) The relationship of topography to the use intended or to its implications.
- (c) Access; traffic flow.
- (d) Adjacent zoning.
- (e) The correctness of the application for the type of change requested.
- (f) The relationship of the use requested to the public health, safety, or general welfare.
- (g) The relationship of the area requested to the area to be used.

(h) The impact of the proposed use on the local school district(s).
(Ord. 21-2003. Passed 9-16-03.)

1111.07 ACTION BY COUNCIL.

(a) Public Hearing. Upon receipt of the recommendation from the Planning Commission, Council shall schedule a public hearing that may be held as part of the second reading of the ordinance.

(b) Public Notice. Notice of the public hearing shall be given by the Clerk of Council to at least one newspaper of general circulation in the Municipality. The notice shall be published at least seven (7) days before the date of the hearing. The published notice shall set the time and place of the public hearing and a summary of the proposed amendment. If the proposed ordinance intends to rezone or redistrict ten (10) or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be made to all applicants, all owners of the parcel or parcels proposed to be rezoned and all owners of neighboring properties as set out in the applicant's affidavit, by the Clerk of Council by first class mail at least seven (7) days before the date of the public hearing. The failure of delivery of such notice shall not invalidate such proposed ordinance.

(c) Display of Relevant Materials. Prior to the public hearing, the text or copy of the text of the proposed ordinance, together with maps, plans and reports submitted by the Planning Commission shall be on file, for public examination, in the office of the Clerk of Council.

(Ord. 21-2003. Passed 9-16-03; Ord. 53-2009. Passed 12-1-09; ; Ord. O-12-2014. Passed 6-3-14.)

CHAPTER 1113 APPEALS, VARIANCES AND WAIVERS*

1113.01	APPEALS.
1113.02	NATURE OF VARIANCE AND WAIVER.
1113.03	APPLICATION FOR VARIANCES AND APPEALS.
1113.04	SUPPLEMENTARY CONDITIONS AND SAFEGUARDS.
1113.05	PUBLIC HEARINGS AND NOTICE.
1113.06	ACTION BY THE BOARD OF ZONING APPEALS.
1113.07	CERTIFICATE OF ZONING COMPLIANCE.
1113.08	ACTION BY BOARD OF ZONING APPEALS.
1113.09	WAIVERS.
1113.10	APPLICATION FOR WAIVER.
1113.11	ACTION BY THE ARCHITECTURAL REVIEW BOARD.

1113.01 APPEALS.

(a) Taking of Appeals. Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance by a staff member may be taken by any person aggrieved including a tenant, or by a governmental officer, department, board, or bureau, unless otherwise specified in this chapter. Such appeal shall be taken within twenty (20) days after the date of the decision, by filing with the Board of Zoning Appeals, a notice of appeal specifying the grounds thereof.

(b) Imminent Peril. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the City Manager's designee certifies to the Board of Zoning Appeals, after notice of appeal shall have been filed with him, that by reason of facts stated in the application a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may, on due cause shown, be granted by the Board of Zoning Appeals, after notice to the City Manager's designee or by judicial proceedings.
(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.02 NATURE OF VARIANCE AND WAIVER.

On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development standards of the Zoning Ordinance unreasonable and, therefore, procedures for variances and waivers from development standards are provided to allow the flexibility necessary to adapt to changed or unusual conditions, both foreseen and unforeseen, under circumstances which do not ordinarily involve a change of the primary use of the land or structure permitted.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.03 APPLICATION FOR VARIANCES AND APPEALS.

Any person owning or having an interest in property, may file an application to obtain a variance or appeal from the decision of the City Manager's designee.

*Cross reference—Board of Zoning Appeals - see CHTR. 10.03 et seq.;
Appeals from zoning decisions - see ORC 713.11, Ch. 2506

The application of a variance or an appeal shall be made on such forms as prescribed by staff and shall contain the following information:

- (a) Name, address and phone number of the applicant.
 - (b) Legal description of property as recorded in Franklin County Recorder's office.
 - (c) Each application for a variance or appeal shall refer to the specific provisions of this Ordinance which apply.
 - (d) The names and addresses of all property owners within two hundred (200) feet, contiguous to, and directly across the street from the property, as appearing on the Franklin County Auditor's current tax list.
 - (e) A narrative statement explaining the following:
 - (1) The use for which variance or appeal is sought.
 - (2) Details of the variance or appeal that is applied for and the grounds on which it is claimed that the variance or appeal should be granted, as the case may be.
 - (3) The specific reasons why the variance or appeal is justified according to this chapter.
 - (4) Such other information regarding the application for appeal as may be pertinent or required for appropriate action by the Board of Zoning Appeals.
 - (f) A plot plan drawn to an appropriate scale showing the following:
 - (1) The boundaries and dimensions of the lot.
 - (2) The nature of the special conditions or circumstances giving rise to the application for approval.
 - (3) The size and location of existing and proposed structures.
 - (4) The proposed use of all parts of the lots and structures, including accesses, walks, off-street parking and loading spaces, and landscaping.
 - (5) The relationship of the requested variance to the development standards.
 - (6) The use of land and location of structures on adjacent property.
- (Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.04 SUPPLEMENTARY CONDITIONS AND SAFEGUARDS.

In granting any appeal or variance, the Board of Zoning Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 1109.99. Under no circum-

stances shall the Board of Zoning Appeals grant an appeal or variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.05 PUBLIC HEARINGS AND NOTICE.

(a) Public Hearing. The Board of Zoning Appeals shall hold a public hearing within thirty (30) days after receipt of an application for an appeal or variance from staff.

(b) Notice. Before conducting the required public hearing, notice of the hearing shall be given in one or more newspapers of general circulation in the Municipality at least seven (7) days before the date of said hearing. The notice shall set forth the time and place of the public hearing and the nature of the proposed appeal or variance.

Written notice of the required public hearing shall be mailed by first class mail, at least ten (10) days before the day of the hearing to owners of property within two hundred (200) feet from, contiguous to, and directly across the street from the property being considered.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.06 ACTION BY THE BOARD OF ZONING APPEALS.

Within thirty (30) days after the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the request for appeal or variance. The Board of Zoning Appeals shall only approve a variance or approve a variance with supplementary conditions if the following findings are made:

(a) That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.

(b) That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.

(c) That the special conditions and circumstances do not result from the action of the applicant.

(d) That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.

(e) That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.

(f) Certified copy of the Board's decision shall be transmitted to the applicant, or appellant, and a copy shall be filed with the Community Development Department.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.07 CERTIFICATE OF ZONING COMPLIANCE.

A certificate of zoning compliance may be issued only within the period of one year from the date of final approval by the Board of Zoning Appeals.

(Ord. 30-93. Passed 5-18-93; Ord. O-08-2011. Passed 5-17-11.)

1113.08 ACTION BY BOARD OF ZONING APPEALS.

Within thirty (30) days after the public hearing pursuant to Section 1113.05 or within thirty (30) days of the application if a hearing is not held, the Board of Zoning Appeals shall either approve, approve with supplementary conditions as specified in Section 1113.04, or disapprove the request for appeal or variance. If the application is approved, or approved with supplementary conditions, the Board of Zoning Appeals shall make a finding that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure. If the request for appeal or variance is denied, the applicant may seek relief through the Court of Common Pleas. A written copy of the Board's decision and findings will be provided to the applicant.

(Ord. O-08-2011. Passed 5-17-11.)

1113.09 WAIVERS.

Where specifically defined within the Zoning Ordinance, deviations from certain development standards are subject to the waiver process. A waiver to the standards may be approved by the Architectural Review Board (ARB) upon the request of an applicant as part of a certificate of appropriateness application. In considering a request for a waiver, the ARB shall conduct a public meeting in conjunction with the certificate of appropriateness.

(Ord. O-08-2011. Passed 5-17-11.)

1113.10 APPLICATION FOR WAIVER.

An applicant who wishes to have a requirement of the Zoning Ordinance waived must apply to the ARB through city staff for said waiver in conjunction with a certificate of appropriateness application that will be reviewed by the Architectural Review Board., The applicant must indicate the nature of the waiver sought and provide a statement explaining why the waiver should be granted. Any drawings or other materials needed to support the application, as determined by city staff, shall be submitted with the waiver request.

(Ord. O-08-2011. Passed 5-17-11.)

1113.11 ACTION BY THE ARCHITECTURAL REVIEW BOARD.

Within thirty (30) days after the public meeting, the ARB shall either approve, approve with supplementary conditions, or disapprove the request for a waiver. The ARB shall only approve a waiver or approve a waiver with supplementary conditions if the ARB finds that the waiver, if granted, would:

(a) Provide an appropriate design or pattern of development considering the context in which the development is proposed and the purpose of the particular standard. In evaluating the context as it is used in the criteria, the ARB may consider the relationship of the proposed development with adjacent structures, the immediate neighborhood setting, or a broader vicinity to determine if the waiver is warranted;

(b) Substantially meet the intent of the standard that the applicant is attempting to seek a waiver from, and fit within the goals of the Village Center Strategic Plan, Land Use Strategic Plan and the Design Guidelines and Requirements;

(c) Be necessary for reasons of fairness due to unusual site specific constraints; and

(d) Not detrimentally affect the public health, safety or general welfare.

(Ord. O-08-2011. Passed 5-17-11.)

CHAPTER 1115 CONDITIONAL USES*

1115.01	PURPOSE.
1115.02	APPLICATION FOR CONDITIONAL USE.
1115.03	GENERAL STANDARDS FOR CONDITIONAL USES.
1115.04	SUPPLEMENTARY CONDITIONS.
1115.05	PUBLIC HEARING BY THE PLANNING COMMISSION.
1115.06	ACTION BY THE PLANNING COMMISSION.
1115.07	EXPIRATION AND REVOCATION OF ZONING PERMIT ISSUED UNDER CONDITIONAL USE PROVISIONS.

1115.01 PURPOSE.

Under some unusual circumstances, a use which more intensely affects an area than those uses permitted in the zoning district in which it is located may nevertheless be desirable and also compatible with permitted uses, if that use is properly controlled and regulated. Such uses shall be listed as "conditional uses" within the description of the respective zoning districts. The Planning Commission may allow such a use to be established as a conditional use where these unusual circumstances exist where the conditional use will be consistent with the general purpose and intent of this Zoning Ordinance.

(Ord. 30-93. Passed 5-18-93.)

1115.02 APPLICATION FOR CONDITIONAL USE.

Any such person owning or having an interest in property may file an application to use such property for one or more of the conditional uses provided for by this Ordinance in the zoning district in which the property is situated. Eight (8) copies of a provided application and a dimensioned site plan shall be filed with the Zoning Officer not less than twenty (20) days prior to the date of the public hearing. At a minimum the application shall contain the following information:

- (a) Name, address, and phone number of applicant.
- (b) Legal description of the property as recorded in the Franklin County Recorder's office.
- (c) Description of existing use.
- (d) Present zoning district.
- (e) Description of proposed conditional use.
- (f) A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading area, traffic circulation, open spaces, landscaping, refuse, and service areas, utilities, signs, yards, and such other information as the Commission may require to determine if the proposed conditional use meets the intent and requirements of this Ordinance.

*Cross reference—Conditional use defined - P. & Z. 1105.02 (n);
Planning Commission to grant permits - see P. & Z. 1107.02(b)

(g) A narrative statement evaluating the effects on adjoining property; the effect of such elements as noise, glare, odor, light, fumes, and vibration on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district.

(h) The names and addresses of all property owners within two hundred (200) feet, contiguous to, and directly across the street from the property, as appearing on the Franklin County Auditor's current tax list. The applicant shall also provide the addresses of all property within the above reference boundaries.

(i) Such other information regarding the property, proposed use, or surrounding area as may be pertinent to the deliberations of the Planning Commission.

(Ord. 30-93. Passed 5-18-93.)

1115.03 GENERAL STANDARDS FOR CONDITIONAL USES.

The Planning Commission shall not approve a conditional use unless it shall in each specific case, make specific findings of fact directly based on the particular evidence presented to it, that support conclusions that such use at the proposed location shall meet all of the following requirements:

(a) The proposed use will be harmonious with and in accordance with the general objectives, or with any specific objective or purpose of the Zoning Ordinance.

(b) The proposed use will be harmonious with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.

(c) The use will not be hazardous to existing or future neighboring uses.

(d) The area will be adequately served by essential public facilities and services such as highways, streets, police, and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

(e) The proposed use will not be detrimental to the economic welfare of the community.

(f) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

(g) Vehicular approaches to the property shall be so designated as not to create interference with traffic on surrounding public streets or roads.

(Ord. 30-93. Passed 5-18-93.)

1115.04 SUPPLEMENTARY CONDITIONS.

In granting any conditional use, the Commission may prescribe appropriate conditions and safeguards in conformance with this Ordinance.

(Ord. 30-93. Passed 5-18-93.)

1115.05 PUBLIC HEARING BY THE PLANNING COMMISSION.

The Commission shall hold a public hearing within thirty (30) days from the receipt of the application specified in Section 1115.02. The requirements for public notice and notification of parties of interest shall be the same as for appeals and variances as specified in Section 1113.05. (Ord. 30-93. Passed 5-18-93.)

1115.06 ACTION BY THE PLANNING COMMISSION.

Within thirty (30) days after the public hearing pursuant to Section 1115.05, the Commission shall either approve, approve with supplementary conditions specified in Section 1115.04, or disapprove the application as presented. If the application is approved with supplementary conditions, the Planning Commission shall direct the Zoning Officer to issue a zoning permit listing the specific conditions listed by the Planning Commission for approval. If the application is disapproved, the applicant may seek relief through the Court of Common Pleas. (Ord. 30-93. Passed 5-18-93.)

1115.07 EXPIRATION AND REVOCATION OF ZONING PERMIT ISSUED UNDER CONDITIONAL USE PROVISIONS.

The approval of the zoning permit issued in accordance with Section 1115.06 shall become null and void if such use is not carried out within one year after the date of approval. The Municipality may revoke the zoning permit upon written evidence by any resident or official of the Municipality of violation of the Zoning Ordinance and/or written terms and conditions upon which approval was based.

The Planning Commission may grant an extension of a zoning permit issued in accordance with Section 1115.06 for an additional period of six (6) months. (Ord. 30-93. Passed 5-18-93.)

CHAPTER 1117 NONCONFORMING USES*

1117.01	INTENT.
1117.02	WHEN PERMITTED.
1117.03	SUBSTITUTION.
1117.04	EXTENSION.
1117.05	DISCONTINUANCE.
1117.06	DAMAGE AND/OR DESTRUCTION OF A NONCONFORMING BUILDING OR USE.
1117.07	MAINTENANCE AND REPAIR.
1117.08	NONCONFORMING LOTS OF RECORD.

1117.01 INTENT.

Within the districts established by this Ordinance, or amendments hereinafter adopted, there may exist lots, structures, uses of land and structure which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their survival.

1117.02 WHEN PERMITTED.

(a) Existing Land or Buildings. Any use of land or buildings existing on the effective date of this Ordinance may be continued even though such use does not conform to the provisions herein, so long as such use was in conformity with the zoning ordinance in effect in the Municipality, or the Township in the case of annexed land, at the time that the use or structure was established. No nonconforming building, structure, or use shall be moved, extended, enlarged, reconstructed, or structurally altered, except as specifically provided in this Ordinance.

(b) Construction Commenced. Any property purchased or acquired in good faith for any nonconforming use prior to the adoption of this Ordinance, upon which property the work of changing, remodeling or construction of such nonconforming use has been legally commenced at the time of adoption of this Ordinance, may be used for the nonconforming use for which such changing, remodeling or construction was undertaken, provided that such work is completed within two (2) years from the date of adoption of this Ordinance or amendment thereto making said use nonconforming.

1117.03 SUBSTITUTION.

The Planning and Zoning Board may allow the nonconforming use of a building or structure to be changed to another nonconforming use of the same or of a more restricted classification, provided no structural alterations except those required by law or ordinance are made. However, in an "R" District, no change shall be authorized by the Planning and Zoning Board to any use which

*Cross reference—Nonconforming use defined - P. & Z. 1105.02 (ee);

Nonconforming uses - see ORC 713.15;

Nonconforming signs - see P. & Z. 1169.04

is not a permitted or conditional use in any "R" District, and in a nonresidential district, no change shall be authorized to any use which is not permitted or conditional use in that district where the nonconforming use is first listed.

1117.04 EXTENSION.

No nonconforming use shall be enlarged, extended, reconstructed, or structurally altered, except as follows:

(a) The Planning and Zoning Board may permit, on a once-only basis, a building containing a nonconforming use to be enlarged to an extent not exceeding twenty percent (20%) of the ground floor area of the existing building or structure devoted to a nonconforming use at the time of enactment of this Ordinance or at the time of its amendment making the use nonconforming. The Board shall not authorize an enlargement which would result in a violation of the provision of this Ordinance with respect to any adjoining premises, or which would occupy ground space required for meeting the yard or other requirements of this Ordinance.

(b) No nonconforming building or structure shall be moved in whole or in part to any other location unless such building or structure and the yard and other open spaces provided are made to conform to all of the regulations of the district in which such building or structure is to be located.

(c) Any residential structure which is nonconforming due to the fact of its being in a non-residential zoning district may be enlarged, extended, reconstructed or structurally altered provided it meets the requirements of the adjacent or most proximate R-District.

1117.05 DISCONTINUANCE.

A nonconforming use which has been discontinued or abandoned shall not thereafter be returned to a nonconforming use. A nonconforming use shall be considered abandoned whenever any one of the following conditions exist:

(a) When the use has been voluntarily discontinued for a period of two (2) years.

(b) When the nonconforming use has been replaced by a conforming use.

1117.06 DAMAGE AND/OR DESTRUCTION OF A NONCONFORMING BUILDING OR USE.

When a building or structure, the use of which does not conform to the provisions of this Ordinance, is damaged by fire, explosion, act of God, or the public enemy to the extent that less than fifty percent (50%) of its market value is lost, it may be restored or rebuilt and continued in such nonconforming use, provided that the restoration or rebuilding is commenced within six (6) months of the time of damage that construction is completed within eighteen (18) months, and

that such restoration or rebuilding would not extend or expand the existing use. If more than fifty percent (50%) of the market value is lost, the building or structure may not be restored or rebuilt in such a manner so as to continue the nonconforming use.

In the administration of this section, if the disagreement occurs as to the market value of a particular property, that market value shall be determined by an independent appraiser as selected and mutually agreed to by the applicant and the Municipality. Such appraisals shall be performed according to a comparable value method of appraisal.

1117.07 MAINTENANCE AND REPAIR.

Nothing in this chapter shall be deemed to prevent normal maintenance and repair of a building or structure containing a nonconforming use. Structural alterations may be made to a building or structure containing a nonconforming use as follows:

- (a) When required by law.
- (b) To convert to a conforming use.
- (c) A building or structure containing residential nonconforming uses may be so altered as to improve interior livability. However, no structural alterations shall be made which exceed the area or height requirements or which would extend into any yard required in the district in which such building is located.

1117.08 NONCONFORMING LOTS OF RECORD.

In any district where dwellings are permitted, a one-family detached dwelling may be erected on any lot of official record on the effective date of this Ordinance, even though such lot does not comply with the lot area and width requirements of the district in which it is located, provided said lot has a minimum of forty (40) feet frontage on a public street, and further provided the following conditions are complied with:

- (a) In any district where dwellings are permitted, two (2) inches may be deducted from the required minimum width of each side yard and four (4) inches from the required sum of minimum widths of both side yards for each foot that the lot is narrower than the required width for the district. In no case, however, shall any side yard be narrower than five (5) feet.
- (b) For lots having a depth of less than one hundred ten (110) feet, the depth of the rear yard need not exceed twenty-five percent (25%) of the total depth of the lot, but shall not be less than twenty (20) feet.

TITLE THREE

ZONING DISTRICTS AND REGULATIONS

Chapter 1125	Districts Established; Zoning Map
Chapter 1127	General Regulations
Chapter 1129	Agricultural District
Chapter 1131	R-1 Residential Estate District
Chapter 1133	R-2, R-3 and R-4 Single-Family Residential Districts
Chapter 1135	R-5 Historic Village Single-Family Residential District
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Chapter 1140	UC Urban Center District
Chapter 1141	OR Office-Residential District
Chapter 1143	O Office District
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CHAPTER 1145	C-1 NEIGHBORHOOD BUSINESS DISTRICT
Chapter 1147	C-2 General Business (Commercial) District
Chapter 1149	C-3 Highway Business District
Chapter 1151	CF Community Facilities District
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Chapter 1155	FP Flood Plain Overlay District
Chapter 1157	ARD Architectural Review Overlay District
Chapter 1158	UCO Urban Center Overlay District
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CHAPTER 1125 DISTRICTS ESTABLISHED; ZONING MAP*

1125.01	ZONING DISTRICTS ESTABLISHED.
1125.02	OFFICIAL ZONING MAP.
1125.03	REPLACING THE ZONING MAP.
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1125.05	NEWLY ANNEXED AREAS.
1125.06	COMPLIANCE WITH NEW ALBANY COMMUNITY AUTHORITY.

*Cross reference—Basis of districts - see ORC 713.10;
Zoning of annexed areas - see ORC 303.25, 519.18

1125.01 ZONING DISTRICTS ESTABLISHED.

The following zoning districts are hereby established for the Municipality of New Albany:

AG - Agricultural District

R-1 - Residential Estate District

R-2 - Low-Density Single-Family Residential District

R-3 - Medium Density Single-Family Residential District

R-4 - Suburban Single-Family Residential District

R-5 - Historic Village Single-Family Residential District

R-6 - Two Family Residential District

R-7 - Urban Density Residential District

UC - Urban Center District

OR - Office Residential District

O - Office District

OCD - Office Campus District

C-1 - Neighborhood Business District

C-2 - General Business District

C-3 - Highway Business District

CF - Community Facilities District

LI - Limited Industrial District

GE - General Employment District

FP - Flood Plain Overlay District

ARD - Architectural Review Overlay District

I-PUD - Infill Planned Unit Development District

C-PUD - Comprehensive Planned Unit Development District

Limited Overlay District

(Ord. 20-90. Passed 6-19-90; Ord. 16-99. Passed 6-15-99; Ord. O-1-2012. Passed 1-24-12.)

1125.02 OFFICIAL ZONING MAP.

The districts established in Section 1125.01 are shown on the official Zoning Map, which together with all notations, references, data, district boundaries and other explanatory information, is hereby adopted as a part of this Ordinance. The official Zoning Map shall be identified by the signatures of the Mayor and the Council Clerk, and shall be on file in the municipal offices. The

Zoning Ordinance, along with its component map, may be purchased by interested parties at Village Hall. In case of a conflict between the Ordinance and the Official Zoning Map, the text of the Ordinance shall govern.

(Ord. O-1-2012. Passed 1-24-12.)

1125.03 REPLACING THE ZONING MAP.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may by ordinance adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof.

(Ord. O-1-2012. Passed 1-24-12.)

1125.04 INTERPRETATION OF ZONING DISTRICT BOUNDARIES.

Where uncertainty exists as to the boundaries of a zoning district shown on the official Zoning Map, the following rules for interpretation shall apply:

(a) Where district boundaries are indicated as approximately following street or highway, the actual street, or highway lines shall be construed as the boundaries.

(b) Where district boundaries are indicated as approximately following lot lines, the lot lines shall be construed to be the boundaries.

(c) Where a district boundary follows a stream, lake, or other body of water, the boundary line shall be construed to be at the jurisdictional limit of the Municipality, unless otherwise indicated.

(d) Where a boundary between two (2) zoning districts divides a lot or parcel which was in single ownership and/or parcel which was in single ownership and of record at the time of enactment of this Ordinance, the district boundary lines shall be determined by use of the scale shown on the Zoning Map.

(e) Where district boundary lines are undefined or their locations uncertain, the matter shall be determined by the Planning Commission.

(Ord. O-1-2012. Passed 1-24-12.)

1125.05 NEWLY ANNEXED AREAS.

All territory which is annexed into the Municipality after May 2, 1996, shall, immediately upon the effective date of the annexation, be zoned into the Agricultural District and shall be subjected

to the regulations and restrictions pertaining thereto. If such territory encompasses uses prohibited in the Agricultural District, such uses shall be considered legal nonconforming uses within the meaning of Chapter 1117.

If current use of such territory is agricultural or residential at the time of annexation, such territory shall remain in the Agricultural District until rezoning to a higher use, as provided by Chapter 1111 occurs.

If the current use of such territory is other than agriculture or residential at the time of annexation, within thirty (30) days of the effective date of the annexation, an owner of property included therein may apply for a change in the zoning of the property to the Municipality's zoning district comparable to the previously applicable township county zoning for such property. During this thirty (30) day period such applicant is exempt from paying any required filing fee. (Ord. 30-96. Passed 4-2-96; Ord. O-1-2012. Passed 1-24-12.)

1125.06 COMPLIANCE WITH NEW ALBANY COMMUNITY AUTHORITY.

(a) The Municipality shall not enact any legislation accepting the following territory for annexation under ORC 709.04 until there has been compliance with the following requirements relating to the New Albany Community Authority (the "Authority"):

- (1) If the newly annexed area is greater than seven (7) acres and the current use is agricultural or residential, the property shall be irrevocably added to the Authority, such addition effective upon annexation, but shall not be subject to any community development charge levied by the Authority until such time as the property or property owner requests and is granted a rezoning to a higher use.
- (2) If the current use of the newly annexed area is other than agricultural or residential, regardless of its size, the property shall be irrevocably added to the Authority, such addition effective upon annexation, and thereafter shall be subject to any community development charge levied by the Authority.

(b) If the newly annexed area is seven (7) acres or less and the current use is agricultural or residential, the Municipality shall not enact any legislation rezoning the territory to a higher use until there has been compliance with this requirement relating to the Authority: The property shall be irrevocably added to the Authority at the time of and effective upon rezoning to a higher use, and thereafter shall be subject to any community development charge levied by the Authority. (Ord. 1-96. Passed 1-23-96; Ord. O-1-2012. Passed 1-24-12.)

CHAPTER 1127 GENERAL REGULATIONS*

1127.01	REGULATION OF THE USE AND DEVELOPMENT OF LAND OR STRUCTURES.
1127.02	RULES OF APPLICATION.

1127.01 REGULATION OF THE USE AND DEVELOPMENT OF LAND OR STRUCTURES.

Regulations pertaining of the use of land and/or structures, and the physical development thereof within each of the zoning districts as established in Chapter 1125, are hereby established and adopted.

1127.02 RULES OF APPLICATION.

(a) Identification of Uses. Listed uses are to be defined by their customary name or identification, except as specifically defined or limited in this Ordinance.

(b) Permitted Uses. Only a use designated as permitted shall be allowed as a matter of right in any zoning district, and any use not so designated shall be prohibited except, when in character with the zoning district, such additional uses may be added to permitted uses by formal amendment, in conformance with the procedures specified in Chapter 1111. No more than one permitted use shall exist on any one zoning lot.

(c) Accessory Uses. An accessory use or structure is a subordinate use or structure clearly incidental to and customary in connection with the principal permitted building or use, and located on the same lot with such principal building or use. Accessory uses or structures shall be allowed in accordance with the specific district regulations, and the requirements of Section 1159.06.

(d) Conditional Uses. A use designated as a conditional use shall be allowed in the zoning district where the designation occurs, when such use, its location, extent and method of development will not substantially alter the character of the vicinity, or unduly interfere with or adversely impact the use of adjacent lots. To this end, the Planning Commission shall, in addition to the development standards for the specific district, set forth additional requirements as will render the conditional use compatible with existing and future use of adjacent lots in the vicinity, in accordance with Chapter 1115.

(e) Similar Uses. Determination as to whether a use is similar to uses permitted by right shall be considered as an expansion of use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall thereafter be considered as a permitted use in that district.

Applications for zoning permits for uses not specifically listed in the permitted building or use classifications of the zoning district, which the applicant feels qualify as a similar use under the provisions of this section, shall be submitted to the Planning Commission.

*Cross reference—Uses defined - see P. & Z. Ch. 1105

Prior to taking action on the inclusion of a use as a similar use, the Planning Commission shall hold a public hearing. The public hearing shall be advertised according to the requirements of Section 1111.05.

Within thirty (30) days after the public hearing, the Planning Commission shall determine whether the requested use is similar to those uses permitted in the specific district. In order to find that a use is similar, the Planning Commission shall find that all of the following conditions exist:

- (1) Such use is not listed as a permitted or conditional use in another zoning district.
- (2) Such use conforms to basic characteristics of the classification to which it is to be added and is more appropriate to it than to any other classification.
- (3) Such use creates no danger to health and safety and creates no offensive noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from uses listed in the classification to which it is to be added.
- (4) Such use does not create traffic congestion to a greater extent than uses listed in the classification to which it is to be added.

(f) Development Standards. Development standards set forth shall be the minimum allowed for development in a district. If development standards are in conflict with requirements of any other lawfully adopted rule, regulation, or law, the most restrictive standard shall govern.

(g) Essential Services. Essential services, as defined and specified in Chapter 1105 of this Ordinance, shall be permitted in any and all zoning districts within the Municipality. Buildings housing those activities related to such services shall be permitted in the CF District.

(h) Obscene Material. Commercial establishments will not be permitted to sell material pandering obscenity, as defined in ORC Title 29, to adults and/or juveniles.

(i) Home-Based Religious Services. Nothing in this Ordinance shall be construed to prohibit the conducting of private religious services, such as prayer meetings and/or Bible study, within the confines of a personal residence.

CHAPTER 1129 AGRICULTURAL DISTRICT*

1129.01	PURPOSE.
1129.02	AGRICULTURAL USES DEFINED.
1129.03	PERMITTED USES.
1129.04	ACCESSORY USES.
1129.05	CONDITIONAL USES.
1129.06	DEVELOPMENT STANDARDS.
1129.07	LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

1129.01 PURPOSE.

This district is established to encourage the existence of agricultural uses, to permit a degree of low-density residential development in areas not requiring public water and sewer for their present or future uses, and to physically conserve areas as needed for intensive development.
(Ord. 08-2006. Passed 9-5-06.)

1129.02 AGRICULTURAL USES DEFINED.

"Agricultural use" means use of land for growing crops in the open, dairying pasturage, horticulture, floriculture and necessary accessory uses, including structures necessary for carrying out farming operations and the residence of the person who owns or operates the farm and family thereof, provided such agricultural use shall not include:

- (a) Maintenance and operation of commercial greenhouses or hydroponic farms, except in zoning districts in which such uses are expressly permitted.
- (b) Wholesale or retail sales as an accessory use unless specifically permitted by this chapter.
- (c) Feeding, grazing or sheltering of animals or poultry, in pens or confined areas within two hundred (200) feet of any residential use.

"Agriculture" does not include feeding garbage to animals, raising poultry or fur-bearing animals as a principal use, or operation or maintenance of a commercial stockyard or feed yard.
(Ord. 08-2006. Passed 9-5-06.)

1129.03 PERMITTED USES.

- (a) Agricultural uses, customary agricultural buildings and structures incidental to the carrying out of the principal agricultural activity, and/or no more than one single-family detached dwelling.
 - (b) Home occupations, subject to the requirements of Section 1165.09.
 - (c) Publicly-owned parks, playgrounds and open space.
- (Ord. 44-92. Passed 8-4-92.)

*Cross reference—District established - see P. & Z. Ch. 1125;
Agriculture defined - see P. & Z. 1105.02

(d) Religious exercise facilities and related uses provided that they occupy a lot of not less than five (5) acres.

(Ord. 08-2006. Passed 9-5-06.)

1129.04 ACCESSORY USES.

(a) Private detached garages or carports.

(b) Tool or garden sheds.

(c) Temporary buildings for uses incidental to construction work, which shall be removed upon completion or abandonment of construction work.

(d) Private swimming pools and tennis courts, for primary use by occupants of the principal use of the property on which the pool is located, and subject to the regulations of Chapter 1173.

(e) Dishes or other devices for the reception of television signals, provided such device is for the sole use of occupants of the principal use of the property on which the device is located, and such device is not located in any front or side yard, and complies with the provisions of Chapter 1177.

(f) Temporary roadside stands, offering for sale only agricultural products grown on the premises.

(Ord. 08-2006. Passed 9-5-06.)

1129.05 CONDITIONAL USES.

(a) Animal boarding facilities.

(b) Animal hospitals or clinics.

(c) Privately-owned recreation areas and open space.

(d) Public schools offering general educational courses and having no rooms regularly used for housing or sleeping of students, providing they occupy an amount of acreage that meets or exceeds state standards.

(Ord. 44-92. Passed 8-4-92; Ord. 08-2006. Passed 9-5-06.)

1129.06 DEVELOPMENT STANDARDS.

(a) Lot Area. For each principal permitted use, the lot area shall be not less than five (5) acres.

(b) Minimum Lot Frontage. Two hundred (200) feet frontage on a dedicated, improved street or highway.

(c) Minimum Front Yard Depth (From Edge of Road Right-of-Way). Fifty (50) feet.

(d) Minimum Side Yard Width. Twenty (20) feet.

(e) Minimum Sum of Side Yard Widths. Forty (40) feet.

(f) Minimum Rear Yard Depth. Fifty (50) feet.

(g) Maximum Building Height. Forty-five (45) feet for buildings. Silos, windmills, or any other structure listed as a permitted, accessory or conditional use may exceed this height provided such structures maintain a distance equal to their height to any adjacent property or zoning district. (Ord. 08-2006. Passed 9-5-06.)

1129.07 LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

The area or parcel of land for nonresidential uses shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, setbacks, yards and open spaces to accommodate the facility and maintain the character of the neighborhood, and in no case shall be less than five (5) acres.

(Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1131 R-1 RESIDENTIAL ESTATE DISTRICT*

1131.01	PURPOSE.
1131.02	PERMITTED USES.
1131.03	ACCESSORY USES.
1131.04	CONDITIONAL USES.
1131.05	DEVELOPMENT STANDARDS.
1131.06	LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

1131.01 PURPOSE.

This district is established to accommodate single-family residential development at low densities, similar to what exists in particular areas on the periphery of the Village not served by public water and sewer facilities, and to discourage large concentrations of intensive development where that intensity would be inconsistent with the existing character of the area.
(Ord. 08-2006. Passed 9-5-06.)

1131.02 PERMITTED USES.

- (a) Single-family detached dwellings.
 - (b) Publicly-owned parks, playgrounds and open space.
 - (c) Religious exercise facilities and related uses.
- (Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1131.03 ACCESSORY USES.

- (a) Private detached garages or carports.
 - (b) Tool and/or garden sheds.
 - (c) Temporary buildings for uses incidental to construction work, which shall be removed upon completion or abandonment of the construction work.
 - (d) Private swimming pools and tennis courts, for primary use by occupants of the principal use of the property. Private swimming pools shall be subject to the regulations of Chapter 1173.
 - (e) Dishes or other devices for the reception of television signals, provided such device is for sole use by occupants of the principal use of the property on which the device is located, such device is not located in any front or side yard, and is located not less than forty (40) feet from any adjoining property lines and complies with the provisions of Chapter 1177.
 - (f) Home occupations, subject to the regulations of Section 1165.09.
- (Ord. 08-2006. Passed 9-5-06.)

***Cross reference**—District established - see P. & Z. Ch. 1125;
 Lots and yards - see P. & Z. 1165.01 et seq.;
 Accessory uses - see P. & Z. 1165.06;
 Home occupations - see P. & Z. 1165.09

1131.04 CONDITIONAL USES.

(a) Golf courses and/or country clubs, provided a development plan showing location of all facilities is submitted and approved by the Planning Commission.

(b) Privately-owned parks and recreation areas.

(c) Public schools offering general educational courses and having no rooms regularly used for housing or sleeping of students, providing they occupy an amount of acreage that meets or exceeds state standards.

(d) Residential model homes and temporary lot sales offices. These are newly-constructed homes or temporary structures placed in a newly-constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home or sales office may be staffed and furnished.

(1) When making its decision to approve, disapprove or approve with conditions an application for a residential model home, the Planning Commission shall consider that the model home:

- A. Is appropriately located within the community and sited so that it is easily accessible without creating a nuisance or hazard to nearby properties.
- B. Is integrated into the residential character of the neighborhood with external lighting in conformity with customary residential lighting.
- C. Is approved with a limited duration which shall be determined by the Planning Commission after consultation with the applicant. Extensions of time may be granted by the Planning Commission, but decisions must be based on the same criteria as outlined in this section.
- D. Is identified by no more than one sign which shall be in compliance with regulations governing signage.
- E. Shall not be used as a general real estate brokerage office where the sale of properties not owned or previously owned wholly or in part by the applicant occurs.

(2) The Planning Commission shall also consider and may set conditions on the following as part of its decision to allow a residential model home:

- A. Hours of operation.
- B. Number and types of employees; and maximum number of employees to be on the site at any one time.
- C. Provisions for parking for employees and customers.
- D. Size, lighting, content and location of signage (no internally lighted signage shall be permitted).
- E. Landscaping and screening.

- (3) The use of temporary sales offices (i.e., manufactured homes, mobile homes or trailers) on the site of a newly constructed subdivision shall be discouraged. In addition to the above-listed criteria for model homes, permission to occupy a temporary sales office for the purpose of home and lot sales within a newly constructed subdivision shall be granted only if the following conditions are met:
- A. Such facility is located on a main arterial roadway or highway.
 - B. Such facility is substantially screened by the use of landscaping and/or mounding.
 - C. Such facility shall not create a nuisance to surrounding properties.
 - D. Such other conditions as the Planning Commission deems appropriate.
 - E. Sales offices in trailers or mobile homes are permitted for a duration of twelve (12) months. Users of such facilities may apply to the Planning Commission for an extension of an additional twelve (12) months.

(Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1131.05 DEVELOPMENT STANDARDS.

(a) Lot Area. The minimum lot size shall be as required by the Franklin County Health Department, but in no case shall be less than forty thousand (40,000) square feet exclusive of rights-of-way or easements.

(b) Minimum Lot Width. For each principal use, there shall be lot width of not less than one hundred fifty (150) feet with frontage on a publicly dedicated, improved street or highway. Minimum lot width on curved street shall be one hundred (100) feet.

(c) Minimum Front Yard Depth. Fifty (50) feet.

(d) Minimum Side Yard Width. Twenty (20) feet.

(e) Minimum Sum of Side Yard Widths. Forty (40) feet.

(f) Minimum Rear Yard Depth. Fifty (50) feet.

(g) Maximum Building Height. Forty-five (45) feet.

(g) Maximum Building Height. Forty-five (45) feet.

(Ord. 08-2006. Passed 9-5-06.)

1131.06 LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

The area or parcel of land for nonresidential uses shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, setbacks, yards and open spaces to accommodate the facility and maintain the character of the neighborhood.

(Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1133 R-2, R-3 AND R-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS*

1133.01	PURPOSE.
1133.02	PERMITTED USES.
1133.03	ACCESSORY USES.
1133.04	CONDITIONAL USES.
1133.05	DEVELOPMENT STANDARDS.
1133.06	LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

1133.01 PURPOSE.

The districts are established to accommodate a variety of single-family residential housing environments, at densities consistent with that which exist in the respective area. The objective is to discourage large concentrations of intensive development in specific areas where such intensity would be inconsistent with the existing character of the area.

(Ord. 08-2006. Passed 9-5-06.)

1133.02 PERMITTED USES.

- (a) One-family detached dwellings.
- (b) Publicly-owned parks, playgrounds and open space.
- (c) Religious exercise facilities and related uses.

(Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1133.03 ACCESSORY USES.

Any use or structure specified as an accessory use in the R-1 District.

(Ord. 08-2006. Passed 9-5-06.)

1133.04 CONDITIONAL USES.

(a) Golf courses and/or country clubs, provided a development plan showing location of all facilities is submitted and approved by the Planning Commission.

(b) Privately-owned parks and recreation areas.

(c) Public schools offering general educational courses and having no rooms regularly used for housing or sleeping of students, providing they occupy an amount of acreage that meets or exceeds state standards.

*Cross reference—District established - see P. & Z. Ch. 1125;

Lots and yards - see P. & Z. 1165.01 et seq.;

Accessory uses - see P. & Z. 1165.06;

Home occupations - see P. & Z. 1165.09

(d) Residential model homes and temporary lot sales offices. These are newly-constructed homes or temporary structures placed in a newly-constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home or sales office may be staffed and furnished.

- (1) When making its decision to approve, disapprove or approve with conditions an application for a residential model home, the Planning Commission shall consider that the model home:
 - A. Is appropriately located within the community and sited so that it is easily accessible without creating a nuisance or hazard to nearby properties.
 - B. Is integrated into the residential character of the neighborhood with external lighting in conformity with customary residential lighting.
 - C. Is approved with a limited duration which shall be determined by the Planning Commission after consultation with the applicant. Extensions of time may be granted by the Planning Commission, but decisions must be based on the same criteria as outlined in this section.
 - D. Is identified by no more than one sign which shall be in compliance with regulations governing signage.
 - E. Shall not be used as a general real estate brokerage office where the sale of properties not owned or previously owned wholly or in part by the applicant occurs.
- (2) The Planning Commission shall also consider and may set conditions on the following as part of its decision to allow a residential model home:
 - A. Hours of operation.
 - B. Number and types of employees; and maximum number of employees to be on the site at any one time.
 - C. Provisions for parking for employees and customers.
 - D. Size, lighting, content and location of signage (no internally lighted signage shall be permitted).
 - E. Landscaping and screening.
- (3) The use of temporary sales offices (i.e., manufactured homes, mobile homes or trailers) on the site of a newly constructed subdivision shall be discouraged.

In addition to the above-listed criteria for model homes, permission to occupy a temporary sales office for the purpose of home and lot sales within a newly constructed subdivision shall be granted only if the following conditions are met:

- A. Such facility is located on a main arterial roadway or highway.
- B. Such facility is substantially screened by the use of landscaping and/or mounding.
- C. Such facility shall not create a nuisance to surrounding properties.

**R-2, R-3 AND R-4 SINGLE-FAMILY
RESIDENTIAL DISTRICTS**

1133.06

- D. Such other conditions as the Planning Commission deems appropriate.
- E. Sales offices in trailers or mobile homes are permitted for a duration of twelve (12) months. Users of such facilities may apply to the Planning Commission for an extension of an additional twelve (12) months.

(Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1133.05 DEVELOPMENT STANDARDS.

The standards for the arrangement and development of land and buildings in the R-2, R-3 and R-4 Districts shall be according to the following schedule:

<i>District</i>	<i>Min. Lot Size (sq. ft.)</i>	<i>Min. Lot Width (ft.)</i>	<i>Min. Lot Width on Curving Street (ft.)</i>	<i>Min. Front Yard (ft.)</i>	<i>Min. Side Yard (ft.)</i>	<i>Min. Rear Yard Depth (ft.)</i>	<i>Max. Build- ing Height (ft.)</i>	<i>Max. % of Lot Coverage</i>
R-2	20,000	100	60	30	10	30	45	25
R-3	15,000	90	50	30	10	30	45	30
R-4	10,400	80	45	30	10	30	45	30

Note: All lots shall have frontage on a publicly dedicated and improved street or highway. Lot width shall be measured at the point of intersection of the lot with said street or highway.

(Ord. 08-2006. Passed 9-5-06.)

1133.06 LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

The area or parcel of land for nonresidential uses shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, setbacks, yards and open spaces to accommodate the facility and maintain the character of the neighborhood.

(Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1135 R-5 HISTORIC VILLAGE SINGLE-FAMILY RESIDENTIAL DISTRICT*

1135.01	PURPOSE.
1135.02	PERMITTED USES.
1135.03	ACCESSORY USES.
1135.04	CONDITIONAL USES.
1135.05	DEVELOPMENT STANDARDS.
1135.06	LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

1135.01 PURPOSE.

This district is established to provide for single-family residential housing sites within the older portions of the Municipality at densities consistent with existing development on platted lots, thereby increasing the diversity of housing choice and encouraging the revitalization of existing areas, while maintaining adequate standards.

(Ord. 08-2006. Passed 9-5-06.)

1135.02 PERMITTED USES.

- (a) Two-family dwelling units.
- (b) Publicly-owned parks, playgrounds and open space.
- (c) Religious exercise facilities and related uses.

(Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1135.03 ACCESSORY USES.

Any use or structure specified as an accessory use in the R-1 District.

(Ord. 08-2006. Passed 9-5-06.)

1135.04 CONDITIONAL USES.

(a) Single-family dwelling units, provided these dwellings meet the standards of the R-4 District.

(b) Home occupations, as regulated in Section 1165.09.

(c) Privately-owned parks and recreation areas.

(d) Public schools offering general educational courses and having no rooms regularly used for housing or sleeping of students, providing they occupy an amount of acreage that meets or exceeds state standards.

***Cross reference**—District established - see P. & Z. Ch. 1125;

Lots and yards - see P. & Z. 1165.01 et seq.;

Accessory uses - see P. & Z. 1165.06;

Home occupations - see P. & Z. 1165.09

(e) Residential model homes and temporary lot sales offices. These are newly-constructed homes or temporary structures placed in a newly-constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home or sales office may be staffed and furnished.

- (1) When making its decision to approve, disapprove or approve with conditions an application for a residential model home, the Planning Commission shall consider that the model home:
 - A. Is appropriately located within the community and sited so that it is easily accessible without creating a nuisance or hazard to nearby properties.
 - B. Is integrated into the residential character of the neighborhood with external lighting in conformity with customary residential lighting.
 - C. Is approved with a limited duration which shall be determined by the Planning Commission after consultation with the applicant. Extensions of time may be granted by the Planning Commission, but decisions must be based on the same criteria as outlined in this section.
 - D. Is identified by no more than one sign which shall be in compliance with regulations governing signage.
 - E. Shall not be used as a general real estate brokerage office where the sale of properties not owned or previously owned wholly or in part by the applicant occurs.
- (2) The Planning Commission shall also consider and may set conditions on the following as part of its decision to allow a residential model home:
 - A. Hours of operation.
 - B. Number and types of employees; and maximum number of employees to be on the site at any one time.
 - C. Provisions for parking for employees and customers.
 - D. Size, lighting, content and location of signage (no internally lighted signage shall be permitted).
 - E. Landscaping and screening.
- (3) The use of temporary sales offices (i.e., manufactured homes, mobile homes or trailers) on the site of a newly constructed subdivision shall be discouraged.

In addition to the above-listed criteria for model homes, permission to occupy a temporary sales office for the purpose of home and lot sales within a newly constructed subdivision shall be granted only if the following conditions are met:

- A. Such facility is located on a main arterial roadway or highway.
- B. Such facility is substantially screened by the use of landscaping and/or mounding.
- C. Such facility shall not create a nuisance to surrounding properties.

- D. Such other conditions as the Planning Commission deems appropriate.
 - E. Sales offices in trailers or mobile homes are permitted for a duration of twelve (12) months. Users of such facilities may apply to the Planning Commission for an extension of an additional twelve (12) months.
- (Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1135.05 DEVELOPMENT STANDARDS.

- (a) Lot Area. For each principal use, there shall be a lot area of not less than five thousand (5,000) square feet.
 - (b) Minimum Lot Width. Fifty (50) feet of lot with frontage on a publicly dedicated, improved street or highway.
 - (c) Minimum Front Yard Depth. Twenty-five (25) feet.
 - (d) Minimum Side Yard Width. Five (5) feet.
 - (e) Minimum Rear Yard Depth. Thirty-five (35) feet.
 - (f) Maximum Building Height. Thirty-five (35) feet.
 - (g) Alleys. All new lots developed within the R-5 District shall have alleys running along the rear lines of such lots. Such alleys shall have a minimum right-of-way of twenty-five (25) feet, be improved to standards for local streets in the New Albany Subdivision Regulations, and be publicly dedicated.
- (Ord. 08-2006. Passed 9-5-06.)

1135.06 LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

The area or parcel of land for nonresidential uses shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, setbacks, yards and open spaces to accommodate the facility and maintain the character of the neighborhood.

(Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1137 R-6 TWO-FAMILY RESIDENTIAL DISTRICT*

1137.01	PURPOSE.
1137.02	PERMITTED USES.
1137.03	ACCESSORY USES.
1137.04	CONDITIONAL USES.
1137.05	DEVELOPMENT STANDARDS.
1137.06	LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

1137.01 PURPOSE.

This district is established to encourage the orderly development of two-family residential dwellings, and customary related facilities.

(Ord. 08-2006. Passed 9-5-06.)

1137.02 PERMITTED USES.

(a) Two-family dwelling units.

(b) Publicly-owned parks, playgrounds and open space.

(c) Religious exercise facilities and related uses.

(Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1137.03 ACCESSORY USES.

Any use specified as an accessory use in the R-1 District.

(Ord. 08-2006. Passed 9-5-06.)

1137.04 CONDITIONAL USES.

(a) Single-family dwelling units, provided these dwellings meet the standards of the R-4 District.

(b) Home occupations, as regulated in Section 1165.09.

(c) Privately-owned parks and recreation areas.

(d) Public schools offering general educational courses and having no rooms regularly used for housing or sleeping of students, providing they occupy an amount of acreage that meets or exceeds state standards.

*Cross reference—District established - see P. & Z. Ch. 1125;

Lots and yards - see P. & Z. 1165.01 et seq.;

Accessory uses - see P. & Z. 1165.06;

Home occupations - see P. & Z. 1165.09

(e) Residential model homes and temporary lot sales offices. These are newly-constructed homes or temporary structures placed in a newly-constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home or sales office may be staffed and furnished.

- (1) When making its decision to approve, disapprove or approve with conditions an application for a residential model home, the Planning Commission shall consider that the model home:
 - A. Is appropriately located within the community and sited so that it is easily accessible without creating a nuisance or hazard to nearby properties.
 - B. Is integrated into the residential character of the neighborhood with external lighting in conformity with customary residential lighting.
 - C. Is approved with a limited duration which shall be determined by the Planning Commission after consultation with the applicant. Extensions of time may be granted by the Planning Commission, but decisions must be based on the same criteria as outlined in this section.
 - D. Is identified by no more than one sign which shall be in compliance with regulations governing signage.
 - E. Shall not be used as a general real estate brokerage office where the sale of properties not owned or previously owned wholly or in part by the applicant occurs.
- (2) The Planning Commission shall also consider and may set conditions on the following as part of its decision to allow a residential model home:
 - A. Hours of operation.
 - B. Number and types of employees; and maximum number of employees to be on the site at any one time.
 - C. Provisions for parking for employees and customers.
 - D. Size, lighting, content and location of signage (no internally lighted signage shall be permitted).
 - E. Landscaping and screening.
- (3) The use of temporary sales offices (i.e., manufactured homes, mobile homes or trailers) on the site of a newly constructed subdivision shall be discouraged.

In addition to the above-listed criteria for model homes, permission to occupy a temporary sales office for the purpose of home and lot sales within a newly constructed subdivision shall be granted only if the following conditions are met:

- A. Such facility is located on a main arterial roadway or highway.
- B. Such facility is substantially screened by the use of landscaping and/or mounding.
- C. Such facility shall not create a nuisance to surrounding properties.

- D. Such other conditions as the Planning Commission deems appropriate.
 - E. Sales offices in trailers or mobile homes are permitted for a duration of twelve (12) months. Users of such facilities may apply to the Planning Commission for an extension of an additional twelve (12) months.
- (Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1137.05 DEVELOPMENT STANDARDS.

- (a) Minimum Lot Area.
 - (1) Four thousand (4,000) square feet per dwelling unit for two-family dwellings. All lots within the R-6 District shall be served by public water and sewer facilities.
 - (2) Only one permitted or conditional use shall be allowed on a zoning lot, and lot shall be covered no more than thirty percent (30%) by the structure.
 - (b) Minimum Lot Width. Seventy-five (75) feet of lot width with frontage on publicly dedicated and improved street or highway.
 - (c) Minimum Front Yard Depth. Twenty-five (25) feet.
 - (d) Minimum Side Yard Width. Ten (10) feet.
 - (e) Minimum Rear Yard Depth. Forty (40) feet, or twenty percent (20%) of lot depth, whichever is less.
 - (f) Maximum Building Height. Forty-five (45) feet.
- (Ord. 08-2006. Passed 9-5-06.)

1137.06 LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

The area or parcel of land for nonresidential uses shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, setbacks, yards and open spaces to accommodate the facility and maintain the character of the neighborhood.

(Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1139 R-7 URBAN DENSITY RESIDENTIAL DISTRICT*

1139.01	PURPOSE.
1139.02	PERMITTED USES.
1139.03	ACCESSORY USES.
1139.04	CONDITIONAL USES.
1139.05	DEVELOPMENT STANDARDS.
1139.06	LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

1139.01 PURPOSE.

This district is established to accommodate multiple-family residences at overall housing densities consistent with those existing in the area. The objective is to provide for the continuance, redevelopment and/or limited expansion of multiple-family developments in areas best equipped to accommodate such higher density development.

(Ord. 08-2006. Passed 9-5-06.)

1139.02 PERMITTED USES.

(a) Multiple family structures having two (2) or more dwellings per structure.

(b) Publicly-owned parks, playgrounds and open space.

(c) Religious exercise facilities and related uses.

(Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1139.03 ACCESSORY USES.

(a) Uses incidental and accessory to multiple-family dwellings and for exclusive use of their residents, to include common recreational facilities, community swimming pools, and offices for the rental and management of units therein.

(b) Temporary buildings for uses incidental to construction work, which shall be removed upon the completion or abandonment of construction work.

(Ord. 08-2006. Passed 9-5-06.)

1139.04 CONDITIONAL USES.

(a) Nursery schools and day care centers.

(b) Privately-owned parks and recreation areas.

(c) Public schools offering general educational courses and having no rooms regularly used for housing or sleeping of students, providing they occupy an amount of acreage that meets or exceeds state standards.

*Cross reference—District established - see P. & Z. Ch. 1125;

Lots and yards - see P. & Z. 1165.01 et seq.;

Accessory uses - see P. & Z. 1165.06;

Home occupations - see P. & Z. 1165.09

(d) Residential model homes and temporary lot sales offices. These are newly-constructed homes or temporary structures placed in a newly-constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home or sales office may be staffed and furnished.

- (1) When making its decision to approve, disapprove or approve with conditions an application for a residential model home, the Planning Commission shall consider that the model home:
 - A. Is appropriately located within the community and sited so that it is easily accessible without creating a nuisance or hazard to nearby properties.
 - B. Is integrated into the residential character of the neighborhood with external lighting in conformity with customary residential lighting.
 - C. Is approved with a limited duration which shall be determined by the Planning Commission after consultation with the applicant. Extensions of time may be granted by the Planning Commission, but decisions must be based on the same criteria as outlined in this section.
 - D. Is identified by no more than one sign which shall be in compliance with regulations governing signage.
 - E. Shall not be used as a general real estate brokerage office where the sale of properties not owned or previously owned wholly or in part by the applicant occurs.
- (2) The Planning Commission shall also consider and may set conditions on the following as part of its decision to allow a residential model home:
 - A. Hours of operation.
 - B. Number and types of employees; and maximum number of employees to be on the site at any one time.
 - C. Provisions for parking for employees and customers.
 - D. Size, lighting, content and location of signage (no internally lighted signage shall be permitted).
 - E. Landscaping and screening.
- (3) The use of temporary sales offices (i.e., manufactured homes, mobile homes or trailers) on the site of a newly constructed subdivision shall be discouraged.

In addition to the above-listed criteria for model homes, permission to occupy a temporary sales office for the purpose of home and lot sales within a newly constructed subdivision shall be granted only if the following conditions are met:

- A. Such facility is located on a main arterial roadway or highway.
- B. Such facility is substantially screened by the use of landscaping and/or mounding.
- C. Such facility shall not create a nuisance to surrounding properties.

- D. Such other conditions as the Planning Commission deems appropriate.
 - E. Sales offices in trailers or mobile homes are permitted for a duration of twelve (12) months. Users of such facilities may apply to the Planning Commission for an extension of an additional twelve (12) months.
- (Ord. 34-95. Passed 9-19-95; Ord. 08-2006. Passed 9-5-06.)

1139.05 DEVELOPMENT STANDARDS.

(a) Minimum Lot Area. Four thousand (4,000) square feet per dwelling unit for two-family dwellings. Three thousand five hundred (3,500) square feet per dwelling unit for all other multiple-family dwellings.

(b) Minimum Lot Frontage. Eighty (80) feet of frontage on a publicly dedicated and improved street or highway.

(c) Minimum Front Yard Depth. Thirty (30) feet.

(d) Minimum Side Yard Width. Ten (10) feet.

(e) Minimum Rear Yard Depth. Forty (40) feet.

(f) Maximum Building Height. Forty-five (45) feet.

(g) Trash and Garbage Control. All trash and garbage shall be stored in container systems which are located and enclosed so as to effectively screen them from view. Screening of trash and garbage areas shall meet the requirements of Chapter 1171.

(h) Landscaping. If side or rear yards are located adjacent to any district where single-family residences are a permitted use, landscaping and screening of those yards shall be required to meet the requirements of Chapter 1171.

(i) Open/Play Area. Buildings or structures shall not occupy more than 60 percent (60%) of the total lot. For each five (5) units or portion thereof, there shall be provided an open space or play area of not less than one thousand (1,000) square feet in size. The design and configuration of such open area shall be approved by the Planning Commission. Such open area shall be maintained by the owner of the multiple-family complex.

(Ord. 08-2006. Passed 9-5-06.)

1139.06 LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

The area or parcel of land for nonresidential uses shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, setbacks, yards and open spaces to accommodate the facility and maintain the character of the neighborhood.

(Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1140 UC URBAN CENTER DISTRICT

1140.01	ADOPTION.
1140.02	PURPOSE.
1140.03	REQUEST FOR ADDITIONAL BUILDING TYPOLOGIES.
1140.04	WAIVERS.
1140.05	APPEALS.
1140.99	PENALTY.

1140.01 ADOPTION.

The Urban Center District is hereby established and the Urban Center Code is hereby adopted and incorporated by reference, as if set out at length herein.

(Ord. O-09-2011. Passed 5-17-11.)

1140.02 PURPOSE.

This Urban Center District is established to provide for a mix of residential and commercial uses within the area defined by the New Albany Strategic Plan as the Village Center. Development in the Village Center should be developed in a traditional town center form. The Urban Center Code standards adopted herein establish the "form" for the Village Center, and encourage redevelopment by providing flexible and multiple options for building style, as well as a mix of uses. The Urban Center Code is intended to be implemented in conjunction with the New Albany Design Guidelines and Requirements.

(Ord. O-09-2011. Passed 5-17-11.)

1140.03 REQUEST FOR ADDITIONAL BUILDING TYPOLOGIES.

(a) Any person owning or having an interest in property within the Urban Center District may file an application to obtain additional building typology(ies) not identified in the Urban Center Code for approval from the Architectural Review Board (ARB). The application for building typology approval shall be made on such forms as prescribed by the City of New Albany, along with such plans, drawings, specifications and other materials as may be needed by staff or the ARB to make a determination.

- (1) The materials that shall be required in an application to the ARB include, but are not limited to:
 - A. Graphic exhibits and lot standards that correspond to the desired placement in an Urban Center Sub-District.
 - B. Written description of the proposed typology.
 - C. Legal description of property as recorded in the Franklin County Recorder's office.
 - D. A plot plan drawn to an appropriate scale showing the following as applicable:
 1. The boundaries and dimensions of the lot.
 2. The size and location of proposed structures.

3. The proposed use of all parts of the lots and structures, including accesses, walks, off-street parking and loading spaces, and landscaping.
 - (2) The City staff reserves the right to require that the applicant submit more documentation than set forth in 1140.03(a)(1), or less, based upon the facts and circumstances of each application.
 - (b) In considering the request for an additional building typology(ies), the ARB shall only grant the request if the applicant demonstrates that the proposed typology:
 - (1) Provides a design, building massing and scale appropriate to and compatible with the building typologies allowed in the subarea;
 - (2) Provides an attractive and desirable site layout and design, including, but not limited to, building arrangement, exterior appearance and setbacks, etc. that achieves an Urban Center form;
 - (3) Demonstrates its ability to fit within the goals of the New Albany Strategic Planning documents and policies; and
 - (4) Demonstrates its ability to fit within the goals of the New Albany Design Guidelines and Requirements.
- (Ord. O-09-2011. Passed 5-17-11.)

1140.04 WAIVERS.

On a particular property, extraordinary circumstances may exist making strict enforcement of the requirements of this chapter unreasonable. Therefore, a property owner within the Urban Center District may apply for a waiver from the requirements of this chapter unless otherwise specified. The variance procedures set forth in Chapter 1113 shall apply to the waiver process. However, the ARB and not the Board of Zoning Appeals shall hear and decide upon requested waivers from the requirements of this chapter. Deviations from the Street and Network Standards shall not be considered waivers and shall follow the variance process in Chapter 1187 unless otherwise specified.

(Ord. O-09-2011. Passed 5-17-11.)

1140.05 APPEALS.

The ARB shall hear and decide appeals from any decisions or interpretations made by City staff under this chapter. Any such appeal shall be in conformance with the criteria standards and procedures set forth in Chapter 1113.

(Ord. O-09-2011. Passed 5-17-11.)

1140.99 PENALTY.

(a) Whoever constructs, reconstructs, alters, or modifies any exterior architectural or environmental feature now or hereafter within the Urban Center District in violation of this chapter, shall be subject to the penalties specified in Section 1109.99.

(b) Any individual or individual property owner that demolishes a structure within the Urban Center District in violation of this chapter shall be subject to a fine of up to ten thousand dollars (\$10,000.00).

(c) Any partnership, association, business entity, etc. that demolishes or causes the demolition of a structure within the Urban Center District in violation of this chapter shall be subject to a fine of up to fifty thousand dollars (\$50,000.00).
(Ord. O-09-2011. Passed 5-17-11.)

CHAPTER 1141 OR OFFICE-RESIDENTIAL DISTRICT*

1141.01	PURPOSE.
1141.02	PERMITTED USES.
1141.03	ACCESSORY USES.
1141.04	CONDITIONAL USES.
1141.05	SPECIAL CONDITIONS FOR CONDITIONAL USES.
1141.06	DEVELOPMENT STANDARDS.
1141.07	ADDITIONAL INFORMATION REQUIRED FOR ZONING AMENDMENT.
1141.08	LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

1141.01 PURPOSE.

The OR District is to be used in residential areas along major thoroughfares that are subject to development pressure for commercial use. The intent of the district is to provide for low-intensity small administrative and professional office use in a regulated environment that will retain the area's residential character.

(Ord. 08-2006. Passed 9-5-06.)

1141.02 PERMITTED USES.

(a) Any use or structure specified as permitted in the R-1 District.

(b) Two-family dwellings.

(c) Home occupations, as regulated in Section 1165.09.

(Ord. 08-2006. Passed 9-5-06.)

1141.03 ACCESSORY USES.

(a) Private detached garages or carports; storage sheds and buildings.

(b) Temporary buildings for uses incidental to construction work which shall be removed upon completion or abandonment of the construction work.

(c) Dishes and other devices for reception of television signals provided such device is for the sole use by the occupants of the principal use of the property and such device is not located in a front or side yard.

(Ord. 08-2006. Passed 9-5-06.)

1141.04 CONDITIONAL USES.

(a) Administrative and business offices not carrying on retail trade with the public and having no stock of goods maintained for sale to customers, consisting of:

(1) Brokers and dealers in securities and investments, not including commercial banks and savings institutions.

***Cross reference**—District established - see P. & Z. Ch. 1125;

Lots and yards - see P. & Z. 1165.01 et seq.;

Accessory uses - see P. & Z. 1165.06;

Home occupations - see P. & Z. 1165.09

(2) Insurance agents and brokers.

(3) Real estate sales and associated services.

(b) Offices for professional services, such as physicians, dentists, lawyers, architects, engineers and similar professions, but not including veterinarians.

(Ord. 08-2006. Passed 9-5-06.)

1141.05 SPECIAL CONDITIONS FOR CONDITIONAL USES.

(a) Hours. Permitted uses shall be conducted principally in daylight hours.

(b) Nuisance. Permitted uses shall not create a nuisance from noise, smoke or odor.

(c) Appearance. Structures shall maintain a residential appearance and be compatible with surrounding residences, in size and scale.

(d) Lighting. Lighting shall be limited to those types customarily found in residential neighborhoods. Any lights shall be arranged so as to not shine on adjacent properties.

(e) Signage. Exterior signage shall be limited to a single nameplate not more than two (2) square feet in size. No signs shall be internally illuminated.

(f) Storage. Storage of materials and equipment shall be within an enclosed building.

(g) Parking. Sufficient off-street parking shall be provided as specified in Chapter 1167. All parking shall be located in the rear yard.

(Ord. 08-2006. Passed 9-5-06.)

1141.06 DEVELOPMENT STANDARDS.

Minimum lot area, minimum lot width, minimum front yard depth, minimum side yard width, minimum sum of side yard widths, minimum rear yard depth, and maximum building height for all permitted and conditional uses shall be as required for the R-5 District.

(Ord. 08-2006. Passed 9-5-06.)

1141.07 ADDITIONAL INFORMATION REQUIRED FOR ZONING AMENDMENT.

Due to special conditions inherent to this district, additional information may be required of an applicant seeking a rezoning of property to the OR Zoning District. Such information shall be specified by the Planning Commission and may include site layout, dimensions of driveways and entrances, vehicular circulation patterns, location of off-street parking spaces, and landscaping.

(Ord. 08-2006. Passed 9-5-06.)

1141.08 LOT AND AREA REGULATIONS; ALL NONRESIDENTIAL USES.

The area or parcel of land for nonresidential uses shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, setbacks, yards and open spaces to accommodate the facility and maintain the character of the neighborhood.

(Ord. 08-2006. Passed 9-5-06.)

PROOFS

CHAPTER 1143 O OFFICE DISTRICT*

1143.01	PURPOSE.
1143.02	PERMITTED USES.
1143.03	CONDITIONAL USES.
1143.04	DEVELOPMENT STANDARDS.

1143.01 PURPOSE.

The purpose of the O Office District is to provide locations for administrative, business and professional offices, recognizing that such uses may provide a suitable transition between residential areas and commercial areas which have a higher intensity of use. Development standards are provided to ensure the compatibility of such office uses with the area to which they are adjacent while still meeting the needs of the general office user related to traffic accessibility and visibility. (Ord. 08-2006. Passed 9-5-06.)

1143.02 PERMITTED USES.

(a) Administrative and business offices not carrying on retail trade with the public and having no stock of goods maintained for sale to customers consisting of:

- (1) Brokers and dealers in securities, investments and associated services, not including commercial banks and savings institutions.
- (2) Insurance agents and brokers and associated services.
- (3) Real estate sales and associated services.

(b) Professional offices engaged in providing services to the general public consisting of:

- (1) Medical and medical-related activities, but not including veterinary offices or animal hospitals.
- (2) Other health or allied medical facilities.
- (3) Professional, legal, engineering and architectural services, not including the outside storage of equipment.
- (4) Accounting, auditing and other bookkeeping services.

(c) Organizations and associations organized on a profit or non-profit basis for promotion of membership interests, including:

- (1) Business associations.
- (2) Professional membership organizations.
- (3) Civic, social and fraternal organizations.
- (4) Charitable organizations.

*Cross reference—District established - see P. & Z. Ch. 1125.01;
Off-street parking and loading - see P. & Z. Ch. 1167;
Signs - see P. & Z. Ch. 1169

(d) Religious exercise facilities and related uses.
(Ord. 08-2006. Passed 9-5-06.)

1143.03 CONDITIONAL USES.

(a) Limited personal services, generally involving the care of the person and/or personal effects, consisting of:

- (1) Commercial photography.
- (2) Barber and beauty shops, having not more than two (2) chairs or work stations.
- (3) Funeral homes, mortuaries and related facilities.

(b) Veterinary offices and animal hospitals, not including facilities for outside boarding or exercising of animals.

(c) Nursery schools and/or day care facilities.
(Ord. 08-2006. Passed 9-5-06.)

1143.04 DEVELOPMENT STANDARDS.

(a) Minimum Lot Area. No minimum lot area is required; however, the lot size shall be adequate to provide for parking and yard requirements.

(b) Minimum Lot Width. No minimum lot width is required; however, all lots shall abut a publicly dedicated and improved street or highway, and shall have adequate width to provide for yard space requirements pursuant to this section.

(c) Minimum Front Yard Depth. Twenty-five (25) feet.

(d) Minimum Side Yard Width. Fifteen (15) feet to any structure; however, if the yard is located adjacent to any district where residences are a permitted use, the minimum side yard width shall be fifteen (15) feet to any paved area, and twenty-five (25) feet to any structure.

(e) Minimum Rear Yard Depth. Twenty (20) feet to any structure; however, if the yard is located adjacent to any district where residences are a permitted use, the minimum rear yard depth shall be twenty (20) feet to any paved area, and forty-five (45) feet to any structure.

(f) Maximum Building Height. Forty-five (45) feet.

(g) Parking and Loading. Parking and loading requirements shall be as specified in Chapter 1165. In addition, parking spaces shall be designated to allow a minimum of five (5) feet between any structure and any parked vehicle.

(h) Landscaping. The landscape of parking and service areas shall be required to meet the requirements of Chapter 1171. If side or rear yards are located adjacent to any district where residences are a permitted use, landscaping and screening shall be required in those yards to meet the requirements of Chapter 1171.

(i) Trash and Garbage Control. All trash and garbage shall be stored in container systems which are located and enclosed so as to effectively screen them from view. Screening of trash and garbage areas shall meet the requirements of Chapter 1171.

(Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 08-2006. Passed 9-5-06.)

PROOFS

CHAPTER 1144 OCD OFFICE CAMPUS DISTRICT*

1144.01	PURPOSE.
1144.02	PERMITTED USES.
1144.03	CONDITIONAL USES.
1144.04	DEVELOPMENT STANDARDS.

1144.01 PURPOSE.

The purpose of the Office Campus District (OCD) is to provide for office use to be developed in a "campus setting." Development standards are provided to ensure the compatibility of such office campus uses within the District and with adjacent properties, while still meeting the needs of the general office uses related to traffic, accessibility and visibility. The Office Campus District is intended to accommodate multiple or large acreage users.

(Ord. 82-96. Passed 1-21-97; Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07.)

1144.02 PERMITTED USES.

(a) Administrative business and professional offices as specified in Sections 1143.02(a), (b), and (c).

(b) General offices and general office buildings designed for leased space, including but not limited to, operational, administrative and executive offices for personnel engaged in general administration, operations, purchasing, accounting, telemarketing, credit card processing, bank processing, other administrative processing, and other similar business activities in accordance with Section 1127.02(e) of the Planning and Zoning Code.

(c) Uses located in building where the primary use in the building is permitted in divisions (a) or (b) shall include the following, when such use is clearly incidental to and located within the same building as the primary permitted use:

- (1) Drug Store.
- (2) Deli/Restaurant/Food Service.
- (3) Office Supply and Service.
- (4) Travel Agent.
- (5) Personal Services such as Barber/Beauty Salons, Dry Cleaning Pickup Station, ATM, and Health Offices.
- (6) Newsstand.
- (7) Health and Fitness Center.
- (8) Training Facility.

***Cross reference**—District established - see P & Z Chap. 1125.01;
 Off-street parking and loading - see P & Z Chap. 1167;
 Signs - see P & Z Chap. 1169;
 Satellite signal receiving antennas - see P & Z Chap. 1177

(9) Storage Facilities.

(10) Day Care Facility.

(11) Other similar uses in accordance with Section 1127.02(e) of the Planning and Zoning Code.

(d) Religious exercise facilities and related uses.

(e) Temporary parking lots in accordance with Chapter 1167 of the Planning and Zoning Code.

(f) A park-and-ride facility providing daily parking as the principle use which may include accessory shelters for mass transit passengers or carpooling that typically includes parking lots and associated structures located along or near public transit routes.

(g) Data Centers.

(Ord. 82-96. Passed 1-21-97; Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07; Ord. O-15-2013. Passed 6-4-13; Ord. O-07-2015. Passed 3-3-15.)

1144.03 CONDITIONAL USES.

The following uses shall be allowed in the Office Campus District (OCD), subject to approval in accordance with Chapter 1115, Conditional Uses:

(a) Drive-through facilities to be developed in association with a permitted use.

(b) Research facility for research, analysis, and development, which can be characterized as clean, non-hazardous and light use, and activities incidental or necessary to the conduct of such research, analysis, and development.

(c) Miscellaneous accessory uses when the primary use of the building is permitted in Section 1144.02(a) or (b), such as show room, distribution, repair shop, light assembly and similar ancillary uses.

(d) Hotel/Motel including conference and banquet facilities.

(Ord. 82-96. Passed 1-21-97; Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07.)

1144.04 DEVELOPMENT STANDARDS.

(a) Minimum Lot Area. No minimum lot areas required, however, the lot size shall be adequate to provide for on-site parking/loading and yard requirements.

(b) Minimum Lot Width. No minimum lot width is required, however, all lots shall abut a publicly dedicated and improved street or highway, and shall have adequate width to provide for yard space requirements pursuant to this section.

(c) Minimum Front Yard Depth. Fifty-five (55) feet except fences, gate houses, entry features and ancillary structures shall be allowed in the front yard setback when approved by the Development Standards Review Committee.

(d) Minimum Side Yard Width. Fifteen (15) feet to any paved area and thirty (30) feet to any structure.

(e) Minimum Rear Yard Depth. Twenty (20) feet to any paved area and forty (40) feet to any structure.

(f) Lot Coverage. The total lot coverage, which includes all areas of parking and building coverage, shall not exceed 80% of the total lot area.

(g) Maximum Building Height. Sixty-five (65) feet, except an increased height may be approved by the Planning Commission upon a showing that the height of the building is harmonious and in accordance with the general objectives, or with any specific objectives or purpose, of the Zoning Ordinance.

(h) Parking and Loading.

(1) Except as otherwise provided herein, parking and loading requirements shall be as specified in Chapter 1167. Parking spaces shall be designated to allow a minimum of five (5) feet between any structure and any parked vehicle. Seventy-five to ninety (75—90) degree angle parking shall have a minimum width (measured in feet parallel to the aisle) of nine (9) feet and a minimum length of eighteen (18) feet with a twenty-four (24) foot wide maneuvering aisle. One loading space shall be provided per dock space.

(2) Where appropriate, adequate provisions shall be made for the use of public transportation by employees and visitors.

(3) All entry drives shall be coordinated with improvements in road rights-of-way and with landscaping within the site.

(i) Service Areas and Dumpsters. All service areas including loading docks, exterior storage of materials, supplies, equipment or products and trash containers shall be screened from all public roads and/or adjacent properties at ground level with walls or landscaping. Any walls shall be of the same materials used on the building walls and shall be complemented with landscaping.

(j) Signage. Signage standards shall comply with those delineated in Chapter 1169. However, the sign area for a wall or free standing sign may be one square foot of sign (as measured in Section 1169.06) per one thousand (1,000) square feet of usable floor space but shall not exceed a maximum sign area of one hundred twenty (120) square feet per side. A building less than thirty-two thousand (32,000) square feet usable floor space may have a sign of thirty-two (32) square feet per side. Signs shall be located so that no part of the sign shall protrude beyond the wall on which it is located. The use of neon roof mounted and internally illuminated signs is prohibited.

(k) Satellite Signal Receiving Antennas. Roof mounted dish antennas shall be permitted as an accessory use to permitted uses in this District, and upon application for installation of a satellite signal receiving antenna, it shall be reviewed for safety, compatibility with surrounding develop-

ment, and for other design measures that screen or otherwise make the dish antenna appear less obtrusive. Otherwise, the standards set forth in Chapter 1177 shall apply to the placement of satellite signal receiving antennas.

(l) Utilities. All utility lines including water supply, sanitary sewer service, electricity, telephone and gas, and their connections or feeder lines shall be placed underground. Meters, transformers, etc. may be placed above ground, but must be clustered and screened from view. To the extent possible utility line placement shall be sensitive to existing vegetation.

(m) Mechanical Equipment. Any external mechanical equipment shall be totally screened from all public roads and/or adjacent properties from ground level with materials that are similar to or the same as used on the majority of the building or if screened by landscaping the landscaping shall provide one hundred percent (100%) opacity. This section includes rooftop equipment, satellite dishes (excluding communication devices where technically impracticable), as well as ground mounted equipment. The screening of the mechanical equipment shall be coordinated with the rest of the architecture so as to avoid being seen as an "add on".

(n) Lighting.

(1) All external lighting shall be cut off type fixtures and down cast to reduce "spillage".

(2) All types of parking, pedestrian and other lighting fixtures shall be of the same type and style and shall be wall mounted cut-off fixtures or located on poles having a maximum height of thirty (30) feet.

(3) Luminaries should have a minimum cut-off of forty-five (45) degrees, so as to provide glare control to pedestrian and vehicular traffic, as well as a distinct beam cut-off on the outer perimeter of the setback areas.

(4) All light poles and standards shall be in dark color.

(5) Landscape uplighting from a concealed source shall be permitted. All upright fixtures must be screened by landscaping.

(6) No permanent colored lights or neon lights shall be used when visible from the exterior of the building. Flood lighting of buildings is prohibited, except that accent lighting, from a concealed source, is permitted. Nothing in this subsection shall prohibit lighting required for employee security.

(o) Architecture. As part of the plans submitted pursuant to Division (q), front, rear and side building elevations shall be shown indicating building material color and height. The following elements shall be considered:

(1) Materials, texture and color compatibility.

A. Earth tones, muted and natural tones are permitted. Brighter hues are permitted only as accent features (such as awnings, doors, limited trim, etc.).

B. Materials: Brick, precast wall panels, stone, concrete, coated metals and woods are permitted. Other materials may be permitted, but are subject to approval for intent and compatibility. All glass or highly reflective buildings (or buildings that appear as such), prefabricated metal or untreated masonry block buildings are not permitted.

(2) Signage with relationship to the building and building facade.

(p) Landscaping. Landscaping shall follow the guidelines herein established except that incidental modifications may be approved by the Development Standards Review Committee. The developer may deviate from the landscape guidelines if an alternate landscape plan is approved by the Planning Commission.

(1) Areas not developed may remain in their natural state or may be used for agriculture purposes, otherwise all undeveloped areas shall be maintained at a maximum of eighteen (18) inch field height and provide an appearance of rural character.

(2) Pond(s) which are located within the setback areas shall be designed and landscaped to be rural in character.

(3) Side lot landscaping shall be planted with a mixture of deciduous shade trees and evergreen trees and shrubs. Five (5) trees shall be planted per one hundred (100) L.F. of side lot and one deciduous shrub per tree. All side lot areas not landscaped shall have grass (seed or sod).

(4) Interior landscaping within parking areas shall be a minimum of five percent (5%) of the total area of the parking lot pavement. The landscaped areas shall be arranged in such a manner so as to visually break up large expanses of pavement and provide landscaped walking paths between parking lots and the main buildings.

(5) Shrubbery should be Native Deciduous Shrubs and shall be a minimum size of thirty (30) inches height at installation.

(6) The minimum tree size at installation shall be as follows:

Perimeter Ornamental Tree	2" caliper
Perimeter Deciduous Shade Tree	2"—3" caliper
Perimeter Evergreen Tree	6'—8' tall
Parking lot Ornamental Tree	2" caliper
Parking lot Deciduous Shade Tree	2" caliper
Parking lot Evergreen Tree	4' tall

(7) No existing trees within the undeveloped areas shall be removed or destroyed unless they are shown to be diseased, interfere with utilities, or are part of a development plan.

(8) Street areas shall be landscaped and maintained in accordance with Section 1171.04.

(9) Where a required side yard abuts any district where a residence is a permitted use landscaping in accordance with Section 1171.05 shall be provided.

(q) Development Standards Review Committee. The Development Standards Review Committee shall, prior to the issuance of any permits, approve all plans and elevations necessary to demonstrate compliance to the development standards established for the Office Campus District. Within thirty-five (35) days of submission of plans the Committee shall issue a statement of compliance or noncompliance with the development standards established for this District. The Committee shall be comprised of the following persons or their designee:

Administrator

Municipal Planner

Chief Building Official

Municipal Engineer

(Ord. 82-96. Passed 1-21-97; Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07.)

CHAPTER 1145 C-1 NEIGHBORHOOD BUSINESS DISTRICT*

1145.01	PURPOSE.
1145.02	PERMITTED USES.
1145.03	CONDITIONAL USES.
1145.04	DEVELOPMENT STANDARDS.

1145.01 PURPOSE.

The purpose of the Neighborhood Business District is to provide for the orderly development of neighborhood shopping facilities serving the regular day-to-day convenience shopping and personal service needs of nearby residents. In that, commercial establishments within the C-1 District will be more closely associated with the residential land uses at the neighborhood level, more restrictive requirements related to size and scale, open space, and landscaping are necessitated than in other commercial districts.

(Ord. 08-2006. Passed 9-5-06.)

1145.02 PERMITTED USES.

- (a) Administrative, business and professional offices as specified in Section 1143.02(a) and (b).
- (b) Retail stores primarily engaged in selling merchandise for personal or household consumption, and rendering services incidental to the sale of those goods; provided all storage and display of merchandise shall be within the principal structure, including:
 - (1) Food and food products, consisting of: grocery stores, meat and fish markets, fruit stores and vegetable markets, and specialty stores such as bakery, candy or confectionery.
 - (2) Proprietary drug and hardware stores.
 - (3) Similar retail stores, consisting of: florists, gift, antique or second-hand stores, books and newspapers, sporting goods, jewelry, optical goods, and other retail stores which conform to the purpose and intent of the Neighborhood Business District and subject to the requirements of Section 1127.01(e). Retail stores will not be permitted to sell items pandering obscenity, as defined in ORC Title 29, to adults/juveniles.
- (c) Personal services, involving the care of the person and his/her personal effects, including consumer services generally involving the care and maintenance of tangible personal consumption, including:
 - (1) Restaurants, but not including restaurants with drive- through facilities.
 - (2) Banks, savings and loans, and credit agencies, but not including establishments with drive-through facilities.
 - (3) Barber and beauty shops, having no more than three (3) work stations.

*Cross reference—District established - see P. & Z. Ch. 1125.01;
 Off-street parking and loading - see P. & Z. Ch. 1167;
 Signs - see P. & Z. Ch. 1169

- (4) Funeral services.
 - (5) Human medical clinics.
 - (6) Radio, television or small appliance repair.
 - (7) Commercial photography.
 - (8) On-premises duplication and reproduction services.
 - (d) Nursery schools and day care facilities.
 - (e) Religious exercise facilities and related uses.
- (Ord. 08-2006. Passed 9-5-06.)

1145.03 CONDITIONAL USES.

- (a) Veterinary offices, not including outside boarding of animals.
 - (b) Multiple-family residences, subject to the development standards of the R-7 District.
- (Ord. 08-2006. Passed 9-5-06.)

1145.04 DEVELOPMENT STANDARDS.

- (a) Lot Area. No minimum lot area is required; however, lot area shall be adequate to provide the required parking and yard areas.
- (b) Lot Width. No minimum lot width is required; however all lots shall abut an improved public street designated on the New Albany Thoroughfare Plan as having not less than collector status. All lots shall have adequate width to provide for required parking and yard area.
- (c) Front Yard Setback. The minimum front yard setback shall be the average of the existing adjacent commercial structures on the same side of the street and facing thereon within the same block. Where there are not adjacent commercial structures, the front yard setback shall not be less than thirty (30) feet measured from the street right-of-way.
- (d) Side Yards. For new principal structures, including service and loading areas, the required side yard shall be not less than one-fourth (1/4) the sum of the height and depth of the building but in no case shall be less than fifteen (15) feet.
- (e) Rear Yards. For new principal structures, the required rear yard shall be not less than one-fourth (1/4) the sum of the height and depth of the building, but in no case shall be less than twenty (20) feet.
- (f) Additional Yard and Pedestrian Areas. Where new development in the C-1 District is located adjacent to a district where residences are a permitted use, the Planning Commission may require that at least five percent (5%) of the lot area, exclusive of parking areas and public rights-of-way, shall be devoted to landscaped yards or pedestrian space.

(g) Maximum Building Size. Individual uses within C-1 District shall have usable floor area of not more than four thousand (4,000) square feet. Individual buildings containing multiple uses within the C-1 District shall have a usable floor area of not more than twenty-five thousand (25,000) square feet.

(h) Lighting. Lighting fixtures within the C-1 District shall be so arranged, shielded and directed so as to not shine directly on any adjacent residential property.

(i) Parking and Loading. Parking and loading requirements shall be as specified in Chapter 1167. In addition, parking spaces shall be designed to allow a minimum of five (5) feet between any structure and any parked vehicle.

(Ord. 20-90. Passed 6-19-90.)

(j) Landscaping. The landscaping of all parking and service areas shall meet the requirements of Chapter 1171. If side or rear yards are located adjacent to any areas where single-family or two-family residence are permitted uses, landscaping and screening shall also be required in those yards to meet the requirements of Chapter 1171.

(k) Trash and Garbage Control. All trash and garbage shall be stored in container systems which are located and enclosed so as to effectively screen them from view.

(Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 08-2006. Passed 6-5-06.)

CHAPTER 1147 C-2 GENERAL BUSINESS (COMMERCIAL) DISTRICT*

1147.01	PURPOSE.
1147.02	PERMITTED USES.
1147.03	CONDITIONAL USES.
1147.04	DEVELOPMENT STANDARDS.

1147.01 PURPOSE.

The purpose of the General Business District is to provide for the orderly development of a wide range of commercial and retail activity. The General Business District is intended to provide for a more intense type of commercial activity than in the C-1 District and should generally not be located adjacent to a single-family residential district.

(Ord. 37-2004. Passed 8-17-04; Ord. 08-2006. Passed 9-5-06.)

1147.02 PERMITTED USES.

- (a) Administrative, business and professional offices as permitted in Section 1143.02(a) and (b).
- (b) Retail stores primarily engaged in selling merchandise for personal or household consumption, and rendering services incidental to the sale of these goods:
 - (1) Food and food products, consisting of: grocery, meat, fish, fruit or vegetable markets or combinations thereof, dairy or bakery products, specialty food stores such as candy or confectionery, and miscellaneous food stores which conform to the purpose of the General Business District.
 - (2) General merchandise, consisting of: department stores, and limited price variety stores.
 - (3) Home furnishings, consisting of: furniture and equipment sales, radio, television, and music stores.
 - (4) Building material retail stores, not having outside storage of material, consisting of: plumbing and electrical supplies, paint, wall paper, upholstery, and interior decorating stores, and hardware stores.
 - (5) Apparel, consisting of: clothing, furnishings, and accessory items for men, women and children, custom tailor shops and combined apparel sales and personal service operations, and miscellaneous apparel and accessory stores.
 - (6) Similar retail stores, including: drug stores, florists, gift and novelty stores, books and newspapers, camera, photographic and optical goods, jewelry, and other retail stores which conform to the purpose and intent of the General Business District.

*Cross reference—District established - see P. & Z. Ch. 1125.01;

Off-street parking and loading - see P. & Z. Ch. 1167;

Signs - see P. & Z. Ch. 1169;

Service stations - see P. & Z. 1165.09

(c) Personal services, involving the care of the person and his/her personal effects, including consumer services generally involving the care and maintenance of tangible property or the provision of tangible services for personal consumption including:

- (1) Restaurants, but not including restaurants with drive- through facilities.
- (2) Banks, savings and loans, and credit agencies, but not including establishments with drive-through facilities.
- (3) Barber and beauty shops.
- (4) Self-service laundries.
- (5) Dry-cleaning establishments.
- (6) Funeral services.
- (7) Human medical and dental clinics.
- (8) Radio, television, or small appliance repair.
- (9) Public and private parking areas.
- (10) On-premises duplication and reproduction facilities.
- (11) Equipment rental or leasing, not including outdoor storage of material.

(d) Business services engaged in the providing of services to business establishments on a fee or contract basis, consulting services, protective services, office equipment rental, lease or purchase, commercial research and development.

(e) Off-premises signs, subject to the regulations of Section 1169.08(e).

(f) Religious exercise facilities and related uses.

(g) Similar uses, as determined by the Planning Commission, in accordance with the provisions of Section 1127.01(e).

(Ord. 37-2004. Passed 8-17-04; Ord. 08-2006. Passed 9-5-06.)

1147.03 CONDITIONAL USES.

(a) Drive-through facilities to be developed in association with a permitted use.

(b) New and used car sales and service, provided all operations except for display and sales are located completely within an enclosed building.

(c) Gasoline service stations, or retail convenience stores selling gasoline as an ancillary activity.

(d) Veterinary offices and animal hospitals.

(Ord. 37-2004. Passed 8-17-04; Ord. 08-2006. Passed 9-5-06.)

1147.04 DEVELOPMENT STANDARDS.

(a) Lot Area. No minimum lot area is required; however, lot area shall be adequate to provide the required parking and yard areas.

(b) Lot Width. No minimum lot width is required; however, all lots shall abut an improved public street designated on the New Albany Thoroughfare Plan as having not less than minor arterial status.

(c) Front Yard Setback. The minimum front yard setback shall be the average of existing commercial structures on the same side of the street and facing thereon within the same block. Where there are not adjacent commercial structures, the front yard setback shall be not less than fifty (50) feet measured from the street right-of-way.

(d) Side Yards. Fifteen (15) feet to any structure.

(e) Rear Yards. Twenty (20) feet to any structure.

(f) Parking and Loading. Parking and loading requirements shall be as specified in Chapter 1167. In addition, parking spaces shall be designed to allow a minimum of five (5) feet between any structure and any parked vehicle.

(g) Landscaping. The landscaping of all parking and service areas shall meet the requirements of Chapter 1171. If side or rear yards are adjacent to any district where single-family or two-family residences are a permitted use, landscaping and screening shall also be required in those yards to meet the requirements of Chapter 1171.

(h) Trash and Garbage Control. All trash and garbage shall be stored in container systems which are located and enclosed so as to effectively screen them from view.

(Ord. 37-2004. Passed 8-17-04; Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1149 C-3 HIGHWAY BUSINESS DISTRICT*

1149.01	PURPOSE.
1149.02	PERMITTED USES.
1149.03	CONDITIONAL USES.
1149.04	DEVELOPMENT STANDARDS.

1149.01 PURPOSE.

The Highway Business District is established to provide areas for the growth of business uses that generate a high degree of activity dependent on high traffic volumes. These uses, by their nature, increase traffic congestion on abutting public roadways and cause specific impacts on adjacent uses. The intent of the C-3 District is to encourage the most compatible relationship between permitted uses and overall traffic movement within the Village, while minimizing negative impacts on adjacent land uses.

(Ord. 08-2006. Passed 9-5-06.)

1149.02 PERMITTED USES.

- (a) Any use or structure specified as a permitted or conditional use in the C-2 District.
- (b) Commercial recreational facilities such as community and public swimming pools, skating rinks, bowling alleys, physical fitness centers.
- (c) Lumber and home improvement sales.
- (d) Motor vehicle sales and service establishments.
- (e) Hotels and motels.
- (f) Garden centers.
- (g) Carry out food and beverage establishments with drive- through facilities.
- (h) Religious exercise facilities and related uses.
- (i) Similar uses, as determined by the Planning Commission, in accordance with the provision by Section 1127.02.

(Ord. 08-2006. Passed 9-5-06.)

1149.03 CONDITIONAL USES.

- (a) Self-service car washes.
- (b) Temporary or seasonal outdoor sales lots having a maximum operating duration of four (4) months, provided all other permits are obtained.

(Ord. 08-2006. Passed 9-5-06.)

***Cross reference**—District established - see P. & Z. Ch. 1125.01;
 Off-street parking and loading - see P. & Z. Ch. 1167;
 Signs - see P. & Z. Ch. 1169;
 Service stations - see P. & Z. 1165.09

1149.04 DEVELOPMENT STANDARDS.

(a) Minimum Lot Area. No minimum lot area is required; however, lot area shall be adequate to provide for the required parking and yard areas.

(b) Minimum Lot Width. One hundred (100) feet of frontage on a publicly dedicated and improved street or highway which is designated as not less than arterial status on the New Albany Thoroughfare Plan.

(c) Minimum Front Yard Depth. Forty (40) feet.

(d) Minimum Side Yard.

(1) When abutting a nonresidential zoning district: twenty (20) feet for structures, ten (10) feet for paved areas.

(2) When abutting a residential zoning district: fifty (50) feet for structures, thirty-five (35) feet for paved areas.

(e) Minimum Rear Yard.

(1) When abutting a nonresidential zoning district: thirty (30) feet for structures, ten (10) feet for paved areas.

(2) When abutting a residential zoning district: fifty (50) feet for structures, thirty-five (35) feet for paved areas.

(f) Building Height. Thirty-five (35) feet.

(g) Parking and Loading. Parking and loading requirements shall be specified in Chapter 1167. In addition, parking spaces shall be designed to allow a minimum of five (5) feet between any structure and any parked vehicle.

(h) Landscaping. The landscaping of all parking and service areas shall meet the requirements of Chapter 1171. If side or rear yards are located adjacent to any district where single-family or two-family residences are a permitted use, landscaping and screening shall also be required in those yards to meet the requirements of Chapter 1171.

(i) Trash and Garbage Control. All trash and garbage shall be stored in container systems which are located and enclosed so as to effectively screen them from view.

(Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 08-2006. Passed 9-5-06.)

CHAPTER 1151 CF COMMUNITY FACILITIES DISTRICT

1151.01	PURPOSE.
1151.02	PERMITTED USES.
1151.03	LOT AND AREA REGULATIONS.
1151.04	YARD REGULATIONS.
1151.05	APPROVAL BY PLANNING COMMISSION.
1151.06	ACTION BY COUNCIL.
1151.07	COMPLIANCE WITH DEVELOPMENT PLAN.

1151.01 PURPOSE.

"Community facilities" as used throughout this Zoning Code, means facilities classified as principal and accessory uses listed in Section 1151.02. The Community Facilities District and regulations are established in order to achieve the following purposes:

- (a) To provide a proper zoning classification for governmental, civic, welfare and recreational facilities in proper locations and extent so as to promote the general public safety, convenience, comfort and welfare;
 - (b) To protect community facilities and institutions from the encroachment of certain other uses and to make such uses compatible with adjoining residential uses; and
 - (c) To regulate the location of such facilities so as to ensure their proper functioning in consideration of traffic, access, and general compatibility.
- (Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 08-2006. Passed 9-5-06.)

1151.02 PERMITTED USES.

Buildings and land within the CF District shall be utilized only for the uses set forth in the following schedule:

Principal Buildings and Uses	Accessory Buildings and Uses
Governmental: Municipal, County, State and Federal buildings for administrative functions and use by the general public.	Public parking areas, maintenance facilities, signs, residence for custodians or guards.
Civic: Art galleries, libraries, museums, places for public assembly, memorials, monuments, fraternal organizations and private clubs.	Maintenance facilities. Bulletin boards and signs as hereinafter regulated.
Educational: Primary and secondary public, private or parochial schools, nursery schools.	Parking areas, playgrounds, signs.
Health Care: General and special hospital and clinics, convalescent centers, institutions for care of children or senior citizens.	Parking areas, signs.
Senior Citizen Housing: Retirement centers, congregate care facilities.	Parking areas, signs.
Religious exercise facilities and related uses.	Religious exercise-related facilities.

Principal Buildings and Uses	Accessory Buildings and Uses
Radio and television antennas and antenna towers, including offices and broadcast studios.	Parking areas, structure directly related to operation of facility, signs.
Infrastructure and Public Service: Buildings housing equipment and offices related to the provision of essential services, but not including actual lines and smaller structures such as pump stations.	Parking areas, signs.
Recreational: Public and private parks, recreational fields and playgrounds, lakes, cemeteries, golf courses, nature preserves, and similar open space facilities, not including such facilities developed for private use by occupants or a resident of the premises.	Parking areas, clubhouses, administrative and maintenance structures, mausoleums, signs.
Park-and-ride facility: A facility providing daily parking as the principle use for mass transit passengers or carpooling	Shelters, signs.

(Ord. 08-2006. Passed 9-5-06; Ord. O-15-2013. Passed 6-4-13.)

1151.03 LOT AND AREA REGULATIONS.

The area or parcel of land for a permitted public facility shall not be less than that required to provide a site adequate for the principal and accessory buildings, off-street parking and other accessory buildings, off-street parking and other accessory uses, set backs, yards and open spaces to accommodate the facility and maintain the character of the neighborhood. The area or parcel of land for a permitted community facility shall be approved by the Planning Commission, pursuant to Section 1151.05.

(Ord. 08-2006. Passed 9-5-06; Ord. 08-2006. Passed 9-5-06.)

1151.04 YARD REGULATIONS.

(a) Front Yards. The front yard setback shall not be less than the largest required front yard setback for any adjacent zoning district.

(b) Side and Rear Yards. The yards for each public facility building shall be not less than the criteria set forth in the following schedule when adjacent to any district where residences are a permitted use.

(c) If the proposed community facility is located adjacent to a nonresidential zoning district, then the side and rear yards shall be not less than the largest yard required in that district.

Principal Buildings and Uses	Minimum Side - Yard and Rear (ft.)
Governmental: Administrative buildings	50

Principal Buildings and Uses	Minimum Side - Yard and Rear (ft.)
Civic: Non-assembly buildings	50
Assembly buildings	75
Educational: Public, private and parochial schools	75
Health care: Buildings	50
Senior citizen housing	50
Religious: Religious exercise facility	75

(d) Driveways, Parking Areas, Play Areas. Driveways and parking areas serving the public facility may be located within the side or rear yard set forth in the above schedule but driveways shall be located not less than ten (10) feet and parking areas less than twenty (20) feet from adjacent lot line, and play areas shall not be located less than fifty (50) from any adjacent district where residences are a permitted use.

(Ord. 08-2006. Passed 9-5-06.)

1151.05 APPROVAL BY PLANNING COMMISSION.

In addition to the material required for the application for a zoning amendment, as specified in Section 1111.03, a development plan shall be submitted for land proposed to be zoned into the CF District. Such development plan shall include a site plan for the proposed public facility, as well as any other information deemed necessary to determine compliance with this Zoning Code.

The development plan shall be reviewed by the Planning and Commission and considered in making its recommendation to Council. The Planning Commission shall display the development plan at any public hearing held pursuant to Section 1111.05. Criteria for reviewing a development plan for a community facility are as follows:

- (a) The proposed building or use shall be located properly in accordance with this chapter.
- (b) The proposed public facility shall be located on a major arterial or collector street as shown on the Thoroughfare Plan, so as to generate a minimum of traffic on local streets. Elementary schools, playgrounds or parks intended for neighborhood use may, however, be located on local streets.
- (c) The location, design and operation of the community facility shall not impose undue adverse impacts on surrounding residential neighborhoods.

(Ord. 08-2006. Passed 9-5-06.)

1151.06 ACTION BY COUNCIL.

In approving the redistricting of land into the CF District, Council may specify appropriate conditions and safeguards applying to the specific proposed facility.

(Ord. 08-2006. Passed 9-5-06.)

1151.07 COMPLIANCE WITH DEVELOPMENT PLAN.

The construction of all buildings and the development of the site with the CF District shall be in conformity and compliance with the approved development plan.

(Ord. 08-2006. Passed 9-5-06.)

PROOFS

CHAPTER 1153 LI LIMITED INDUSTRIAL AND GE GENERAL EMPLOYMENT DISTRICTS*

1153.01	PURPOSE.
1153.02	PERMITTED AND CONDITIONAL ACTIVITIES.
1153.03	ACTIVITY CATEGORIES FOR INDUSTRIAL AND GENERAL EMPLOYMENT DISTRICTS.
1153.04	LOT AND YARD REQUIREMENTS.
1153.05	EXTERIOR DEVELOPMENT.
1153.06	OFF-SITE IMPACTS.

1153.01 PURPOSE.

These regulations are established to provide for a range of industrial and other employment-generating activity, while protecting the health, safety and welfare of the users of the district and residents of the City. Two (2) separate industrial districts are established.

(a) LI - Limited Industrial District. This district provides areas where most industrial and industrial related activities may locate. Retail activities are limited and residential uses are prohibited. The district is intended for areas which are primarily undeveloped, having larger lots and irregular block patterns.

(b) GE - General Employment District. This district provides areas for a wider range of employment opportunities. The district allows for a more restricted range of industrial activities, but a wider range of office, business and retail uses. As with the LI District, this district is intended for areas which are primarily undeveloped.

(Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07; Ord. 20-2008. Passed 7-15-08; Ord. O-15-2011. Passed 8-16-11; Ord. O-07-2015. Passed 3-3-15.)

1153.02 PERMITTED AND CONDITIONAL ACTIVITIES.

Permitted and conditional activities in each district are as shown on the following table. Descriptions and characteristics of activity categories listed are contained in Section 1153.03.

Activity	District	
	LI	GE
Industrial Categories		
• Industrial Product Sales	P	C
• Industrial Service	P	C
• Manufacturing and Production	P	C
• Warehouse and Distribution	P	P
• Research and Production	P	P
• General Office Activities & Data Centers	C	P
• Personal Service	C	P
• Retail Product Sales and Service	C	P

*Cross reference—Districts established - see P. & Z. Ch. 1125;
Noxious or offensive odors - see GEN. OFF. 521.09

Activity	District	
	LI	GE
• Vehicle Service	P	P
Other Activities		
• Radio/Television Broadcast Facility	P	C
• Off-Premises Signs	P	P
• Sexually Oriented Businesses	N	P
• Religious exercise facilities and related uses	P	P
• Car fleet and truck fleet parking	C	C
• Park-and-Ride Facility	P	P
P = Permitted Activity		
C = Conditional Activity		
N = Not Permitted or Conditional		

(Ord. 36-2003. Passed 1-13-04; Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07; Ord. 20-2008. Passed 7-15-08; Ord. O-15-2011. Passed 8-16-11; Ord. O-15-2013. Passed 6-4-13; Ord. O-07-2015. Passed 3-3-15.)

1153.03 ACTIVITY CATEGORIES FOR INDUSTRIAL AND GENERAL EMPLOYMENT DISTRICTS.

(a) Industrial Categories.

(1) Industrial product sales.

- A. Characteristics. Firms are involved in the sale, rent or lease of products generally intended for industrial or commercial users. Sales may be wholesale or retail. Emphasis is on on-site sales or order taking and may include display areas. Products may be delivered to the customer.
- B. Accessory activities. Accessory activities may include administrative offices, product repair, and warehouses.
- C. Examples. Industrial product sales activities may include: sale of machinery, and equipment, special trade tools, electrical supplies, janitorial supplies, restaurant equipment, office furniture, and store fixtures. Industrial product sales also include industrial equipment and vehicle rentals.
- D. Exceptions. Firms that primarily engage in retail sales to the general public are classified as retail product, sales and service.

(2) Industrial service.

- A. Characteristics. Firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment or products. Few customers especially the general public, come to the site.
- B. Accessory activities. Accessory activities may include administrative offices.

- C. Examples. Industrial service activities may include welding shops; machine shops; tool and appliance repair; electric motor repair, truck and large equipment repair, storage and salvage; headquarters for building, heating, plumbing, or electrical contractors; printing, publishing and blueprinting; janitorial and building maintenance services; laundry, dry- cleaning, and carpet cleaning plants; and photofinishing laboratories.

(3) Manufacturing and production.

- A. Characteristics. Firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on-site. Relatively few customers come to the manufacturing site.
- B. Accessory activities. Accessory activities may include administrative offices, cafeterias, employee recreational facilities, warehouse, storage yards, outlets, and caretaker's quarters. Retail outlet as an accessory to manufacturing plants shall be treated as retail product sales and service.
- C. Exceptions. Manufacturing of goods to be sold primarily on-site and to the general public are classified in the retail product sales and service category. Manufacturing of products related to research activities under Section 1153.03(a)(5).

(4) Warehouse and distribution.

- A. Characteristics. Firms are involved in the movement, storage and/or sales of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer. The category includes wholesale sales which are not open to the general public and where on-site sales are low.
- B. Accessory activities. Accessory activities may include administrative offices, truck fleet parking and maintenance areas, repackaging of goods, and showrooms or display areas, but generally not for direct sale.
- C. Examples. Warehouse and distribution firms may include warehouse used by retail stores such as furniture and appliance stores; food and hardware distributors; household moving and general freight storage; distribution of industrial items; building materials, plumbing and electrical distributors; truck terminals; parcel services; major post offices; mail order houses; and public mini-warehouses.

(5) Research and production.

- A. Characteristics. Firms engaged in research, synthesis, analysis, development and testing laboratories, including the fabrication, assembly, mixing and preparation of equipment, materials (raw and processed) and components incidental or convenient or necessary to the conduct of such activities. The category also includes production facilities that require the continual or recurrent application of research knowledge and

activity as an integral part of the manufacturing process. Such production facilities may produce commercial quantities of products intended for wholesale sales and distribution. An allowed use in this district shall operate entirely within an enclosed structure, emitting no vibrations, dust, smoke, noxious gas, odor or toxic fumes. Noise shall not be emitted past the property limits, if such sound levels exceed typical traffic background noise.

- B. Accessory activities. Accessory activities may include administrative and executive offices for personnel engaged in general administrative, supervisory, purchasing, accounting and other functions related to office operations.
- C. Examples. Firms engaged in pharmaceutical and medical, research, production, development, and testing laboratories; technology and biotechnology firms.
- D. HVAC equipment, emergency power systems and similar operating equipment shall be screened from public rights-of-way and residential districts in accordance with Chapter 1171 of these Codified Ordinances.

(b) Sales and Service Categories.

(1) General office activities and data centers.

- A. Characteristics. Firms where activities are conducted in an office setting and generally focus on business or personal services. If the office activity is part of a larger firm, it does not need to be on the same site as the primary activity. Most people coming to the site are employees.
- B. Accessory activities. Accessory uses may include: cafeterias, health facilities, or other amenities primarily for the use of employees in the firm or building.
- C. Examples. Examples include professional services such as lawyers, accountants, engineers, or architects; financial businesses such as brokerage houses, lenders, or realtors; data-processing; sales offices; industrial or commercial company headquarters when not adjacent with other portions of the firm; and government offices.

(2) Personal service.

- A. Characteristics. These establishments provide on-site personal services or entertainment to the general public or business person.
- B. Accessory activities. Accessory uses may include administrative offices, product sales and laboratories.
- C. Examples. Examples include barbers, hair salons and personal care services; banks, savings and loans, and credit unions; continuous entertainment activities such as arcades, bowling alleys, ice rinks libraries, and museums; cafes, restaurants, bars, and taverns, day care facilities; laundromats; business and trade schools; dance and martial arts schools; health clubs, gyms, racquet centers, membership clubs, and lodges;

medical related offices such as doctors, dentists, optometrist and veterinarians; public service agencies such as employment offices, social service agencies, and permit issuing offices.

(3) Retail product sales and service.

- A. Characteristics. Firms are involved in the sale, lease or rent of used products or goods to the general public and/or provide on-site product repair or services for consumer and business goods. Goods are displayed and sold on-site, and use or consumption is primarily off-site. Goods are generally taken off-site by the customer at the time of sale or may be delivered by the firm. For items being serviced, customers generally deliver and pick up the items and spend little time at the site.
- B. Accessory activities. Accessory uses may include: offices, storage and display of goods.
- C. Examples. Examples include stores selling apparel, housewares, furniture, hardware, auto parts, flowers, personal care items, sporting goods, office products and machines, and computers; food, produce or meat markets; delicatessens and caterers; tool rental and household moving centers; sales of cars, motorcycles, boats, and recreational vehicles; repair of TVs, appliances, shoes, precision instruments, and business machines; laundry or dry cleaning drop-off; on-site launderer; photo drop-off; quick printing or reproducing; tailors; locksmiths; upholsterers; and furniture refinishing.
- D. Exceptions.
 - 1. Lumber yards and similar building material sales which sell primarily to contractors and do not have a retail orientation are classified in the industrial product sales category.
 - 2. Repair and service of consumer vehicles is classified in the vehicle service category. Repair of motor vehicles in conjunction with vehicle sale is classified in the vehicle service category.
 - 3. Repair and service of industrial vehicles and equipment is classified in the industrial service category.

(4) Vehicle services.

- A. Characteristics. Firms servicing automobiles, light trucks and other consumer vehicles such as motorcycles, boats and recreational vehicles.
- B. Accessory activities. Accessory uses may include offices and sales of parts.
- C. Examples. Examples may include gas stations, vehicle repair, auto body shop, alignment shop, auto upholstery shop, tire sales and mounting, towing and vehicle storage; and surface or garage fee parking.

(c) Other Activity Categories.

- (1) Radio or television broadcast facility. Characteristics. Any and all devices, equipment, machinery, structures or supporting elements necessary to produce nonionizing, electromagnetic radiation within the range of frequencies from one hundred (100) KHz to three hundred (300) GHz and operating as a discrete unit to produce a signal or message.

- (2) Off-premises signs. Subject to regulations of Section 1169.08.
- (3) Sexually oriented businesses as defined, regulated and licensed by Chapter 743 entitled "Sexually Oriented Business Establishments" provided the proposed location of such use is more than seven hundred fifty (750) feet (as measured from property line to property line) from all of the following uses:
- A. Any other place licensed to operate a sexually oriented business.
 - B. Any elementary school, middle school or high school.
 - C. Any child day-care center or nursery school.
 - D. Any park, playground, playfield or community center publicly owned or operated.
 - E. Any residential use or residential zoning district.
 - F. Any place licensed for the sale of beer or intoxicating liquor for consumption on the premises.
 - G. Any place of worship.
 - H. Any public library.
- (4) Religious exercise facilities and related uses.
- (5) Fleet parking. Shall only be used to park car fleets and truck fleets (fleet parking) providing services directly to and for the benefit of a primary business located on a contiguous real estate parcel as set forth herein. In addition to meeting all of the requirements of this chapter, fleet parking shall also require conditional use approval pursuant to Chapter 1115 of this Zoning Code.
- A. Characteristics. Fleet parking is permitted only as a conditional use and only when used in conjunction with a contiguous parcel containing the primary business served by the fleet parking (primary business parcel). For the purposes of this chapter, contiguous shall mean that the proposed fleet parking parcel shares a contiguous boundary with the primary business parcel for a continuous length of at least fifteen percent (15%) of the perimeter of the property upon which fleet parking is proposed. The fleet parking parcel cannot be used as a junkyard, salvage yard, impound lot, or similar facility, or for car or truck vehicle repair or service, even if the permitted business use would allow such activities on the primary business parcel.
 - B. Location. Fleet parking shall be located on a parcel which is contiguous with the parcel that contains a permitted primary business associated with the parking area;
 - C. Justification. In addition to the conditional use provisions set forth in Chapter 1115 of this Zoning Code, an applicant for fleet parking must also demonstrate to the Planning Commission that sufficient space for fleet parking does not exist on the primary business parcel, and that it is not practicable to combine the proposed fleet parking parcel with the primary business parcel;

- D. Setbacks. Fleet parking shall be set back from the public right-of-way at least forty (40) feet; and
- E. Landscaping. Landscaping shall be provided as follows, subject to the approval of the City Landscape Architect or designee:
1. Car fleet parking:
 - a) A minimum three (3) foot tall mound but no greater than five (5) feet tall, shall be provided between the public right-of-way and parking area. The mound shall have a slope no steeper than 4:1 on that part of the slope that abuts the parking area. The mound shall have a slope no steeper than 9:1 that part of the slope that abuts the public right-of-way. If necessary due to site constraints and upon a showing of extenuating circumstances, the Planning Commission may approve a steeper slope as part of the conditional use approval for only that part of the slope that abuts the public right-of-way. In no instance, however, shall the Planning Commission approve a slope steeper than 6:1 for that part of the slope.
 - b) The mound shall be planted with deciduous shade trees at the rate of ten (10) trees per one hundred (100) linear feet. Some evergreen trees may be used as appropriate in the context of the location and to the design intent of the site, subject to City Landscape Architect approval. Trees shall be planted with random spacing (naturalized) within tree groupings approximately eight (8) to fifteen (15) feet on center.
 - c) Trees planted on the mound facing public right-of-way shall be located as follows: Trees shall be planted in naturalized massings. Massings shall include no less than three (3) trees and no more than twenty-five (25) trees. No more than ten percent (10%) of massings shall include three (3) trees and no less than fifty percent (50%) of massings shall include less than eight (8) trees. Massings shall be separated by varying distances, from twenty (20) feet to fifty (50) feet. Massings shall be planted on upper $\frac{1}{2}$ of mound, but staggered along contours to avoid the impression that trees are planted in a line.
 - d) Tree species shall be native to central Ohio and varied to promote diversity as follows: no given species shall account for more than twenty percent (20%) of the overall quantity of trees. At least five (5) different species shall be used. Tree plant lists must be submitted for review.
 2. Truck fleet parking:
 - a) A minimum nine (9) foot mound but no greater than fifteen (15) foot tall shall be provided between the public right-of-way and parking area. The mound shall have a slope no steeper than 4:1 on that part of the slope that abuts the parking area. The mound shall have a slope no steeper than 9:1 that

part of the slope that abuts the public right-of-way. If necessary due to site constraints and upon a showing of extenuating circumstances, the Planning Commission may approve a steeper slope as part of the conditional use approval for only that part of the slope that abuts the public right-of-way. In no instance, however, shall the Planning Commission approve a slope steeper than 6:1 for that part of the slope.

- b) The mound shall be planted with deciduous shade trees at the rate of twelve (12) trees per one hundred (100) linear feet. Some evergreen trees may be used as appropriate in the context of the location and to the design intent of the site, subject to City Landscape Architect approval. Trees shall be planted with random spacing within tree groupings approximately eight (8) to fifteen (15) feet on center.
- c) Trees planted on the mound facing public right-of-way shall be located as follows: Trees shall be planted in naturalized massings. Massings shall include no less than three (3) trees and no more than twenty-five (25) trees. No more than ten percent (10%) of massings shall include three (3) trees and no less than fifty percent (50%) of massings shall include less than eight (8) trees. Massings shall be separated by varying distances, from twenty (20) feet to fifty (50) feet. Massings shall be planted on upper ½ of mound, but staggered along contours to avoid the impression that trees are planted in a line.
- d) Tree species shall be native to central Ohio and varied to promote diversity as follows: no given species shall account for more than twenty percent (20%) of the overall quantity of trees. At least five (5) different species shall be used. Tree plant lists must be submitted for review.

- (6) Park-and-ride facility. A facility providing daily parking as the principle use which may include accessory shelters for mass transit passengers or carpooling that typically includes parking lots and associated structures located along or near public transit routes.

(Ord. 36-2003. Passed 1-13-04; Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07; Ord. 20-2008. Passed 7-15-08; Ord. O-15-2011. Passed 8-16-11; Ord. O-15-2013. Passed 6-4-13; Ord. O-07-2015. Passed 3-3-15.)

1153.04 LOT AND YARD REQUIREMENTS.

(a) Minimum Lot Area. No minimum lot area is required in the LI or GE Districts; however, lot area shall be sufficient to provide for all yards and distances as required by this Zoning Code.

(b) Lot Width. All lots shall abut a public or private street and have adequate lot width to provide for yards and distances as required by this Zoning Code.

(c) Side Yards. For any structure or service area within the LI or GE Districts, the required side yard shall be not less than twenty-five (25) feet from any interior lot line.

(d) Rear Yards. For any structure or service area within the LI or GE Districts, the required rear yard shall not be less than twenty-five (25) feet from any interior lot line.

(e) Maximum Lot Coverage. For structures and paved areas within the LI or GE Districts the maximum lot coverage shall be seventy-five percent (75%). The remainder of the site shall be landscaped in natural vegetation.

(f) Distance From Residential Districts. In no case shall any structure, service area, or parking area in any LI District be located less than fifty (50) feet from any district where residences are a permitted use. In no case shall any structure, service area or parking area in any GE District be located less than fifty (50) feet from any district where residences are a permitted use.

(Ord. 08-2006. Passed 9-5-06; Ord. 07-2006. Passed 2-20-07; Ord. 20-2008. Passed 7-15-08; Ord. O-15-2011. Passed 8-16-11; Ord. O-07-2015. Passed 3-3-15.)

1153.05 EXTERIOR DEVELOPMENT.

(a) Exterior Operations. Exterior operations include: outdoor processing, assembly or fabrication of goods; movement of bulk goods not in containers or pipelines; maintenance, repair and salvage of equipment. Exterior operations shall not be permitted in the GE District.

(b) Exterior Storage. Exterior storage includes the outdoor storage of: raw or finished goods (packaged or bulk) including gases, chemicals, gravel, building materials; packing materials; salvage goods; machinery; equipment; damaged vehicles, etc. Exterior storage shall be permitted in the LI District but not permitted in the GE District, unless an acceptable plan for screening such storage is submitted to and approved by the Planning Commission.

(c) Exterior Display. Exterior display includes the display of products, vehicles, equipment and machinery for sale or lease. Display items are intended to be viewed by customers and are not just being stored or parked. Exterior display does not include damaged vehicles, vehicles or equipment being serviced, bulk goods and materials, or other such products. Exterior display shall not be permitted in the LI District but shall be permitted in the GE District.

(Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07; Ord. 20-2008. Passed 7-15-08; Ord. O-15-2011. Passed 8-16-11; Ord. O-07-2015. Passed 3-3-15.)

1153.06 OFF-SITE IMPACTS.

No land or structure in the LI or GE Districts shall be used or occupied in such a manner so as to create any dangerous, injurious, noxious or otherwise objectionable impact on any land which is located in any other zoning district. Such impacts may result from noise, vibration, odor, smoke or dust, or glare. Statements in writing that such uses comply or will comply with such uses may be required by the Planning Commission from the owner. In cases of doubt, the Municipality shall select and arrange for an independent survey by a professional engineer qualified in the particular field and the costs for such service shall be paid by the owner.

(a) Noise. The sound pressure level of any operation on a lot within the LI or GE Districts shall not exceed the average intensity of street traffic noise in the nearest residential districts, and no sound shall be objectionable due to intermittence, best frequency or shrillness.

(b) Vibration. No vibrations which are perceptible without the aid of instruments shall be permitted, as measured on the lot within the non-industrial district.

(c) Odor. No emission of odorous matter in any quantities so as to produce a public nuisance shall be permitted, as measured on the lot within the non-industrial district.

(d) Dust and Smoke. The emission of smoke, soot, fly ash, fumes, dust or other types of pollutants borne by the wind shall be controlled so that the rate of emission and quantity deposited do not create a public nuisance, as measured on the lot within the non-industrial district.

(e) Glare. Exterior lighting shall be used in a manner that produces no glare on public highways or non-industrial zoned land.

(Ord. 08-2006. Passed 9-5-06; Ord. 07-2007. Passed 2-20-07; Ord. 20-2008. Passed 7-15-08; Ord. O-15-2011. Passed 8-16-11; Ord. O-07-2015. Passed 3-3-15.)

CHAPTER 1155 FP FLOOD PLAIN OVERLAY DISTRICT*

1155.01	PURPOSE.
1155.02	FINDINGS OF FACT.
1155.03	DEFINITIONS.
1155.04	SCOPE AND APPLICATION.
1155.05	ADMINISTRATION.
1155.06	VARIANCES AND APPEALS.
1155.07	DEVELOPMENT STANDARDS.
1155.08	ENCROACHMENTS.

1155.01 PURPOSE.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize losses resulting from periodic inundation of flood waters in the Municipality of New Albany by:

- (a) Restricting or prohibiting uses which are dangerous to health, safety or property in times of flooding, or cause excessive increases in flood heights or velocities;
- (b) Requiring that uses vulnerable to floods be protected from flood damage at time of initial construction;
- (c) Controlling the filling, grading, dredging and other development which may increase flood damage; and
- (d) Controlling the alteration of nature/flood plains, stream channels, and natural protective barriers which are involved in the accumulation of flood waters.

1155.02 FINDINGS OF FACT.

The flood hazard areas of the Municipality of New Albany are subject to periodic inundation which may result in loss of life and property, hazards to health and safety, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by:

- (a) The cumulative effect of obstructions in flood plains, causing increased flood heights and velocities.
- (b) The occupancy of flood hazard areas by uses vulnerable to floods and which are not adequately elevated or protected from flood damage.

***Cross references**—County flood control aid to governmental units - see ORC 307.77;
 Basis of zoning districts - see ORC 713.10;
 Construction permits and prohibitions for dams, dikes or levees - see ORC 1521.06;
 Flood hazards; marking flood areas - see ORC 1521.14;
 Review of flood plain ordinances - see ORC 1521.18

1155.03 DEFINITIONS.

(a) "Accessory structure" means a structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

(b) "Area of special flood hazard" means the land in the floodplain subject to a one percent or greater chance of flooding in any given year.

(c) "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the one hundred (100) year flood.

(d) "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

(e) "Development" means 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 located within the area of special flood hazard.

(f) "Federal Emergency Management Agency (FEMA)" means the agency with the overall responsibility for administering the National Flood Insurance Program.

(g) "Flood" or "flooding" means 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 of runoff of surface waters from any source.

(h) "Flood Insurance Rate Map (FIRM)" means an official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the Municipality.

(i) "Floodway" means the channel of a river or other watercourse and the adjacent lands that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(j) "Floodway fringe" means all areas within the designated area of special flood hazard which are outside the floodway.

(k) "Historic structure" means any structure that is:

- (1) Listed individually on the National Register of Historic Places or determined as meeting the requirements of such listing, or
- (2) Listed as a contributing structure in a historic district on the National Register of Historic Places, or
- (3) Listed on the Ohio Historic Inventory.

(l) "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished, flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided that such enclosure is built in accordance with the applicable design requirements specified in this Ordinance for enclosures below the lowest floor.

(m) "Manufactured home" means 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. "Manufactured home" does not include a recreational vehicle.

(n) "New construction" means structures for which the "start of construction" commenced on or after the initial effective date of New Albany's Flood Insurance Rate Map, and includes any subsequent improvements to such structures.

(o) "Recreational vehicle" means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (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 a temporary living quarters for recreational, camping, travel or seasonal use.

(p) "Start of construction" means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (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 state of excavation. 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.

(q) "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

(r) "Substantial improvement" means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (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 project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;

- (2) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure"; or
- (3) Any improvement to a structure which is considered new construction.

(s) "Variance" means a grant of relief from the standards of this Ordinance consistent with the variance conditions herein.

(Ord. 20-90. Passed 6-19-90; Ord. 29-95. Passed 8-15-95.)

1155.04 SCOPE AND APPLICATION.

(a) Applicable Lands. This chapter shall apply to all lands within the municipal boundaries shown as within the one hundred (100) year flood boundary, or floodway fringe, as identified by the Federal Emergency Management Agency on the Flood Insurance Study, Franklin County, Ohio, and Incorporated Areas.

This study, with accompanying Flood Insurance Rate Maps dated August 2, 1995 and any revisions thereto are hereby adopted by reference and declared to be a part of this Ordinance.

(b) Overlay District Designation. The areas of floodway or floodway fringe identified on the Official Zoning District Map shall be shown as an overlay district. This overlay district shall be designated as the Flood Plain Overlay (FP) District.

Those areas within the Flood Plain Overlay District designated as Floodway on the FEMA Flood Insurance Rate Map as referenced above, shall be subject to all the requirements of the Flood Plain Overlay District, as well as those specified sections that address the floodway.

The Flood Plain Overlay (FP) District shall be superimposed over the Official Zoning District Map. The underlying zoning district, as shown on the Official Zoning District Map, shall hereafter be called the base district. When uses and requirements of the Flood Plain Overlay District as contained in this chapter are more restrictive than the uses and minimum requirements of the base district, the provisions of this chapter shall supersede the uses and requirements of the base district.

(c) Interpretation of Boundaries. When disagreement exists as to the boundaries of the Flood Plain Overlay District, those boundaries shall be interpreted to be the boundaries of the floodway and floodway fringe as shown on the Flood Insurance Rate Maps referenced in subsection (a) hereof.

Actual boundaries may also be determined by use of the flood elevation profile information provided in the referenced Flood Insurance Study and topographic survey of the site in question.

(d) Warning and Disclaimer of Responsibility. The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside the Flood Plain Overlay

District boundaries or land uses permitted within such district will be free from flooding or flood damage. This Ordinance shall not create liability on the part of New Albany or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(e) Compliance. Unless specifically exempted as stated in Section 1155.05(c), no structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable ordinances of the Municipality.

(f) Abrogation. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. 20-90. Passed 6-19-90; Ord. 29-95. Passed 8-15-95.)

1155.05 ADMINISTRATION.

(a) Flood Plain Development Permit. A flood plain development permit shall be obtained before the start of construction or development of land in the Flood Plain Overlay District. This permit shall be in addition to the zoning permit required in Section 1109.02. Application for a flood plain development permit shall be made concurrently with the application for a zoning permit, on forms as furnished by the Zoning Inspector.

(b) Contents of Application for Flood Plain Development Permit. The application for a flood plain development permit shall contain the following information:

- (1) Plans in duplicate drawn to scale showing the location, dimensions, and elevations of the area in question, existing and proposed structures, fill, storage of materials, and drainage facilities.
- (2) Elevation in relation to mean sea level of the lowest floor, including basement, of all proposed structures.
- (3) Elevation in relation to mean sea level to which any proposed structure will be floodproofed.
- (4) Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the flood proofing criteria in Section 1155.07(b).
- (5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- (6) Base flood elevation data as provided by the Federal Emergency Management Agency. If such base flood elevation data is not available from that source, the applicant shall provide base flood elevation data available from another federal or state agency. Where such base flood elevation data is not available from any other source, the applicant shall provide such

data in accordance with a hydrologic and hydraulic engineering analysis, performed and certified by a professional engineer, who shall demonstrate that the technical methods used correctly reflect currently accepted technical concepts.

(7) Other information as requested by the Zoning Inspector to determine conformance with this Ordinance.

(8) Application fee as established by separate ordinances.

(c) Exemption From Filing a Flood Plain Development Permit. An application for a flood plain development permit shall not be required for maintenance work such as roofing, painting, basement sealing, or for small development activities (except for grading and filling) valued at less than one thousand dollars (\$1,000.00).

(d) Duties and Responsibilities of Zoning Inspector. The duties of the Zoning Inspector, in processing the flood plain development permit, shall include the following. In the performance of these duties, the Zoning Inspector may receive input from the Municipal Engineer, as needed:

(1) Review all flood plain development permits to assure that requirements of this chapter have been met.

(2) Review all flood plain development permits to assure that all necessary permits have been received from those federal, state, and local agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required, including permits issued by the Department of the Army under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

(3) Review all flood plain development permits to determine if the proposed development involves alterations of watercourses. If it is determined that an alteration or relocation of a watercourse is contemplated, the following shall be provided by the applicant and maintained on file by the Municipality.

A. The applicant shall provide a signed affidavit that adjacent communities and the Ohio Department of Natural Resources Division of Water has been notified prior to any alteration or relocation of a watercourse, and that evidence of such notification has been submitted to the Federal Emergency Management Agency. A watercourse is considered to be altered if any change occurs within its banks.

B. The applicant shall provide documentation certified by a registered professional engineer, which shall be reviewed and approved by the Municipal Engineer, that the flood-carrying capacity of the altered or relocated watercourse will not be diminished.

C. The applicant shall provide the necessary maintenance for the altered or relocated portion of the watercourse to insure that the flood-carrying capacity will not be diminished; or deed the watercourse along with sufficient maintenance easements to the Municipality so the Municipality can maintain the watercourse to the degree necessary to insure that the flood-carrying capacity will not be diminished.

- (4) Review all flood plain development permits to determine if the proposed development is located within the floodway component of the Flood Plain Overlay District. If the proposed development is located within the designated floodway, as shown on the Flood Insurance Rate Map, ensure compliance with the encroachment provisions outlined in Section 1155.08(a).
 - (5) Notify adjacent communities and the Ohio Department of Natural Resources, Division of Water, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - (6) Obtain and maintain for public inspection all information concerning actual elevation of new or substantially improved structures.
- (Ord. 20-90. Passed 6-19-90; Ord. 29-95. Passed 8-15-95.)

1155.06 VARIANCES AND APPEALS.

(a) Criteria and Conditions. The Planning Commission shall hear and decide appeals and requests for variances from the requirements of this chapter, in conformance with the criteria standards, and procedures stated in Chapter 1113. In deciding appeals and variances from the requirements of this chapter, the Planning Commission shall consider the following items in addition to the criteria stated in Chapter 1113.

- (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 use which are not subject to flooding or erosion damage.
- (5) The availability of the proposed use with existing and anticipated development.
- (6) The compatibility of the proposed use with existing and anticipated development.
- (7) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood water and the effects of wave action, if applicable, expected at the site.
- (10) 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.

(b) Action Variances. No variances shall be issued within the designated floodway if any increase in flood levels during the base flood discharge would result and unless the applicant demonstrates that the requested variance will not result in increase flood heights, additional threats to public safety, extraordinary public expense, create nuisances, or cause fraud on or victimization of the public. In taking any action on the variance request, the Board of Zoning appeals shall notify the applicant in writing that the issuance of the variance will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage, and that construction below the base flood level increases risks to life and property. Such notification shall be maintained, with a record of all variance actions and justification for variances approved, shall be maintained in the municipal offices.

(c) Historic Structures. Variances may be issued for the 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 the variance is the minimum necessary to preserve the historic character and design of the structure.
(Ord. 20-90. Passed 6-19-90; Ord. 29-95. Passed 8-15-95.)

1155.07 DEVELOPMENT STANDARDS.

In addition to the requirements for development in base district, land located in Flood Plain Overlay District shall be subject to the following requirements and standards:

(a) Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a level not less than two (2) feet above the base flood elevation. If fill is used to elevate the structure, it shall, whenever practical, extend laterally fifteen (15) feet beyond the limits of any structure.

In addition, all new construction or substantial improvement shall be anchored to prevent flotation, collapse, or lateral movement of the structure, and shall be constructed using materials, utility equipment, methods and practices that minimize flood damage.

All residential buildings or structures shall have one traffic lane or drive to the main door of the structure elevated to a level of at least one foot above the base elevation.

(b) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to a level not less than two (2) feet above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- (1) Be floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to an elevation of not less than one foot above the base flood elevation;
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and

- (3) Be certified by a registered professional engineer or architect that the standards of this section are satisfied.

(c) Additional Structural Requirements. In addition, all new construction and/or substantial improvements shall:

- (1) Be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Be constructed with materials resistant to flood damage;
- (3) Be constructed by methods and practices that minimize flood damage; and,
- (4) Be constructed with electrical, heating, ventilation, plumbing, and other service facilities that are designed and/or located so as to prevent water from entering within the components of the flooding conditions.

All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize or eliminate flood damage. For water and sewer systems, such requirements shall include, but not be limited to, provisions to minimize or eliminate infiltration of flood waters into the system, and discharges from the system into flood waters.

The location of manufactured homes or structures or recreational vehicles (except in designated camping areas for short term occupancy) within flood hazard areas shall be prohibited.

(d) Subdivisions and Large Developments. In all areas of special flood hazard where base flood elevation data have not been provided in accordance with Section 1155.04(a) or 1155.05(b), the following standards apply to all subdivision or development proposals regardless of size.

- (1) The applicant shall provide base flood elevation data prepared by using current engineering standards for hydrologic and hydraulic analysis.
- (2) If subsection (d)(1) hereof is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions listed in this chapter.
- (3) Additionally, the following special design considerations to reduce flood damage potential shall be followed:
 - A. All subdivision proposals shall be consistent with the need to minimize flood damage.
 - 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.

(e) Accessory Structures. A relief to the elevation of dry floodproofing standards may be granted for accessory structures (e.g., sheds, detached garages) containing 576 square feet or less in gross floor area. Such structures must meet the encroachment provisions in Section 1155.08 and the following additional standards:

- (1) They shall not be used for human habitation.
 - (2) They shall be designed to have low flood damage potential.
 - (3) They shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters.
 - (4) They shall be firmly anchored to prevent flotation.
 - (5) Service facilities such as electrical and heating equipment shall be elevated or floodproofed.
- (Ord. 20-90. Passed 6-19-90; Ord. 29-95. Passed 8-15-95.)

1155.08 ENCROACHMENTS.

(a) Areas With Floodways. The Flood Insurance Rate Map (FIRM) for Franklin County and Incorporated Areas establishes areas within the one hundred (100) year floodplain as floodways. The floodway generally consists of the stream channel and immediate overbank area which carry the deep and fast moving flood waters. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential.

Encroachments, including fill, new construction, substantial improvements, and other development shall be prohibited, unless hydrologic and hydraulic analysis, performed at the owner's expense in accordance with standard engineering practices demonstrates to the satisfaction of the Planning Commission that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) Areas Without Floodways. In all areas within the Flood Plain Overlay District, where no floodway has been delineated, the following provisions shall apply:

New construction, substantial improvements, or other development (including grading and filling) shall be permitted only if it is demonstrated, to the satisfaction of the Planning Commission, that the cumulative effect of the proposed development, when combined with any existing or anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.

(Ord. 20-90. Passed 6-19-90; Ord. 29-95. Passed 8-15-95.)

CHAPTER 1157 ARD ARCHITECTURAL REVIEW OVERLAY DISTRICT*

1157.01	ADOPTION.
1157.02	PURPOSE.
1157.03	DEFINITIONS.
1157.04	DISTRICT BOUNDARIES.
1157.05	ARCHITECTURAL REVIEW BOARD.
1157.06	CERTIFICATE OF APPROPRIATENESS REQUIRED.
1157.07	MAJOR AND MINOR ENVIRONMENTAL CHANGES.
1157.08	PROCEDURE FOR CERTIFICATE OF APPROPRIATENESS.
1157.09	CRITERIA FOR EVALUATION OF APPLICATION FOR CERTIFICATION OF DESIGN APPROPRIATENESS.
1157.10	DEMOLITION OF STRUCTURES.
1157.11	MAINTENANCE.
1157.12	WAIVERS.
1157.13	APPEALS.
1157.99	PENALTY.

1157.01 ADOPTION.

There is hereby adopted and incorporated by reference, the New Albany Design Guidelines and Requirements, as if set out at length herein.

(Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.02 PURPOSE.

(a) The City of New Albany contains numerous architectural and environmental assets that establish an environmental character. This environmental character is directly linked to the economic, social, historical and cultural health and well being of the community. The purpose of the Architectural Review District is to protect and preserve these assets, by regulating the architectural characteristics of structures and their surroundings, as well as the preservation and protection of buildings of architectural or historical significance throughout the City. The Architectural Review District has also been created to recognize, preserve and enhance the architectural and historical character of the community and to prevent intrusions and alterations within the established zoning districts which would be incompatible with their established character.

(b) The Architectural Review District is an Overlay District. This means that the requirements of this chapter are requirements which must be met in addition to the established requirements and standards of the base district over which the Architectural Review District is placed.

(Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.03 DEFINITIONS.

As used in this chapter, the following words shall be defined as:

(a) "Applicant" means any person, persons, association, organization, partnership, unit of government, public body or corporation who applies for a certificate of appropriateness in order to undertake an environmental change within the District.

*Cross reference—Historic Village District - see P. & Z. Ch. 1135

(b) "Board" means the Architectural Review Board of the City of New Albany.

(c) "Certificate of Appropriateness" means a certificate authorizing any environmental change within the Architectural Review District.

(d) "Design Guidelines and Requirements" means the building, construction and design standards that apply to any environmental change within the City of New Albany. The Design Guidelines and Requirements shall have the force and effect of law.

(e) "District" means the Architectural Review Overlay District.

(f) "Environmental change" means new construction or alterations which change, modify, reconstruct, remove or demolish any exterior features of an existing structure.

(g) (Reserved)

(h) "Preserve" or "preservation" means the process, including maintenance, or treating of an existing building to arrest or slow future deterioration, stabilize the structure, and provide structural safety without changing or adversely affecting the character or appearance of the structure.

(i) "Owner" means the owner of record, and the term shall include the plural as well as the singular.

(j) "Village Center" or "Village Center Area" means that area defined as the Village Center in the Village Center Strategic Plan of the City of New Albany.

(Ord. 10-98. Passed 8-4-98; Ord. 12-99. Passed 10-5-99; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.04 DISTRICT BOUNDARIES.

The Architectural Review District shall consist of all zoning districts in the City of New Albany and shall apply to all environmental changes: private, municipal, and to the extent municipal design review is not pre-empted by state or federal law, all other government environmental changes.

(Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.05 ARCHITECTURAL REVIEW BOARD.

(a) The Architectural Review Board is hereby established and shall consist of seven (7) members, any two (2) of which may be members of the New Albany Planning Commission.

(b) All members shall be appointed by Council for terms of three (3) years. Initial term lengths shall be staggered so as to provide continuity of membership on the Board. Initially, two (2) persons shall be appointed to one-year terms, two (2) members shall be appointed to two-year terms, and three (3) members shall be appointed to three-year terms. Thereafter, all members shall be appointed to three-year terms.

(c) Except in special circumstances outlined in this paragraph, all members shall be residents of the City of New Albany. At least two (2) members of the Architectural Review Board shall be professionals in the following fields: architecture, landscape architecture, city planning, interior design, industrial design, engineering or other allied design professions. If no residents within the Municipality of New Albany who are members of these professions wish to serve on the Architectural Review Board, then applicants from the unincorporated area of Plain Township who are in these professions may be appointed. Each time a Township resident's term expires, Council shall advertise to determine if a municipal resident is qualified and desires to take the seat. Council shall select a qualified municipal resident for membership over a qualified Township resident.

(b) All members shall be appointed by Council for terms of three (3) years. Initial term lengths shall be staggered so as to provide continuity of membership on the Board. Initially, two (2) persons shall be appointed to one-year terms, two (2) members shall be appointed to two-year terms, and three (3) members shall be appointed to three-year terms. Thereafter, all members shall be appointed to three-year terms.

(c) Except in special circumstances outlined in this paragraph, all members shall be residents of the City of New Albany. At least two (2) members of the Architectural Review Board shall be professionals in the following fields: architecture, landscape architecture, city planning, interior design, industrial design, engineering or other allied design professions. If no residents within the Municipality of New Albany who are members of these professions wish to serve on the Architectural Review Board, then applicants from the unincorporated area of Plain Township who are in these professions may be appointed. Each time a Township resident's term expires, Council shall advertise to determine if a municipal resident is qualified and desires to take the seat. Council shall select a qualified municipal resident for membership over a qualified Township resident.

(Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.06 CERTIFICATE OF APPROPRIATENESS REQUIRED.

No environmental change shall be made to any property within the City of New Albany until a certificate of appropriateness (COA) has been properly applied for, and issued by staff or the Board. No building permit or zoning permit shall be issued for any major or minor environmental change now or hereafter in the Architectural Review District or subject to the architectural review process, unless a certificate of appropriateness has been issued. In cases where a standard is not required by the zoning text or code, then a "no permit required" certificate may be issued by staff. (Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.07 MAJOR AND MINOR ENVIRONMENTAL CHANGES.

Environmental changes are divided into two (2) categories as follows:

<i>Major</i>	<i>Minor</i>
<ul style="list-style-type: none"> • New construction • Alterations which change, modify, reconstruct, remove or demolish any exterior features of an existing structure that are not considered to be minor modifications • Demolition • Building additions • The addition of signage • Changes to nonconforming signs • New, relocated and expanded parking lots • Patios, porches and other defined outdoor areas used for dining or other commercial activities • Multiple minor changes may be defined as a major change, as determined by the Community Development Department • Similar changes as determined by the Community Development Department 	<ul style="list-style-type: none"> • Addition or deletion of awnings or canopies • Replacement of windows and doors • Gutters • Skylights • Solar panels • Satellite dishes • Face changes to otherwise conforming signs • Changes to paint and siding colors • Changes in materials but not in appearance • Re-roofs • Landscape modifications • The construction of sports fields and associated bleachers, fences, dugouts and like facilities not requiring a commercial building permit, as approved by the Community Development Department • Modifications to off-street parking and loading areas • Accessory buildings • Fences • Walls • Decks • Porches • Patios (residential) • Swimming pools and spas • Similar changes as determined by the Community Development Department

(Ord. O-08-2011. Passed 5-17-11.)

1157.08 PROCEDURE FOR CERTIFICATE OF APPROPRIATENESS.

(a) The application for a certificate of appropriateness shall be made on such forms as prescribed by the staff of the City of New Albany, along with such plans, drawings, specifications and other materials as may be needed by staff or the Board to make a determination.

(1) The materials that may be required include but are not limited to:

- A. A dimensioned site plan showing existing conditions including all structures, pavement, curb-cut locations, natural features such as tree masses and riparian corridors, and rights-of-way.

- B. A dimensioned site plan showing the proposed site change including structures, pavement, revised curb-cut locations and landscaping.
 - C. Illustration of all existing building elevations to scale.
 - D. Illustrations of all proposed building elevations to scale.
 - E. Samples of proposed building materials.
 - F. Color samples for proposed roof, siding, etc.
- (2) For review of signage, the following submittal requirements apply:
- A. Illustrations of all existing site signage including wall and ground.
 - B. Illustrations of proposed signage to scale.
 - C. A dimensioned site plan showing location of existing ground mounted signs.
 - D. A dimensioned site plan showing the proposed location of ground mounted signs.
 - E. Samples of proposed sign materials.
 - F. Color samples of proposed sign(s).
 - G. Proposed lighting plan for sign(s).
- (b) (1) Any major environmental change, or zoning change, to any property located within the Village Center Area, requires a certificate of appropriateness from the Architectural Review Board. Applicants shall file an application for a Certificate of Appropriateness at least thirty (30) days prior to the Architectural Review Board meeting.
- (2) In the case of a Certificate of Appropriateness application for a property in a Planned Unit Development (PUD) Zoning District within the Village Center Area, the Architectural Review Board shall review the proposal and make a recommendation to the Planning Commission at the time of rezoning or the preliminary development plan. After the preliminary development plan, any alterations, modifications or other environmental changes to the zoning requirements of a Planned Unit Development within the Village Center require a Certificate of Appropriateness issued by the Planning Commission.
- (c) Any major environmental change to a property located outside the Village Center Area, requires a certificate of appropriateness issued by the City Manager's designee.
- (d) Any minor environmental change requires a Certificate of Appropriateness issued by the City Manager's designee.
- (e) Any major or minor environmental change which requires a waiver to the requirements of this chapter requires a Certificate of Appropriateness to be issued by the Architectural Review Board.
- (f) Upon review of the application for a certificate of appropriateness, the ARB or staff member shall determine whether the proposed environmental change promotes, preserves and enhances the architectural and historical Architectural Review District, set forth in Section

1157.02. As a part of its review, the ARB or staff member will ensure that, at a minimum, the proposed environmental change complies with the criteria set forth in Section 1157.08 and the design Guidelines and Requirements incorporated into this section by reference. Upon completion of its review, the ARB or staff member will issue or deny a certificate of appropriateness to the applicant.

(g) In determining the appropriateness of specific environmental change, the Board shall conduct a public meeting on the project and/or solicit input from staff members or other consultants to the Municipality.

(Ord. 12-99. Passed 10-5-99; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.09 CRITERIA FOR EVALUATION OF APPLICATION FOR CERTIFICATION OF DESIGN APPROPRIATENESS.

In considering the appropriateness of any proposed environmental change, including landscaping or exterior signage, the Architectural Review Board or City staff member shall consider the following, as a part of its review:

(a) The compliance of the application with the Design Guidelines and Requirements. The proposed environmental change is to comply with the Design Guidelines and Requirements of the City, incorporated by reference.

(b) The visual and functional components of the building and its site, including but not limited to landscape design and plant materials, lighting, vehicular and pedestrian circulation, and signage.

(c) The distinguishing original qualities or character of a building, structure, site and/or its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural or environmental features should be avoided when possible.

(d) All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance inconsistent or inappropriate to the original integrity of the building shall be discouraged.

(e) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be created with sensitivity.

(f) The surface cleaning of masonry structures shall be undertaken with methods designed to minimize damage to historic building materials. Cleaning methods that will damage building materials should be avoided.

(g) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the original structure would be unimpaired. Additions to the least significant and least visible of historic properties should be given priority over other designs.

(h) Where, prior to the effective date of the Design Guidelines and Requirements (September 20, 2007), certificates of appropriateness have been previously issued for 33.3% of the total number of approved homes within a residential PUD, a certificate of appropriateness which differs from the applicable Design Guidelines and Requirements may be issued for additional homes/new house elevations within such PUD. Provided however that any such additional homes/new house elevations which deviate from the Design Guidelines and Requirements shall utilize previously-approved architectural features consistent with those of homes already permitted within such PUD, and shall also comply with any architectural-feature provisions set forth in the applicable zoning text. In such cases:

- (1) The request for use of the same architectural features shall be made as part of the certificate of appropriateness application. The request should include a written description of the feature proposed with addresses and photos of the copied architectural features; however, additional information may be required for review. Several architectural features may be proposed for one house on a single request/application. Each request will be evaluated individually on a house-by-house basis.
- (2) For the purposes of this division (h), "architectural feature" shall mean the elements of the house, not approved by a variance, that contribute to the house style, which may include the mixing of architectural features from different architectural styles. Examples of such architectural features include pediments, window styles and details, eave details, door details, porches, etc. However, shutters shall not be undersized for the windows with which they are associated.

(Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. 01-2008. Passed 2-5-08; Ord. O-08-2011. Passed 5-17-11.)

1157.10 DEMOLITION OF STRUCTURES.

In cases where an applicant applies for a certificate of appropriateness to demolish a structure, the ARB or staff member shall grant the demolition and issue a certificate of appropriateness when at least one of the following conditions prevails.

- (a) The structure contains no features of architectural and historic significance to the character of the individual precinct within which it is located.
- (b) There exists no reasonable economic use for the structure as it exists or as it might be restored, and that there exists no feasible and prudent alternative to demolition.
- (c) Deterioration has progressed to the point where it is not economically feasible to restore the structure.

(Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.11 MAINTENANCE.

Nothing in this chapter shall be construed to prevent ordinary maintenance or repair of any property within the Architectural Review District, nor shall anything in this chapter be construed

to prevent any change, including the construction, reconstruction, alteration or demolition of any feature which in the view of the Zoning Inspector is required for the public safety because of an unsafe, insecure or dangerous condition.

(Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

1157.12 WAIVERS.

Any person or entity owning or having an interest in property that seeks to perform an environmental change may file an application to obtain a waiver from the requirements of this chapter in conformance with the criteria standards, and procedures set forth in Chapter 1113.

(Ord. O-08-2011. Passed 5-17-11.)

1157.13 APPEALS.

The Architectural Review Board shall hear and decide appeals from any decisions or interpretations made by City staff under this chapter. Any such appeal shall be in conformance with the criteria standards and procedures set forth in Chapter 1113.

(Ord. O-08-2011. Passed 5-17-11.)

1157.99 PENALTY.

(a) Whoever constructs, reconstructs, alters, or modifies any exterior architectural or environmental feature now or hereafter within the Architectural Review District in violation of this chapter, shall be subject to the penalties specified in Section 1109.99.

(b) Any individual or individual property owner that demolishes a structure within the Architectural Review District in violation of this chapter shall be subject to a fine of up to ten thousand dollars (\$10,000.00).

(c) Any partnership, association, business entity, etc. that demolishes or causes the demolition of a structure within the Architectural Review District in violation of this chapter shall be subject to a fine of up to fifty thousand dollars (\$50,000.00).

(Ord. 10-98. Passed 8-4-98; Ord. 26-2007. Passed 8-21-07; Ord. O-08-2011. Passed 5-17-11.)

CHAPTER 1158 UCO URBAN CENTER OVERLAY DISTRICT

1158.01	ADOPTION.
1158.02	PURPOSE.
1158.03	SCOPE AND APPLICATION.
1158.04	APPROVAL PROCEDURE.
1158.05	REQUEST FOR ADDITIONAL BUILDING TYPOLOGIES.
1158.06	WAIVERS.
1158.07	APPEALS.
1158.99	PENALTY.

1158.01 ADOPTION.

The Urban Center Overlay District is hereby established and the Urban Center Form-Based Code is hereby adopted and incorporated by reference, as if set out at length herein. (Ord. O-09-2011. Passed 5-17-11.)

1158.02 PURPOSE.

This Urban Center Overlay District is established to provide guidance and direction for Planned Unit Developments located within the area defined by the New Albany Strategic Plan as the Village Center. The Urban Center Code standards adopted herein establish the "form" for the Village Center, and the standards encourage redevelopment by providing flexible and multiple options for building style, as well as a mix of uses. The Urban Center Code is intended to be implemented in conjunction with the New Albany Design Guidelines and Requirements. (Ord. O-09-2011. Passed 5-17-11.)

1158.03 SCOPE AND APPLICATION.

(a) Property Subject to UCO. This chapter shall apply to all lands located within the Village Center Area (as identified by the current New Albany Strategic Plan) with the zoning designation of Planned Unit Development.

(b) Overlay District Designation. The Village Center Area (as identified by the current New Albany Strategic Plan) shall be shown as an overlay district on the Official Zoning District map and designated as the Urban Center Overlay (UCO) District.

(c) Effect on Planned Unit Development Texts. Planned Unit Development (PUD) districts in existence and all associated zoning texts and development plans adopted prior to the effective date of this Chapter 1158 shall continue in effect and shall be considered to be legally conforming under this code. Subject to Section 1158.03.D below, property that has a PUD zoning designation on or after the effective date of this ordinance may be developed, at the election of the property owner or applicant, in one of the following manners:

- (1) Pursuant to the terms of the approved zoning text and development plan(s) for the relevant PUD, provided that if the approved zoning text and/or development plan(s) are silent on

any particular matter, issue, restriction or requirement that is addressed in the Urban Center Code, then the Urban Center Code shall apply to that matter, issue, restriction or requirement; or

- (2) In accordance with the requirements of the Urban Center Code, provided that in this circumstance the approved PUD zoning text and/or development plan(s) for the property shall not apply.
- (3) Notwithstanding the provisions of subsection C.(2) herein, all infrastructure development commitments approved or otherwise committed to as set forth in approved PUD districts, zoning texts and development plans adopted prior to or after the effective date of this chapter 1158 shall continue in effect, unless the Planning Commission determines that such infrastructure development commitment is no longer necessary.

(d) Partial Development of Planned Unit Development Districts. The following provisions shall apply to an election made under Section 1158.03.C:

- (1) The property owner making an election under Section 1158.03.C shall specify the election that has been made on a form that is provided by the Director of Community Development and signed by the property owner, and shall submit the form to the Director of Community Development along with a legal description of the property to which the election is to apply. The Director of Community Development or designee shall take administrative action to approve the form and legal description if the election is in conformance with the requirements of this Section 1158.03 and the UCO District. A property owner may submit the aforementioned form and legal description to the Director of Community Development at any time, but in no event shall a building permit or certificate of zoning compliance be issued by the City on real property that is subject to the provisions of this Section 1158.03 until such form and legal description have been approved as required hereunder.
- (2) To the extent that the property for which an election under Section 1158.03.C has been made contains less than the entirety of the applicable PUD district, then the owner(s) of the balance of the property within that PUD district shall have the continuing future right to make the election described in Section 1158.03.C with respect to all or any portion of the PUD district for which the election has not been made. Notwithstanding the foregoing, in the event that a final plat for a residential subdivision has been approved by the City, the form and legal description specified in subsection D(1) above must be approved by the City prior to the time that the City signs the final plat. Upon the recording of the final plat, all of the property that is subject to the final plat shall be developed in accordance with the zoning standards that the property owner has elected to apply to that property, and there shall be no continuing right to make the election under Section 1158.03.C with respect to individual lots or tax parcels that have been created pursuant to the final plat.

- (3) When an election has been made to develop less than the entirety of a PUD district in accordance with Section 1158.03.C(2) and a property owner or other applicant later elects to develop all or a portion of the remaining property in that PUD district in accordance with Section 1158.03.C(1) then the following provisions shall apply:
- A. Density. The permitted density to be developed on the remaining property within the PUD shall be calculated using the per-acre density permitted within the applicable subarea of the PUD district immediately prior to any elections having been made for the PUD district as permitted in Section 1158.03.C and D.
 - B. Parkland Dedication and Open Space. The requirements set forth in 1187.15, Parkland Dedication and 1187.16, Open Space on the remaining property shall be calculated utilizing the per-acre requirements that existed for Parkland Dedication and Open Space within the applicable subarea of the PUD district immediately prior to any elections having been made for the PUD district as permitted in Section 1158.03.C and D. It is the general intent of this provision that such parkland and open space be allocated appropriately by between both the property selected for development under the Urban Center Code and the remaining PUD district property.

(Ord. O-09-2011. Passed 5-17-11; Ord. O-47-2015. Passed 12-15-15.)

1158.04 APPROVAL PROCEDURE.

(a) Property to be Developed in Accordance with PUD Regulations. Any property owner or applicant that desires to develop its property in accordance with Section 1158.03(c)(1) shall be required to file and obtain approval of preliminary and final development plan applications as required under Chapter 1159 of the Codified Ordinances.

(b) Property to be Developed in Accordance with Urban-Center Code. Any property owner or applicant that desires to develop its property in accordance with Section 1158.03(c)(2) shall be required to follow all of the procedures required for approval of developments under the Urban Center Code, and the provisions of Chapter 1159 of the Codified Ordinances shall not apply. Once a building permit has been issued for development as contemplated in Section 1158.03(c)(2), all future development, redevelopment, alterations, or reconstruction of improvements on a property zoned with a PUD designation shall occur in accordance with the requirements of the Urban Center Form-Based Code.

(Ord. O-09-2011. Passed 5-17-11.)

1158.05 REQUEST FOR ADDITIONAL BUILDING TYPOLOGIES.

(a) Any person owning or having an interest in property within the Urban Center Overlay District, may file an application to obtain additional building typology(ies) not identified in the Urban Center Code for approval from the Architectural Review Board (ARB). The application for

building typology approval shall be made on such forms as prescribed by the City of New Albany, along with such plans, drawings, specifications and other materials as may be needed by staff or the ARB to make a determination.

- (1) The materials that shall be required in an application to the ARB include, but are not limited to:
 - A. Graphic exhibits and lot standards that correspond to the desired placement in an Urban Center Sub-District.
 - B. Written description of the proposed typology.
 - C. Legal description of property as recorded in the Franklin County Recorder's office.
 - D. A plot plan drawn to an appropriate scale showing the following as applicable:
 1. The boundaries and dimensions of the lot.
 2. The size and location of proposed structures.
 3. The proposed use of all parts of the lots and structures, including accesses, walks, off-street parking and loading spaces, and landscaping.

- (2) The City staff reserves the right to require that the applicant submit more documentation than set forth in 1158.05(a)(1), or less, based upon the facts and circumstances of each application.

(b) In considering the request for an additional building typology(ies) the ARB shall only grant the request if the applicant demonstrates that the proposed typology:

- (1) Provides a design, building massing and scale appropriate to and compatible with the building typologies allowed in the subarea;
- (2) Provides an attractive and desirable site layout and design, including, but not limited to, building arrangement, exterior appearance and setbacks, etc. that achieves an Urban Center form;
- (3) Demonstrates its ability to fit within the goals of the City Strategic Planning documents and policies; and
- (4) Demonstrates its ability to fit within the goals of the New Albany Design Guidelines and Requirements.

(Ord. O-09-2011. Passed 5-17-11.)

1158.06 WAIVERS.

Extraordinary circumstances may exist making strict enforcement of the requirements of this Chapter unreasonable. Therefore, a Planned Unit Development property owner within the Urban Center Overlay District may apply for a waiver from the requirements of this chapter. The variance

procedures set forth in Chapter 1113 shall apply to the waiver process. However, the ARB and not the Board of Zoning Appeals shall hear and decide upon requested waivers from the requirements of this chapter.

(Ord. O-09-2011. Passed 5-17-11.)

1158.07 APPEALS.

The ARB shall hear and decide appeals from any decisions or interpretations made by City staff under this chapter. Any such appeal shall be in conformance with the criteria standards and procedures set forth in Chapter 1113.

(Ord. O-09-2011. Passed 5-17-11.)

1158.99 PENALTY.

(a) Whoever constructs, reconstructs, alters, or modifies any exterior architectural or environmental feature now or hereafter within the Urban Center Overlay District in violation of this chapter, shall be subject to the penalties specified in Section 1109.99.

(b) Any individual or individual property owner that demolishes a structure within the Urban Center Overlay District in violation of this Chapter shall be subject to a fine of up to ten thousand dollars (\$10,000.00).

(c) Any partnership, association, business entity, etc. that demolishes or causes the demolition of a structure within the Urban Center Overlay District in violation of this Chapter shall be subject to a fine of up to fifty thousand dollars (\$50,000.00).

(Ord. O-09-2011. Passed 5-17-11.)

CHAPTER 1159 PUD PLANNED UNIT DEVELOPMENT DISTRICT*

1159.01	CONFLICT.
1159.02	PURPOSE AND INTENT.
1159.03	DEFINITIONS.
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1159.05	GENERAL PROCEDURES.
1159.06	OWNERSHIP.
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1159.08	BASIS OF PLAN APPROVAL.
1159.09	PROCEDURE FOR APPROVAL OF COMPREHENSIVE PLANNED UNIT DEVELOPMENT (C-PUD).
1159.10	PROCEDURE FOR APPROVAL OF AN INFILL PLANNED UNIT DEVELOPMENT (I-PUD).
1159.11	RECORDING AND TRANSFER.
1159.12	APPEAL.

1159.01 CONFLICT.

Planned Unit Development Zoning Districts may be established by application in accordance with the provisions of this chapter and the requirements contained herein which shall take precedence over all other conflicting regulations contained in the Zoning Code and/or platting ordinances.

(Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

1159.02 PURPOSE AND INTENT.

The application of flexible and creative land use regulations to the development of land is often difficult or impossible within traditional zoning district standards. In order to permit the use of more flexible land use regulations and to facilitate use of the most advantageous techniques of land development, it is often necessary to establish a Planned Development District designation in which development is in harmony with the general purpose and intent of this Code, and the Strategic Plan. The objective of a Planned Development District is to encourage ingenuity, imagination and design efforts on the part of builders, architects, site planners and developers, to produce development that is in keeping with overall land use intensity and open space objectives of this Code and the Strategic Plan, while departing from the strict application of the dimensional standards of the traditional Districts. Planned Development Districts are intended to allow design flexibility and provide performance standards that may:

- (a) Ensure that future growth and development occurs in general accordance with the Strategic Plan;
- (b) Minimize adverse impacts of development on the environment by preserving native vegetation, wetlands and protected animal species to the greatest extent possible;
- (c) Increase and promote the use of pedestrian paths, bicycle routes and other non-vehicular modes of transportation;

*Cross reference—District established - see P. & Z. 1125.01

(d) Result in a desirable environment with more amenities than would be possible through the strict application of the minimum commitment to standards of a standard zoning district;

(e) Provide for an efficient use of land, and public resources, resulting in co-location of harmonious uses to share facilities and services and a logical network of utilities and streets, thereby lowering public and private development costs;

(f) Foster the safe, efficient and economic use of land, transportation, public facilities and services;

(g) Encourage concentrated land use patterns which decrease the length of automobile travel, encourage public transportation, allow trip consolidation and encourage pedestrian circulation between land uses;

(h) Enhance the appearance of the land through preservation of natural features, the provision of underground utilities, where possible, and the provision of recreation areas and open space in excess of existing standards;

(i) Avoid the inappropriate development of lands and provide for adequate drainage and reduction of flood damage;

(j) Ensure a more rational and compatible relationship between residential and non-residential uses for the mutual benefit of all;

(k) Provide an environment of stable character compatible with surrounding areas; and

(l) Provide for innovations in land development, especially for affordable housing and infill development.

(Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

1159.03 DEFINITIONS.

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

(a) "Comprehensive Planned Unit Development (C-PUD)." A "C-PUD" means an area of land consisting of a minimum of one hundred (100) acres in which a variety of housing types and/or commercial facilities may be accommodated in a pre-planned environment under more flexible standards than those restrictions that would normally apply under this Zoning Code. The process in a C-PUD shall consist of a Comprehensive Plan which shall constitute the rezoning of the property; Preliminary Development Plan which shall consist of more detailed plans for a subarea or subareas of the Comprehensive Plan and a Final Development Plan which shall consist of a detailed development and engineering plans for a subarea or portion of a subarea.

(b) "Infill Planned Unit Development (I-PUD)." An "I-PUD" means an area of land consisting of no more than one hundred (100) contiguous acres in which one use or a variety of uses may be accommodated in a pre-planned environment under more flexible standards than those restrictions that would normally apply under this Zoning Code. The process in an I-PUD shall consist of

a Preliminary Development Plan which shall constitute the act of zoning; and a Final Development Plan which shall consist of a detailed development plan for all, a portion of the area, or subareas within the Preliminary Development Plan.

(c) "Subarea." A "subarea" is a distinct area of land within a C-PUD or an I-PUD. Each subarea shall designate acreage, land use, development standards, architectural standards, landscape standards, thoroughfare subarea standards, conceptual road alignments, gross density (as defined in Section 1105.02(w)) and such other standards as may be required by the Planning Commission and Council.

(Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

1159.04 USES.

Within the Planned Unit Development (PUD) Zoning District, permitted uses shall include all uses allowable under the Zoning Code or a compatible combination of any or all of these uses provided the proposed location of any of the uses will not adversely affect adjacent property and/or public health, safety and general welfare.

(Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

1159.05 GENERAL PROCEDURES.

Procedures and conditions set forth for determination of Planned Unit Development Districts and development(s) therein shall be strictly followed except when the Planning Commission and Council have approved a written statement submitted with the rezoning application, by the applicant clearly showing that such procedures or conditions do not apply in the specific case.

(Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

1159.06 OWNERSHIP.

A Planned Unit Development shall be in joint or common ownership or control at the time the rezoning application is made for a Planned Unit Development District, or where joint or common ownership and/or control does not exist, each owner within the Planned Unit Development shall sign the application for rezoning. Any transfer of land within the Development resulting in ownership within the development by two (2) or more parties after an application has been filed shall not alter the applicability of the regulations contained herein. A Development Plan approved hereunder shall be binding upon the applicant(s), their successors and assigns and shall limit and control the issuance of validity of all Certificates of Zoning approval.

(Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

1159.07 PLAN CONTENTS.

(a) The following described contents shall be provided to secure approval for Planned Unit Development (PUD) District zoning. The basic process shall require submittal and approval of:

- (1) Comprehensive Plan in a C-PUD

(2) Preliminary Development Plan in a C-PUD and I-PUD

(3) Final Development Plan in a C-PUD and I-PUD

(b) All plans shall be drawn to a scale suitable to the scope of the project and acceptable to the Municipality. Thirteen (13) copies of each plan shall be submitted to the Zoning Officer.

(1) Contents of Comprehensive Plan. It is the intent of these regulations that the Comprehensive Plan indicate the following in text or map form:

- A. Overall design of the proposed PUD project
- B. Show accurate boundaries of the entire project
- C. North point and scale
- D. Location of the site in the Municipality
- E. A subarea plan which shows allocation of land use by acreage, type, and density
- F. Architectural guidelines for each subarea
- G. General location of principal thoroughfares and open space
- H. General location of any lands to be dedicated to any public agency
- I. Estimated population of the project together with anticipated combination of housing types
- J. The relationship of the proposed project to the surrounding area
- K. Topography with slope classification system
- L. Existing roads, buildings and permanent facilities
- M. Jurisdictional boundaries
- N. Easements, rights-of-way, abutting property boundaries
- O. Physical features and natural conditions of the site including the location of substantial tree masses
- P. Surface drainage and areas subject to flooding
- Q. Existing utility systems
- R. Regional transportation system
- S. A written statement regarding the potential impact of the proposed development on the student population of the local school district(s).
- T. Verification that an application, if required, has been submitted to the Ohio Environmental Protection Agency in compliance with Section 401 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain a Water Quality Certification Permit from the Ohio Environmental Protection Agency. In the case of an isolated wetland either a general state or individual state isolated wetland permit must be obtained from the Ohio Environmental Protection Agency (Sections 6111.021. - 6111.024. of House Bill 231).

- U. Verification that an application, if required, has been submitted to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain either a nationwide or individual permit from the U.S. Army Corps of Engineers.
- (2) Contents of Preliminary Development Plan. It is the intent of these regulations that, in addition to complying with the provisions of Section 1159.07(b)(1), the Preliminary Development Plan indicates the following in text or map form:
- A. North point and scale
 - B. The location and size of areas of residential use, indicating dwelling unit densities, dwelling unit types, the total number of dwelling units for each density area, and the total number of dwelling units in the development plan.
 - C. The size, location and use of nonresidential portions of the tract, including usable open areas, parks, playgrounds, school sites and other public areas and open spaces with the suggested ownership of such areas.
 - D. The provision of water, sanitary sewer and surface drainage facilities, including engineering feasibility studies or other evidence of reasonableness. All utility services shall be underground.
 - E. The traffic circulation patterns, including public and private streets and parking areas, indicating their relationship to topography and existing streets, or showing other evidence of reasonableness.
 - F. The schedule of site development, construction of structures and associated facilities. Such schedule shall include the proposed use or reuse of existing features such as topography, streets, easements and natural areas.
 - G. The relationship of the development to existing and future land use in the surrounding areas, the street system, community facilities, services and other public improvements.
 - H. An affidavit of the applicant listing all property owners within the two hundred (200) feet, contiguous to, and directly across the street from the parcel(s) included in the Preliminary Development Plan and their addresses as appearing on the Franklin County Auditor's current tax list.
 - I. A written statement regarding the potential impact of the proposed development on the student population of the local school district(s).
 - J. Verification that an application, if required, has been submitted to the Ohio Environmental Protection Agency in compliance with Section 401 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain a Water Quality Certification Permit from the Ohio Environmental Protection Agency. In the case of an isolated wetland either a general

state or individual state isolated wetland permit must be obtained from the Ohio Environmental Protection Agency (Sections 6111.021. - 6111.024. of House Bill 231).

- K. Verification that an application, if required, has been submitted to the U.S. Army Corps of Engineers, in compliance with Section 404 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain either a nationwide or individual permit from the U.S. Army Corps of Engineers.

- (3) Contents of Final Development Plan. Following approval of the Preliminary Development Plan, a Final Development Plan may be submitted for all or any part of the approved Preliminary Development Plan provided that no details of any Final Development Plans shall necessitate revision of portions of the approved Preliminary Development Plan located outside of the area to be included within boundaries of the Final Development Plan. If revision of any portion of the Preliminary Development Plan is required, a revised Preliminary Development Plan shall be approved by the Planning Commission and all in accordance with the provisions of this Code before approval of the Final Development Plan. If the application involved is an I-PUD, Council shall also be required to approve any change to the Preliminary Development Plan and the rezoning. Final Development Plans are intended to be detailed representations of the total aspects of the approved Preliminary Development Plan. Contents of the Final Development Plan shall include:

- A. The boundaries of the property which is the subject of the Final Development Plan with accurate distances and bearings from an established monument on the project to the three (3) nearest established street lines or official monuments;
- B. All municipal, corporation, township and county lines and section lines traversing or immediately adjacent to the property which is the subject of the Final Development Plan, and adjacent subdivision boundaries within two hundred (200) feet of such property, accurately referenced to the boundaries of the project by bearings and distances;
- C. A bar scale, north point, legal description and total acreage of the area which is the subject of the Final Development Plan;
- D. Accurate location of all monuments, which shall be concrete six (6) inches by six (6) inches by thirty (30) inches with iron pipe cast in center, one such monument to be placed at each corner and at each change of direction of the boundary, at each street intersection and at the beginning and end of curves on one side of the street;
- E. A certificate by a surveyor registered in the State of Ohio that the plan represents a survey made by him and that the monuments shown actually exist and that all dimensional and geodetic details are correct;
- F. Accurate outlines, dimensions and legal descriptions of any areas to be dedicated or reserved for public use, with the purposes indicated thereon, and of any area to be reserved by deed covenant for the common use of all property owners, and the acreage of such reserved areas;

- G. The lines of adjoining streets and alleys with their width and names;
- H. All lot lines and easements with their dimensions;
- I. Radii, arcs, points of tangency, central angles for all curvilinear streets, and radii for all rounded corners;
- J. The dimensions and locations of proposed structures, buildings, streets, parking areas, yards, playgrounds, school site, open spaces and other public or private facilities; (This provision shall not apply to those areas of the Final Development Plan indicated for development of one or two (2) family building sites. However, all lots intended to be so developed shall have building setback lines indicated thereon);
- K. A detailed statement of all uses proposed to be established indicated in the areas to be occupied by each use and the anticipated density of population and building intensity;
- L. Detailed engineering plans for the provision of all streets and utilities including provisions for off-site connections and facilities necessary to serve the entire areas which are the subject of the Final Development Plan;
- M. Detailed engineering site grading plans including proposed finished grades (This provision shall not apply to those areas of the Final Development Plan indicated for development of one or two (2) family buildings sites.);
- N. Proposed drainage facilities;
- O. Detailed landscaping plans (This provision shall not apply to those areas of the Final Development Plan indicated for development of single family detached homes, except that detailed landscaping shall be provided as to all residential entry features.);
- P. Architectural drawings demonstrating the design and character of the proposed structures, buildings, uses and facilities and the physical relationship of all elements; (In a one or two (2) story building site this provision is intended to demonstrate the exterior design, character and general element of and within the plan and it is not intended to require a detailed presentation by the applicant. However, it should provide sufficient detail to enable the Planning Commission to make a decision.);
- Q. All proposed restrictions or reference made thereto and proper acknowledgment of owners and/or holders of mortgages accepting such restrictions;
- R. Evidence that the applicant has sufficient control over the land in question to initiate the proposed project within five (5) years;
- S. A certificate to the effect that the owner will dedicate to public use the appropriate uses, streets, parks and other lands intended for public use, provided those areas are acceptable to the Municipality;
- T. A tabulation showing the exact area of each lot, reserve or other parcel shown on the plan (other than streets and alleys), such areas to be computed inclusive of and after the extension of lot or parcel lines to the center lines of contiguous public ways, such as streets and parking areas;

- U. Approval of detailed water and sewer engineering plans by the appropriate Departments of Health;
- V. Space for signature of the Planning Commission chair, vice chair or designee and the date of Commission approval;
- W. Location and character of all signs;
- X. The proposed size, location, ownership and use of nonresidential portions of the tract, including usable open areas, parks, playgrounds, school sites, other public areas and open spaces, and the methods of access whereby all residents of the PUD can have ingress to and egress from the aforesaid areas or portions of the tract whether such areas have been previously established or will be established in the future;
- Y. An affidavit of the applicant listing all property owners within the two hundred (200) feet, contiguous to, and directly across the street from the parcel(s) included in the Final Development Plan and their addresses as appearing on the Franklin County Auditor's current tax list;
- Z. Evidence that the Ohio Environmental Protection Agency has considered the applicant's application and, if required, granted such permit. If a permit was granted, four (4) copies shall be supplied by the owner to the Zoning Officer for distribution;
- AA. Evidence that the U.S. Army Corps of Engineers has considered the applicant's application and, if required, granted such permit. If a permit was granted, four (4) copies shall be supplied by the owner to the Zoning Officer for distribution.

- (4) Public area requirements. Open space for residential development shall conform to Subdivision Standards for Public Areas, Section 1187.15.

(Ord. 44-97. Passed 12-16-9; Ord. 29-2004. Passed 6-15-04; Ord. 25-2007. Passed 7-10-077.)

1159.08 BASIS OF PLAN APPROVAL.

The basis for approval of a Comprehensive Plan in a C-PUD and the Preliminary Development Plan in an I-PUD shall be:

- (a) That the proposed development is consistent in all respects with the purpose, intent and applicable standards of the Zoning Code;
- (b) That the proposed development is in general conformity with the Strategic Plan or portion thereof as it may apply;
- (c) That the proposed development advances the general welfare of the Municipality;
- (d) That the benefits, improved arrangement and design of the proposed development justify the deviation from standard development requirements included in the Zoning Ordinance;
- (e) Various types of land or building proposed in the project;

(f) Where applicable, the relationship of buildings and structures to each other and to such other facilities as are appropriate with regard to land area; proposed density of dwelling units may not violate any contractual agreement contained in any utility contract then in effect;

(g) Traffic and circulation systems within the proposed project as well as its appropriateness to existing facilities in the surrounding area;

(h) Building heights of all structures with regard to their visual impact on adjacent facilities;

(i) Front, side and rear yard definitions and uses where they occur at the development periphery;

(j) Gross commercial building area;

(k) Area ratios and designation of the land surfaces to which they apply;

(l) Spaces between buildings and open areas;

(m) Width of streets in the project;

(n) Setbacks from streets;

(o) Off-street parking and loading standards;

(p) The order in which development will likely proceed in complex, multi-use, multi-phase developments;

(q) The potential impact of the proposed plan on the student population of the local school district(s);

(r) The Ohio Environmental Protection Agency's 401 permit, and/or isolated wetland permit (if required);

(s) The U.S. Army Corps of Engineers 404 permit, or nationwide permit (if required).
(Ord. 29-2004. Passed 6-15-04; Ord. 25-2007. Passed 7-10-07.)

1159.09 PROCEDURE FOR APPROVAL OF COMPREHENSIVE PLANNED UNIT DEVELOPMENT (C-PUD).

Except as provided in Section 1159.12 hereof, the following procedures shall be used to secure approval of a Comprehensive Planned Unit Development (C-PUD) and the appropriate change of zoning resulting therefrom.

(a) The Comprehensive Plan together with an application shall be filed with the Administrator. Within thirty (30) days of the submittal, the Comprehensive Plan and accompanying documents shall be forwarded to Council where an ordinance shall be drawn concerning the requested zoning change. The Comprehensive Plan, accompanying documents and ordinance shall then be forwarded to the Planning Commission for study and recommendation. Copies of the Comprehen-

sive Plan shall also be forwarded to the Municipal Engineer, Municipal Planner, and Solicitor for preparation of a comprehensive staff report, which report shall have been received by the Planning Commission prior making its recommendations to Council.

(b) The Planning Commission shall have a reasonable time not less than thirty (30) days to consider the ordinance, the Comprehensive Plan, comprehensive staff report and to report its recommendations to Council. When the report and recommendations of the Planning Commission are received by Council, Council shall establish a date for a public hearing on the ordinance and the Comprehensive Plan giving notice in accordance with the provisions of Section 1111.07. Such public hearing by Council shall be held within ninety (90) days after the receipt of the Planning Commission's report unless such time period is extended by mutual agreement of the parties. The report of recommendations of the Planning Commission on the Comprehensive Plan and the ordinance, as well as the plan and the ordinance, shall be available for public inspection immediately preceding the public hearing. Adoption of the ordinance including the Comprehensive Plan shall constitute a rezoning of the property included in the Comprehensive Plan, subject to the applicant's compliance with the provisions of subsection (c) through (g) hereof prior to the development or the construction of improvements contained in the Final Development Plan.

At any time the applicant and/or his/her successors in title to the property may submit an amended Comprehensive Plan. In such event the same procedures shall be followed as in the case of an original Comprehensive Plan and if approved such amended Comprehensive Plan shall in all respects be considered as if it were the originally adopted Comprehensive Plan.

(c) Within two (2) years of Village Council approval of a Comprehensive Plan, the applicant shall submit a Preliminary Development Plan for at least one subarea of the Comprehensive Plan. Upon good cause shown by the applicant and by a majority vote of the Planning Commission, the Commission may extend the two-year period if the request is submitted prior to the expiration date. Submittal of the Preliminary Development Plan shall be to the Administrator. The failure to submit a Preliminary Development Plan within such two-year period (or any such extended period) shall invalidate any prior zoning approval given, forfeit fee payments and the property shall revert to its previous zoning classification. Within thirty (30) days of official submittal, the Preliminary Development Plan and accompanying documents shall be forwarded to the Planning Commission for study and approval. Copies of the Preliminary Development Plan shall also be forwarded to the Municipal Engineer, Municipal Planner and Solicitor for a comprehensive staff report, which report shall have been received by the Planning Commission prior to the Commission's action on the Final Development Plan.

(d) Following receipt of a Preliminary Development Plan and accompanying documents from the Administrator, it shall be the duty of the Planning Commission to review such plan and determine whether it complies with regulations of this chapter, that it represents a detailed expansion and delineation of the previously approved Comprehensive Plan, that it complies with all conditions which may have been given at the time of the Comprehensive Plan approval, or that before it can be considered, the proposed Preliminary Plan requires an amendment to the

Comprehensive Plan on the basis that the Preliminary Development Plan includes or contains a significant deviation from the approved Comprehensive Plan. The Zoning Officer shall notify all owners of neighboring properties as set out in the applicant's affidavit, of the time and place of the public meeting at which such Preliminary Development Plan will be considered. Such notices shall be served by first class mail posted at least ten (10) days before the date of the proposed hearing.

(e) If the Planning Commission finds that the Preliminary Development Plan complies with the regulations of this chapter and the previously approved Comprehensive Plan, the Commission shall approve the plan and the Commission chair, vice chair or designee shall affix his/her signature and approval date thereto attesting to such approval. If the Commission finds that the Preliminary Development Plan necessitates revision of portions of the approved Comprehensive Plan located outside of the area to be included within the boundaries of the Preliminary Development Plan, it shall be required that an amended Comprehensive Plan be submitted and approved in accordance with the provisions of Section 1159.07(b)(1), 1159.08 and 1159.09 hereof before considering the Preliminary Development Plan. At such time as the amended Comprehensive Plan is approved, consideration of the Preliminary Development Plan shall be given by the Commission in accordance with this subsection (c), subsection (d) and subsection (e) hereof. Following approval of the Preliminary Development Plan and the attestation of such action by the Commission chair, vice chair or designee, the applicant shall provide one mylar copy of all plans, as part of the Preliminary Development Plan, for records of the Municipality.

At any time, the applicant and/or his/her successors in title to the property may submit an amended Preliminary Development Plan. In such event the same procedures shall be followed as in the case of an original Preliminary Development Plan and if approved such amended Preliminary Development Plan shall in all respects be considered as if it were the originally adopted Preliminary Development Plan.

Following approval of the Preliminary Development Plan, a Final Development Plan may be submitted for all or any part of the approved Preliminary Development Plan provided that no details of any Final Development Plans shall necessitate revision of portions of the approved Comprehensive and Preliminary Development Plans located outside of the area to be included within boundaries of the Final Development Plan. If revision of any portion of the Preliminary Development Plan is required, a revised Preliminary Development Plan shall first be presented to the Planning Commission in accordance with the provisions of this Code before approval is granted to the Final Development Plan. Final Development Plans are intended to be detailed representations of the total aspects of the approved Comprehensive and Preliminary Development Plans.

(f) Following receipt of a Final Development Plan and accompanying documents from the Administrator, it shall be the duty of the Planning Commission to review such plan and determine whether it complies with regulations of this chapter, that it represents a detailed and precise expansion and delineation of the previously approved Preliminary Development Plan and that it complies with all conditions which may have been given at the time of approval of the Preliminary

Development Plan. The Zoning Officer shall notify all owners of neighboring properties as set out in the applicant's affidavit, of the time and place of the public meeting at which such Preliminary Development Plan will be considered. Such notices shall be served by first class mail posted at least ten (10) days before the date of the proposed hearing.

(g) If the Planning Commission finds that the Final Development Plan complies in all respects with the regulations of this chapter and the previously approved Comprehensive and Preliminary Development Plans, the Commission shall approve the plan and the chair, vice chair or designee of the Commission shall affix his/her signature and approval date thereto attesting to such approval.

Following approval of the Final Development Plan and the attestation of such action by the chair, vice chair or designee of the Commission, the applicant shall provide one mylar copy of all plans which are part of the Final Development Plan for records of the Municipality.

(h) The applicant shall have the option of filing the Preliminary and Final Development Plan as one application.

(i) A final subdivision plat prepared in accordance with applicable requirements of the subdivision regulations for the area covered by the Final Development Plan shall be approved by Council prior to appropriate recording.

(Ord. 22-2003. Passed 9-16-03; Ord. 25-2007. Passed 7-10-07; Ord. O-12-2014. Passed 6-3-14.)

1159.10 PROCEDURE FOR APPROVAL OF AN INFILL PLANNED UNIT DEVELOPMENT (I-PUD).

The following procedures shall be used to secure approval of an Infill Planned Unit Development (I-PUD) and the appropriate changes of zoning resulting therefrom.

(a) The Preliminary Development Plan together with an application shall be filed with the Administrator. Within thirty (30) days of the submittal, the Preliminary Development Plan and accompanying documents shall be forwarded to Council where an ordinance shall be drawn concerning the requested zoning change. The Preliminary Development Plan, accompanying documents and ordinance shall then be forwarded to the Planning Commission for study and recommendation. Copies of the Preliminary Development Plan shall also be forwarded to the Municipal Engineer, Municipal Planner and Solicitor for a comprehensive staff report, which report shall have been received by the Planning Commission prior to the Commission's recommendations being made to Council.

(b) The Planning Commission shall have a reasonable time not less than thirty (30) days to consider the ordinance and the plan and to report its recommendations to Council. When the report and recommendations of the Commission are received by Council, Council shall establish a date for public hearing on the ordinance and the plan giving notice in accordance with the

provisions of Section 1111.07. Such public hearing by Council shall be held within ninety (90) days after the receipt of the report of the Commission unless such time period is extended by mutual agreement of the parties.

The report of recommendations of the Planning Commission on the Preliminary Development Plan and the ordinance, as well as the plan and the ordinance, shall be available for public inspection immediately preceding the public hearing. Adoption of the ordinance including the Preliminary Development Plan shall constitute a rezoning of the property included in the Preliminary Development Plan subject to the applicant's compliance with the provisions of subsections (c) through (f) hereof prior to the development or the construction of improvements contained in the preliminary plan.

(c) Within two (2) years of notice of approval of the Preliminary Development Plan the applicant shall submit a Final Development Plan for at least twenty percent (20%) of the gross area contained within the approved Preliminary Development Plan. Such area submitted shall consist of the substantive part of the development and shall not be comprised of open spaces, parklands, etc., to the extent of more than one-fourth of the area submitted in the Final Development Plan. Upon good cause shown by the applicant and by a majority vote of the Planning Commission, the Commission may extend the two-year period if the request is submitted prior to the expiration date. Submittal of such plan shall be to the Administrator. The failure to submit a Final Development Plan within such two-year period (or any such extended period) shall invalidate any prior zoning approval given, forfeit fee payments and the property shall revert to its previous zoning classification. Within thirty (30) days of official acceptance, the Final Development Plan and accompanying documents shall be forwarded to the Planning Commission for study and approval. Copies of the Final Development Plan shall also be forwarded to the Municipal Engineer, Municipal Planner, and Solicitor for preparation of a comprehensive staff report, which report shall have been received by the Planning Commission prior to the Commission's action on the Final Development Plan.

(d) Following approval of the Preliminary Development Plan, a Final Development Plan may be submitted for all or any part of the approved Preliminary Development Plan provided that no details of any Final Development Plan shall necessitate revision of portions of the approved Preliminary Development Plan located outside of the area to be included within boundaries of the Final Development Plan. If revision of any portion of the Preliminary Development Plan is required, a revised Preliminary Development Plan shall be approved by the Planning Commission and all in accordance with the provisions of this Code before approval is granted to the Final Development Plan. Council shall be required to approve the change. Public notice shall be given in conformance with Section 1111.07.

Final Development Plans are intended to be detailed representations of and in conformance with all aspects of the approved Preliminary Development Plan. Following receipt of a Final Development Plan and accompanying documents from the Administrator, it shall be the duty of the Planning Commission to review such plan and determine whether it complies with regula-

tions of this chapter, that it represents a detailed and precise expansion and delineation of the previously approved Preliminary Development Plan, that it complies with all conditions which may have been given at the time of approval of the Preliminary Development Plan, or that before it can be considered, it requires an amendment of the Preliminary Development Plan.

The Zoning Officer shall notify all owners of neighboring properties as set out in the applicant's affidavit, of the time and place of the public meeting at which such Preliminary Development Plan will be considered. Such notices shall be served by first class mail posted at least ten (10) days before the date of the proposed hearing.

(e) If the Planning Commission finds that the Final Development Plan complies in all respects with the regulations of this chapter and the previously approved Preliminary Development Plan, the Commission shall approve the plan and the Commission chair, vice chair or designee shall affix his/her signature and approval date thereto attesting to such approval. Following approval of the Final Development Plan and the attestation of such action by the Commission chair, vice chair or designee, the applicant shall provide one mylar copy of all plans as part of the Final Development Plan for records of the Municipality.

At any time the applicant and/or his/her successors in title to the property may submit an amended Preliminary Development Plan. In such event the same procedures shall be followed as in the case of an original Preliminary Development Plan and if approved such amended Preliminary Development Plan shall in all respects be considered as if it were the originally adopted Preliminary Development Plan.

(f) A final subdivision plat prepared in accordance with applicable requirements of the subdivision regulations for the area covered by the Final Development Plan shall be prepared for Council approval prior to appropriate recording.

(Ord. 22-2003. Passed 9-16-03; Ord. 25-2007. Passed 7-10-07; Ord. O-12-2014. Passed 6-3-14.)

1159.11 RECORDING AND TRANSFER.

When a final plat is approved by Council, the owner shall file and record the same in the Office of the County Recorder within twelve (12) months unless such time is, for good cause shown, extended by resolution of Council. If not recorded within this time, the approval of Council shall become null and void. If construction is not begun within two (2) years of approval of the Final Development Plan, all approvals and permits shall be invalidated and canceled. Original tracings will become the permanent record of the County Recorder. One copy of this tracing, reproduced on mylar, showing the date and place of recording, shall be supplied by the owner to Council as local public records. Such two (2) year period may be extended by the Commission for good cause. (Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

1159.12 APPEAL.

If the Planning Commission disapproves the Preliminary Development Plan or Final Development Plan in a C-PUD application or the Final Development Plan in a I-PUD application the

applicant shall have thirty (30) days in which to file an appeal with the Council for review. Such appeal shall be in writing, filed within thirty (30) days of the disapproval, and shall be filed with the Administrator. Council shall then act within a reasonable time.

(Ord. 44-97. Passed 12-16-97; Ord. 25-2007. Passed 7-10-07.)

PROOFS

CHAPTER 1160 LIMITED OVERLAY DISTRICT

1160.01	PURPOSE.
1160.02	APPLICATION.
1160.03	LIMITED OVERLAY DISTRICT DEVELOPMENT PLAN.
1160.04	PROJECT SCOPE.
1160.05	PERMITTED USES.
1160.06	STANDARDS.
1160.07	CONDITIONS AND LIMITATIONS.
1160.08	AMENDMENT.
1160.09	EFFECT OF APPROVAL OF LIMITED OVERLAY DISTRICT DEVELOPMENT PLAN.

1160.01 PURPOSE.

This district is established to address situations where the underlying straight zoning district is overly broad in terms of permitted or conditional uses or where increasing one or more of the minimum development standards or adding conditions for items not covered in the underlying zoning would be appropriate. The use of this district, which is voluntary on the part of the applicant, is designed to address situations where special circumstances or conditions exist as to a particular parcel of land that do not generally apply to other parcels within the same underlying zoning districts.

Further, the objective is to provide an alternative to a Planned Unit Development District where the applicant is seeking to limit the uses or increase the minimum development standards as set forth above.

All standards of the underlying zoning district shall be applicable unless specifically superseded by the Limited Overlay District text contained within the ordinance establishing such a zoning district for any particular real estate parcel within the Village.

(Ord. 16-99. Passed 6-15-99.)

1160.02 APPLICATION.

An applicant for a Limited Overlay District shall file an application as to any lot proposed to be rezoned to any of the zoning districts set forth in Chapters 1129 through 1153 of the Zoning Code, on a form provided by or otherwise approved by Village Staff. This application will be processed together with the application to rezone the subject property and will be reviewed in the same manner as the rezoning application by Staff, the Municipal Planning Commission and Village Council.

(Ord. 16-99. Passed 6-15-99.)

1160.03 LIMITED OVERLAY DISTRICT DEVELOPMENT PLAN.

(a) In addition to filing the underlying rezoning application, an applicant shall provide a signed, dated Limited Overlay District Development Plan composed of the text and site plan, as required by Staff, setting forth the reasons justifying the rezoning to this district and specifically identifying the following:

- (1) Any and all limitation(s) to be imposed on the existing conditional or permitted uses set forth in the underlying zoning district;

- (2) Any and all increases in the minimum development standard(s) for the underlying zoning district;
- (3) Any additional limitations or conditions to be imposed.

(b) All of the standards set forth in the underlying zoning district shall be applicable within this district unless the Limited Overlay District Development Plan specifically stipulates a more stringent standard. This Limited Overlay District Development Plan shall be used only to increase the standards within the underlying district and shall not be utilized or construed so as to grant a variance from or to in any way decrease the standards or requirements set forth within the underlying zoning district.

(c) The Limited Overlay Development Plan shall set forth with specificity each characteristic of the proposed limitations and conditions and shall be specifically referenced in the body of the ordinance establishing a limited overlay for the subject site.

(Ord. 16-99. Passed 6-15-99.)

1160.04 PROJECT SCOPE.

An application may include more than one lot provided that all lots in a specific application are contiguous to each other. For the purpose of this section, lots separated only by a public highway, street or alley are considered contiguous.

(Ord. 16-99. Passed 6-15-99.)

1160.05 PERMITTED USES.

In accordance with all other pertinent Code provisions within the Limited Overlay District, the premises or building may be used in accordance with the underlying zoning, unless the normal range of permitted or conditional uses is specifically limited by the Development Plan referenced in the ordinance passed by Council, in which event, only the more limited use or range of permitted or conditional uses shall apply.

(Ord. 16-99. Passed 6-15-99.)

1160.06 STANDARDS.

Any use of a lot within a Limited Overlay District shall meet or exceed each development standard of the underlying zoning classification unless more limited standards are specifically identified in the Limited Overlay Development Plan referenced in the ordinance passed by Council, in which event, the more limiting standard shall apply.

The Limited Overlay District standards shall in all cases be reasonable related to the accomplishment of the specified goals in the planning process and all related planning documents and shall be clear, understandable and enforceable.

(Ord. 16-99. Passed 6-15-99.)

1160.07 CONDITIONS AND LIMITATIONS.

The use of any lot subject to a Limited Overlay District shall conform to each and every condition or limitation specifically identified and imposed in the development plan referenced in the ordinance passed by Council. These conditions or limitations shall be strictly construed.
(Ord. 16-99. Passed 6-15-99.)

1160.08 AMENDMENT.

The procedures set forth in Chapter 1111, "Amendments" and all other general procedures for amending the Zoning Ordinance shall be applied to amendment of any Limited Overlay District.
(Ord. 16-99. Passed 6-15-99.)

1160.09 EFFECT OF APPROVAL OF LIMITED OVERLAY DISTRICT DEVELOPMENT PLAN.

A development plan approved pursuant to the provisions set forth herein shall run with the land to the same nature and extent as the underlying zoning.
(Ord. 16-99. Passed 6-15-99.)

TITLE FIVE

ADDITIONAL ZONING REQUIREMENTS

Chapter 1165	General Development Standards
Chapter 1167	Off-Street Parking and Loading
Chapter 1169	Display Signs and Outdoor Advertising
Chapter 1171	Landscaping
Chapter 1173	Private Swimming Pools
Chapter 1175	Fences and Hedges
Chapter 1177	Satellite Signal Receiving Antennas
Chapter 1178	Rights-Of-Way
Chapter 1179	Wireless Telecommunication Facilities

CHAPTER 1165 GENERAL DEVELOPMENT STANDARDS*

1165.01	LOT WIDTH.
1165.02	FRONT YARDS.
1165.03	SIDE YARDS.
1165.04	REAR YARDS.
1165.05	HEIGHT.
1165.06	ACCESSORY USES OR STRUCTURES.
1165.07	MINIMUM FLOOR AREA REQUIREMENTS.
1165.08	CONNECTIVITY.
1165.09	HOME OCCUPATIONS.
1165.10	GASOLINE SERVICE STATION.
1165.11	MODEL HOME STANDARDS.

1165.01 LOT WIDTH.

(a) Frontage Required. No building, structure, or improvement shall be constructed or altered unless its lot fronts on a publicly dedicated and improved street or thoroughfare within the Municipality.

(b) Lot Width. Lot width shall be measured along the minimum building setback line for the district within which such lot is located.

(Ord. 27-2007. Passed 8-21-07.)

1165.02 FRONT YARDS.

(a) Front Yard Requirements. All front yard space shall be maintained in accordance with at least one of the following provisions:

- (1) Landscaped by lawns, shrubbery, trees or other plantings. Such planting shall be maintained in a neat and orderly state.
- (2) In all districts, driveways may be located in front yards; if needed in rear yards, rear yard access is permitted off of alleys. In districts where single-family residences are not a permitted use, front yard setbacks may also be used for parking areas, consistent with the regulations of Chapter 1167.

(b) Front Yard Measurements. Front yard depth shall be measured from the right-of-way line of the street or highway to the building line.

(c) Corner Lots. Lots fronting on more than one street shall provide the required front yard on both streets.

(d) Open Porches. An open, uncovered porch or paved terrace may not project into the required front yard for distance of greater than fourteen (14) feet.

(e) Architectural Features. Cornices, canopies, eaves, pilasters, sills or other architectural features may project into a front yard no more than three (3) feet.

*Cross reference—Gasoline service station defined - see P. & Z. 1105.02;
Home occupation defined - see P. & Z. 1105.02

(f) Rural Setbacks. All buildings should respect the setbacks of all rural designated roads established in the Village's Strategic Plan.

(Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 27-2007. Passed 8-21-07.)

1165.03 SIDE YARDS.

(a) Measurement. Side yard width shall be measured from the nearest side lot line to the building line.

(b) Open Porches. In a residential district, an open, uncovered porch or paved terrace may project into a required side yard, if a minimum of five (5) feet is maintained to any adjoining lot line.

(c) Architectural Features. Cornices, canopies, eaves, pilasters, sills or other architectural features may project into a side yard no more than three (3) feet with minimum of two (2) feet maintained to any adjoining lot line.

(Ord. 27-2007. Passed 8-21-07.)

1165.04 REAR YARDS.

(a) Measurement. Rear yard depth shall be measured from the rear lot line to the building line. Where a lot abuts a service street or alley, the rear yard shall be measured from the right-of-way line of the existing street or alley.

(b) Accessory Uses or Structures. Accessory uses or structures may be allowed in a rear yard, subject to requirements of Section 1165.06.

(c) Open Porches. In a residential district, an open, uncovered porch or paved terrace may project into a required rear yard, if a minimum distance of twenty (20) feet is maintained to any rear lot line.

(d) Architectural Features. Cornices, canopies, eaves, pilasters, sills or other architectural features may project into a rear yard no more than three (3) feet with a minimum of two (2) feet maintained to any adjoining lot line.

(Ord. 27-2007. Passed 8-21-07.)

1165.05 HEIGHT.

Height regulations specified in the various zoning districts shall not apply to chimneys, tanks, cupolas, domes, spires, or similar structures attached provided that the height of all structures and buildings, including those mentioned above, shall not constitute a hazard to safe landing and take-off of aircraft from an established airport.

(Ord. 27-2007. Passed 8-21-07.)

1165.06 ACCESSORY USES OR STRUCTURES.

"Accessory structure" means a subordinate structure detached from, but located on the same lot as the principal building/structure, which is incidental to the use of the principal building/structure. An accessory structure may include but is not limited to storage buildings, recreational structures, mechanical devices, detached garages, carports, decks and open-sided structures.

(a) Storage Buildings, Recreational Structures and Similar. In a residentially-zoned district, enclosed storage buildings and recreational structures shall comply with the following requirements:

- (1) Area. Shall not occupy more than twenty-five percent (25%) of a required rear yard, plus forty percent (40%) of any non-required rear yard, provided that in no instance shall the storage building or recreational structure exceed the ground floor area of the main building or five percent (5%) of the total lot, whichever is less.
- (2) Location.
 - A. Shall not project beyond any front elevation of the primary structure;
 - B. Shall be located at least ten (10) feet from any other accessory structure situated on the same lot; and
 - C. Shall not be located nearer to any side or rear property line than the minimum side and rear yard setback dimension specified for the zoning district containing the structure;
 - D. Shall maintain a proportional distance of two (2) feet for every foot in height (2:1) from the main building.
- (3) Height. Shall not exceed ten (10) feet in height.
- (4) Corner Lots. In addition to the requirements of this section, accessory structures on corner lots shall not be located nearer to the side yard lot line than a distance equal to the minimum required side setback for the district in which it is located.
- (5) Number. Only one storage building shall be permitted in addition to those accessory structures specifically regulated by separate ordinance or other sections of this chapter. Recreational structures shall be exempt from the number limitation in this section.
- (6) No storage building or recreational structure shall be erected or constructed prior to the erection or construction of the principal or main building, except in conjunction with the same.

(b) Mechanical Devices. In a residentially-zoned district, mechanical devices or units incidental to the operation or use of the principal building, not exceeding seventy-two (72) inches in height, shall not be located nearer to any street than the nearest wall of the principal building in question, or nearer to any side or rear property line than three (3) feet.

(c) Detached Garages and Carports. In a residentially-zoned district, detached garages and carports shall not be erected or constructed prior to the erection or construction of the principal structure or main building, except in conjunction with the same. Detached garages and carports shall be subject to the following requirements:

(1) Location.

- A. Shall not project beyond any front elevation of the primary structure.
- B. Shall be distant at least ten (10) feet from any dwelling situated on the same lot; and
- C. Shall be at least ten (10) feet from any lot lines of adjoining lots, and shall not occupy any easement.
- D. Where the rear lot line of a corner lot adjoins the side lot line of an adjacent residential lot, no part of a detached garage or carport shall be located within the required rear yard nor shall it extend beyond the front yard setback of the property adjacent to the rear property line.

(2) Number. There shall be no more than one detached garage or carport per dwelling unit.

(3) Height. No detached garage or carport shall exceed the height of the principal structure and in no case shall exceed twenty-five (25) feet in height unless specifically permitted under separate legislation, or if converted to habitable use, shall exceed the rear yard height plane limit required for principal structures.

(4) Area. Shall not exceed eight hundred (800) square feet, provided that in no instance shall the detached garage or carport exceed the ground floor area of the main building or five percent (5%) of the total lot, whichever is less.

(d) Decks. A deck is an accessory structure and is further defined as a horizontal platform supported by any combination of posts, beams, foundations, and/or joists with or without handrails, steps or terraces. Decks shall comply with the following requirements:

- (1) The area below a deck which exceeds more than two (2) feet above grade at any point within six (6) feet of the deck's perimeter shall be screened;
- (2) Decks which encroach into the required rear yard shall have no walls or roof planes, or permanently attached benches, seats, or other structures of any kind, weatherproof or not, except a guardrail which may be up to forty-two (42) inches in height above the top of the deck. The handgrip portion of the rail shall not be more than three and one-half (3 and 1/2) inches in width, if the handgrip is flat.
- (3) All decks shall be attached or contiguous to the principal structure or principal building;
- (4) Decks may be located in an interior side yard or rear yard as long as they are at least five (5) feet from the side and rear property lines and do not occupy any part of a platted easement.

(e) Open-Sided Structures. An open-sided structure is defined as a free-standing, unheated structure unenclosed except for a structural system supporting a roof, and screen panels which may be used to enclose the open spaces between structural elements. An open-sided structure includes but may not be limited to a gazebo, tent, pergola, canopy or trellis. An open-sided structure must meet the following minimum design criteria:

- (1) Height: All open-sided structures are limited to one story; and the height to the top of the highest roof ridge beam, or to the highest point of any other roof form, from the finished floor may not exceed fifteen (15) feet.
- (2) Area: The area of an open-sided structure may not exceed four percent (4%) of the unimproved required rear yard or two hundred (200) square feet whichever is less.
- (3) Materials: All finished roof surfaces, except for flat roofs, shall be metal, seal- tab asphalt shingles, clay tile, slate or wood shingles. All other finished surfaces shall be wood, brick, stone, screen or any combination thereof.
- (4) Location: All open-sided structures shall be located in the rear yard buildable area. This area is defined as the interior lot area bounded by the rear yard setback line and a side yard setback line on each side of the house, which is parallel to the side property line and turns at a 90-degree angle to intersect the corner of the house closest to the side yard being considered.
- (5) Lighting: Illumination of the open-sided structure exterior is prohibited. Illumination within the structure shall not exceed seventy (70) foot-candles measured at a horizontal plane three (3) feet above the finished floor.
- (6) Grading: If the open-sided structure is built on a mound, deck, or other elevated surface, the height of this elevated surface at its highest point above grade shall be added to the height of the structure to determine the overall height of the open-sided structure measured. Elevated surface is defined as an artificial rise or elevation above the natural grade of the surrounding ground created with earth, rock, wood or other material.

(Ord. 29-2001. Passed 8-21-01; Ord. 27-2007. Passed 8-21-07.)

1165.07 MINIMUM FLOOR AREA REQUIREMENTS.

No single-family residential dwelling shall have floor area of less than one thousand two hundred (1,200) square feet. No two-family dwelling shall have floor area of less than eight hundred fifty (850) square feet for each family. No multiple family dwelling shall have a floor area of less than eight hundred (800) square feet for each family.

(Ord. 72-92. Passed 12-15-92; Ord. 27-2007. Passed 8-21-07.)

1165.08 CONNECTIVITY.

The following regulations shall apply to all new development. For the purposes of this section, "new development" shall be any construction involving the replacement of an existing primary structure, construction on a site currently without a primary building or when a commercial parking area is being repaved or constructed.

(a) Sidewalks.

- (1) Sidewalks are required along all public rights-of-way unless a leisure trail is required. The minimum sidewalk width shall be five (5) feet or greater as determined by the width of existing sidewalks.
- (2) Sidewalks shall be constructed per the Village standard and made of concrete, brick, stone, simulated stone, or simulated brick. The design and installation of sidewalk paving materials other than concrete shall be in accordance with manufacturer recommendations and are subject to Village Engineer and Community Development Department approval. Simulated materials shall correctly simulate appearance of brick or stone.

(b) Leisure Trails.

- (1) Leisure trails shall be constructed along streams and roads in accordance with the Village's Strategic Plan or as otherwise required.
- (2) Leisure trails shall be asphalt and have a minimum width of eight (8) feet unless otherwise specified by the Community Development Department. All leisure trails shall be constructed per the Village standard.

(c) Fees In-Lieu of Sidewalk and Trail Construction. Where special circumstances exist for sidewalk and trail construction as required in divisions (a) and (b) of this section, a fee in-lieu may be considered according to the procedure in Section 1187.18.

(d) Where there are open spaces between buildings, excluding single-family and town homes, pedestrian connections shall be established between rear parking areas and the sidewalk in front of the building.

(Ord. 27-2007. Passed 8-21-07; Ord. 06-2009. Passed 3-17-09.)

1165.09 HOME OCCUPATIONS.

Home occupations or professions shall be regulated as permitted, accessory, or conditional uses pursuant to Chapters 1129 through 1139. A home occupation shall comply with the following standards:

- (a) The use shall be clearly incidental and secondary to residential use of the dwelling and not more than 15 percent (15%) of dwelling unit floor area is devoted to the home occupation.
- (b) The home occupation shall not generate greater traffic volume than is normal for a residential neighborhood.
- (c) Not more than one person, other than immediate family residing at the premises, shall be employed in such occupation.
- (d) External indication of such home occupation shall be limited to one non-illuminated sign, not more than two (2) square feet, attached flat against the structure.

(e) The sale of products, stock, or commodities shall be limited to those produced on the premises.

(f) Any need for parking generated by conduct of the home occupation shall meet off- street parking requirements of this Zoning Code, and shall not be located in any front yard.

(g) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to normal sense off the lot, if the occupation is conducted in a single-family residence; or outside the dwelling unit if conducted in other than a single-family residence.

(h) No home occupation shall be conducted from any accessory building on the lot.

In particular, a home occupation shall consist primarily of rendering specific personal services, such as those performed by a seamstress, member of the clergy, physician, dentist, lawyer, engineer, architect, accountant, artist, or private teacher. The home occupation shall be performed by the occupant of the premises and shall include employment of not more than one non-resident of the premises.

(Ord. 27-2007. Passed 8-21-07.)

1165.10 GASOLINE SERVICE STATION.

Gasoline service stations, or retail establishments selling gasoline as an ancillary activity, are listed as conditional and permitted uses in the C-1, C-2, and C-3 zoning districts. In addition to the requirements of the district in which the gasoline service station is located, and other provisions of this Chapter, such establishments shall be subject to the following requirements:

(a) Minimum Lot Size. Twenty thousand (20,000) square feet.

(b) Minimum Building or Structure Size. The building shall have an enclosed area of not less than eight hundred (800) square feet if any service is offered on or from the premises other than the delivery of gasoline, diesel fuel or oil for use as vehicle fuel or lubrication. If a gasoline service station offers no service other than the delivery of gasoline, diesel fuel or oil into vehicles, the enclosed area of the building shall not be less than six hundred (600) square feet. No such limited gasoline service station may offer to provide lubrication, oil changes, repairs, or other equipment installation.

(c) Minimum Frontage. The lot on which a gasoline service station is located shall have frontage of not less than one hundred fifty (150) feet along a dedicated and improved street designated as not less than minor arterial status on the New Albany Thoroughfare Plan. If a gasoline service station is located on the corner of two (2) or more intersection streets, it shall have one hundred fifty (150) feet of frontage on each intersecting streets.

(d) Location. No gasoline service station shall be located on any lot within two hundred (200) feet of any zoning district where residences are permitted.

(e) Setbacks. The pump island setback in a gasoline service station, which shall be the minimum location for pumps dispensing fuel or oil products, shall be forty (40) feet from any right-of-way of any street, and forty (40) feet from any adjoining property line. Any building located on such premises shall be located not less than fifty (50) feet from the right-of-way of any street.

(f) Driveways and Parking Areas. Driveways and parking areas shall be paved and properly drained. The landscaping of areas along the perimeter of the lot is required, pursuant to Chapter 1171.

(g) Parking. Gasoline service stations shall be subject to the parking and loading provisions of Chapter 1167. In addition, no inoperable or damaged motor vehicle shall be parked outside a gasoline service station building in excess of seventy-two (72) hours. Parking areas shall be located not closer than five (5) feet to the main building.

(h) Outside Storage. Outside storage shall be in accordance with the following requirements:

- (1) All vending machines, except ice machines and telephone booths, shall be located inside the main building.
- (2) Only one permanent or one portable display rack for oil, antifreeze, or other automotive products shall be permitted on each pump island. No such rack shall be located closer than twenty-five (25) feet to the street right-of-way line or adjoining property line. All other displays or merchandise outside the main building is prohibited.
- (3) All hydraulic hoists, oil pits, lubricants and greasing, and other repair equipment shall be enclosed completely within the main building.

(i) Signs. All signs used in connection with gasoline service stations shall be in conformance with the regulations for general retail and commercial uses as specified in Chapter 1169.
(Ord. 27-2007. Passed 8-21-07.)

1165.11 MODEL HOME STANDARDS.

Residential model homes and temporary lot sales offices are newly-constructed homes or temporary structures placed in a newly-constructed subdivision and used by a homebuilder or developer to display home styles and lot availability in a subdivision to promote the sale of new housing units. The model home or sales office may be staffed and furnished.

(a) When making its decision to approve, disapprove or approve with conditions an application for a residential model home, the Planning Commission shall consider that the model home:

- (1) Is appropriately located within the community and sited so that it is easily accessible without creating a nuisance or hazard to nearby properties.
- (2) Is integrated into the residential character of the neighborhood with external lighting in conformity with customary residential lighting.

- (3) Is approved with a limited duration which shall be determined by the Planning Commission after consultation with the applicant. Extensions of time may be granted by the Planning Commission, but decisions must be based on the same criteria as outlined in this section.
 - (4) Is identified by no more than one sign which shall be in compliance with regulations governing signage.
 - (5) Shall not be used as a general real estate brokerage office where the sale of properties not owned or previously owned wholly or in part by the applicant occurs.
- (b) The Planning Commission shall also consider and may set conditions on the following as part of its decision to allow a residential model home:
- (1) Hours of operation.
 - (2) Number and types of employees; and maximum number of employees to be on the site at any one time.
 - (3) Provisions for parking for employees and customers.
 - (4) Size, lighting, content and location of signage (no internally lighted signage shall be permitted).
 - (5) Landscaping and screening.
 - (6) The use of temporary sales offices (i.e., manufactured homes, mobile homes or trailers) on the site of a newly constructed subdivision shall be discouraged.
- (c) In addition to the above-listed criteria for model homes, permission to occupy a temporary sales office for the purpose of home and lot sales within a newly constructed subdivision shall be granted only if the following conditions are met:
- (1) Such facility is located on a main arterial roadway or highway.
 - (2) Such facility is substantially screened by the use of landscaping and/or mounding.
 - (3) Such facility shall not create a nuisance to surrounding properties.
 - (4) Such other conditions as the Planning Commission deems appropriate.
 - (5) Sales offices in trailers or mobile homes are permitted for a duration of twelve (12) months. Users of such facilities may apply to the Planning Commission for an extension of an additional twelve (12) months.
- (Ord. O-08-2011. Passed 5-17-11.)

CHAPTER 1167 OFF-STREET PARKING AND LOADING*

1167.01	PURPOSE.
1167.02	PROVISION FOR PARKING AND LOADING REQUIRED.
1167.03	GENERAL SPECIFICATIONS AND REQUIREMENTS.
1167.04	PARKING LIMITATIONS IN RESIDENTIAL DISTRICTS.
1167.05	REQUIRED NUMBER OF OFF-STREET PARKING SPACES.
1167.06	REQUIRED NUMBER OF OFF-STREET LOADING SPACES.

1167.01 PURPOSE.

The purpose of these requirements for off-street parking and loading facilities is to encourage the orderly development of parking areas within the Municipality and to promote the safety of residents and visitors by ensuring the efficient handling of vehicular traffic.
(Ord. 07-2007. Passed 2-20-07; Ord. 28-2007. Passed 9-18-07.)

1167.02 PROVISION FOR PARKING AND LOADING REQUIRED.

In all zoning districts, at the time any building, structure or use is changed, established, erected, developed, or is enlarged or increased in capacity, there shall be provided off-street parking and loading spaces in accordance with the provisions of this chapter.
(Ord. 07-2007. Passed 2-20-07; Ord. 28-2007. Passed 9-18-07.)

1167.03 GENERAL SPECIFICATIONS AND REQUIREMENTS.

(a) Area and Dimensions - Parking Spaces.

	Minimum Width (measured in feet parallel to aisle)	Minimum Length (feet)	Maneuvering Lane Width (feet)
Parallel Parking	9	23	12
30°-53° Angle Parking	13	20	15
54°-74° Angle Parking	9	19	22
75°-90° Angle Parking	9	19	22

(b) Area and Dimensions - Loading Spaces. Loading spaces shall conform to the following minimum requirements:

<i>Length</i>	<i>Width</i>	<i>Height Clearance</i>
30 feet	12 feet	15 feet

(c) Access. All off-street parking and loading areas provided in accordance with this section shall have direct access to a publicly dedicated and improved street or alley.

(d) Driveway Curb Cuts. For all single-family residences, all driveway curb cuts shall be designed to accommodate a maximum 12-foot driveway at the right-of-way line.

*Cross reference—Off-street parking facilities - see ORC 717.05 et seq.

(e) Surfacing. All off-street parking and loading areas, except for parking areas serving single-family residential uses, shall be properly graded, drained, marked and surfaced so as to provide a hard, durable and dustless surface.

(f) Lighting. Any lighting used to illuminate any off-street parking or loading area shall be so arranged as to reflect light away from any adjoining premises in any zoning district where residences are a permitted use. In addition, such lighting shall be so arranged as to not interfere with traffic on any adjoining street or to be confused with any traffic control lighting.

(g) Location of Parking and Loading Spaces.

(1) Proximity to street right-of-way.

- A. For single- and two-family residential uses, no off-street parking space (or portion thereof) shall be located closer than five (5) feet to any established street right-of-way line.
- B. In the R-7 and OR Districts, no off-street parking space, or portion thereof, shall be located closer than twenty-five (25) feet to any established street right-of-way line.
- C. In all other districts, a five (5) foot clear zone shall be maintained between the street right-of-way line, and any vehicle. Parking areas shall be so designed and arranged as to not allow the protruding of any vehicle (or portion thereof) over the clear zone.

(2) Proximity to use.

- A. In the A, R, OR, CF, LI and GE Districts, required parking and loading spaces shall be provided on the same lot as the principal use which they serve.
- B. In the O and C-3 Districts, required parking and loading spaces shall be provided either on the same lot, or within one hundred (100) feet of the principal use which they serve.
- C. In the C-1 and C-2 Districts, required parking spaces may be located within three hundred (300) feet of the use they serve.

(3) Location. Parking for commercial structures should be primarily at the rear of the site, behind the buildings.

(4) Joint provision of parking facilities. Two (2) or more buildings or uses located in the same area may meet parking and loading requirements by the joint provision of parking and loading facilities, provided those facilities are located so as to meet the requirements of this section, and the number of spaces so provided shall not be less than the sum of required spaces as per Section 1167.05. A written agreement between the parties, stating the terms under which the proposed parking shall be developed and maintained, shall be filed with the application for a zoning permit. Such agreement shall be approved by the Law Director prior to issuance of a zoning permit.

(h) Temporary Parking. In districts where temporary parking is a permitted use, the following regulations shall apply to all temporary parking lots, except for temporary parking areas less than thirty-five (35) spaces provided that they are located on the same lot as the principal use that they serve and are associated with construction activities:

- (1) Land used for temporary parking must be located on the same lot or on a lot whose nearest lot line is within three hundred (300) feet of the nearest lot line of the property that contains the principal use served by the parking area.
- (2) Temporary parking is permitted for a period of time not to exceed three (3) years from date of final zoning inspection, no extension shall be provided. If the owner of the temporary parking area does not use the area according to the policies and procedures as set forth by the Department of Community Development, the parking area shall be immediately removed and returned to vegetation.
- (3) All temporary parking areas shall be properly graded and drained.
- (4) The temporary parking area shall be constructed with a dustless non-porous or semi-porous surface material as approved by the Village Engineer. The use of alternative paving materials is recommended.
- (5) Parking lot lighting for temporary parking areas shall comply with the regulations in division (e) of this section.
- (6) Temporary parking areas must meet all setbacks as required for permanent parking areas.
- (7) Temporary parking areas shall be screened from adjacent residential districts by a three and one-half (3.5) foot minimum evergreen hedge, masonry wall, or other means that block automobile headlights by at least ninety percent (90%).
- (8) Signage for temporary parking areas shall comply with the regulations in Section 1169.08(e) but may contain the name of the business they serve.
- (9) When temporary parking is not specifically addressed in PUD texts, refer to this section, Section 1167.03(h) or similar provisions, for standards regarding buffering, landscape, open space and screening commitments for temporary parking areas.
- (10) Should a temporary parking area be converted into a permanent parking area it must comply with all applicable codes for permanent parking.
- (11) A performance bond shall be posted at time of certificate of appropriateness to ensure removal of temporary parking areas within three (3) years or upon discontinuance of use. Upon removal the area shall be returned to vegetation.

(Ord. 92-92. Passed 12-15-92; Ord. 07-2007. Passed 2-20-07; Ord. 28-2007. Passed 9-18-07.)

1167.04 PARKING LIMITATIONS IN RESIDENTIAL DISTRICTS.

Travel trailers, motor homes, pick-up campers, folding tent trailers, boats or boat trailers and similar recreational equipment shall not be parked on streets or alleys in any district where residences are a permitted use, for a period of time exceeding twelve (12) hours. The storage of such equipment shall be subject to the following requirements:

(a) Such recreational equipment shall be stored behind the building line and shall not be stored within a required side and/or rear yard.

(b) Not more than one piece of recreational equipment shall be permitted to be stored outside on a parcel containing a single family or two-family dwelling. For the purpose of this section, a boat stored on a boat trailer shall be deemed one piece of recreational equipment. For multi-family uses, an area shall be designated for outdoor storage of recreational equipment and shall be limited in area to accommodate no more than one piece of recreational equipment for each fifteen (15) dwelling units.

(c) Recreational equipment shall not be occupied or used for living, sleeping, housekeeping, storage or business purposes.

(d) Parking Motor Vehicles on Residential Premises.

(1) All motor vehicles parked outside an enclosed structure shall be operable and bear current registration. "Operable" in this context means a vehicle capable of being started and driven from the location in question in compliance with all applicable motor vehicle laws.

A. Not more than one inoperable vehicle shall be allowed per one dwelling unit. Such vehicle may be maintained on the premises of the owner for the purpose of restoration and/or repair only for a period not to exceed fourteen (14) days.

B. Non-operating or dismantled vehicles and their component parts stored concealed from neighboring parcels and the public right-of-way in a garage or other enclosed building shall be exempt from the requirements of this section.

(2) In accordance with ORC 4513.65, a "collector's motor vehicle", meaning a vehicle whose variety or excellence makes it worth collecting and whose value is expected to appreciate, may be kept on private property with the permission of the person having the right to possession of the property, except that the vehicle must be concealed by means of buildings, fences, vegetation, terrain or other suitable obstruction.

(e) Sale of Motor Vehicles, Boats, and Trailers.

(1) Motor vehicles, boats and trailers may be displayed for sale upon driveways within the front or side yards, provided no more than one item is so displayed at any time and that such displayed item is placed no nearer to the edge of the roadway pavement than twenty (20) feet;

- (2) Not more than two (2) signs, each of which shall not exceed two (2) square feet in area, may be displayed for the sale of such item upon or in the motor vehicle, boat, trailer, motorcycle or motor home;
- (3) Any such motor vehicle, boat, or trailer displayed for sale must be in operating condition and capable of being immediately moved under its own power if self-propelled, or if not self-propelled, by towing by ordinary means available upon the premises.
- (Ord. 20-90. Passed 6-19-90; Ord. 27-2001. Passed 8-21-01; Ord. 07-2007. Passed 2-20-07; Ord. 28-2007. Passed 9-18-07.)

1167.05 REQUIRED NUMBER OF OFF-STREET PARKING SPACES.

Parking spaces shall be provided according to the following schedule of uses. If a use consists of more than one component use (e.g., a school with a stadium), the required number of parking spaces shall be the sum of the required spaces for those component uses.

Use	Number of Uses
(a) <u>Residential.</u>	
(1) One or two family residence.	Two per dwelling unit.
(2) Multiple family units.	Two per dwelling unit.
(3) Institutional housing.	One per three occupants plus one for each employee for main work shift.
(b) <u>Recreational.</u>	
(1) Softball, baseball, football, soccer or similar organized sport playfield.	20 for each playfield, plus one for each six seats in stands.
(2) Tennis, handball, or racquetball courts.	Three for each court.
(3) Bowling alleys.	Five per lane plus necessary spaces as required for affiliated uses, such as restaurants.
(4) Community swimming pools.	One per 75 square feet of total water surface.
(5) Theaters, stadium or sports arenas, auditorium or other assembly halls other than schools.	One for each three seats.
(c) <u>Institutional.</u>	
(1) Churches and other places of public worship.	One for each three seats in main auditorium.
(2) Public or private school.	Three for each classroom or one for each five seats in main auditorium, whichever is greater.

Use	Number of Uses
(3) Nursery School/Day Care.	One for each 15 students of proposed capacity.
(4) Libraries, museums, community centers.	One for each 400 square feet of gross floor area.
(5) Civic, social, fraternal organizations.	One for each three persons allowed under occupancy of maximum main meeting room.
(6) Hospitals, nursing facilities.	One for each four beds plus one per employee on main shift.
(d) <u>Commercial</u> .	
(1) Food, department or general merchandise, hardware, drugs, and similar retail sales.	One for each 200 square feet of gross floor area.
(2) Home furnishings, appliances, apparel, and similar retail sales.	One for each 250 square feet of gross floor area.
(3) Eating and drinking establishments without drive-through facilities.	One for each 75 square feet of gross floor area.
(4) Restaurants with drive-through facilities.	One for each 75 square feet of gross floor area, plus additional spaces in the drive-through lanes equal to 25 percent of the required number of parking spaces.
(5) Personal services, including banks, savings and loans, repair services without drive-through facilities.	One for each 200 square feet of gross floor area.
(6) Banks, savings and loans and similar uses with drive-through facilities.	One for each 200 square feet of gross floor area plus additional spaces in all drive-through lanes equal to 80 percent of the required number of parking spaces.
(7) Barber and beauty shops.	Two for each work station.
(8) Gasoline service stations.	Two for each service bay plus one for each two gasoline dispensing units, plus one for each employee during main shift.
(9) Self-serve laundries.	One for each three washers.

Use	Number of Uses
(10) Automobile sales and services.	One for each 400 square feet of gross floor space.
(11) Retail shopping centers.	One for each 200 square feet of gross floor area, plus one for each three persons allowed under maximum occupancy in any theater or place of assembly.
(12) Temporary outdoor sales.	One for each 200 square feet of area devoted to display and sales of goods.
(13) Hotels, motels, lodging houses.	One for each sleeping room or suite, plus one for each employee during main shift.
(14) Funeral homes.	One for each 50 square feet of gross floor area.
(15) Medical or dental offices.	Five for each doctor or dentist, plus one for each other employee during main work shift.
(16) Animal hospitals/clinics, veterinarian office.	Four for each veterinarian.
(17) Professional, administrative and business offices.	One for each 250 square feet of gross floor area.
(18) Data Center	One for each employee on the main shift
(e) <u>Industrial.</u>	
(1) Commercial and business support services.	One for each 400 square feet of gross floor area.
(2) Manufacturing, compounding, processing, assembling, packaging or treating of goods; warehousing, distribution and service industries.	Two for each three employees during work shift having greatest number of employees, plus one for each vehicle maintained on the premises.

(f) Other Uses. The Planning Commission shall determine the number of parking spaces required for any use not mentioned in this section for properties located outside of the Village Center area. For properties located within the Village Center area, refer to Chapters 1140, Urban Center and 1158, Urban Center Overlay Districts.

(g) Provision of Parking for the Disabled.

(1) Parking spaces shall be designated for the physically handicapped and may be used to compute the total number of spaces required. The number and location of the designated spaces shall be in compliance with the requirements of the Ohio Building Code.

(2) All such handicapped parking spaces shall be designated by free-standing signs as provided for pursuant to the Ohio Manual of Uniform Traffic Control Devices.

(Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 07-2007. Passed 2-20-07; Ord. 28-2007. Passed 9-18-07; Ord. O-08-2011. Passed 5-17-11; ; Ord. O-05-2015. Passed 2-24-15.)

1167.06 REQUIRED NUMBER OF OFF-STREET LOADING SPACES.

Loading spaces shall be provided for the loading and unloading of merchandise and goods, and may be located within the building, along a drive aisle adjacent to the building where a connected sidewalk is present, service area, or loading dock and shall be located so as not to impede normal vehicular parking according to the following schedule of uses. A building may share loading spaces when it contains multiple uses.

Use	Number of Uses
(a) <u>Retail, Restaurant, Commercial, and Industrial Uses</u>	
(1) 0 to 2,500	None
(2) 2,501 to 10,000	One
(3) 10,001 to 100,000	Two
(4) 100,001 to 200,000	Three
(5) Each additional 100,000	One additional
(b) <u>Hotels, Office Buildings, and Similar Establishments</u>	
(1) 0 to 50,000	None
(2) 50,001 to 100,000	One
(3) 100,001 to 200,000	Two
(4) Each additional 100,000	One additional
(c) Data Centers	
(1) Per building	One

(Ord. 07-2007. Passed 2-20-07; Ord. 28-2007. Passed 9-18-07; Ord. O-05-2015. Passed 2-24-15.)

CHAPTER 1169 DISPLAY SIGNS AND OUTDOOR ADVERTISING

1169.01	PURPOSE.
1169.02	DEFINITIONS.
1169.03	SIGN APPROVAL PROCEDURES.
1169.04	PROHIBITED SIGNS.
1169.05	PROHIBITED SIGN LOCATIONS.
1169.06	MAINTENANCE.
1169.07	NONCONFORMING SIGNS.
1169.08	SIGN AREA AND OTHER MEASUREMENT CALCULATIONS.
1169.09	CUSTOMARY SIGNS.
1169.10	TEMPORARY SIGNS.
1169.11	SPECIAL SIGNS.
1169.12	PERMANENT SIGNS: GENERAL REQUIREMENTS
1169.13	PERMANENT SIGNS: STANDARDS DEFINED.
1169.14	PERMITTED SIGNS: WITHIN THE VILLAGE CENTER.
1169.15	PERMITTED SIGNS: OUTSIDE THE VILLAGE CENTER.
1169.16	PERMANENT SIGNS: BUILDING SIGN TYPES.
1169.17	PERMANENT SIGNS: GROUND SIGN TYPES.
1169.18	SIGN TYPES: BY-RIGHT SIGNS.
1169.99	PENALTY.

1169.01 PURPOSE.

(a) The purpose of these sign regulations is to ensure the proper development and regulation of signs. These regulations are intended to provide design regulations for sign types so that they may fit harmoniously with structures and their surroundings. It is the intent of these regulations to prevent signs from becoming a distraction or obstruction to the safe flow of pedestrian and vehicular traffic, to prevent signs from becoming a nuisance factor to adjacent properties or uses, to protect and encourage a healthful economic and business environment in the community, and thereby protect the general health, safety, and welfare of the community.

(b) This chapter shall supersede all previous regulations regarding signs and shall be considered the requirements necessary for promotion of public safety, health, and general welfare through the regulation of signs.

(Ord. O-38-2010. Passed 12-7-10.)

1169.02 DEFINITIONS.

(a) As used in this chapter, the following words or phrases shall have the meanings herein:

- (1) "Abandoned sign" means a sign associated with an abandoned use, a sign that remains after the termination of the business, or a sign on its immediate premises not adequately maintained.
- (2) "Address sign" means any street location identifier that integrates with the architecture of the building and is not standard to a typical address marker permitted by code. These address signs are usually larger in scale and meant to be highly visible beyond standard means.

- (3) "Awning" means a non-rigid cloth or canvas hood or cover that projects from the wall of a building.
- (4) "Banner" means a non-rigid cloth, plastic or canvas sign typically related to a special event or promotion. National flags, state flags, municipal flags or corporate flags shall not be considered banners.
- (5) "Bench sign" means any sign painted on, located on, or attached to any part of the surface of a bench, seat, or chair placed on or adjacent to a public roadway.
- (6) "Billboard" means an off-premises sign directing attention to a specific business, product, service, entertainment or other activity sold, offered, or conducted.
- (7) "Blade" means a sign projecting from the face of the building and is oriented such so that it is vertical.
- (8) "Building directory sign" means an exterior building mounted sign intended to provide the identity or name, whether through logo, type, graphics or other symbols, for two (2) or more uses within one building.
- (9) "Building face" means one side of an exposed elevation.
- (10) "Canopy" means a projection from a building made from any material, which is cantilevered, suspended or supported on columns intended only for shelter or ornamentation.
- (11) "Canvas blade" means a cloth or flexible material sign which is not limited by code for the time it is allowed to be displayed.
- (12) "Clearance Zone" means an area not obstructed by objects.
- (13) "Copy" means the lettering or graphics on the face of a sign.
- (14) "Deteriorated" means showing signs of rust, corrosion, exposed wiring, chipped paint or faces, cracked, broken, or missing faces, or loose materials
- (15) "Directional sign" means a sign which locates features within a lot or indicates points of ingress or egress for automobile traffic.
- (16) "Drive-thru/Menu board sign" means a sign which displays the goods and prices available from a business for customers in their automobile.
- (17) "Dual-post sign" means a sign which is supported on two (2) sides by posts that are attached to the ground.
- (18) "Electronic sign" means any sign, or portion of a sign, that displays an electronic image or video, which may or may not include text, where the rate of change is electronically programmed and can be modified by electronic processes. This definition includes television screens, plasma screens, digital screens, LED screens, video boards, holographic displays, and other similar media.
- (19) "Face change" means a change in colors, copy, graphics, or visual image that does not require the installation of a new or modified sign board.

- (20) "Flag" means any fabric or bunting containing distinctive colors, patterns or symbols used as a symbol of a government or political subdivision.
- (21) "Flashing" means a sign or graphic which in any manner, as a whole or in part, physically changes in light intensity or gives the appearance of such change.
- (22) "Freeway oriented business park sign" means a sign announcing general development opportunities in a business park and/or a sign welcoming a new business to the business park, which is located on property adjacent to a freeway, expressway or divided highway.
- (23) "Ground sign" means a sign supported by or suspended from posts, pillars, columns, or other structures and which is wholly independent of any building for support.
- (24) "Hanging sign" means a sign suspended from its top and attached to an architectural piece of a building.
- (25) "Interior sign" means a sign which is not in any manner physically attached to or painted on the glass or any structural component of the window but which is on the interior of the building or structure and is clearly visible through the window from the exterior of the premises.
- (26) "Identification" means the act of specifying the name, address, and number of a building, institution, or person or the activity carried on in the building or institution. "Joint identification sign" means a sign intended to provide the identity or name, for two (2) or more uses within one building or on one property or the name of the building or its address for property occupied by two (2) or more businesses.
- (27) "Monument sign" means a sign incorporated as part of an architectural feature, the base of which rests entirely on the ground and is wholly independent of any building for support.
- (28) "Mounting width" means the length available to suspend a hanging sign from.
- (29) "Moving sign" means any sign, all or any part of which physically moves or is animated so as to give the appearance of movement.
- (30) "Nonconforming sign" means any sign which does not meet the standards set forth in this code document and/or has become abandoned.
- (31) "Pennant" means a triangular shaped banner.
- (32) "Permanent subdivision identification sign" means those signage features specifically relating to the denotation of a major entrance or entrances to a subdivision.
- (33) "Permanent sign" means a sign intended to be erected or used or in fact which is used for a time period in excess of thirty (30) days, other than those temporary signs allowed a longer use period as specifically permitted in Section 1169.10.
- (34) "Political sign" is a sign having reference to a political official, candidate, question, issue or opinion".

- (35) "Portable sign" means a sign that is designed to be transported, however, it also includes a sign that was designed to be transported, but which has had its wheels removed, and a sign with a chassis or support constructed without wheels, designed to be transported by trailer, vehicle, or wheels; a portable sign also includes sidewalk signs.
- (36) "Post-top" means a sign board that is atop a single supporting post.
- (37) "Primary Entrance" means the entrance which faces the public right-of-way, public easement, or is clearly the identifiable way to which the general public would enter a building.
- (38) "Projecting" means a sign which extends outward perpendicular to the building face.
- (39) "Residential For Sale/For Lease Signs" means signs that indicate the sale, rental or lease of a particular structure or land area.
- (40) "Roof line" means the bottom-most portion of a roof that abuts or is adjacent to the supporting exterior walls of a building.
- (41) "Roof sign" means a sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building or eave line of a building with a gambrel, gable or hip roof or the deck line of a building with a mansard roof.
- (42) "Setback" means the distance from the property line and/or right-of-way line to the nearest part of the applicable building, structure or sign, measured perpendicularly to the property line and/or right-of-way line.
- (43) "Sidewalk sign" means a sign placed within the sidewalk and set out daily for the advertisement of products and services at an accompanying business.
- (44) "Sidewalk plaque" means a durable emblem, graphic, or lettering embedded into the sidewalk or a business entry outside of the public right-of-way.
- (45) "Sign" means any name, number, symbol, identification, description, display, illustration, object, graphic, sign structure, or part thereof, whether permanent or temporary, which is affixed to, painted on, represented directly or indirectly upon, or projected onto a building, structure, lot, or other device, whether mobile or affixed to the ground, and which directs attention to any object, product, place, activity, person, institution, organization, or business. This definition includes all signs visible from the right-of-way or adjacent property, including interior signs oriented towards the exterior facade of any building or structure. Signs erected by the local, state or federal government for the purposes of discharging any normal governmental function, such as traffic control or safety, are excluded from the regulations of this chapter.
- (46) "Sign board" means the area of a sign to which the lettering and graphics are applied.
- (47) "Sign relief" means a measured dimension created by the materials used for a sign or the thickness of lettering applied to a building face or sign board.

- (48) "Single-post sign" means a sign which hangs from an armature that is attached to the ground and erected by one post.
 - (49) "Streamer" means any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire, string or cord, usually in a series, designed to move in the wind. A streamer may have pennants and/or banners attached.
 - (50) "Street frontage" means the total length or width of the side and or front of a building, or storefront that faces a principal improved public right-of-way, excluding any extension of a building wall beyond the building itself.
 - (51) "Temporary sign" means a sign of a type described in Section 1169.10 intended to be used, or in fact used, for a time period not to exceed thirty (30) days in any calendar year unless otherwise specifically permitted in Section 1169.10.
 - (52) "Trailer sign" means a sign that is attached to, supported by, or part of a structure which is designed to move on trailer wheels, skids, or other similar devices, or transported, pushed, or pulled by a motor vehicle.
 - (53) "Wall plaque" means a small sign attached to the face of the building and typically is made of very durable materials (etched stone, cast metal) and is integrated with the architectural detailing of the building.
 - (54) "Wall sign" means a sign attached to a building face, with the exposed face thereof in a plane parallel to the plane of the wall. Wall signs include painted murals, messages, graphics and other designs painted along with any letters or numerals mounted directly on buildings and any extensions thereon.
 - (55) "Window sign" means a sign, graphic, poster, symbol or other identification that is physically affixed to or painted on the glass or other structural component of the window.
- (Ord. O-38-2010. Passed 12-7-10.)

1169.03 SIGN APPROVAL PROCEDURES.

- (a) The following sign approval criteria shall be observed:
 - (1) All signs contained in Section 1169.11 (Special Signs), Section 1169.12 (Permanent Signs), and Section 1169.18 (By-Right Signs) require a sign permit issued by the Zoning Officer.
 - (2) Existing, conforming signs requiring a sign face change shall require a sign permit issued by the Zoning Officer.
 - (3) All new permanent signs within the Village Center Area require a certificate of appropriateness according to Section 1157.06 prior to the issuance of a sign permit.
 - (4) All signs contained in Section 1169.10 (Temporary Signs) require a temporary sign permit issued by the zoning officer.

(b) Application and Permit Procedure. Application for a sign permit shall be made by the owner of the property upon which the sign is proposed, or his agent, on forms provided by the Community Development Department. The Department shall regulate and enforce the requirements of this chapter, and approve or disapprove all requests for sign permits. An application for a sign permit shall include the following information:

- (1) Name, address, and telephone number of the applicant and property owner if different from the applicant.
- (2) Scaled drawings, showing at a minimum:
 - A. The width of the building face or faces.
 - B. The design and layout of the proposed sign to scale, including the total area of the sign and the size, height, character, material specifications and color of letters, lines, and symbols.
 - C. Details of illumination, if applicable.
 - D. A scaled site plan of the proposed ground sign location showing the distance from the public right-of-way and relationship to access drives, parking areas and buildings or a face elevation of proposed signs on buildings showing the height and proportions of the signs.
 - E. The landscape plan for ground signs, if required.
- (3) Details and specifications for the construction and attachment of the sign.
- (4) Name, address and telephone number of the sign contractor or company.
- (5) Other information as may be required by the Community Development Department to ensure compliance with the provisions of this chapter.
- (6) Any required application fee.

(c) Variances and waivers. Requests for deviations to the requirements of this chapter for properties located within the Village Center, as defined in the Village Center Strategic Plan, shall be considered to be waivers and shall be heard by the Architectural Review Board as set forth in Chapter 1113 of these Codified Ordinances. Requests for variances to the requirements of this chapter for properties located outside of the Village Center shall be heard by the Board of Zoning Appeals as set forth in Chapter 1113 of these Codified Ordinances.

(Ord. O-38-2010. Passed 12-7-10; Ord. O-8-2011. Passed 5-17-11.)

1169.04 PROHIBITED SIGNS.

The following signs or similar devices are prohibited: trailer signs, search lights, laser lights, pennants, streamers, spinners, balloons, bench signs, portable signs (except for sidewalk signs), roof signs, billboards, changeable copy (except for gasoline station price signs), flashing signs, projected images and animated signs, signs with moving or moveable parts, electronic signs, and any look-alike version of any of these prohibited sign types. Signs on vending machines, trash bins,

or other devices serving any premises, shall be fully screened from view of any public right-of-way and adjoining property. Homemade lettered signs shall also be prohibited with the exception of sidewalk signs as long as they meet the requirements of Section 1169.10(i).

(Ord. O-38-2010. Passed 12-7-10.)

1169.05 PROHIBITED SIGN LOCATIONS.

Signs may not be installed in any of the following locations:

(a) In any public easement, right-of-way, or no build zone, except publicly owned signs, such as traffic control signs and directional signs.

(b) In any public park or other public property, without written authority of the owner of that property;

(c) On any traffic control signs, construction signs, fences (without written permission from owner), utility poles, street signs, trees or other natural objects;

(d) No sign shall be located so as to interfere with the safe movement of vehicles or pedestrians entering, leaving, or crossing a public right-of-way or private street;

(e) On any property without the prior authorization of the owner of the property on which any sign is to be placed.

(Ord. O-38-2010. Passed 12-7-10.)

1169.06 MAINTENANCE.

(a) All signs and components thereof shall be subject to the following conditions:

(1) The property owner shall be solely responsible for maintaining the appearance, safety and structural integrity of the sign at all times;

(2) Whenever a Community Development Department inspecting official finds a sign in need of repair, support, replacement, cleaning, repainting, or that other action is necessary to maintain reasonable and proper appearance or public safety, he or she shall issue an order to the owner allowing thirty (30) days to effect needed repairs, maintenance or action. If the inspecting official determines that the existing condition of the sign creates an immediate hazard to the health or safety of the general public, he or she shall issue an order to the owner requiring that the sign be removed immediately.

(b) Failure of an owner to comply with the provisions listed above shall be cause for the inspecting official to order the permit issued for the sign void and issue an order for the sign to be removed. If the sign is not removed by the deadline established by the inspecting official, that official may cause the sign to be removed and the cost assessed to the property owner. If the property owner refuses to pay for removal of the sign, the cost of such removal shall be assessed to the property owner's real property tax assessment.

(Ord. O-38-2010. Passed 12-7-10.)

1169.07 NONCONFORMING SIGNS.

(a) Abandonment. Use of an existing sign shall terminate and a sign will be considered abandoned when any of the following conditions exist:

- (1) When the sign is associated with an abandoned use;
- (2) When the sign remains after a business has ceased operations. A business has ceased operations if it is closed to the public for at least thirty (30) consecutive days, or the business has vacated site, whichever comes first;
- (3) When the sign is not maintained or does not conform to the following:
 - A. All signs, together with all supports, braces, guys and anchors shall be kept in a proper state of repair;
 - B. Every sign and the immediately surrounding premises shall be maintained by the owner, or his agent, in a clean, sanitary and inoffensive condition, free from all obnoxious substances, rubbish and weeds.

Abandoned signs shall be removed by the property owner.

Upon determination by a Community Development Department inspecting official that a sign has been abandoned, but not removed, the inspecting official shall issue an order for its removal by the property owner within fifteen (15) days. Any abandoned sign still standing after fifteen (15) days following an order for removal may be removed by the Village at the property owner's expense. If the property owner refuses to reimburse the Village for removal of the sign, the cost of such removal, as determined by the Village Administrator, will be added to the owner's real property tax assessment.

(b) Relocation or Replacement. A nonconforming sign shall not be structurally relocated or replaced unless it is brought into compliance with the provisions of this section. Should any replacement or relocation occur without being brought into compliance, the sign shall be existing illegally, and subject to the penalties as specified in Section 1169.99.

(c) Maintenance. A nonconforming sign shall be maintained or repaired in accordance with the following provisions:

- (1) The size and structural shape of the sign shall not be changed or altered. The copy may be changed provided the size and structural shape of the sign face is not altered.
- (2) In case damage occurs to the sign to the extent that more than fifty percent (50%) of the replacement value is lost, the sign shall be removed within sixty (60) days. Any replacement sign must meet the requirements of this chapter.

(Ord. O-38-2010. Passed 12-7-10.)

1169.08 SIGN AREA AND OTHER MEASUREMENT CALCULATIONS.

For the purposes of this chapter, the measurement of sign area and other supporting measurements shall comply with the following standards:

(a) Sign area shall include the face of all the display areas of the sign not including bracing, framing and structural supports of the sign, unless such support members are made part of the message or face of the sign or are determined by the Village Administrator's designee to be intended solely to make the sign more visible rather than serving any aesthetic or structural purpose.

(b) For a sign that has two (2) display faces and is perpendicular to a public easement, right-of-way or lot line, the total area of the sign shall be determined by the total area of both sign faces unless otherwise specified. For spherical signs, the sphere shall be bisected by an imaginary line through the center of the sphere, and the surface area of the two (2) half spheres shall be counted as the sign face.

(c) The area of the letters, numbers or emblems mounted on a building wall or wall extension shall be computed by enclosing such letters, numbers or emblems with an imaginary rectangle around the letters, numbers or emblems, and determining the area.

(d) Measurement of Building Frontage. The frontage of a building shall be the width of the facade of the building, excluding any overhang or non-enclosed cover, that faces the principal street or contains the primary entrance, if a building is divided into units, the building unit frontage shall be the width of that unit, as measured from the party wall centerlines, on the frontage of the building.

(e) Measurement of Lot Frontage. The frontage of a lot shall be the number of linear feet the lot abuts on the principal street. For structures and uses having no direct frontage on public roads, as within shopping centers, frontage shall be counted as the intersection of the building line onto adjacent drives or parking areas.

(f) Measurement of Ground Sign. The height of ground signs shall be measured from the base of the sign at its point of attachment to the ground to its topmost element. However, if the support of a ground sign is attached to a wall or other man-made base, including a graded earth mound, the sign height shall be measured from the natural grade of the nearest street, drive or parking area.

(g) Measurement of Sign Location. In determining the location of signs in relation to lot lines, distances shall be measured from the vertical projection of the lot line to the closest point on the sign.

(Ord. O-38-2010. Passed 12-7-10.)

1169.09 CUSTOMARY SIGNS.

The following special signs do not require a sign permit but are subject to the following standards:

(a) Flags. The flag or insignia of any nation, state, city or other political subdivision. Poles for such flags must be no more than thirty-five (35) feet in height as measured from established grade line to the top of the pole. The maximum size of such flags must be determined according to the following table:

<i>POLE HEIGHT</i>	<i>MAXIMUM FLAG SIZE</i>
35'	5' by 9'6"
30'	5' by 8'
25'	4' by 6'
20'	3' by 5'

(b) Corporate Flags. Corporate Flags are exempt from this sign code subject to the following conditions:

- (1) No more than one corporate flag may be flown per parcel of land;
- (2) A corporate flag shall not be larger than three (3) feet in height and five (5) feet in length;
- (3) The maximum height for a corporate flag on a separate pole shall be twenty (20) feet as measured from established grade line to top of the pole;
- (4) Corporate flags may display only the name, corporation emblem and/or logo of a given corporation. Slogans and tag lines are not permitted.

(c) Standard Street Address Markers. New and existing buildings shall have approved numbers, buildings numbers, or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of high with a minimum stroke width of one-half (0.5) inch. Addresses which exceed twenty-four (24) inches in height or four (4) square feet in area shall be considered address signs and shall require a sign permit.

(d) Government Signs. Signs required or authorized for a public purpose by any law, statute or ordinance, including traffic control devices, provided that such signs contain no supplementary advertising.

(e) Public Information Signs. Public information signs approved and installed by the Village, including "block watch", way-finding, public events and attractions, and other such signs.

(f) Historical Markers. Signs which describe locations of historical importance and are administered by the Ohio Historical Markers Program.

(g) Political Signs. Political signs may be erected and displayed with no limitation on time or duration subject to the following limitations: Such signs shall not exceed three (3) square feet in area and shall not exceed four (4) feet in height above the ground level. All political signs are an important and distinct medium of expression and are being regulated, not based on their content, but to the extent they become deteriorated and/or a safety issue. A political sign shall be removed when it becomes deteriorated, as defined in Section 1169.02, or when it is displayed in a non-compliant position. Such signs shall not be illuminated and shall not be located on any public property, street or right-of-way, nor shall such signs be attached to any utility pole, fence, traffic sign or other structure located upon public property, street or right-of-way.

(h) Residential For Sale/For Lease Signs. Signs that indicate the sale or rental of a particular structure or land area, are limited in size to sixteen (16) square feet total and a maximum of eight (8) square feet per side, with one sign allowed per street front. Signs shall not exceed six (6) feet in height in all residential areas. Such sign may only be located on the property offered for sale or lease. Such signs shall not be located in a public right-of-way and shall not be illuminated. Such sign shall be removed not later than ten (10) days after the closing of the sale of the property or entering of a lease agreement.

(i) Garage/Yard Sale Signs. A sign which advertises the sale of personal property such as a garage, yard, or moving sale sign provided that it is limited to one sign, not greater than four (4) square feet in size and is located only on the sale premises. Such sign shall be erected for a period not greater than three (3) consecutive days. Such signs shall not be located in public right-of-way. No property shall display a garage, yard, or moving sale sign for more than fifteen (15) days per year.

(j) Business Open/Close Signs. A sign which indicates that a business is open is permitted for each business. The following criteria shall be met:

- (1) Shall be no more than four (4) square feet in area;
- (2) Shall only be placed within ground floor windows;
- (3) Shall not be associated with any business names or logos;
- (4) Shall only illuminate "open";
- (5) If exposed lighting is used as an illumination method, the approval of the Architectural Review Board is required. The use of exposed lighting shall be appropriate to the design of the sign and location of the building.

(k) Business Hours. Each business with operating hours shall be permitted to post them as necessary. Signs shall be limited to one and one-half square feet in area, not be associated with any business names or logos, and not be illuminated.

(Ord. O-38-2010. Passed 12-7-10.)

1169.10 TEMPORARY SIGNS.

Temporary signs shall require a temporary sign permit subject to the following standards:

(a) Business Event Signs. A sign advertising a business event may not exceed a maximum of sixteen (16) square feet in area unless it is a sign covering all portions of an existing permitted sign. The sign must be located on the premises of the business event. No business shall display such sign for more than thirty (30) days and only three (3) business event signs are permitted per site per year. The date that the sign is first displayed shall be legibly marked on the sign.

(b) Temporary Window Signs. Signs placed in first floor and storefront windows so as to be visible from the right-of-way, will be considered temporary. Temporary window signs are limited to a maximum of one per window, up to three (3) windows, not to exceed fifteen percent (15%) of the area of the windows in which they are placed. Typical uses for temporary window signs would be to promote limited-time events or retail sales. No business shall display such sign for more than forty-five (45) days.

(c) Commercial Construction Signs.

- (1) Construction signs may be placed no sooner than sixty (60) days prior to construction and shall be removed within fourteen (14) days after construction is complete. One sign may be displayed for each frontage. Such sign(s) may identify the owner's name, the architect, the contractors, the financing arrangements, and the purpose for which the project is intended. No products or services may be advertised on construction signs.
- (2) Each sign shall be located only on the parcel of land being improved. No sign shall exceed thirty (30) square feet in total area and shall not extend more than seven (7) feet above the grade of the lot on which it is located. The sign shall not be located nearer the right-of-way line than five (5) feet, and on corner lots shall not be nearer the right-of-way line of either street than thirty (30) feet.

(d) Subdivision Construction Signs. Signs advertising the sale of lots in an undeveloped subdivision may be erected and displayed in the subdivision. A permitted sign package for temporary subdivision construction signs may include a primary signs and additional story-board signs. All signs shall be removed at the expiration of three (3) years after its erection or when sixty percent (60%) of the lots fronting on the street which the sign faces have been built on and occupied as residences, whichever occurs first.

- (1) One primary sign shall be permitted for each new subdivision street that intersects with the previously existing roadway grid. No sign shall be located within the intersection clearance zone. No sign shall be more than six (6) feet in height above the established grade of the abutting street. The sign shall not exceed thirty-six (36) square feet in area or display surface.

- (2) Storyboard signs shall be permitted to display subdivision amenities. Graphics are not permitted on these signs. No sign shall be more than four (4) feet in height and exceed twelve (12) square feet in area or display surface. One sign is permitted for each seventy-five (75) feet of street frontage with a maximum number of three (3).

(e) Residential Subdivision Model Home Signs. Signs advertising the model home of a builder in an undeveloped subdivision may be displayed provided that only one sign may be located on the property of a model home. No sign shall be located nearer than ten (10) feet (three (3) feet in the Village Center District) to any street right-of-way line. No sign shall exceed two (2) feet by three (3) feet in dimension or six square feet in area. No sign shall extend more than four (4) feet above the grade of the lot on which it is located. Such sign shall not be illuminated.

(f) Community Event and Program Signs. Community events and programs which last for a time period of thirty (30) days or less and which are sponsored by nonprofit, public, educational, religious and charitable organizations may display up to four (4) signs, not to exceed a total area of twenty (20) square feet, for a period of thirty (30) days immediately preceding the commencement of the event. One sign may be located at the site of the event provided it does not exceed twenty (20) square feet in size. All off-site signs shall be placed at different sites and shall be removed not later than forty-eight (48) hours after the scheduled activity. Additional community event signage may be approved by the City as part of a special event permit.

(g) Theater, Stadium, Sports Arena, Auditorium and Assembly Hall Banners. Theaters, stadiums, sports arenas, auditoriums and assembly halls may display building mounted banners to promote events and programs. Banners may not be used as an advertising medium for specific commercial products. Such banners must be artistic in nature and must be sized and designed appropriately for the building facade on which they are located.

(h) Freeway Oriented Business Park Signs. Freeway Oriented Business Park signs are limited to a maximum of four (4) along the State Route 161 freeway frontage and subject to the following standards:

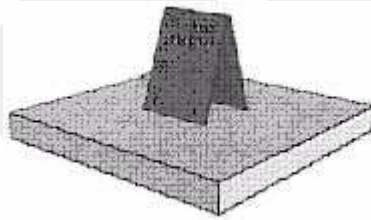
- (1) The area of each sign shall not exceed two hundred twenty-five (225) square feet and is limited to a height of fifteen (15) feet.
- (2) Such sign shall be incorporated into the design of the horse fence if one exists, and shall be located behind the right-of-way.
- (3) Illumination of the sign is prohibited.
- (4) The sign may not advertise the sale/lease of specific parcels.
- (5) Development opportunity signs may be displayed for a period of two (2) years in a single location and business welcome signs may be displayed for a period of sixty (60) days.

(i) Commercial and Industrial For Sale/For Lease Signs. Signs indicating the sale, rental, or lease of commercial or industrial real estate is permitted and limited to sixteen (16) square feet in area and five (5) feet in height for lots with less than one hundred (100) feet of street frontage. For

lots with street frontage of one hundred (100) feet or more a sign of thirty-six (36) square feet in area and eight (8) feet in height is permitted. For lots with greater than two hundred (200) feet with freeway frontage, an additional sign on the freeway frontage, limited to one hundred twenty (120) square feet and ten (10) feet in height, is permitted. Free-standing signs must be located so that they do not interfere with the safe movement of vehicular and pedestrian traffic and must be removed within ten (10) days after the sale, rental, or lease has occurred. Individual tenant spaces within a parcel are allowed a window or wall sign no larger than sixteen (16) square feet in area. Such sign may only be located on the property offered for sale or lease.

(j) Residential For Sale/For Lease Signs. Signs that indicate the sale of a land area, in excess of five (5) acres for residential development or redevelopment are limited to sixteen (16) square feet in area and five (5) feet in height for lots with less than one hundred (100) feet of street frontage. For lots with street frontage of one hundred (100) feet or more a sign of thirty-six (36) square feet in area and eight (8) feet in height is permitted. Free-standing signs must be located so that they do not interfere with the safe movement of vehicular and pedestrian traffic and must be removed within ten (10) days after the sale has occurred. Such sign may only be located on the property offered for sale or lease.

(k) Sidewalk. Sidewalks signs shall be designed according to the following diagram and standards:



- (1) Must be a durable weatherproof material such as painted wood, metal or plastic.
- (2) A-frame or hanging signs allowed, spinning or spring-mounted signs are prohibited.
- (3) May be located within the right-of-way with approval of the Community Development Department but must not obstruct pedestrian movement along public or private walkways.
- (4) Must be removed after business hours.
- (5) Content may change only on chalkboard, whiteboard, or applied vinyl lettering signs.
- (6) The following specifications shall apply:

<i>SUB-DISTRICT/ CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per business	8 s.f. maximum per side	Located within 10' of an entrance	Not permitted
Village Core	One per business	8 s.f. maximum per side	Located within 10' of an entrance	Not permitted

<i>SUB-DISTRICT/ CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Core Residential	Not Permitted			
Village Residential	Not Permitted			
Campus	One per building	8 s.f. maximum per side	Located within 10' of an entrance	Not permitted
Parks & Preservation	One per building	8 s.f. maximum per side	Located within 10' of an entrance	Not permitted
Commercial/Warehousing	One per business	8 s.f. maximum per side	Located within 10' of an entrance	Not permitted
Residential Subdivision	Not Permitted			
Retail	One per business	8 s.f. maximum per side	Located within 10' of an entrance	Not permitted
Institutional	One per building	8 s.f. maximum per side	Located within 10' of an entrance	Not permitted

(Ord. O-38-2010. Passed 12-7-10; Ord. O-8-2011. Passed 5-17-11.)

1169.11 SPECIAL SIGNS.

Signs limited to specific functions shall require a sign permit subject to the following standards:

(a) ATM Signs. Signage for all ATMs (automated teller machines) shall be limited to one square foot of sign area and utilize no more than three (3) colors. ATM signage must have an opaque background. If the ATM contains a logo, it may be internally illuminated. In addition, monochromatic, non-illuminated logos of accepted credit systems (VISA, MasterCard, etc.) are limited to less than one square foot in area.

(b) Automotive Fuel Station Signs. Automotive fuel stations are permitted two (2) name/logo combinations for each stand-alone pumping station. The area of the name and logo shall not exceed one and one half (1.5) square feet in area. Automotive fuel stations may display the following additional signs without the information contained thereon being treated as items of information: signs showing an affiliation with a motor club or signs indicating the acceptance of designated credit cards. The name/logo or additional information may not be illuminated. Matter appearing on gasoline pumps as purchased or installed shall not be considered a sign for the purposes of this Chapter.

(c) Drive-through, menu board signs. A drive-through menu board sign is permitted only when all of the following conditions are fulfilled:

- (1) The sign is located on the property to which it refers;
- (2) The sign is not visible from the public right-of-way;
- (3) The sign is single-face only and does not exceed thirty-two (32) square feet in size;
- (4) The sign is not placed in front of the building setback line.

(d) Home Occupation Signs. Home occupation signs as regulated by Section 1165.09(d) shall be limited to one non-illuminated sign, not more than two (2) square feet, attached flat against the structure. Such sign shall contain no more than two (2) colors.

(Ord. O-38-2010. Passed 12-7-10.)

1169.12 PERMANENT SIGNS: GENERAL REQUIREMENTS

All permitted permanent signs shall be subject to the following requirements where applicable:

(a) Context and Compatibility.

- (1) Signs are consistent with the design/style of the building on which they are located. Signs integrate with the building/site on which they are located and adjacent development in scale, design, and intensity. For example, large signs are best suited for buildings with larger massing.
- (2) Signs do not adversely impact existing and adjacent residential uses in mixed-use settings.
- (3) Signs do not create an appearance of competition between adjacent signs. For example, all signs on a single building have similar scale, placement and proportion as to create harmony among all sign designs.
- (4) Joint identification signs on a single sign face contain consistent or complementary fonts and colors for all tenants.
- (5) Signs are appropriate to their settings. For example, a monument sign is not particularly suitable for a pedestrian-oriented retail environment.

(b) Execution.

- (1) Signs do not block portions of architectural detailing, windows, entries, or doorways.
- (2) Sign materials are complementary to the building materials and are high quality and durable.
- (3) Signs are well designed using unique materials and combinations, lighting concepts, and progressive forms.
- (4) Multiple sign types should avoid repeated functionality. For example, a blade sign and a projecting sign that are both perpendicular to a building face have very similar visibility perspectives.

(c) Illumination. Appropriate illumination methods shall be permitted within each sign type as indicated in Section 1169.16 through Section 1169.18 for permanent signs. The following illumination method standards shall apply:

- (1) External. All external lighting sources shall be shielded. For energy conservation, all external light sources shall be LED, fluorescent, compact fluorescent lamps, gas-discharge lamps, or any other lighting technology that delivers fifty (50) or more lumens per watt. Light sources shall use a warm color temperate range of less than five thousand (5,000)

Kelvin. Incandescent light sources are prohibited. Ground mounted fixtures shall not exceed a total height of one foot, including base. No mounting base shall exceed a height of four (4) inches from the ground level. All permanent ground-mounted fixtures for external illumination shall be fully landscaped and screened with living plant material to hide any visible fixtures. All shrubs, trees, turf, groundcovers, and other planting shall be well maintained, properly installed, weeded, mulched as needed and kept free of trash and other unsightly material and/or debris.

- (2) Internal. All internal lighting sources shall be shielded behind semi-opaque acrylic lettering or graphics. Only individual lettering or graphics may be illuminated for signs greater than eight (8) square feet. For energy conservation, all internal light sources shall be fluorescent, compact fluorescent lamps, or other lighting technology that is equal or greater to in energy efficiency.
- (3) Exposed. Signs are prohibited from utilizing exposed neon, exposed LED or equivalent exposed light sources without express approval granted by the Architectural Review Board. The Architectural Review Board may only grant approval of signs utilizing exposed neon, exposed LED or equivalent light sources if the use of exposed lighting is appropriate to and consistent with the design and style of the building, the sign, the location of the building and the concerns expressed by the adjacent property owners. If approved, the light source may utilize a range of colors but must meet requirements of Section 1169.12(f) for maximum permitted number of colors. Other exposed light sources and signs with moving or changing words, shall be prohibited.
- (4) Halo. Light sources concealed behind lettering or graphics may utilize white or soft white light sources. The face of characters or graphics utilizing halo lighting shall not be illuminated. For energy conservation, all light sources shall be fluorescent, compact fluorescent lamps, or other lighting technology that is equal or greater to in energy efficiency.
- (d) Joint identification signs. Joint identification signs shall be limited to premises where there are two (2) or more business uses on one property. Any joint identification sign shall not exceed the maximum sign area and measurements for sign types identifying individual occupants.
- (e) Continuity. Signs and their location should be considered in relationship to their surrounding environment and, if seen as a single package of signs, should have a continuity of design. Sign continuity should be achieved for buildings or storefronts with matching architectural composition and detailing. The sign shall be in harmony with the buildings on the site and shall not detract from the appearance of the general neighborhood in which it is located.
- (f) Color. Signs with color shall be limited to four (4) colors. For the purposes of this section, black and white shall be considered colors.
- (1) Color gradation. Gradation from different shades of one color is considered to be one color. Color gradation to a different color is considered to be two (2) colors.

- (2) Joint identification signs. Joint identification signs consisting of multiple sign boards connected by chains or similar materials leaving visible space between sign boards shall be limited to four (4) colors per sign board.

(g) Materials. Sign materials shall be of good quality, good durability and complementary to the building of which they become part. The following materials design criteria shall apply, unless otherwise noted.

- (1) Nylon or other flexible synthetic materials are limited to only temporary banner signs.
 - (2) Any combination of these materials may be used for any permanent sign: wood, stone, brick, glass, metal, acrylic, PVC, medium/high density overlay board, Alumalite™, DiBond™, LusterBoard™ or other similar products.
 - (3) Canvas or other colorfast fabric materials for permanent signs shall only be utilized for canvas blade or awning signs.
 - (4) Signs shall not be manufactured of synthetic foams (exposed or encased).
- (Ord. O-38-2010. Passed 12-7-10.)

1169.13 PERMANENT SIGNS: STANDARDS DEFINED.

The following shall be observed to define the number of permitted signs:

(a) Signs within the Village Center. The number and types of permitted signs shall be regulated by the location of the signage within the Village Center District. Sub-districts are established and depicted in the Village Center Sign Code map, as adopted by reference, which has the following area designations:

- (1) Historic Center.
- (2) Village Core.
- (3) Core Residential.
- (4) Village Residential.
- (5) Campus.
- (6) Parks and Preservation

The Village Center Sign Code reference map shall be updated as necessary to reflect rezonings within the Village Center area.

(b) Signs outside the Village Center Area. The number of permitted signs shall coincide with a land use category for which a permit is being applied. The land use categories are follows:

- (1) Commercial and warehousing.
- (2) Residential Subdivision.
- (3) Retail.
- (4) Institutional.

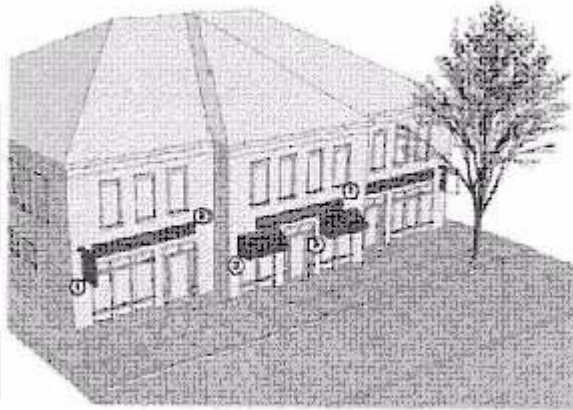
(c) Sign types. The term "sign types" refers to a unique set of design standards and criteria for signage as listed in Sections 1169.16 through 1169.18. Each Village Center sub-district or use category outside of the Village Center is permitted a defined number of sign types. The number of permitted sign types may not necessarily correlate to a maximum number of individual signs. For example, the "window" sign type allows for the location of multiple signs in a business' storefront. The application of window signs constitutes as one permitted sign type. Not all sign types are permitted in designated sub-districts or use categories and is noted with each sign type. (Ord. O-38-2010. Passed 12-7-10; Ord. O-08-2011. Passed 5-17-11.)

1169.14 PERMITTED SIGNS: WITHIN THE VILLAGE CENTER.

The following shall be observed to determine the number of permitted signs within the Village Center. No more than one sign type may be a ground sign. The examples shown are for example only and applicants are encouraged to choose a sign type that appropriately fits their needs and site conditions.

(a) Historic Core/Village Core. Each building or structure in either the Historic Core or Village Core sub-districts of shall be allowed three (3) sign types.

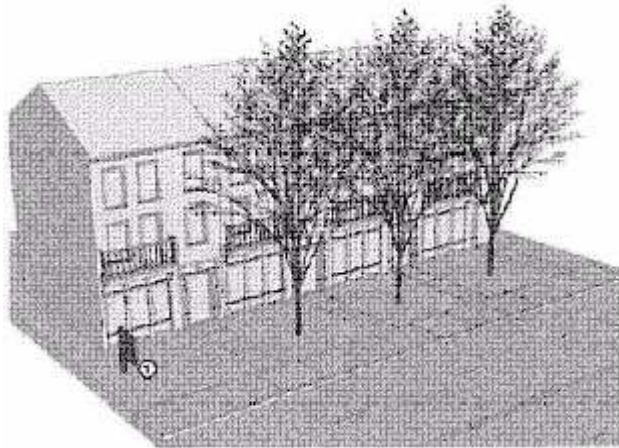
Example Sign Package:



1. First permitted sign type. Example shown: Projecting
2. Second permitted sign type. Example shown: Wall
3. Third permitted sign type. Example shown: Awning

(b) Core Residential/Village Residential. Each building or structure in either the Core Residential or Village Residential sub-districts shall be allowed one sign type.

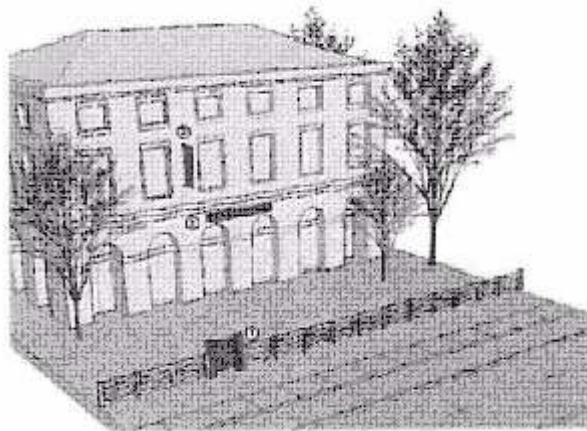
Example Sign Package:



1. First permitted sign type. Example shown: Single-post

(c) Campus/Parks and Preservation. Each building or structure in either the Campus or Parks and Preservation sub-district shall be allowed three (3) sign types.

Example Sign Package:



1. First permitted sign type. Example shown: Dual-post
2. Second permitted sign type. Example shown: Wall
3. Third permitted sign type. Example shown: Canvas Blade

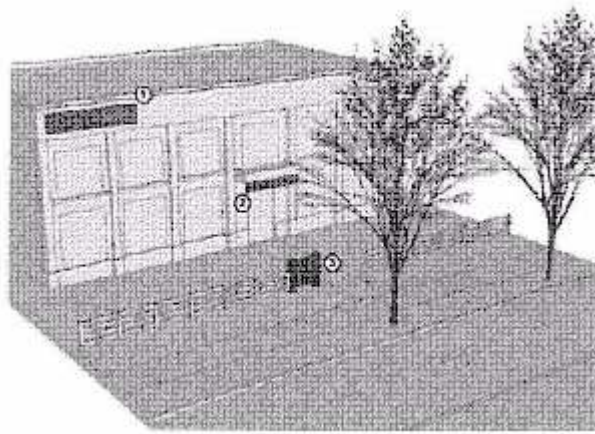
(Ord. O-38-2010. Passed 12-7-10.)

1169.15 PERMITTED SIGNS: OUTSIDE THE VILLAGE CENTER.

The following shall be observed to determine the number of permitted signs outside of the Village Center.

(a) Commercial and warehousing. Each building or structure for a commercial and warehousing type business shall be allowed three (3) sign types.

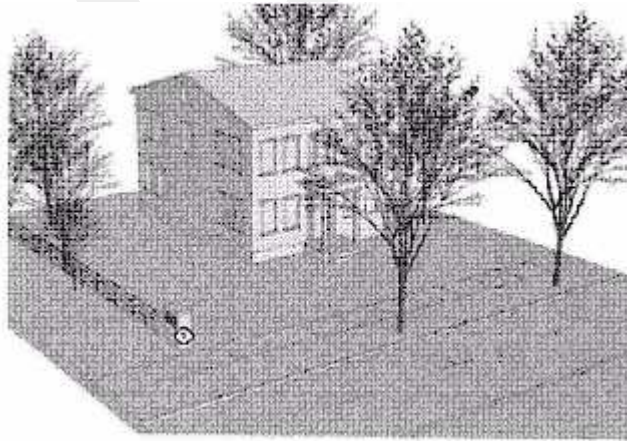
Example Sign Package:



1. First permitted sign type. Example shown: Wall
2. Second permitted sign type. Example shown: Hanging
3. Third permitted sign type. Example shown: Dual-post

(b) Residential Subdivision. Each residential subdivision shall be allowed one sign type.

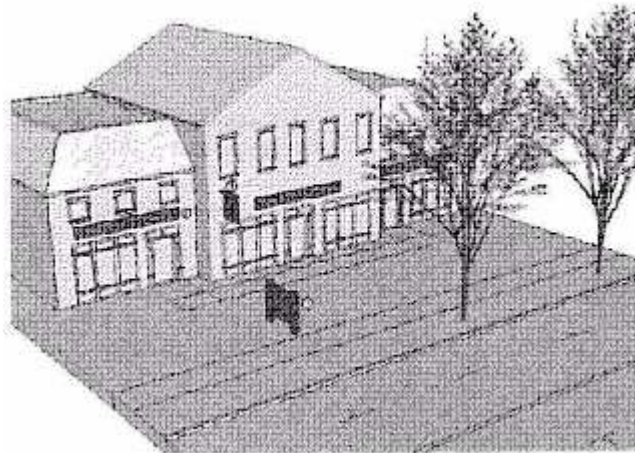
Example Sign Package:



1. First permitted sign type. Example shown: Monument

(c) Retail. Each building or structure for retail and related businesses shall be allowed three (3) sign types.

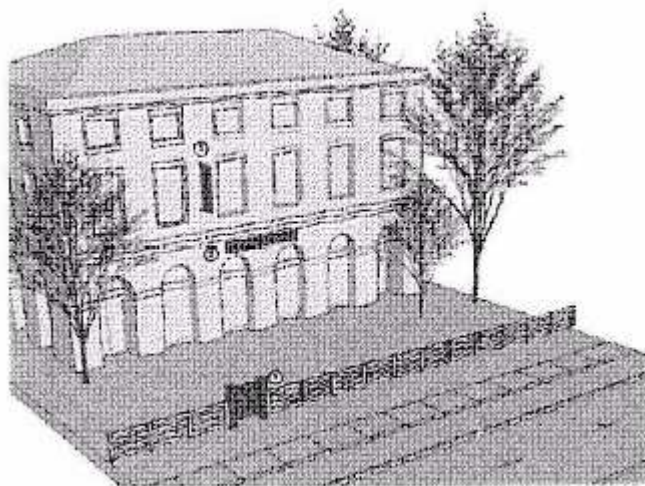
Example Sign Package:



1. First permitted sign type. Example shown: Dual-post
2. Second permitted sign type. Example shown: Wall
3. Third permitted sign type. Example shown: Projecting

(d) Institutional. Each building or structure for institutional and related establishments shall be allowed three (3) sign types.

Example Sign Package:



1. First permitted sign type. Example shown: Dual-post
2. Second permitted sign type. Example shown: Wall
3. Third permitted sign type. Example shown: Canvas Blade

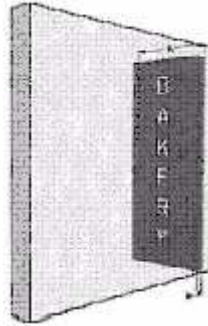
(Ord. O-38-2010. Passed 12-7-10.)

1169.16 PERMANENT SIGNS: BUILDING SIGN TYPES.

The following shall constitute the framework standards and details for the construction of permanent building-mounted signs within and outside the Village Center District. Sign specifica-

tions may vary with each Village Center sub-district or use category. Not all sign types are permitted in each sub-district or associated with each use category and are noted as such with each sign type.

(a) Blade. Blade signs shall be designed according to the following diagram and standards:

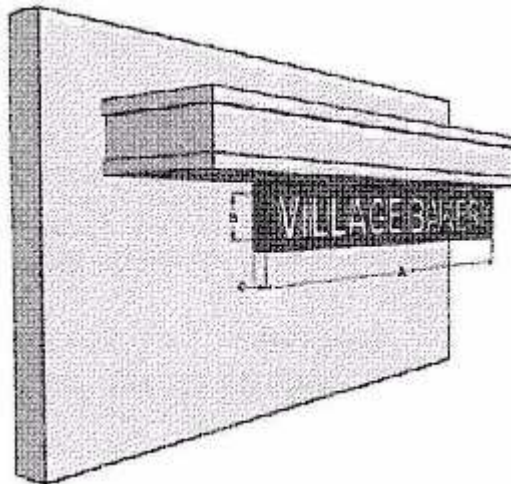


- (1) Must be oriented vertically.
- (2) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per business entrance	8 s.f. maximum, per side	-Projecting no more than 2.5' from the building (A) -Minimum 8' clearance from side-walk -No closer than 20' from another blade sign -Minimum 2" sign relief (B)	External
Village Core	One per business entrance	15 s.f. maximum, per side	-Projecting no more than 3' from the building (A) -Minimum 8' clearance from side-walk -No closer than 20' from another blade sign -Minimum 2" sign relief (B)	External Internal Neon
Core Residential	Not Permitted			
Village Residential	Not Permitted			
Campus	One per business entrance	15 s.f. maximum, per side	-Projecting no more than 3' from the building (A) -Minimum 8' clearance from side-walk -Minimum 2" sign relief (B)	External Internal
Parks & Preservation	One per business entrance	15 s.f. maximum, per side	-Projecting no more than 3' from the building (A) -Minimum 8' clearance from side-walk -Minimum 2" sign relief (B)	External Internal

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Commercial/ Warehousing	One per entrance	25 s.f. maximum, per side	-Projecting no more than 4' from the building (A) -Minimum 8' clearance from side-walk -No closer than 20' from another blade sign -Minimum 2" sign relief (B)	External Internal Neon Halo
Residential Sub-division	Not Permitted			
Retail	One per business entrance	15 s.f. maximum, per side	-Projecting no more than 4' from the building (A) -Minimum 8' clearance from side-walk -No closer than 20' from another blade sign -Minimum 2" sign relief (B)	External Internal Neon Halo
Institutional	One per business entrance	15 s.f. maximum, per side	-Projecting no more than 3' from the building (A) -Minimum 8' clearance from side-walk -Minimum 2" sign relief (B)	External Internal

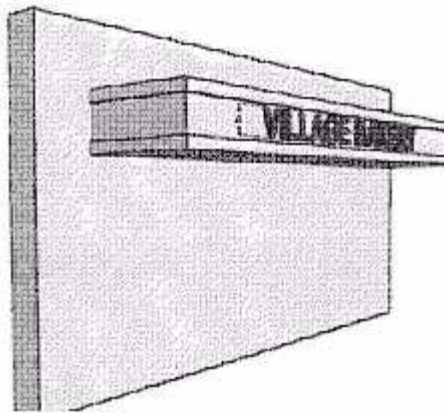
(b) Hanging. Hanging signs shall be designed according to the following diagram and standards.



- (1) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per business entrance	25 s.f. maximum	-Maximum length 75% of available mounting width (A) -Maximum lettering height 12" (B) -Minimum 8' clearance from sidewalk -Minimum 1" sign relief (B)	External
Village Core	One per business entrance	25 s.f. maximum	-Maximum length 75% of available mounting width (A) -Maximum lettering height 18" (B) -Minimum 8' clearance from sidewalk -Minimum 1" sign relief (C)	External
Core Residential	Not Permitted			
Village Residential	Not Permitted			
Campus	One per business entrance	25 s.f. maximum	-Maximum length 75% of available mounting width (A) -Maximum lettering height 18" (B) -Minimum 8' clearance from sidewalk -Minimum 1" sign relief (C)	External
Parks & Preservation	One per business entrance	25 s.f. maximum	-Maximum length 75% of available mounting width (A) -Maximum lettering height 18" (B) -Minimum 8' clearance from sidewalk -Minimum 1" sign relief (C)	External
Commercial/Warehousing	One per entrance	35 s.f. maximum	-Maximum length 90% of available mounting width (A) -Maximum lettering height 24" (B) -Minimum 8' clearance from sidewalk -Minimum 1" sign relief (C)	External Internal Neon
Residential Sub-division	Not Permitted			
Retail	One per business entrance	30 s.f. maximum	-Maximum length 75% of available mounting width (A) -Maximum lettering height 18" (B) -Minimum 8' clearance from sidewalk -Minimum 2" sign relief (C)	External Internal
Institutional	One per building	45 s.f. maximum	-Maximum length 90% of available mounting width (A) -Maximum lettering height 24" (B) -Minimum 8' clearance from sidewalk -Minimum 2" sign relief (C)	External

(c) Architectural canopy. Architectural canopy signs shall be designed according to the following diagram and standards:

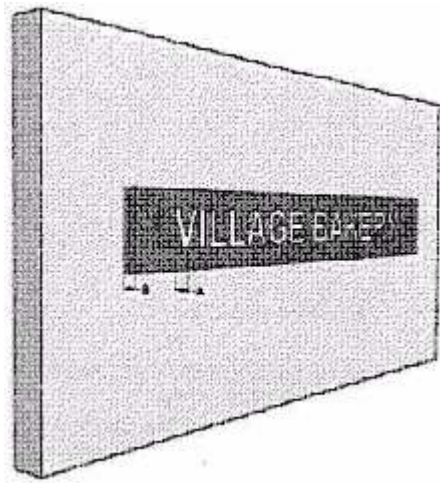


- (1) Signs may be mounted directly to a canopy face or on top of the canopy.
- (2) Signs on the face of the canopy must be mounted directly with individual lettering or have a face that is flush with the canopy face.
- (3) The following specifications shall apply. these specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per canopy face	75% of canopy face	-Minimum 8' clearance from side-walk -Maximum lettering height 18" (A)	External Internal Halo
Village Core	One per canopy face	75% of canopy face	-Minimum 8' clearance from side-walk -Maximum lettering height 18" (A)	External Internal Neon Halo
Core Residential	One per canopy face	50% of canopy face	-Minimum 8' clearance from side-walk -Maximum lettering height 12" (A)	External Halo
Village Residential	Not Permitted			
Campus	One per canopy face	75% of canopy face	-Minimum 8' clearance from side-walk -Maximum lettering height 18" (A)	External Halo
Parks & Preservation	Not Permitted			
Commercial/Warehousing	One per canopy face	75% of canopy face	-Minimum 8' clearance from side-walk -Maximum lettering height 24" (A)	External Halo
Residential Sub-division	Not Permitted			
Retail	One per canopy face	95% of canopy face	-Minimum 8' clearance from side-walk -Maximum lettering height 18" (A)	External Internal Neon Halo

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Institutional	One per canopy face	75% of canopy face	-Minimum 8' clearance from side-walk -Maximum lettering height 24" (A)	External Halo

(d) Wall. Wall signs shall be designed according to the following diagram and standards:

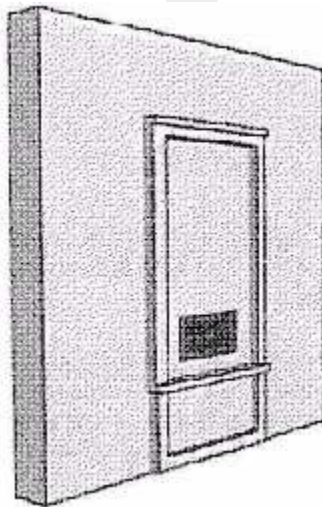


- (1) Single plane sign boxes must be installed so that the sign face is flush with the building facade.
- (2) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per business entrance	1 s.f. per linear s.f. of building frontage, not to exceed 30 s.f.	- Maximum 18" projection from building (A) - Minimum 1" sign relief (B) - Maximum lettering height 24" (C)	External Internal Neon
Village Core	One per business entrance	1 s.f. per linear s.f. of building frontage, not to exceed 40 s.f.	- Maximum 18" projection from building (A) - Minimum 1" sign relief (B) - Maximum lettering height 24" (C)	External Internal Neon
Core Residential	One per business entrance	15 s.f. maximum	- Maximum 18" projection from building (A) - Maximum lettering height 18" (B) - Minimum 1" sign relief (C)	External
Village Residential	Not Permitted			
Campus	One per building frontage	35 s.f. maximum	- Maximum 18" projection from building (A) - Maximum lettering height 24" (B) - Minimum 1" sign relief (C)	External Halo

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Parks & Preservation	One per building frontage	25 s.f. maximum	- Maximum 18" projection from building (A) - Maximum lettering height 24" (B) - Minimum 1" sign relief (C)	External Halo
Commercial/Warehousing	One per building frontage	1 s.f. per linear s.f. of building frontage, not to exceed 75 s.f.	- Maximum 18" projection from building (A) - Maximum lettering height 36" (B) - Minimum 1" sign relief (C)	External Internal Neon Halo
Residential Sub-division	Not Permitted			
Retail	One per business frontage	1 s.f. per linear s.f. of building frontage, not to exceed 50 s.f.	- Maximum 18" projection from building (A) - Maximum lettering height 24" (B) - Minimum 1" sign relief (C)	External Internal Halo
Institutional	One per building frontage	45 s.f. maximum	- Maximum 18" projection from building (A) - Minimum 1" sign relief (B)	External Halo

(e) Window. Window signs shall be designed according to the following diagram and standards:



- (1) Only permitted on first floor windows and storefronts.
- (2) Vinyl lettering is permitted.
- (3) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per window, up to three windows	15% of window area	Not regulated	External
Village Core	One per window, up to three windows	15% of window area	Not regulated	External

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Core Residential	One per window, up to two windows	15% of window area	Not regulated	External
Village Residential	Not Permitted			
Campus	Not Permitted			
Parks & Preservation	One per window, up to two windows	15% of window area	Not regulated	External
Commercial/Warehousing	One per window, up to three windows	25% of window area	Not regulated	External
Residential Subdivision	Not Permitted			
Retail	One per window, up to three windows	15% of window area	Not regulated	External
Institutional	Not Permitted			

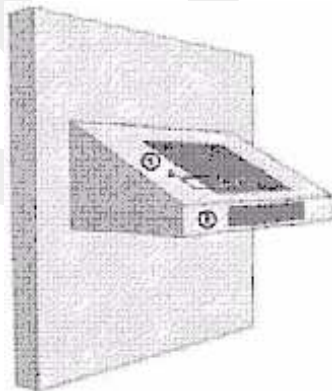
(f) Canvas Blade. Canvas blade signs shall be designed according to the following diagram and standards:



- (1) Must be constructed of a durable, fade resistant canvas fabric and mounted with permanent hardware.
- (2) Must be vertically oriented and placed on architectural pier elements of a building, if present.
- (3) Must be mounted using fixed brackets.
- (4) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter, in addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per business entrance	12 s.f. maximum, per side	- Maximum projection of 5' (A) - No closer than 20' from another blade sign	External
Village Core	One per business entrance	12 s.f. maximum, per side	- Maximum projection of 5' (A) - No closer than 20' from another blade sign	External
Core Residential	Not Permitted			
Village Residential	Not Permitted			
Campus	One per business entrance	12 s.f. maximum, per side	- Maximum projection of 5' (A) - No closer than 20' from another blade sign	External
Parks & Preservation	Not Permitted			
Commercial/Warehousing	Not Permitted			
Residential Sub-division	Not Permitted			
Retail	One per business entrance	12 s.f. maximum, per side	- Maximum projection of 5' (A) - No closer than 20' from another blade sign	External
Institutional	One per business entrance	12 s.f. maximum, per side	- Maximum projection of 5' (A) - No closer than 20' from another blade sign	External

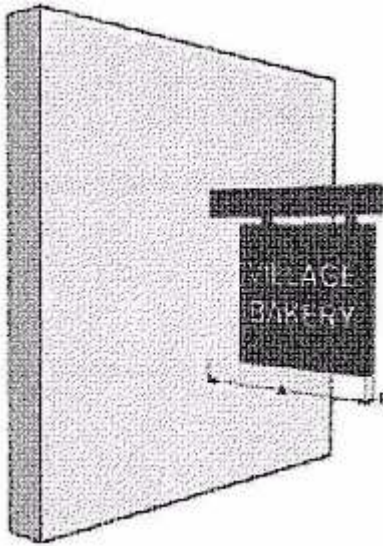
(g) Awning. Awning signs shall be designed according to the following diagram and standards:



- (1) Must be constructed of a durable, fade resistant canvas fabric.
- (2) Signage should be located either on the main body of the awning or on the overhang, but not on both.
- (3) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per awning	Maximum 33% of the awning area	Maximum 18" letter height (A)	External
Village Core	One per awning	Maximum 33% of the awning area	Maximum 18" letter height (A)	External
Core Residential	One per awning	Maximum 33% of the awning area	Maximum 18" letter height (A)	External
Village Residential	Not Permitted			
Campus	One per awning	Maximum 33% of the awning area	Maximum 18" letter height (A)	External
Parks & Preservation	Not Permitted			
Commercial/Warehousing	Not Permitted			
Residential Sub-division	Not Permitted			
Retail	One per awning	Maximum 33% of the awning area	Not regulated	External
Institutional	One per awning	Maximum 33% of the awning area	Not regulated	External

(h) Projecting. Projecting signs shall be designed according to the following diagram and standards:



- (1) Shall be located adjacent to an entrance and perpendicular to a public easement, right-of-way, or lot line.
- (2) May hang from an armature, architectural canopy, or mounted directly to the building face.
- (3) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

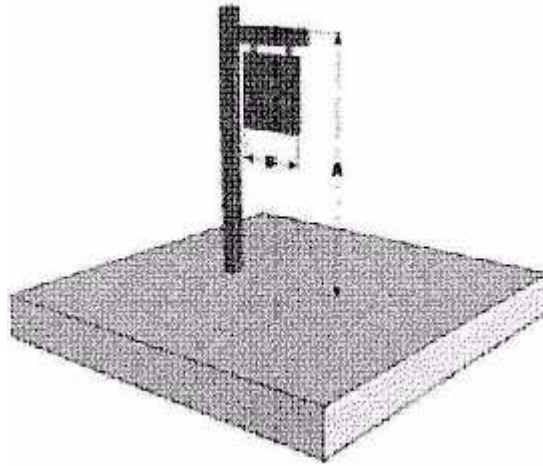
<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per business entrance	6 s.f. maximum, per side	- Maximum projection of 5' (A) - Minimum 8' clearance from side-walk - Minimum 1" sign relief (B)	External Internal Neon
Village Core	One per business entrance	6 s.f. maximum, per side	- Maximum projection of 5' (A) - Minimum 8' clearance from side-walk - Minimum 1" sign relief (B)	External Internal Neon
Core Residential	One per business entrance	6 s.f. maximum, per side	- Maximum projection of 5' (A) - Minimum 8' clearance from side-walk - Minimum 1" sign relief (B)	External Internal
Village Residential	Not Permitted			
Campus	One per building entrance	8 s.f. maximum, per side	- Maximum projection of 5' (A) - Minimum 8' clearance from side-walk - Minimum 1" sign relief (B)	External Internal
Parks & Preservation	Not Permitted			
Commercial/Warehousing	One per entrance	8 s.f. maximum, per side	- Maximum projection of 5' (A) - Minimum 8' clearance from side-walk - Minimum 1" sign relief (B)	External Internal Neon
Residential Sub-division	Not Permitted			
Retail	One per business entrance	10 s.f. maximum, per side	- Maximum projection of 5' (A) - Minimum 8' clearance from side-walk - Minimum 1" sign relief (B)	External Internal Neon
Institutional	One per building	8 s.f. maximum, per side	- Maximum projection of 5' (A) - Minimum 8' clearance from side-walk - Minimum 1" sign relief (B)	External Internal

(Ord. O-38-2010. Passed 12-7-10.)

1169.17 PERMANENT SIGNS: GROUND SIGN TYPES.

The following shall constitute the framework standards and details for the construction of permanent ground signs within and outside the Village Center District. Sign specifications may vary with each Village Center sub-district or use category. Not all sign types are permitted in each sub-district or associated with each use category and are noted as such with each sign type. Only one of the maximum permitted number of sign types may be a ground sign.

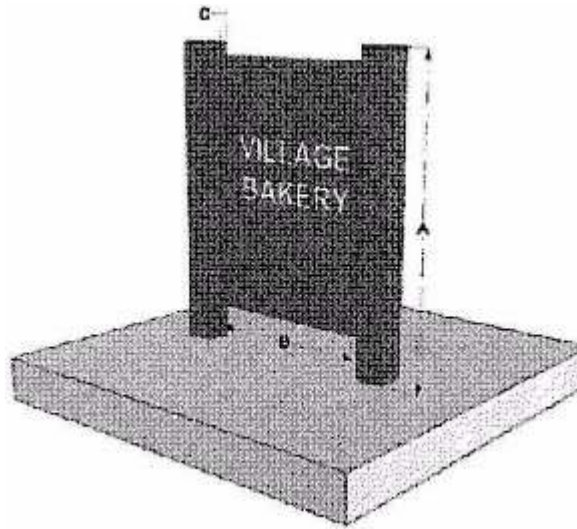
(a) Single Post. Single post signs shall be designed according to the following diagram and standards:



- (1) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per street front	6 s.f. maximum, per side	- Maximum total height 7' (A) - Max. sign board width of 3' (B), max. height 2 times width	External
Village Core	One per street front	6 s.f. maximum, per side	- Maximum total height 7' (A) - Max. sign board width of 3' (B), max. height 2 times width	External
Core Residential	One per street front	6 s.f. maximum, per side	- Maximum total height 7' (A) - Max. sign board width of 3' (B), max. height 2 times width	External
Village Residential	One per residential subdivision entrance	8 s.f. maximum, per side	- Maximum total height 7' (A) - Max. sign board width of 3' (B), max. height 2 times width	External
Campus	One per street entrance	8 s.f. maximum, per side	- Maximum total height 8' (A) - Max. sign board width of 3.5' (B), max. height 2 times width	External
Parks & Preservation	One per street entrance	8 s.f. maximum, per side	- Maximum total height 8' (A) - Max. sign board width of 3.5' (B), max. height 2 times width	External
Commercial/Warehousing	One per street entrance	8 s.f. maximum, per side	- Maximum total height 8' (A) - Max. sign board width of 3' (B), max. height 2 times width	External Internal
Residential Subdivision	One per residential subdivision entrance	8 s.f. maximum, per side	- Maximum total height 8' (A) - Max. sign board width of 3.5' (B), max. height 2 times width	External
Retail	One per street front	10 s.f. maximum, per side	- Maximum total height 8' (A) - Max. sign board width of 3.5' (B), max. height 2 times width	External Internal
Institutional	One per street entrance	10 s.f. maximum, per side	- Maximum total height 8' (A) - Max. sign board width of 3.5' (B), max. height 2 times width	External

(b) Dual post. Dual post signs shall be designed according to the following diagram and standards:

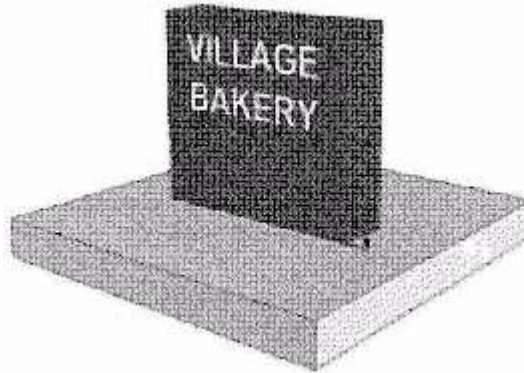


(1) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core			Not Permitted	
Village Core			Not Permitted	
Core Residential			Not Permitted	
Village Residential			Not Permitted	
Campus	One per street entrance	30 s.f. maximum, per side	- Maximum total height 7' (A) - Maximum sign board width of 7.5' (B) - Minimum 1" sign relief (C)	External Internal
Parks & Preservation	One per street entrance	30 s.f. maximum, per side	- Maximum total height 7' (A) - Maximum sign board width of 7.5' (B) - Minimum 1" sign relief (C)	External
Commercial/Warehousing	One per street entrance	30 s.f. maximum, per side	- Maximum total height 7' (A) - Maximum sign board width of 7.5' (B) - Minimum 1" sign relief (C)	External Internal
Residential Subdivision	One per residential subdivision entrance	20 s.f. maximum, per side	- Maximum total height 7' (A) - Maximum sign board width of 7.5' (B) - Minimum 1" sign relief (C)	External
Retail	One per street front	30 s.f. maximum, per side	- Maximum total height 7' (A) - Maximum sign board width of 7.5' (B) - Minimum 1" sign relief (C)	External Internal

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Institutional	One per street entrance	30 s.f. maximum, per side	- Maximum total height 7' (A) - Maximum sign board width of 7.5' (B) - Minimum 1" sign relief (C)	External

(c) Monument. Monument signs shall be designed according to the following diagram and standards:

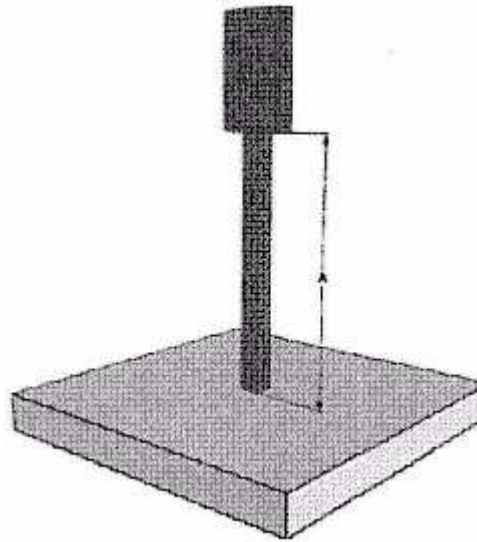


- (1) A defined sign base, if present, may not exceed three (3) feet in height.
- (2) The base of the sign shall be landscaped on all sides with a defined bed and all-season plant material.
- (3) The base of the sign shall be flush with the ground.
- (4) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	Not Permitted			
Village Core	Not Permitted			
Core Residential	Not Permitted			
Village Residential	Not Permitted			
Campus	Not Permitted			
Parks & Preservation	Not Permitted			
Commercial/Warehousing	One per street entrance	30 s.f. maximum, per side	- Maximum total height 5' (A) - Maximum sign board width of 8' (B)	External Internal Halo
Residential Sub-division	One per residential subdivision entrance	15 s.f. maximum, per side	- Maximum total height 6' (A) - Maximum sign board width of 8' (B)	External

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Retail	One per street entrance	30 s.f. maximum, per side	- Maximum total height 6' (A) - Maximum sign board width of 8' (B)	External Internal
Institutional	One per street entrance	30 s.f. maximum, per side	- Maximum total height 6' (A) - Maximum sign board width of 8' (B)	External Internal

(d) Post-top. Post-top signs shall be designed according to the following diagram and standards:



- (1) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per building	6 s.f. maximum per side	- Maximum 7' pole height (A)	External Internal
Village Core	One per street front	6 s.f. maximum per side	- Maximum 7' pole height (A)	External Internal
Core Residential	One per street front	6 s.f. maximum per side	- Maximum 7' pole height (A)	External Internal
Village Residential	One per street front	6 s.f. maximum per side	- Maximum 7' pole height (A)	External Internal
Campus	One per street entrance	6 s.f. maximum per side	- Maximum 8' pole height (A)	External Internal
Parks & Preservation	One per street entrance	7 s.f. maximum per side	- Maximum 8' pole height (A)	External Internal
Commercial/Warehousing	One per street entrance	7 s.f. maximum per side	- Maximum 8' pole height (A)	External Internal

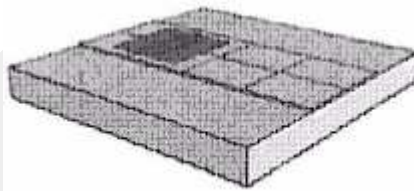
<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Residential Sub-division	One per residential subdivision entrance	7 s.f. maximum per side	- Maximum 8' pole height (A)	External Internal
Retail	One per street entrance	7 s.f. maximum per side	- Maximum 8' pole height (A)	External Internal
Institutional	One per street entrance	7 s.f. maximum per side	- Maximum 8' pole height (A)	External Internal

(Ord. O-38-2010. Passed 12-7-10.)

1169.18 SIGN TYPES: BY-RIGHT SIGNS.

The following signs shall be permitted in each Village Center sub-district or use category where noted and do not count towards the maximum number of permitted sign types. Sign specifications may vary by each Village Center sub-district or use category. The following framework standards and details for the construction of by-right signs shall be as follows:

(a) Sidewalk Plaque. Sidewalk plaque signs shall be designed according to the following diagram and standards:

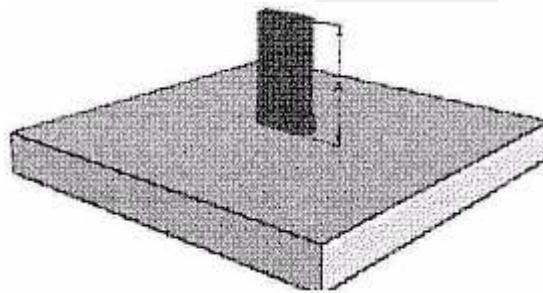


- (1) Must be made of a durable material such as cut or etched stone, tile, or metal.
- (2) May not be made of a temporary or removable material applied to the sidewalk surface.
- (3) Must be located within two (2) feet of the tenant entrance.
- (4) Must not be located within the public right-of-way.
- (5) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per building entrance	10 s.f. maximum	Not regulated	Not permitted
Village Core	One per building entrance	10 s.f. maximum	Not regulated	Not permitted
Core Residential	Not Permitted			
Village Residential	Not Permitted			

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Campus	One per building entrance	15 s.f. maximum	Not regulated	Not permitted
Parks & Preservation	Not Permitted			
Commercial/Warehousing	One per building entrance	15 s.f. maximum	Not regulated	Not permitted
Residential Sub-division	Not Permitted			
Retail	One per building entrance	15 s.f. maximum	Not regulated	Not permitted
Institutional	One per building entrance	15 s.f. maximum	Not regulated	Not permitted

(b) Directional sign. Directional signs shall be designed according to the following diagram and standards:

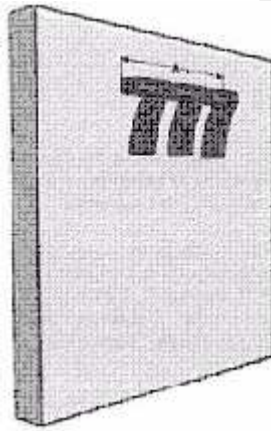


- (1) The base of the sign shall be landscaped on all sides with a defined bed and all-season plant material.
- (2) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	Two	4 s.f. maximum	Maximum total height of 3' (A)	Not permitted
Village Core	One per lot access	4 s.f. maximum	Maximum total height of 3' (A)	Not permitted
Core Residential	Not Permitted			
Village Residential	Not Permitted			
Campus	One per lot access plus one per building	4 s.f. maximum	Maximum total height of 3' (A)	Not permitted
Parks & Preservation	One per lot access plus one per recreational or community amenity	4 s.f. maximum	Maximum total height of 3' (A)	Not permitted

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Commercial/Warehousing	One per lot access plus one per building	5 s.f. maximum	Maximum total height of 4' (A)	External Internal
Residential Sub-division	Not Permitted			
Retail	One per lot access	4 s.f. maximum	Maximum total height of 3' (A)	External Internal
Institutional	One per lot access	5 s.f. maximum	Maximum total height of 4' (A)	External Internal

(c) Address sign. Address signs shall be designed according to the following diagram and standards:

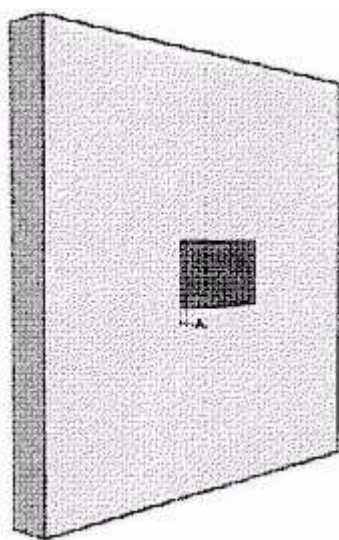


- (1) May not project more than six (6) inches from the building face unless it is integrated with an architectural design feature of the building.
- (2) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per building	4 s.f. maximum	Maximum 4' in any direction (A)	External Halo
Village Core	One per building	4 s.f. maximum	Maximum 4' in any direction (A)	External Halo
Core Residential	One per building	4 s.f. maximum	Maximum 4' in any direction (A)	External Halo
Village Residential	One per building	4 s.f. maximum	Maximum 4' in any direction (A)	External Halo
Campus	One per building	6 s.f. maximum	Maximum 5' in any direction (A)	External Halo
Parks & Preservation	One per building	4 s.f. maximum	Maximum 4' in any direction (A)	External Halo

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Commercial/Warehousing	One per building	15 s.f. maximum	Maximum 6' in any direction (A)	External Halo
Residential Sub-division	Not Permitted			
Retail	One per building	4 s.f. maximum	Maximum 4' in any direction (A)	External Halo
Institutional	One per building	6 s.f. maximum	Maximum 5' in any direction (A)	External Halo

(d) Wall Plaque. Wall plaque signs shall be designed according to the following diagram and standards:



- (1) The sign must be made of a durable material such as cut or etched stone, glass, tile, or metal.
- (2) This sign type may not be located above the first floor.
- (3) The following specifications shall apply. These specifications are in addition to the requirements established elsewhere in this Chapter. In addition, board or commission approval may be required:

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Historic Core	One per entrance	4 s.f. maximum	May not project more than 4" from the façade (A)	External
Village Core	One per building	4 s.f. maximum	May not project more than 4" from the façade (A)	External
Core Residential	One per building	4 s.f. maximum	May not project more than 4" from the façade (A)	External
Village Residential	One per building	4 s.f. maximum	May not project more than 4" from the façade (A)	External

<i>SUB-DISTRICT/CATEGORY</i>	<i>NUMBER OF SIGNS</i>	<i>PERMITTED AREA</i>	<i>MEASUREMENTS</i>	<i>ILLUMINATION</i>
Campus	One per building	6 s.f. maximum	May not project more than 4" from the façade (A)	External
Parks & Preservation	One per building	6 s.f. maximum	May not project more than 4" from the façade (A)	External
Commercial/Warehousing	One per building	6 s.f. maximum	May not project more than 4" from the façade (A)	External
Residential Sub-division	One per building	4 s.f. maximum	May not project more than 4" from the façade (A)	External
Retail	One per building	4 s.f. maximum	May not project more than 4" from the façade (A)	External
Institutional	One per building	6 s.f. maximum	May not project more than 4" from the façade (A)	External

(Ord. O-38-2010. Passed 12-7-10.)

1169.99 PENALTY.

Any person, firm, corporation, partnership or association violating any provision of this Chapter or failing to obey any lawful order issued pursuant to its terms, shall be fined not more than one hundred dollars (\$100.00) per violation. Each day during which such violation continues may be deemed a separate violation or offense.

(Ord. O-38-2010. Passed 12-7-10.)

CHAPTER 1171 LANDSCAPING*

1171.01	PURPOSE.
1171.02	DEFINITIONS.
1171.03	PRESERVATION OF NATURAL FEATURES.
1171.04	STREET TREE REQUIREMENTS.
1171.05	LANDSCAPING SCREENING.
1171.06	PARKING LOT LANDSCAPING.
1171.07	LANDSCAPE MATERIALS.
1171.08	WET AND DRY STORMWATER BASINS.
1171.09	UNDESIRABLE SPECIES.

1171.01 PURPOSE.

The purpose of these landscaping, open space and natural feature requirements is to promote and protect the public health, safety and welfare through the preservation of the environment by recognizing the vital importance of tree growth, green space and sensitive environmental features in the ecological system. It is further the purpose of this section to specifically encourage the preservation and replacement of major trees removed in the course of land development, and to encourage the effective utilization of landscaping as a buffer between particular land uses, and to minimize noise, air and/or visual pollution and artificial light glare.

(Ord. 30-2007. Passed 8-21-07.)

1171.02 DEFINITIONS.

As utilized in this section, the following words and phrases shall have the meaning ascribed herein:

(a) "Landscaping" means the use of trees, shrubs, grass, ground covers and other plant materials.

(b) "Major tree" means a living tree with a trunk diameter of not less than six (6) inches, measured twenty-four (24) inches above ground level.

(c) "Opacity" means the state of being impervious to rays of light measured by observation of any two (2) square yard area lying between two (2) and ten (10) feet from the ground.

(Ord. 30-2007. Passed 8-21-07.)

1171.03 PRESERVATION OF NATURAL FEATURES.

(a) Good faith effort shall be made to preserve natural vegetation areas. Streets, lots, structures and parking areas shall be laid out to avoid unnecessary destruction of heavily wooded areas or outstanding tree specimens.

(b) If an area is determined to be a wetland, it shall be preserved or mitigated in compliance with Federal regulations.

*Cross reference—Injury to trees and growing products - see GEN. OFF. 541.06

(c) All streams with a drainage area greater than fifty (50) acres and their riparian corridors shall be preserved. The corridor width shall be a minimum of one hundred (100) feet, with at least twenty-five (25) feet on each side of the centerline of the stream.

(d) Floodplain areas should be incorporated into the open spaces and is encouraged to be made publicly accessible.

(Ord. 30-2007. Passed 8-21-07.)

1171.04 STREET TREE REQUIREMENTS.

The planting of trees along roadways for all new development shall be according to the following Street Tree Requirements:

(a) Deciduous canopy trees (street trees) shall be planted no less than twenty-four (24) feet and no more than thirty-six (36) feet on center unless otherwise approved by the Village Landscape Architect.

(b) Street trees must be planted in the tree lawn, between the sidewalk or leisure trail and the road pavement. Tree lawns shall be a minimum width of six (6) feet.

(c) Street trees shall be a minimum of three (3) inches caliper dbh (trunk diameter at four and one-half (4.5) feet above the ground).

(d) Any tree on the list of undesirable species in Section 1171.09 shall not be planted as street trees.

(e) Street trees shall be located so that a twenty-five (25) foot sight triangle is maintained at street intersections.

(f) Street trees shall be located not less than fifteen (15) feet from fire hydrants and/or utility poles.

(g) The developer shall be required to maintain all street trees for a period of one year after the tree is planted and to replace any tree which dies within such one year period.

(h) Street trees should be of the same genus and species planted continuously along the length of each street.

(i) No person shall, as a normal practice, top any tree within the public right-of-way. "Topping" means the severe cutting back of limbs within the tree's crown to such a degree so as to remove the normal canopy or disfigure the tree.

(j) Street tree limbs extending over a sidewalk shall be trimmed to such an extent that no portion of the same shall be less than seven (7) feet above the sidewalk. Tree limbs extending over streets shall be trimmed so that no portion of the same shall interfere with the normal flow of traffic.

(k) The Village, or any licensed utility, shall have the right to plant, prune, maintain and remove trees, plants, and shrubs within the established right-of-way lines of all streets, highways, and alleys as may be necessary to ensure public safety, enhance the symmetry and beauty of such public grounds, or remove such trees as may be injurious to sewers, electric power lines, gas lines, water lines or other public improvements.

(l) No person shall, by any type of construction, reduce the area of a tree lawn within the street right-of-way.

(m) On all properties within the Village Center, to avoid interference with pedestrian traffic, only approved street trees may be planted. Such trees shall conform to the size, spacing, and placement of similar trees already in place on adjacent and nearby properties. In addition to the approved street trees, tree wells may also contain flowers or other ground cover plantings. (Ord. 30-2007. Passed 8-21-07.)

1171.05 LANDSCAPING SCREENING.

(a) Screening of Service Areas. For commercial, industrial, office, institutional and multiple-family uses, all areas used for service, loading and unloading activities shall be screened on those portions of the lot which abut districts where residences are a permitted use. Screening shall consist of walls, landscaped earthen mounds, fences, natural vegetation or an acceptable combination of these elements, provided that screening must be at least seven (7) feet in height. Natural vegetation screening shall have a minimum opaqueness of seventy-five percent (75%) during full foliage. The use of year-round vegetation, such as pines or evergreens, is encouraged. Vegetation shall be planted no closer than three (3) feet to any property line.

(b) Screening of Trash Receptacles. For commercial, industrial, office, institutional, and multiple-family uses, all trash and garbage container systems shall be screened or enclosed by walls, fences, or natural vegetation to screen them from view. Container systems shall not be located in front yards, and shall conform to the side and rear yard pavement setbacks in the applicable zoning district. The height of such screening shall be at least six (6) feet in height. Natural vegetation shall have a maximum opaqueness of seventy-five percent (75%) at full foliage. The use of year-round vegetation, such as pines and evergreens is encouraged.

(c) Buffering and Screening Requirements. For commercial, industrial, office and institutional uses which abut districts where residences are a permitted use, a buffer zone with a minimum width of twenty-five (25) feet should be created. Such screening within the buffer zone shall consist of natural vegetation planted no closer than three (3) feet to any property line. Natural vegetation shall have an opaqueness of seventy-five percent (75%) during full foliage and shall be a variety which will attain ten (10) feet in height within five (5) years of planting.

(d) Maintenance of Shrubbery and Hedges. No shrubbery or hedge shall be planted, in any district, in such a manner that any portion of growth extends beyond the property line. The owner or occupant of property on which there is shrubbery, hedges, or trees so located as to affect the vision of drivers on adjacent streets shall keep shrubbery and hedges trimmed to a maximum of thirty (30) inches in height, and keep trees trimmed so as to avoid creating traffic hazards.

(e) Minimum Trees. The following minimums are required, based upon total ground coverage of structures and vehicular use areas:

- (1) Up to twenty thousand (20,000) square feet: A minimum of one tree per five thousand (5,000) square feet of ground coverage and a total tree planting equal to one inch in tree trunk size for every two thousand (2,000) square feet of ground coverage.
- (2) Between twenty thousand (20,000) and fifty thousand (50,000) square feet: A minimum of one tree for every five thousand (5,000) square feet of ground coverage and a total tree planting equal to ten (10) inches plus one-half inch in tree trunk size for every two thousand (2,000) square feet over twenty thousand (20,000) feet in ground coverage.
- (3) Over fifty thousand (50,000) square feet: A minimum of one tree for every five thousand (5,000) square feet of ground coverage and a total tree planting equal to twenty-five (25) inches plus one-half inch in tree trunk size for every four thousand (4,000) square feet over fifty thousand (50,000) square feet in ground coverage.

(Ord. 20-90. Passed 6-19-90; Ord. 72-92. Passed 12-15-92; Ord. 30-2007. Passed 8-21-07.)

1171.06 PARKING LOT LANDSCAPING.

(a) Parking Lot Islands.

- (1) Large, unbroken expanses of parking lot shall be avoided. Large lots should be separated into a series of smaller interconnected lots separated by peninsulas or islands. No individual landscape area shall be smaller than three hundred fifty (350) square feet.
- (2) For each one hundred (100) square feet, or fraction thereof, of parking area, a minimum total of five (5) square feet of landscaped area shall be provided.
- (3) Parking areas should contain a minimum of one deciduous canopy tree for every ten (10) parking spaces.
- (4) Trees used in parking lot islands shall have a clear trunk of at least five (5) feet above the ground, and the remaining areas shall be landscaped with shrubs, or ground cover, not to exceed two (2) feet in height.

(b) Buffering. Parking lots shall be screened from primary streets, residential areas, and open space by a three and one-half (3.5)-foot minimum height evergreen hedge or masonry wall, or combination of wall and plantings.

(Ord. 30-2007. Passed 8-21-07.)

1171.07 LANDSCAPE MATERIALS.

Landscape materials utilized in meeting requirements of this section should complement the form of existing trees and plantings, as well as the general design and architecture of the developed

area. The type of sun or shade should be considered in selecting plant materials. Artificial plants are prohibited. All landscape materials shall be living plants and shall meet the following requirements:

(a) Quality. All plant material shall conform to the standards of the American Association of Nurserymen and shall have passed any inspections required under state regulations.

(b) Type. Added landscape elements shall observe and respect the size, placement, character and type of such materials employed on adjacent or nearby properties.

(c) Deciduous Trees. Trees which normally shed their leaves in the fall shall be species having an average mature crown spread of greater than fifteen (15) feet and having trunks which can be maintained with over five (5) feet of clear wood in areas where visibility is required, except at vehicular use intersections where the clear wood requirement shall be eight (8) feet. A minimum of ten (10) feet overall height, or a minimum caliper (trunk diameter as measured six (6) inches above ground) of at least two (2) inches immediately after planting shall be required. Trees of undesirable species, as listed in Section 1171.07 are prohibited.

(d) Evergreen Trees. Evergreen trees shall be a minimum of five (5) feet high with a minimum caliper of one and one-half (1½) inches immediately after planting.

(e) Shrubs and Hedges. Shrubs shall be planted at least two (2) feet in average height when planted and shall conform to opacity and other requirements within four (4) years after planting.

(f) Vines. Vines shall be at least twelve (12) inches high at planting and generally used in conjunction with walls or fences.

(g) Grass or Ground Cover. Grass of the fescue (Gramineae) or bluegrass (Poaceae) family shall be planted in species normally grown as permanent lawns, and may be sodded or seeded. In swales or other areas, reducing net or suitable mulch shall be used; nurse grass shall be sown for immediate protection until complete coverage otherwise is achieved. In certain cases, ground cover consisting of rocks, pebbles, sand or similar materials may be approved.

(h) Maintenance and Installation. All landscaping materials shall be installed in a sound and competent manner, according to accepted, good construction and planting procedures. The owner of the property shall be responsible for the continued proper maintenance of all landscaping materials, and shall keep them in a proper, neat and orderly appearance, free of refuse and debris at all times. All unhealthy or dead plant material installed pursuant to this section shall be replaced within one year.

(Ord. 30-2007. Passed 8-21-07.)

1171.08 WET AND DRY STORMWATER BASINS.

In addition to the requirements listed in Chapter 1181, the following regulations shall apply to the design of wet and dry stormwater basins:

(a) Wet and dry stormwater basins shall be designed by a landscape architect in conjunction with a professional engineer to ensure that the basins have a natural shape and are graded and planted in an attractive manner.

(b) Wet and dry stormwater basins shall be designed in compliance with the ODNR Rainwater and Land Development Manual, latest edition, to meet water quality requirements.

(c) For safety, maintenance, and aesthetic purposes, wet and dry stormwater basins shall have side slopes (above normal pool elevation) that are generally no steeper than 6:1 and no more gradual than 20:1 (horizontal:vertical).

(d) The use of fountains and other plainly visible aeration devices shall be subject to the approval of the Village Landscape Architect.

(e) Landscape treatments at the perimeter of wet and dry stormwater basins shall be designed either with maintained turf to the pond's edge or a naturalized planting of native landscape material, subject to approval of the Village Landscape Architect. The landscape plantings shall be in large masses and drifts, and shall not include decorative landscape boulders, large mulch beds, or specimen plantings. Under no circumstances shall the landscape design conflict with any of the safety, maintenance, or engineering requirements set forth in the codified ordinances or reference documents.

(f) Temporary on-site wet or dry stormwater basins shall not be subject to the regulations in divisions (a), (b), (c) and (e) of this section. Temporary basins shall either be removed or replaced with a permanent basin prior to acceptance of infrastructure improvements when installed as part of new subdivisions or completion of the final engineering punch list in the case of single site developments. The time frame in which to install a permanent basin may be extended for good cause by the Village Administrator or his designee. In the case of a time extension, a performance bond must be provided to the Village in an amount to cover removal of the temporary basin and installation of the permanent basin. State and Federal safety and engineering regulations apply to all temporary ponds.

(Ord. 30-2007. Passed 8-21-07; Ord. 07-2009. Passed 3-17-09.)

1171.09 UNDESIRABLE SPECIES.

In meeting the planting and maintenance requirements of this Ordinance, the following species of trees shall be considered undesirable species, and shall not be utilized.

- (a) Box-Elder (*Acer negundo*). (Breakage and insect pests)
- (b) Silver Maple (*Acer saccharinum*). (Breakage; surface roots)
- (c) Catalpa (*Catalpa speciosa*). (Messy flowers and seed pods; insect pests)
- (d) Tulip Tree (*Liriodendrum tulipifera*). (Insect pests; leaves drop in dry periods)
- (e) Mulberry (*Morus alba*). (Fruit objectionable on street)
- (f) Poplars (all kinds) (*Populus*). (Breakage; insect pests, disease-prone)
- (g) Willows (all kinds) (*Salix*). (Breakage; insect and disease-prone; surface roots)

(h) Siberian Elm (*Ulmus pumila*). (Breakage)
(Ord. 30-2007. Passed 8-21-07.)

PROOFS

CHAPTER 1173 PRIVATE SWIMMING POOLS*

1173.01	PURPOSE AND APPLICABILITY.
1173.02	PRIVATE SWIMMING POOLS.
1173.03	COMMUNITY SWIMMING POOLS.
1173.04	ZONING PERMIT REQUIRED.

1173.01 PURPOSE AND APPLICABILITY.

This section is enacted to provide regulations for the construction and operation of private swimming pools. It is applicable to bodies of water used for swimming and/or recreational bathing and is not applicable to storm drainage or detention facilities authorized by the Municipality.

1173.02 PRIVATE SWIMMING POOLS.

A "private swimming pool" as regulated herein, means any pool or open tank not located within a completely enclosed building and containing water to a depth, at any point greater than one and one-half (1.5) feet. No such swimming pool, exclusive of portable swimming pools with an area of less than one hundred (100) square feet, shall be allowed in any Agricultural or Residential District unless the following conditions and requirements are complied with:

(a) "In-ground pool" means a swimming pool whose sides rest in partial or full contact with earth, no part of which is more than twelve (12) inches above grade.

(b) The pool is intended and is to be used solely for the occupants of the principal use of the property on which it is located.

(c) Such pool, including any walks, paved areas, equipment, and appurtenances thereto, shall not be located in any front yard, nor closer than fifteen (15) feet to any property line.

(d) The area of the swimming pool, exclusive of decks, walks and other appurtenances, shall not exceed ten percent (10%) of the area of the lot or parcel.

(e) Any private swimming pool, or the property on which the pool is located, shall be enclosed by a wall or fence constructed so as to prevent uncontrolled access. Such wall or fence shall not be less than five (5) feet in height, maintained in good condition, and affixed with an operable gate and lock. Additionally, the provisions of Chapter 1175, Fences, shall apply.

(f) All lights used for the illumination of the swimming pool and adjacent areas shall be designed, located and installed so as to confine the direct beams thereof to the lot or parcel on which the pool is located.

(Ord. O-26-2012. Passed 1-22-13.)

1173.03 COMMUNITY SWIMMING POOLS.

"Community swimming pool" means any pool constructed by an association of property owners, a private club for use and enjoyment of its members; or any individual or organization

*Cross references—Swimming pools - see ORC Ch. 3749; OAC Ch. 3701-31

(including the Municipality) for use by the general public. Such community swimming pools, specified as permitted or conditional uses in the various zoning districts are subject to the following additional conditions:

- (a) The swimming pool, including any walks, paved areas or appurtenances thereto, shall not be located closer than thirty (30) feet to any property line.
- (b) Any community swimming pool, or the property on which it is located, shall be enclosed by a fence or wall constructed so as to prevent uncontrolled access. Such fence or wall shall not be less than six (6) feet in height and maintained in good condition. Each gate in the fence or wall shall be provided with a secure lock and shall be kept locked at all times when the pool is not in use or under immediate control of a responsible person.

1173.04 ZONING PERMIT REQUIRED.

A zoning permit shall be required for the construction or installation of any private or community pool. The application for the zoning permit shall be evidence that the pool will be constructed, maintained and/or installed in conformance with the above provisions of this Ordinance, as well as all other applicable ordinances in effect at time of the application.

CHAPTER 1175 FENCES AND HEDGES

1175.01	DEFINITION.
1175.02	APPLICATION.
1175.03	PERMIT REQUIRED.
1175.04	HEIGHT AND LOCATION.
1175.05	PROHIBITED FENCES.

1175.01 DEFINITION.

"Fence" or "wall" means any structure composed of wood, metal, stone, brick or other material, including hedges or other plants, erected in such a manner and location so as to enclose, partially enclose or divide any premises or part of premises for the purpose of confinement, screening, partitioning, or decoration. Trellises or other structures for the purpose of supporting vines, flowers or other vegetation, when erected in such a position so as to enclose, partially enclose or divide any premises or any part of premises shall also be considered a fence.

1175.02 APPLICATION.

The provisions of this chapter shall apply to any zoning district where residences are a permitted use.

1175.03 PERMIT REQUIRED.

No fence or wall, as defined above, may be erected within the Municipality unless a property owner or his agent files application with the Zoning Inspector. Such application shall be on such forms as provided by the Municipality and shall include a drawing of the lot, to scale, showing the actual location of the proposed fence or wall. The Zoning Inspector shall review each application to determine its compliance with the provisions of this Ordinance. Each property owner shall determine property lines and certify that the fence or wall does not encroach upon another lot or parcel of land.

1175.04 HEIGHT AND LOCATION.

The permitted height of a fence or wall shall be determined by its location on the property as follows:

(a) A fence or wall not exceeding fifty-four (54) inches in height may be erected between the building setback line and a line three (3) feet toward the building setback line from the street right-of-way line provided the provisions of subsection (c) hereof are met. No fence or wall may be erected within three (3) feet of the street right-of-way line.

(b) A fence or wall not exceeding seventy-two (72) inches in height may be erected in any area of the lot behind the building setback line.

(c) No fence, hedge, or wall shall be erected on any lot in such a manner so as to obscure the vision of motorists approaching a street, intersection, within a twenty-five (25) feet clear sight distance along either street approaching said intersection.

1175.05 PROHIBITED FENCES.

No person shall erect or maintain any fence or wall charged with electrical current, nor shall any person erect or maintain any fence or wall having wire or metal prongs or spikes, or other cutting points or edges. This prohibition shall not apply to fences erected in the A District for the purposes of enclosing livestock.

PROOFS

CHAPTER 1177 SATELLITE SIGNAL RECEIVING ANTENNAS

1177.01	PURPOSE.
1177.02	PERMIT REQUIRED.
1177.03	CONTENTS OF PERMIT.
1177.04	APPROVAL OF PERMIT.
1177.05	LOCATION OF SATELLITE DISH.
1177.06	SIZE AND HEIGHT.
1177.07	SATELLITE DISH SUPPORT STRUCTURES.
1177.99	PENALTY.

1177.01 PURPOSE.

It is the purpose of this chapter to protect the health, safety, welfare and property rights of all property owners within the Municipality by permitting the reasonable use of dish-type satellite signal receiving stations, hereinafter referred to as "satellite dishes."

1177.02 PERMIT REQUIRED.

No person, firm, or corporation shall erect a satellite dish within New Albany without first securing a permit in accordance with the provisions of this Ordinance.

1177.03 CONTENTS OF PERMIT.

The owner or occupant of any lot, premises, or parcel of land within the Municipality who desires to erect a satellite dish shall apply to the Zoning Inspector for a permit. Such application shall be made on forms furnished by the Municipality and shall contain, at a minimum, the following information:

- (a) Name, address, and telephone number of the applicant, and owner of the property, if different.
- (b) Name of occupant of the property, if different from above.
- (c) Name, address, and telephone number of contractor or other person who is responsible for erection or construction of the satellite dish.
- (d) Plot plan of the lot, drawn to scale, showing the exact location of the satellite dish.
- (e) Description of the kind and type of satellite dish to be erected.
- (f) Plans and specifications showing the elevations, with sufficient details of the method of assembly and construction to determine compliance with the provisions of this Ordinance.
- (g) An application fee, as established by Council.

1177.04 APPROVAL OF PERMIT.

Upon receipt of the application, the Zoning Inspector shall issue a permit for a satellite dish, if the application shows the all the requirements of this Ordinance have been met.

If the application is denied, the applicant may follow procedures for appeal and/or variance as specified in Chapter 1113.

1177.05 LOCATION OF SATELLITE DISH.

(a) Satellite dishes shall be permitted as an accessory use in those zoning districts where they are so specified.

(b) All satellite dishes shall be constructed or erected to the rear of the premises where not visible from the street.

(c) No satellite dish shall be erected within twenty (20) feet from any lot line.

(d) No satellite dish shall be erected on the roof on any building or structure. Public schools and police/fire stations shall be exempt from this requirement.

(e) No satellite dish shall be linked to receivers which are not located on the same lot or premises.

(f) Evergreen or landscaping shall be provided so as to effectively conceal the satellite dish from view of adjacent parcels. Such landscaping shall be installed within thirty (30) days from the date of the erection of the satellite dish.

1177.06 SIZE AND HEIGHT.

The maximum diameter of any satellite dish shall not exceed twelve (12) feet. The maximum installed height of any satellite dish shall not exceed fifteen (15) feet above natural grade level.

1177.07 SATELLITE DISH SUPPORT STRUCTURES.

(a) Only metal supports of galvanized construction, or equal thereto, shall be permitted.

(b) Only a concrete base or caissons, depending on soil conditions, shall be permitted.

(c) The installed satellite dish structure shall be capable of withstanding a wind force of up to eighty-five (85) miles per hour.

(d) Any driving motor shall be limited to one hundred ten (110) volts maximum power and encased with protective guards.

(e) Any satellite dish must be grounded to an eight (8) foot grounding rod.

1177.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter shall be subject to the penalties specified in Section 1109.99.

CHAPTER 1178 RIGHTS-OF-WAY (Repealed)*

***Editor's note**—Ord. O-06-2014, passed March 18, 2014, repealed Ch. 1178, §§ 1178.01—1178.99 and derived from Ord. 17-97, passed Oct. 6, 1998; Ord. 21-2009, passed June 16, 2009; Ord. 43-2002, passed Dec. 10, 2002; and Ord. 35-2006, passed Nov. 28, 2006. Provisions pertaining to Rights-of-Way are now set forth in Ch. 901, §§ 907.01—907.99.

CHAPTER 1179 WIRELESS TELECOMMUNICATION FACILITIES*

1179.01	PURPOSE.
1179.02	APPLICABILITY.
1179.03	DEFINITIONS.
1179.04	GENERAL REQUIREMENTS.
1179.05	NONRESIDENTIAL DISTRICTS.
1179.06	RESIDENTIAL DISTRICTS AND USES.
1179.07	CRITERIA FOR A CONDITIONAL USE.
1179.08	CO-LOCATION REQUIREMENTS.
1179.09	ABANDONMENT OF TOWER.
1179.10	VARIANCES AND SPECIAL EXCEPTIONS.
1179.11	MISCELLANEOUS PROVISIONS.

1179.01 PURPOSE.

This chapter provides for the regulation of the placement, construction and modification of towers and wireless telecommunications facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City. Specifically:

- (1) To direct the location of towers and wireless telecommunications facilities in the City;
- (2) To protect residential areas and land uses from potential adverse impacts of towers and wireless telecommunications facilities;
- (3) To minimize adverse visual impacts of towers and wireless telecommunications facilities through careful design, siting, landscaping and innovative camouflaging techniques;
- (4) 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;
- (5) To avoid potential damage to adjacent properties caused by towers and wireless telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed;
- (6) To the greatest extent feasible, ensure that towers and wireless telecommunications facilities are compatible with surrounding land uses;
- (7) To the greatest extent feasible, ensure that proposed towers and wireless telecommunications facilities are designed in harmony with natural setting and in a manner consistent with current development patterns.

(Ord. O-37-2014. Passed 12-16-14.)

1179.02 APPLICABILITY.

(a) All towers, antenna support structures and wireless telecommunications facilities, any portion of which are located within the City, are subject to this chapter.

***Editor's note**—Ord. O-37-2014, passed Dec. 16, 2014, amended Ch. 1179, §§ 1179.01—1179.11, in effect repealing and reenacting said chapter as set out herein. Former Ch. 1179 pertained to similar subject matter and derived from Ord. 18-97, passed Oct. 6, 1998.

(b) Except as provided herein, any use being made of an existing tower or antenna support structure on the effective date of this chapter (herein "Nonconforming Structures") shall be allowed to continue, even if in conflict with the terms of this chapter. Any tower site that has received City approval in the form of either a variance or building permit, but has not yet been constructed or located, shall be considered a Non-conforming Structure so long as such approval is current and not expired.

(Ord. O-37-2014. Passed 12-16-14.)

1179.03 DEFINITIONS.

For purposes of this chapter, the following terms, phrases 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. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- (1) "Antenna" means any transmitting or receiving device used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communication signals, or other communication signals.
- (2) "Antenna support structure" means any building, poles (utility poles, light poles or traffic signal poles) then currently in place having been previously constructed for a primary purpose other than supporting wireless telecommunications facilities, or other structure other than a tower which can be used for location of wireless telecommunications facilities.
- (3) "Applicant" means any person that applied for a conditional use permit pursuant to Section 1179.07.
- (4) "Application" means 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 chapter. An application includes all written documentation, verbal statements and representations, in whatever form or forms made by an applicant to the City concerning such a request.
- (5) "Cable Microcell Network" or "CMN" means a wireless telecommunications facility characterized by small antennas and equipment cabinets, and typically located on a small diameter monopole; on an existing or replacement street light, power pole, sign, or other suitable structure; or on an existing building.
- (6) "Code" means City Codified Ordinances.
- (7) "Co-location" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.
- (8) "Council" means the Municipal Council.

- (9) "Distributed Antenna System" or "DAS" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure which also may or may not contain fiber optic transport and/or landline components.
- (10) "Emergency" means a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.
- (11) "Engineer" means any engineer licensed by the State of Ohio.
- (12) "Equipment Shelter" means a structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.
- (13) "FCC" means the Federal Communications Commission or any legally appointed, designated or elected agent or successor.
- (14) "Height" means, when referring to a tower or other antenna support structure, the distance measured from the finished grade at the base of the tower or structure to the highest point on the tower or structure, including the base pad and any wireless telecommunications facilities, but not including lightning arrest devices.
- (15) "Monopole" means a support structure constructed of a single, self-supporting hollow metal tube or other appropriate pole like structure securely anchored to a foundation.
- (16) "City" means the City of New Albany, a municipal corporation, in the State of Ohio, acting by and through its Council.
- (17) "Open Space" means land devoted to conservation of recreational purposes and/or land designated by the City to remain undeveloped (may be specified on a zoning map).
- (18) "Person" means any natural persons, firm, partnership, association, corporation, company or other legal entity, private or public, whether for profit or not for-profit.
- (19) "Right(s) of Way" means the public rights-of-way within the City as defined by Code Section 907.01(C)51.
- (20) "Tower" means a self-supporting lattice, guyed, monopole, or other structure constructed from grade which is built for the sole or primary purpose of supporting wireless telecommunications facilities. The term "tower" shall not include amateur radio operators' equipment, as licensed by the FCC or poles (utility poles, light poles or traffic signal poles) then currently in place having been previously constructed for a primary purpose other than supporting wireless telecommunications facilities.
- (21) "Wireless telecommunications facilities" means 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 has installed upon a tower or antenna support structure. However, the term "wireless telecommunications facilities" shall not include:
 - A. Any satellite earth station antenna two (2) meters in diameter or less which are located in an area zoned industrial or commercial;

B. Any satellite earth station antenna one meter or less in diameter, regardless of zoning category;

C. Antennas used by amateur radio operators are excluded from this definition.

(Ord. O-37-2014. Passed 12-16-14.)

1179.04 GENERAL REQUIREMENTS.

(a) Permitted, Conditional and Prohibited Use. Wireless telecommunications facilities are either permitted uses, conditional uses or prohibited uses in a variety of zoning districts contingent upon a number of requirements being met. These criteria are in place in an attempt to minimize adverse health, safety, public welfare or visual impacts through buffering, siting, design and construction, and reduction of the need for new towers.

(b) Requirements of All Wireless Telecommunications Facilities. The following requirements apply to all wireless telecommunications facilities regardless of the zoning district in which they are to be located. These general standards are to be supplemented with the specific regulations for nonresidential districts as set forth in Sections 1179.05 and 1179.06.

- (1) Each applicant for a wireless telecommunications facility and/or tower shall provide to the City an inventory of its existing towers, wireless telecommunications facilities, or sites planned and/or approved for towers or wireless telecommunications facilities that are either within the jurisdiction of the City or within two (2) miles of the border thereof, including specific information about the location, height and design of each tower and wireless telecommunications facilities. The City may share such information with other applicants seeking to locate antennas within the jurisdiction of the City, provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (2) Towers and wireless telecommunications facilities shall meet the following requirements:
 - A. Towers are a prohibited use/structure in the Right(s) of Way in all zoning districts within the City.
 - B. Tower color and finish. Towers shall either maintain a non-contrasting gray or similar neutral color or have a galvanized steel finish unless otherwise required by the City or any applicable standards of the FAA or ODOT.
 - C. Compatible design. At a tower site, the design of the buildings and related structures shall use materials, colors, textures and screening so as to be aesthetically and architecturally compatible with the surrounding environment, as approved by the City.
 - D. Antenna color. If a wireless telecommunications facility is installed on an antenna support structure or tower, the wireless telecommunications facilities and supporting electrical and mechanical equipment must be a neutral color that is identical to, or

closely compatible with the color of the antenna support structure or tower so as to make the wireless telecommunications facilities as visually unobtrusive as possible, as determined by the City.

- E. Fencing. Any fencing shall comply with the City's Code.
- F. Lighting. Towers and wireless telecommunications facilities shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- G. State or federal requirements. All towers must meet or exceed current standards and regulations for the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and wireless telecommunications facilities. If such standards and regulations are changed, then the owners of the towers and wireless telecommunications facilities governed by the Chapter shall bring such towers and antennas into compliance with such revised standards within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and wireless telecommunications facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower and/or wireless telecommunications facility at the owner's expense.
- H. Building codes; safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronics Industries Association, as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. Failure to bring such tower into compliance within said thirty (30) days shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- I. Nonessential services. Towers and wireless telecommunications facilities shall be regulated and permitted pursuant to this Chapter and shall not be regulated or permitted as essential services, public utilities or private utilities.
- J. License to operate. Owners and operators of towers or wireless telecommunications facilities shall submit copies of all franchises, certifications, licenses and permits required by law for the design, construction, location and operation of wireless communications in the City. Owners and/or operators shall be required to maintain same and to provide evidence of removal or extension thereof when granted.

- K. Signs. No signs shall be allowed on a wireless telecommunications facility or tower. A notification sign shall be posted indicating the emergency contact phone number. Any such emergency notification signage shall be non-illuminated and not larger than two (2) feet × three (3) feet.
- L. Historic register/district. Any application to locate a tower or a wireless telecommunications facility that; is on a parcel that contains a building or structure that is listed on a historic register, or is in a historic district, or is attached to building or structure that is listed on a historic register acting as an antenna support structure, shall require the filing of a Certificate of Appropriateness application for review by the City's Architectural Review Board in addition to any other required review process.
- M. Underground equipment shelters. Underground equipment shelters will be required where appropriate screening of shelter cannot be accomplished.
- N. Accommodation. All towers shall be constructed or reconstructed to accommodate multiple users.
- O. Maximum height. No tower shall exceed two hundred (200) feet, in height.

(c) Permitted Ancillary Use. Any wireless telecommunications facilities which are not attached to a tower shall be a permitted ancillary use (permitted use) to any commercial, industrial, office, community facilities, institutional, or multi-family structure, or other antenna support structure, regardless of the zoning restrictions applicable to the zoning district where the structure is located and without having to obtain any prior authorization from the City; provided that the person making such ancillary use files a written certification with the City establishing the following:

- (1) That the total height of the antenna support structure and wireless telecommunications facility does not exceed the structural height limitations in the applicable zoning district more than twenty (20) feet;
- (2) That the antenna support structure and wireless telecommunications facilities comply with the Ohio Basic Building Code;
- (3) That any wireless telecommunications facilities and their appurtenances, located on the roof of a building, are set back one foot from the edge of the roof, not including for the penthouse, for each one foot in height of the wireless telecommunications facilities. However, this setback requirement shall not apply to antennas less than two (2) inches in thickness, which are mounted to the sides of antenna support structures, but which do not protrude more than six (6) inches from the side of such an antenna support structure. This requirement is subject to change by the Planning Commission upon review of the photo simulation provided in compliance with this subsection.
- (4) That the wireless telecommunications facilities will utilize camouflaging techniques or will be side-mounted to an antenna support structure in order that the wireless telecommunications facilities harmonize with the character and environment of the area in which they are located.

(Ord. O-37-2014. Passed 12-16-14)

1179.05 NONRESIDENTIAL DISTRICTS.

Towers and wireless telecommunication facilities proposed for the following zoning districts-industrial, commercial and community facilities, are subject to the following conditions:

- (1) Tower-Sole Use on a Lot. A Tower is permitted as a sole use on a lot subject to the following:
 - A. Minimum yard requirements. Tower: Unless the tower is equal to or less than fifty (50) feet in height and being used solely for DAS or CMN, the minimum distance to any single-family or two-family residential use or district lot line shall be two hundred (200) feet. A DAS or CMN tower that is equal to or less than fifty (50) feet in height shall be set back a minimum distance to any single-family or two-family residential use or district lot line equal to the height of the tower plus twenty (20) feet.
 - B. Maximum size of equipment shelter. Four hundred (400) square feet for a single shelter, or, if there is more than one, eight hundred (800) total square feet.
- (2) Tower-Combined with Another Use. A tower is permitted on a property with an existing use subject to the following conditions:
 - A. The existing or future use on the property may be any permitted use in the district or any lawful nonconforming use, and need not be affiliated with the wireless telecommunications provider. The tower will not be considered an addition to the structure or value of a nonconforming use.
 - B. The tower and all wireless telecommunications facilities shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).
 - C. Minimum lot area. The minimum lot area shall be the area needed to accommodate the tower (and guy wires, if used), the equipment shelter, security fencing and buffer planting.
 - D. Minimum yard requirements. Tower: Unless the tower is equal to or less than fifty (50) feet in height and being used solely for DAS or CMN, the minimum distance to any single-family or two-family residential use or district lot line shall be two hundred (200) feet. A DAS or CMN tower that is equal to or less than fifty (50) feet in height shall be set back a minimum distance to any single-family or two-family residential use or district lot line equal to the height of the tower plus twenty (20) feet.
 - E. Access. The service to the equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
 - F. Maximum size of equipment shelter. Four hundred (400) square feet for a single shelter, or if there is more than one, eight hundred (800) square feet.

(3) Wireless Telecommunications Facilities-Combined with an Existing Structure. A wireless telecommunications facility shall be attached to an existing structure or building subject to the following conditions:

- A. Maximum height. Twenty (20) feet or twenty percent (20%) of the building height above the existing building or structure, whichever is greater.
- B. If the applicant proposes to locate the wireless telecommunications facility in a separate equipment shelter (not located on, or attached to the building or structure), the equipment shelter shall comply with the following:
 - 1. A minimum setback of fifty (50) feet from all property lines.
 - 2. A buffer yard shall be planted in accordance with this Code.
 - 3. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
 - 4. That maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.

(Ord. O-37-2014. Passed 12-16-14)

1179.06 RESIDENTIAL DISTRICTS AND USES.

Wireless telecommunications facilities that include towers are not permitted in single-family or two-family residential districts, including single-family and two-family residential districts within Planned Unit Development districts, and any property with a residential use, or within mixed-residential districts, with the exception of placement on any property with an institutional use (e.g., church, park, library, municipal government, hospital, school, utility). However, wireless telecommunications facilities attached to existing buildings or antenna support structures within such residential zoning districts may be allowed as a conditional use. In applying for a conditional use approval in any district, the applicant must present sufficient evidence as to why it is not technically feasible to locate in a more appropriate nonresidential zone. Once those efforts have been exhausted, a wireless telecommunications facility may be located in a residential district subject to the following conditions:

- (1) The wireless telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance. This shall apply to (b), (c), (d) and (e) below.
- (2) Wireless Telecommunications Facilities-Combined with a Nonresidential Use. Wireless telecommunications facilities may be attached to a nonresidential building or an antenna support structure that is a permitted use in the district; including, but not limited to, a church, a municipal or governmental building or facility, agricultural building, and a building or structure owned by a utility. The following conditions shall be met:
 - A. Maximum height: twenty (20) feet above the existing building or structure.

- B. If the applicant proposes to locate any wireless telecommunications facilities in a separate equipment shelter, the equipment shelter shall comply with the following:
 - 1. The equipment shelter shall comply with the minimum property line setback of thirty (30) feet from any property line.
 - 2. The maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.
 - 3. A buffer yard shall be planted in accordance with this chapter.
 - 4. Vehicular access to the equipment shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
- (3) Tower-Located on a Nonresidential Use Property. A tower to support a wireless telecommunications facility may be constructed on a property with a nonresidential use that is a permitted use within the district, including but not limited to a church, hospital, school, municipal or government building, facility or structure, agricultural use and a utility use, subject to the following conditions:
 - A. Unless the tower is equal to or less than fifty (50) feet in height and being used solely for DAS or CMN, the tower shall be set back from any property line abutting a single-family or two-family residential lot by two hundred (200) feet. A DAS or CMN tower that is equal to or less than fifty (50) feet in height shall be set back from any property line abutting a single-family or two-family residential lot by an amount equal to the height of the tower plus twenty (20) feet.
 - B. The maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.
 - C. Vehicular access to the tower and equipment shelter shall, whenever feasible, be provided along the circulation driveway of the existing use.
 - D. In order to locate a tower on a property that is vacant or with an agricultural use, the tract shall be at least two and one-half (2.5) acres, or as otherwise determined by the Planning Commission unless the tower is equal to or less than fifty (50) feet in height and being used solely for DAS or CMN, then the tract shall be at least .25 acres, or as otherwise determined by the Planning Commission.
- (4) Wireless Telecommunications Facility-Located on a Multifamily Residential Building. A wireless telecommunications facility may be attached to a mid-rise or high-rise apartment building subject to the following conditions:
 - A. Maximum height - twenty (20) feet above the existing building.
 - B. If the applicant proposes to locate the wireless telecommunications facility in a separate equipment shelter (not located in, or attached to the building), the equipment shelter shall comply with the following:
 - C. The shelter shall comply with the minimum property line setback of thirty (30) feet from any property line.

- D. The maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.
- E. A buffer yard shall be planted in accordance with this chapter.
- F. Vehicular access to the equipment shelter shall, if at all possible, use the existing circulation system.

(5) Tower Located in Open Space. A tower is permitted on land that has been established as a permanent open space, or park subject to the following conditions:

- A. The Open Space shall be owned by the City, county or state government, a homeowners association, charitable organization, or a private non-profit conservation organization.
- B. The maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.
- C. Unless the tower is equal to or less than fifty (50) feet in height and being used solely for DAS or CMN, the tower shall be set back from any single-family or two-family property line two hundred (200) feet. A DAS or CMN tower that is equal to or less than fifty (50) feet in height shall be set back from any single-family or two-family property line by an amount equal to the height of the tower plus twenty (20) feet.

(Ord. O-37-2014. Passed 12-16-14)

1179.07 CRITERIA FOR A CONDITIONAL USE.

(a) Wireless Telecommunications Facility - Tower. A wireless telecommunications facility which includes a tower may be permitted as a conditional use in a residential or commercial district. In order to be considered for review, the applicant must prove that a newly constructed tower is necessary because co-location or an existing tower is not feasible in accordance with Section 1179-08. The following steps must also be taken for the application to be considered for review in this category:

- (1) The Applicant shall demonstrate that the Tower must be located where it is proposed in order to service the applicant's service area. There shall be an explanation of why a Tower and this proposed site is technically necessary.
- (2) Where the wireless telecommunications 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 that the vehicular access is provided to the facility.
- (3) The applicant shall present a site/landscaping plan showing the specific placement of the wireless telecommunications facilities on the site; showing the location of existing structure, trees and other significant site features; and indicating type and locations of plant materials used to screen the facilities, and the proposed color of the facilities.

- (4) Applicant shall present a signed statement indicating:
- A. The applicant agrees to allow for the potential co-location of additional wireless telecommunications facilities by other providers on the applicant's structure or within the same site location; and
 - B. That the applicant agrees to remove the facility within one hundred eighty (180) days after the site's use is discontinued.

(b) A conditional use permit must be approved by the Planning Commission with a subsequent building permit issued for construction of new Towers in nonindustrial districts. Co-location of antennas on a single tower, antennas attached to existing structures/buildings, towers located in industrial districts, or replacement towers to be constructed at the site of a current tower are permitted uses and will not be subject to the conditional use permitting process.

(c) Any decision to deny a request to place, construct or modify a wireless telecommunications facility and/or tower shall be in writing and supported by evidence contained in a written record of the proceedings of the Planning Commission.

(Ord. O-37-2014. Passed 12-16-14.)

1179.08 CO-LOCATION REQUIREMENTS.

(a) Public Property First.

- (1) In order to encourage the location of wireless telecommunications facilities on publicly-owned property, the City shall undertake an identification of publicly-owned properties that the City determines are suitable for such use. The City shall regularly update such identification and make the results of such identification available to the public.
- (2) Persons locating wireless telecommunications facilities upon such identified publicly-owned properties shall be exempt from the requirements herein regarding presentation of proof that co-location of facilities on towers or structures owned by other Persons or in other locations is not available. However, persons locating wireless telecommunications facilities on publicly owned properties shall continue to be subject to the requirements contained in subsection (b) hereof.
- (3) In addition, persons locating wireless telecommunications facilities on publicly-owned properties identified by the City to be suitable for such purposes shall be exempt from the requirements of Sections 1179.01 and 1179.07 (a)(2).

(b) No new tower, unless the tower is equal to or less than fifty (50) feet in height and being used solely for DAS or CMN, shall be constructed in the City unless such tower is capable of accommodating at least one additional wireless telecommunications facility owned by other persons.

(c) A conditional use permit shall be issued only if there is not technically suitable space reasonably available on an existing tower or structure within the coverage area to be served. With the permit application, the Applicant shall list the location of every tower or antenna support, or

structure within the coverage area that could support the proposed antenna. The Applicant must demonstrate that a technically suitable location is not reasonably available on an existing tower or antenna support structure. If another tower or antenna support structure is technically suitable, Applicant must show that it has offered to allow the owner to co-locate the wireless telecommunications facility on another tower within the City owned by Applicant on reciprocal terms, and the offer was not accepted, or the other tower is presumed to be reasonably available.
(Ord. O-37-2014. Passed 12-16-14.)

1179.09 ABANDONMENT OF TOWER.

(a) All providers utilizing towers shall present a report to the city manager or designee notifying him of any wireless telecommunications facility located in the City whose use will be discontinued and the date this use will cease. If at any time the use of the wireless telecommunications facility is decommissioned for one hundred eighty (180) days, the city manager or designee may declare the wireless telecommunications facility abandoned. (This excludes any dormancy period between construction and the initial use of the wireless telecommunications facility). The wireless telecommunications facility's owner/operator will receive written notice from the city manager and be instructed to either reactivate the wireless telecommunications facility's use within one hundred eighty (180) days, or dismantle and remove the wireless telecommunications facility. If reactivation or dismantling does not occur, the City will remove or will contract to have removed the wireless telecommunications facility and assess the owner/operator the costs.

(b) The City must provide the tower owner three (3) months' notice and an opportunity to be heard before the Council before initiating such action. After such notice has been provided, the City shall have the authority to initiate proceedings to either acquire the tower and any appurtenances attached thereto at the then fair market value, or in the alternative, order the demolition of the tower and all appurtenances.

(c) The City shall provide the tower owner with the right to a public hearing before Council, which public hearing shall follow the three (3) month notice required in Section 1179.09(b). All interested parties shall be allowed an opportunity to be heard at the public hearing.

(d) After a public hearing is held pursuant to Section 1179.09(c), the Council may order the acquisition or demolition of the tower. The City may require Licensee to pay for all expenses necessary to acquire or demolish the tower.

(Ord. O-37-2014. Passed 12-16-14.)

1179.10 VARIANCES AND SPECIAL EXCEPTIONS.

Any request to deviate from any requirements of this Chapter shall require variance approval in conformance with the procedures set forth in the Zoning Code.

(Ord. O-37-2014. Passed 12-16-14.)

1179.11 MISCELLANEOUS PROVISIONS.

(a) Non-Waiver. Nothing in this chapter shall preclude the City from exercising any right or remedy it may have in law or equity to enforce the terms and conditions of this chapter.

(b) Severability. If any provision of this chapter or the application of any provision of this chapter to any person is, to any extent, held invalid or unenforceable by a tribunal of competent jurisdiction, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected by such holding. In case of such an event, this chapter and all of its remaining provisions shall, in all other respects, continue to be effective. In the event the law invalidating such a Chapter provision subsequently repealed, rescinded, amended or is otherwise changed so that the provision which had previously been held invalid or unenforceable, no longer conflicts with the laws, rules or regulations then in effect, the previously invalid or unenforceable provision shall return to full force and effect.

(c) Performance Bond.

- (1) All Tower owners shall purchase for the benefit of the City, a performance bond to assure that the terms and conditions of this chapter are complied with, including repair and removal. The performance bond shall be in a form approved by the Municipal Attorney and shall be in an amount no less than ten percent (10%) of the construction value of the towers as estimated by the City at the time of issuance of a building permit.
- (2) The City may draw upon the performance bond for recovery of any cost or damages it incurs arising from a tower owner's violation of this chapter, or the abandonment or discontinuance of use of a tower.
- (3) The requirement to maintain a performance bond under this subsection shall cease only upon a written determination by the City that the maintenance of the bond is no longer necessary.

(Ord. O-37-2014. Passed 12-16-14.)

TITLE SEVEN

SOIL EROSION AND STORMWATER MANAGEMENT

Chapter 1181 Stormwater Management and Runoff Control

Chapter 1183 Soil Erosion and Sediment Pollution

PROOFS

CHAPTER 1181 STORMWATER MANAGEMENT AND RUNOFF CONTROL

1181.01	ENFORCEMENT AND COMPLIANCE.
1181.02	DESIGN STANDARDS.
1181.03	STORMWATER RUNOFF CONTROL MEASURES.
1181.04	EXEMPTIONS.
1181.05	WAIVERS.
1181.06	STORMWATER RUNOFF CONTROL CRITERIA.
1181.07	STORMWATER SYSTEM DESIGN CRITERIA.
1181.08	PUBLIC NOTIFICATION OF STORMWATER MANAGEMENT AND WATERCOURSE PLAN.
1181.09	RIGHT OF APPEAL.
1181.10	VIOLATIONS.
1181.99	PENALTY.

1181.01 ENFORCEMENT AND COMPLIANCE.

(a) The Municipal Engineer shall be responsible for enforcement of these stormwater runoff control regulations and shall not allow any development of land area unless such development meets the design requirements herein and per New Albany's most current Ohio Environmental Protection Agency's (OEPA) National Pollutant Discharge Elimination Systems (NPDES) Phase II Permit.

(b) Council shall not approve the final plat of any development or subdivision over which it has jurisdiction without certification from the Municipal Engineer that such development or subdivision shall be in full compliance with the design requirements herein.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.02 DESIGN STANDARDS.

(a) The design standards contained in the latest editions of the Ohio Department of Natural Resources (ODNR) Rainwater and Land Development Manual and the City of Columbus, Division of Sewerage and Drainage, Department of Public Utilities Stormwater Drainage Manual shall be used to determine the technical acceptability of land development stormwater management methods. The Municipal Engineer, or Administrator's designee shall determine the acceptability of the hydrologic design.

(b) The United States Department of Agriculture Soil Conservation Service soil classification mapping shall be used to determine soil classification for the purpose of all stormwater management design unless more detailed data is prepared by a competent authority and accepted by the Municipal Engineer.

(c) For the purpose of determining predevelopment runoff coefficients on any property, the condition of the property prior to earth disturbing activity shall be used.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.03 STORMWATER RUNOFF CONTROL MEASURES.

(a) The stormwater runoff control measures require that land uses and developments which increase the runoff rate and/or volume shall control the discharge rate of runoff prior to its release to off-site land. The purposes of these measures are to:

- (1) Permit development without increasing the flooding potential of other lands;
- (2) Reduce damage to receiving streams and impairment of their capacity, which may be caused by increases in the quantity and rate of stormwater discharge; and
- (3) Establish a basis for design of stormwater drainage systems on lands below undeveloped areas which shall preserve the rights and options of both dominant and servient property owners and assure long-term adequacy of storm drainage systems.

(b) These stormwater runoff management and control regulations apply to all land developments not specifically exempted under Section 1181.04 of these regulations or granted a waiver as provided by Section 1181.05.

(c) Other sections of these regulations specify the performance requirements of on-site drainage systems and runoff control standards.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.04 EXEMPTIONS.

Exemptions are appropriate for certain land use activities which clearly do not generate significant increases in stormwater runoff. Where exemptions are granted under this section, they shall apply to the requirements for runoff control only and do not in any way imply a relaxation of requirements for adequate and proper on-site drainage or the ability of the system to accept runoff from tributary land. The following land uses and developments are exempted from stormwater runoff controls:

- (a) A residential lot of any size which is under single ownership and is the principal place of residency of the property owner;
- (b) Land preparation for agricultural crops, orchards, woodlots, sod farms and nursery operations;
- (c) Land grading or leveling less than one acre for erosion control under the direction of the Municipal Engineer or the Administrator's designee;
- (d) Land subdivisions for residential purposes with minimum lot sizes of five (5) acres; and
- (e) Land located within the Regulatory Flood Hazard Area as established by the zoning regulations of the Municipality of New Albany based on determinations by the U.S. Army Corps of Engineers, the U.S. Department of Housing and Urban Development or the Ohio Department of Natural Resources.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.05 WAIVERS.

(a) It is conceivable that development situations not automatically subject to exemptions under Section 1181.04 may exist such that development shall have none of the harmful effects associated with increases in runoff rates and volume. Such developments are eligible for a waiver. The waiver applies only to the requirement that runoff be controlled, and does not in any way imply a relaxation in the requirement for adequate on-site drainage or the ability to accept runoff from land tributary to the development.

(b) The waiver application shall request in writing that such requirements for stormwater runoff control be waived. The application shall include sufficient detail to determine that granting a waiver shall not result in increased flooding and the added volume of runoff shall not damage the receiving stream.

(c) A condition of the waiver shall be that any addition, extension or modification of a development for which a waiver has been granted shall be required to provide stormwater runoff control for the entire site if preceding limitations are exceeded by subsequent additions, extensions or modifications.

(d) The following land uses and developments are eligible to apply for a waiver on stormwater runoff control requirements contained in this chapter:

- (1) Single family residential developments which meet the following criteria:

Minimum Lot Size

Maximum Subdivision Size

1 to 4.99 acres	10 acres
40,000 square feet	10 acres
20,000 square feet	5 acres
15,000 square feet	2 acres

- (2) Buildings, their related parking lots and structures where less than one acre is to be altered by grading, draining, removing existing ground cover or paving and of which one acre or less shall be impervious areas, such as roofs, walks or parking areas;
- (3) Situations where existing and adequate off-site stormwater runoff control facilities provide the required control. However, this shall not be construed to imply the first development requesting use shall have full use of available storage capacity to ensure that later developments have a similar opportunity to utilize a portion of the storage capacity.

(e) All waiver applications shall be recommended by the Municipal Engineer and the Planning Commission to Council for action to grant or deny the waiver.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.06 STORMWATER RUNOFF CONTROL CRITERIA.

(a) Stormwater runoff control shall address both peak rate and total volume of runoff. The peak rate of the runoff from an area after development shall not exceed the peak rate of runoff from the same area before development for all storms from one year up to a 100-year frequency,

twenty-four-hour storm. In addition, if it is found a proposed development shall increase the volume of runoff from an area, the peak rate of runoff from certain more frequent storms shall be controlled further. There are two (2) reasons why increases in volume of runoff require a control standard more restrictive than controlling to the predevelopment condition.

First, increases in volume mean runoff shall be flowing for a longer period of time. When routed through a watershed, these longer flows may join at some point or points downstream thereby creating new peak flows and the problems associated with peak flow such as flooding. This is known as the "routing problem." Second, longer flow periods of large runoff quantities place a highly erosive stress on natural channels. This stress can be minimized by reducing the rate of discharge. The permissible peak rate shall be determined as follows:

- (1) Determine the total volume of runoff from a one-year frequency twenty-four-hour storm, occurring over the area before and after development; and
- (2) Determine the percentage of increase in volume due to development and using this percentage, pick the critical storm from the following table:

If the percentage of increase in volume of runoff is:

Equal to or greater than:	and less than:	the critical storm for discharge limitations shall be (years)
—	10	1
10	20	2
20	50	5
50	100	10
100	250	25
250	500	50
500	—	100

(b) The peak rate of runoff from the critical storm occurring over the development shall not exceed the peak rate of runoff from a one-year frequency storm occurring over the same area under predevelopment conditions. Storms of less frequent occurrence (longer return period) than the critical storm, shall have a peak rate runoff not greater than for the same storm under predevelopment conditions. As an example, if the total volume is to be increased by thirty-five percent (35%), the critical storm is a five-year storm. The peak rate of runoff for all storms up to this intensity shall be controlled so as not to exceed the peak rate of runoff from a one-year frequency storm under predevelopment conditions in the area. The runoff from a more intense storm up to a 100-year storm need only be controlled so as not to exceed the predevelopment peak rate from the same frequency of storm.

(c) Storage volume does not have to be provided for off-site upstream drainage areas.
(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.07 STORMWATER SYSTEM DESIGN CRITERIA.**(a) Design Storms.**

- (1) Initial drainage system. The initial drainage system is that part of the storm drainage system which is used regularly for collecting, transporting and disposing of stormwater runoff, snowmelt and miscellaneous minor flows. The capacity of the initial drainage system should be equal to the maximum rate of runoff expected from a design storm of established frequency. For purposes of design, the initial drainage portion of the drainage system shall be designed to carry the runoff from a storm with a return period of not less than five (5) years.
- (2) Major drainage system. The major drainage system is that part of the storm drainage system which carries the runoff which exceeds the capacity of the initial drainage system. The major drainage system shall have the capacity to carry runoff from a storm with a return period of not less than one hundred (100) years without posing significant threat to property or public safety.

(b) Initial Storm: Physical Design Criteria for On-Site Improvements.

- (1) Depth of flow in natural channels shall not exceed bank full stage with backwater effects considered.
- (2) Depth of flow in artificial channels shall not exceed 0.8 bank full stage. Velocity of flow shall be determined in accordance with the design criteria for open channels and shall not exceed seven (7) feet per second. Where flows exceed this rate, special channel lining and erosion protection shall be provided.
- (3) Depth of flow in roadside ditch swales shall not exceed one foot or be of such depth that the flow would extend out of the right-of-way if the side ditch is less than one foot in depth. Velocity at this depth shall not exceed five (5) feet per second with grass swales or ten (10) feet per second with paved ditches.
- (4) Depth of flow in streets with curb and gutter shall not exceed the curb height. Velocity of flow in the gutter at design depth shall not exceed ten (10) feet per second. In addition to the above, the following are maximum encroachments of the minimum five-year initial design storm onto the pavement:
 - A. For minor streets carrying traffic from the individual residence to collector and secondary streets, the flow may spread to the crown of the street.
 - B. For collector or secondary streets, one lane shall be free from water.
 - C. For primary streets, one lane in each direction shall be free from water.
 - D. For freeways, no encroachment is allowed into traffic lanes.
- (5) In the design of the conduit, the conduit may be designed on the basis of flowing full with surcharge to gutter line. Backwater effects shall be considered.

(c) Major Storm: Physical Design Criteria for On-Site Improvements.

- (1) The major storm floodway and floodway fringe for natural streams shall be as defined by the U.S. Army Corps of Engineers, the U.S. Department of Housing and Urban Development or the Ohio Department of Natural Resources, where such determinations have been made.
- (2) Many of the drainageways associated with the major storm system are in areas beyond those designated as floodway or floodway fringe. For these areas, the major storm limits shall be determined by the U.S. Corps of Engineers HEC-RAS method or other accepted methods of determining water profiles using the major design storm runoff. One foot of elevation shall be added to the flood profile as freeboard for protection in the event of future encroachments into the drainageway (Refer to applicable FEMA policy and Village Code of Ordinances Chapter 1155 Flood Plain Overlay District Policy for determining free board requirements in floodway or floodway fringe).
- (3) Where the street is designed as the major drainageway, the depth of flow shall not exceed eighteen (18) inches at the gutter line for local and collector streets and shall not exceed six (6) inches depth at the crown for primary streets and freeways. The same maximum depth criteria shall apply where a major drainageway crosses the street. Where a major drainageway is located outside a street, right-of-way easements shall be provided.
- (4) In determining the required capacity of surface channels and other drainageways provided for the major storm runoff, the street storm inlets and conduit provided for the initial design storm shall carry not more than one-half their design capacity. This is a safety factor to allow for the surcharged outlets, obstructed inlets or other malfunctions.

(d) Retention and Storage. Areas designed solely for storage of stormwater by detention or retention shall be avoided where possible, except if detention areas can be incorporated into the natural features of the general area or where such detention area would become a desired amenity to the development. Cooperative planning and joint owner construction of detention discharge control or retention facilities and use of natural land contours is encouraged. No such facilities shall be permitted which may become an aesthetically unpleasing, construction or maintenance problem. The Municipality encourages such facilities which are designed as multipurpose spaces such as open space, recreation and/or scenic areas.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.08 PUBLIC NOTIFICATION OF STORMWATER MANAGEMENT AND WATER-COURSE PLAN.

Land developers shall place in all sales offices copies of the land development grading plan with graphic and written descriptive information clearly showing and describing the purpose of all drainage easements, floodway routing, flood hazard areas and other watercourses, detention and retention basins contained on or designed into the land development. A copy of an approved Notice of Intent (NOI) from the OEPA, corresponding sedimentation and erosion control plan,

and all sedimentation and erosion control inspection reports (taken after each rain event) shall be placed in a location (mailbox, construction trailer, etc.) approved by the Municipal Engineer, or Administrators designee. This location must be clearly labeled Stormwater Management Pollution Prevention Plan (SWP3) and available for inspection twenty-four (24) hours a day.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.09 RIGHT OF APPEAL.

Any person dissatisfied with a decision made by the Municipal Engineer pursuant to these regulations shall have the right of appeal in writing to Council within ten (10) days after such decision is made. Council shall act on the written appeal at its next regular meeting held after receipt of such appeal by the Clerk, or the appeal is deemed denied.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.10 VIOLATIONS.

The Municipal Engineer shall notify in writing the person or company found in violation of the conditions of this chapter and that person or firm shall have five (5) working days to correct the violation prior to the institution of penalties outlined in Section 1181.99.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1181.99 PENALTY.

Any person, firm or corporation violating any provision, amendment or supplement of this chapter may be subject to forfeit of construction bond to the amount determined necessary by the Municipal Engineer to eliminate the violation and bring the subject stormwater control and management systems into compliance. Also, to guarantee completion of work to the standards set in these regulations, the Municipal Engineer or his designee may issue a stop work order, withhold the issuance of building permits, may not conduct inspections or may take other action permitted by their lawful powers to ensure the work needed to satisfy the requirements of these regulations is completed.

(Ord. 74-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

CHAPTER 1183 SOIL EROSION AND SEDIMENT POLLUTION

1183.01	PURPOSE.
1183.02	DEFINITIONS.
1183.03	SEDIMENTATION AND EROSION CONTROL PLAN REQUIRED.
1183.04	SEDIMENT AND EROSION CONTROL STANDARDS AND CRITERIA.
1183.05	GUARANTEE FOR COMPLETION OF WORK.
1183.06	INSPECTION TO ENSURE COMPLIANCE.
1183.99	PENALTY.

1183.01 PURPOSE.

This chapter is adopted for the purpose of controlling the pollution of public waters by sediment from accelerated stormwater runoff caused by earth-disturbing activities and land use changes connected with developing urban areas. Control of such pollution will promote and maintain the health, safety and general well-being of lives and inhabitants of New Albany. (Ord. 73-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1183.02 DEFINITIONS.

(a) For the purpose of this chapter certain rules or word usage apply to the text as follows:

- (1) Words used in the present tense include the future tense; and the singular includes the plural, unless the context clearly indicates the contrary.
- (2) The term "shall" is always mandatory and not discretionary; the word "may" is permissive.
- (3) The word or term not interpreted or defined by this chapter shall be used with a meaning of common or standard use, so as to give this chapter its most reasonable application.

(b) "Channel" means a stream that conveys water.

(c) "Development area" means any contiguous (abutting) area owned by one person or operated as one development unit and used or being developed for non-farm commercial, industrial, residential, or other non-farm purposes upon which earth-disturbing activities are planned or under way.

(d) "District" means the Franklin Soil and Water Conservation District, organized under ORC Ch. 1515.

(e) "Disturbance" means any event or series of events that disrupt ecosystem, community, or population structure and alters the physical environment.

(f) "Ditch" means an excavation either dug or natural for the purpose of drainage or irrigation with intermittent flow.

(g) "Drainageway" means an area of concentrated water flow other than a river, stream, ditch or grassed waterway.

(h) "Dumping" means grading, pushing, piling, throwing, unloading or placing.

(i) "Earth-disturbing activity" means any grading, excavating, filling or other alteration of the earth's surface where natural or man-made ground cover is destroyed and which may result in or contribute to erosion and sediment pollution.

(j) "Earth material" means soil, sediment, rock, sand, gravel and organic material or residue associated with or attached to the soil.

(k) "Erosion" means:

(1) The wearing away of the land surface by running water, wind, ice, or other geological agent, including such processes as gravitational creep.

(2) Detachment and movement of soil or rock fragments by wind, water, ice or gravity.

(3) Erosion includes:

A. Accelerated erosion: Erosion much more rapid than normal; natural or geologic erosion, primarily as a result of the influence of the activities of man.

B. Floodplain erosion: Abrading and wearing away of the nearly level land situated on either side of a channel due to overflow flooding.

C. Gully erosion: The erosion process whereby water accumulates in narrow channels during and immediately after rainfall or snow or ice melt and actively removes the soil from this narrow area to considerable depths such that the channel would not be obliterated by normal smoothing or tillage operations.

D. Natural erosion (geologic erosion): Wearing away of the earth's surface by water, ice or other natural environmental conditions of climate, vegetation, etc., undisturbed by man.

E. Normal erosion: The gradual erosion of land used by man which does not greatly exceed natural erosion.

F. Rill erosion: An erosion process in which numerous small channels only several inches deep are formed; occurs mainly on recently disturbed soils.

G. Sheet erosion: The removal of a fairly uniform layer of soil from the land surface by wind or runoff water.

(l) "Grassed waterway" means a broad or shallow natural course or constructed channel covered with erosion-resistant grasses or similar vegetative cover and used to conduct surface water.

(m) "Landslide" means the rapid downward and outward movement of large rock material and/or soil mass under the influence of gravity in which the movement of the soil mass occurs along an interior surface of sliding.

(n) "Person" means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government or any combination thereof.

(o) "Public waters" means water within rivers, streams, ditches and lakes.

(p) "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, gravity or ice, and has come to rest on the earth's surface above or below sea level.

(q) "Sediment basin" means a temporary settling pond that slowly releases runoff at a controlled rate into a stabilized channel or pipe, detaining it long enough to allow most of the sediment to settle out.

(r) "Sedimentation and erosion control plan" means a written description, acceptable to the Municipal Engineer, or Administrators designee, of methods for controlling sediment pollution from accelerated erosion on a development site or from erosion caused by accelerated runoff from a development site.

(s) "Sediment pollution" means failure to use the most current and scientifically sound best available technologies (BAT's) and management practices (BMP's) to abate wind or water erosion of the soil or to abate the degradation of the waters of the State by soil sediment in conjunction with land grading, excavating, filling or other soil disturbing activities on land used or being developed for non-farm commercial, industrial, residential or other non-farm activities.

(t) "Slip" means landslide as defined above.

(u) "Sloughing" means a slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth-disturbing activity of man.

(v) "Soil loss" means soil relocated on or removed from a given site by the forces of erosion and the redeposit of the soil at another site on land or in a body of water.

(w) "Storm frequency" means the average period of time within which a storm of a given duration and intensity can be expected to be equaled or exceeded.

(x) "Stream" means a body of water running or flowing on the earth's surface or channel in which flow occurs. Flow may be seasonally intermittent.

(y) "Topsoil" means surface and upper surface soils which presumably are darker colored, fertile soil materials, ordinarily rich in organic matter or humus debris.

(Ord. 73-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1183.03 SEDIMENTATION AND EROSION CONTROL PLAN REQUIRED.

(a) A copy of an approved Notice of Intent (NOI) from the Ohio Environmental Protection Agency as well as a sedimentation and erosion control plan shall be submitted to the Municipal Engineer prior to any earth disturbing activity equal to or greater than one acre for residential, commercial, manufacturing, multi-family development, or public utility construction. Such plan

may be submitted as a part of the detailed engineering plans. For earth disturbing activity less than one acre, the need for sediment and erosion control activity shall be determined by the Municipal Engineer, or Administrator's designee.

A copy of an approved Notice of Intent (NOI) from the OEPA, corresponding sedimentation and erosion control plan, and all sedimentation and erosion control inspection reports (taken after each rain event) shall be placed in a location (mailbox, construction trailer, etc.) approved by the Municipal Engineer, or Administrator's designee. This location must be clearly labeled Stormwater Management Pollution Prevention Plan (SWP3) and available for inspection twenty-four (24) hours a day.

(b) Sedimentation and Erosion Control Plan Content. A sedimentation and erosion control plan for a proposed development area, with maps drawn to a minimum scale of one inch equals one hundred (100) feet, shall be submitted to the Municipal Engineer, or Administrator's designee. The sediment control plan may be a part of the detailed engineering plan, but it shall contain the following information:

- (1) Location of the area and its relation to its general surroundings including but not limited to:
 - A. Off-site areas susceptible to sediment deposits or to erosion caused by accelerated runoff, and
 - B. Off-site areas affecting potential accelerated runoff and erosion control.
- (2) Existing and proposed topography and drainage of the development area and adjacent land within one hundred (100) feet of the boundaries. A topographic map should contain an appropriate contour interval to clearly portray the conformation and drainage pattern of the area.
- (3) The location of existing buildings, structures, paved areas (streets, roads, driveways, sidewalks, etc.), utilities, water bodies, drainage facilities, vegetative cover, conservation/preservation zones and other significant natural or man-made features on the development area and adjacent land within one hundred (100) feet of the boundaries.
- (4) A general description of the predominant soil types, their location and their limitations for the proposed use.
- (5) Proposed use of the development area.
- (6) All proposed earth disturbance including:
 - A. Areas of disturbance including excavation, grading, filling, etc. and
 - B. Total size of disturbance area.
 - C. The finished grading plan.
 - D. Kinds of utilities and proposed areas of installation.
 - E. Proposed paved and covered areas in square feet or to scale on a plan map.

- (7) Provisions for temporary and permanent erosion control shall generally follow the latest edition of the Ohio Department of Natural Resources (ODNR) Rainwater and Land Development Manual.
- (8) Provisions for the management of stormwater, derived both on-site and from upper watershed areas, including the control of accelerated on-site runoff, to a stable receiving outlet.
- (9) Provisions for maintenance of control facilities including easements to ensure short as well as long term erosion and sediment pollution control and stormwater management.
- (10) Proposed construction sequence and time schedule for all earth-disturbing activities and installation of provisions for erosion and stormwater management.
- (11) Design computations and applicable assumptions for all structural measures for erosion and sediment pollution control and water management. Volume and velocity of flow must be given for all surface water conveyance. This information shall also be provided for surface water outlets.
- (12) Seeding mixtures and rates, lime and fertilizer application rates, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
- (13) Estimate of cost of erosion and sediment control and water management structures and features.
- (14) Title, scale, direction, legend and date of all plan maps.
- (15) Names and address of the person(s) preparing the plan, the owner, and the person responsible for the development area.
- (16) Certification that all earth disturbance, construction, and development will be done pursuant to the plan.

The Municipal Engineer may waive specific requirements for plan detail or may require additional information to show that work will conform to basic requirements of this chapter.

(c) Plan Review. The Municipal Engineer shall, within fourteen (14) working days of receipt of a sedimentation and erosion control plan, indicate its approval or disapproval (status of compliance or non-compliance) to the person who filed the plan. Indication of disapproval (non-compliance) shall include the plan deficiencies and the procedures for filing a revised plan. Pending preparation and approval (determination of compliance) of a revised plan, earth-disturbing activities shall proceed only in accordance with conditions outlined by the Municipal Engineer, or Administrators designee.

(Ord. 73-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1183.04 SEDIMENT AND EROSION CONTROL STANDARDS AND CRITERIA.

In order to control sediment pollution of water resources, the owner or person responsible for the development area shall use the most current and scientifically sound BAT's and BMP's relating to conservation planning to maintain the level of conservation established by the following standards:

In order to control sediment pollution of water resources, the owner or person responsible for the development area shall use conservation planning and practices to maintain the level of conservation established per New Albany's current Ohio Environmental Protection Agencies (OEPA) National Pollutant Discharge Elimination Systems (NPDES) Phase II Permit:

(a) Timing of Sediment-Trapping Practices.

- (1) Sediment control practices shall be functional throughout earth-disturbing activity.
- (2) Settling facilities, perimeter controls and other practices intended to trap sediment shall be implemented as the first step of grading or construction and within seven (7) days from the start of grubbing. They shall continue to function until the upslope development area is re-stabilized.

(b) Stabilization of Denuded Areas. Denuded areas shall have soil stabilization applied within seven (7) days if they are to remain dormant for more than twenty-one (21) days. Permanent or temporary soil stabilization shall be applied to denuded areas within seven (7) days after final grade is reached on any portion of the site, and shall also be applied within seven (7) days to denuded areas which may not be at final grade, but which will remain dormant (undisturbed) for longer than twenty-one (21) days.

(c) Settling Facilities. Concentrated stormwater runoff from denuded areas shall be filtered or diverted to a settling facility.

- (1) The minimum capacity of the sediment basin to the elevation of the crest of the pipe spillway shall be sixty-seven (67) cubic yards (0.04 acre-feet) for each acre within the drainage area that will be disturbed by construction during the designed life of the sediment basin. If other areas within the drainage area are actively eroding, additional sediment capacity must be added (volume will be determined based on site conditions). The volume of the sediment storage zone shall be thirty-seven (37) cubic yards per disturbed acre within the watershed of the basin or based on another method acceptable to the Municipal Engineer.
- (2) The Municipal Engineer will consider alternate methods, proposed by the developer, for accumulating, processing and storing sedimentation, so long as the methods utilize the most current and scientifically sound BAT's and BMP's and that these BAT's and BMP's comply with New Albany's most current OEPA NPDES Phase II permit.

(d) Sediment Barriers.

- (1) Sheet flow runoff from denuded areas shall be filtered or diverted to a settling facility.

- (2) Sediment barriers such as sediment fence or diversions to settling facilities shall protect adjacent properties and water resources from sediment transported by sheet flow.

(e) Storm Sewer Inlet Protection. All storm sewer inlets which accept water runoff from the development area shall be protected so that sediment-laden water will not enter the storm sewer systems without first being filtered or otherwise treated to remove sediment, unless the storm sewer system drains to a settling facility.

(f) Working In or Crossing Streams. Streams including bed and banks shall be re-stabilized immediately after in-channel work is completed, interrupted or stopped.

- (1) To the extent practicable, construction vehicles shall be kept out of streams. Where in-channel work is necessary, precautions shall be taken to stabilize the work area during construction to minimize erosion.
- (2) A temporary stream crossing plan shall be provided if a stream must be crossed by vehicles during construction.

(g) Construction Access Routes. Measures shall be taken to prevent soil transport onto surfaces where runoff is not checked by sediment controls, or onto public roads.

(h) Sloughing and Dumping.

- (1) No soil, rock, debris or any other material shall be dumped or placed into a water resource or into such proximity that it may readily slough, slip, or erode into a water resource unless such dumping or placing is authorized by the Municipal Engineer, and, where applicable, the U.S. Army Corps of Engineers, for such purposes as, but not limited to, constructing bridges, utility lines, culverts and erosion control structures.
- (2) Unstable soils prone to slipping or landsliding shall not be graded, excavated, filled or have loads imposed upon them unless the work is done in accordance with a qualified professional engineer's recommendations to correct, eliminate or adequately address the problems.

(i) Cut and Fill Slopes. Cut and fill slopes shall be designed and constructed in a manner which will minimize erosion. Consideration shall be given to the length and steepness of the slope, soil type, upslope drainage area, groundwater conditions and slope stabilization.

(j) Stabilization of Outfalls and Channels. Outfalls and constructed or modified channels shall be designed and constructed to withstand the expected velocity of flow from a post-development, 10-year frequency storm without eroding.

(k) Preservation of Natural Watercourses. Existing streams and channels shall not be altered or channeled without express permission from the Municipality of New Albany, and shall be preserved with their natural tree or vegetation canopy intact as a means to prevent their pollution from runoff containing sediment. The buffer area necessary to protect such watercourses shall be determined by the Municipal Engineer.

- (1) The Engineer may rely, as a guide for determining appropriate buffer area, on ODNR's Rainwater and Land Development Manual.

- (2) When the Municipal Engineer determines that in his opinion prohibiting channelization of an existing natural watercourse would cause an undue hardship for the development of property subject to these regulations, he may permit such alteration after reviewing plans outlining the extent and nature of the channelization or alteration.
- (3) Additionally, whenever such watercourse is being considered for alteration, the agency seeking permission to alter the watercourse shall provide the names of the owners of the three (3) next lower riparian properties under wholly different ownership, and such property owners shall be notified in writing of the intended watercourse alteration.

(l) Establishment of Permanent Vegetation. A permanent vegetation shall not be considered established until ground cover is achieved which, in the opinion of the approving agency, provides adequate cover and is mature enough to control soil erosion satisfactorily and to survive adverse weather conditions.

(m) Maintenance. All temporary and permanent erosion and sediment control practices shall be designed and constructed to minimize maintenance requirements. They shall be maintained and repaired as needed to assure continued performance of their intended function. The person or entity responsible for the continued maintenance of permanent erosion controls shall be identified to the satisfaction of the Municipal Engineer, or Administrators designee.

(Ord. 73-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1183.05 GUARANTEE FOR COMPLETION OF WORK.

All persons proposing development affected by these regulations, if not already required to do so under existing ordinances regulating construction within the Municipality, shall be required to furnish a bond in the form of a cash on deposit, traditional bond, or other pledging of securities as deemed adequate by the Finance Director, to be retained by the Municipality until satisfactory completion of construction of the measures required by these regulations. The amount of the bond shall be determined by the Engineer as equal to the cost to repair damage caused by the violator of these regulations.

(Ord. 73-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1183.06 INSPECTION TO ENSURE COMPLIANCE.

(a) The Municipal Engineer or Administrators designee shall inspect development areas, both for which plan approval is required prior to commencement of development and those for which it is not required, in order to determine compliance with these regulations. If the Municipal Engineer, or Administrators designee determines that a violation of these regulations exists, the responsible person will be notified of the deficiencies or non-compliance.

(b) The Inspector shall also report the deficiency or noncompliance to the Municipal Engineer, or Administrators designee. Upon determination that a person or firm is not complying with these regulations, the Municipality may issue an order to comply to the property owner or his agency in writing. That person shall have five (5) working days to bring the work into compliance. If the

noncompliance pertains to land development that is under way, the Municipality may also issue a written stop work order, refuse to issue building permits, or take other action to insure compliance. (Ord. 73-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

1183.99 PENALTY.

(a) Any person, firm or corporation violating any provision, amendment or supplement of these regulations, or failing to obey any lawful order of the Municipal Engineer, or Administrator's designee issued in pursuance thereof, shall be deemed guilty of a minor misdemeanor for the first five (5) days that such violation exists. The court of competent jurisdiction may levy a fine of up to one thousand dollars (\$1,000.00) a day for each day thereafter that the violation exists. Each day such violation continues shall be considered a separate offense.

(b) Nothing herein contained shall prevent the Municipality of New Albany from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 73-91. Passed 9-17-91; Ord. O-02-2011. Passed 2-15-11.)

TITLE NINE

SUBDIVISION CONTROL

Chapter 1187 Subdivision Regulations

PROOFS

CHAPTER 1187 SUBDIVISION REGULATIONS*

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1187.01 DEFINITIONS.

The following words and phrases when used in this chapter shall have the meaning here described.

(a) "Easement" means a grant by property owner(s) to another party or parties for a specific use of a described portion of property.

(b) "Improvements" means street pavements, with or without curbs and/or gutters, sidewalks, water mains, sanitary and storm sewers, stormwater management facilities, erosion and sedimentation measures, grading and shaping, street lights, landscaping, screening and buffering and other related matters normally associated with the development of land into development sites.

(c) "Lot" means a division of land and described on a recorded subdivision plat or recorded deed by metes and bounds description.

(d) "Minor commercial subdivision" means a commercially zoned parcel, with an approved Final Development Plan or equivalent plan, with public road frontage, which does not involve the opening, widening or extension of a public street and does not involve more than five (5) lots after the original tract has been completely subdivided.

*Cross references—Plat and subdivision defined - see ORC 711.001;

Plat and contents - see ORC 711.01 et seq.;

Lot numbering and revision - see ORC 711.02, 711.06, 711.28 et seq.;

Plat acknowledgment and recording - see ORC 711.06;

Engineer to approve plats; inspection of streets and acceptance - see Ohio 711.08, 711.09;

Plat approval by planning authority; minimum lot area - see ORC 711.09;

Violations of rules and regulations - see ORC 711.102

(e) "Plat" means a map of a subdivision described by accurate distances and bearings.

(f) "Right-of-way" means the width between property lines of a street, roadway, easement.

(g) "Subdivision" means the division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two (2) or more parcels, sites, or lots, any one of which is less than five (5) acres for the purpose, whether immediate or future, of the transfer of ownership provided, however, that the division or partition of land into parcels of more than five (5) acres not involving any new streets or easements of access, or the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall be exempt. The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets, except for private streets serving industrial structures, 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.

(Ord. 77-91. Passed 10-15-91; Ord. 08-2007. Passed 2-20-07; Ord. 31-2007. Passed 8-21-07.)

1187.02 REQUIRED IMPROVEMENTS.

The subdivider or developer of land shall provide and pay the entire cost of improvements to such land as follows:

- (a) Street improvements shall consist of grading the right- of-way for full width; construction of curbs or curbed gutters and pavement; construction of draining structures and appurtenances. Two (2) roof drain openings shall be provided in curb for each lot, or shall be machine cored by the builder.
- (b) Sanitary sewers, including manholes, services and all appurtenances.
- (c) Water distribution system, including mains, services, valves, fire hydrants and all appurtenances.
- (d) Concrete sidewalks on both sides of street, except where Leisure Trails are required in accordance with the Village's Strategic Plan or as recommended by the Parks and Trails Advisory Board. Sidewalks shall be linked to external trails or sidewalks. Where special circumstances exist for sidewalk construction a fee in-lieu may be considered according to the procedure in Section 1187.18.
- (e) Leisure Trails in accordance with the Village's Strategic Plan or as recommended by the Parks and Trails Advisory Board. Trails shall be linked to external trails or sidewalks. Where special circumstances exist for trail construction a fee in-lieu may be considered according to the procedure in Section 1187.18.
- (f) Storm sewers, including manholes, inlets or catch basins, and all appurtenances, stormwater management features and facilities.

- (g) Landscaping, screening and buffering features, if required by these regulations or the Zoning Code.
- (h) Street lighting above public right-of-way which meets minimum illumination specifications approved by the Municipal Engineer. Light standards shall be approved by the Municipality.
- (i) Erosion and sedimentation measures and practices.

All phases of the improvement shall be approved by the Municipal Engineer and shall be constructed in accordance with Municipal specifications and standards as approved by the Municipal Engineer.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.03 APPLICATION PLAN.

A subdivider or developer may submit a sketch, prepared by a registered engineer or surveyor, of the proposed subdivision to the Planning Commissioner for informed comments and suggestions.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.04 PRELIMINARY PLAT.

The subdivider shall submit an application with a total of thirteen (13) copies of the preliminary plat to the Village Administrator's designee a minimum of fifteen (15) working days prior to the meeting of the Planning Commission at which the subdivider desires his application to be heard.

The Village Administrator's designee shall, within five (5) working days, review the application and plat for completeness and compliance with the requirements in this section. If he finds the application is complete and meets the requirements, he shall, at least five (5) working days prior to the meeting at which the plat will be heard, forward copies to the Municipal Engineer, Planner and Administrator for review and comment, and to all members of the Planning Commission. He shall also place one copy on file in the zoning office.

If the Village Administrator's designee finds that the application is not complete and does not meet requirements of this section, he shall notify the applicant in writing of the deficiencies. The applicant may make the necessary additions and/or revisions. No hearing shall be held or action of approval taken by the Planning Commission until a complete application meeting all requirements of this section has been filed with and accepted by the Village Administrator's designee.

- (a) The preliminary plat shall contain the following:
 - (1) Scale - Minimum of one inch equals one hundred (100) feet.
 - (2) The proposed name of the subdivision.
 - (3) Key map showing location within the Municipality.
 - (4) Names and addresses of owners, developers and the surveyor who developed the plat.

- (5) Date of submission.
- (6) North point.
- (7) Signature block for applicant and applicant's engineer and surveyor.
- (b) The following existing conditions shall be shown:
 - (1) Boundary lines and approximate acreage included.
 - (2) Locations, widths and names of all existing or prior platted streets or alleys, railroad and utility rights-of-way, parks and public open spaces, community ownership association, permanent buildings and structures, all section and corporation lines within or adjacent to the tract.
 - (3) Existing sewers, water mains, culverts and other underground facilities within the tract, indicating pipe size, elevations and grades (if readily available) and locations (if known or available).
 - (4) Existing easements on subject acreage and easements within fifty (50) feet on adjacent subdivided plat. Proposed developer utility and proposed public utility easements are not expected to be shown.
 - (5) Names of adjacent subdivisions and owners of adjoining parcels of unsubdivided land with deed book and page number or official record volume.
 - (6) Boundary lines of adjacent tracts of unsubdivided and subdivided land, within one hundred (100) feet of boundary line.
 - (7) Existing zoning or deed restrictions (if known) for subject and surrounding acreage.
 - (8) Existing contours, with intervals of five (5) feet where the slope is greater than ten percent (10%) and two (2) feet where the slope is less than ten percent (10%).
 - (9) Drainage channels, wooded areas, water courses and other significant physical features.
 - (10) All elevations shall be based on sea level datum as determined by the U.S. Coast and Geodetic survey or the U.S. Geological Survey.
 - (11) FEMA floodplain areas.
- (c) The following proposed conditions shall be shown:
 - (1) Layout of streets and right-of-way widths.
 - (2) Layout, numbers and dimensions of lots. Lots shall be numbered sequentially for each plat from one, or continue from the last number used on previous section in multiple phase developments.
 - (3) Parcels of land intended to be dedicated or temporarily reserved for public use, and proposed method of maintenance and control of same.
 - (4) Building setback lines shown graphically with dimensions or standards indicated in current Zoning Ordinance.

- (5) Names of new streets shall not duplicate names of any existing dedicated streets within the northeastern quadrant of Franklin County and/or its incorporated areas.
 - (6) New streets, which are extensions of or in alignment with existing streets, shall bear the names of the existing streets of which they are extensions, or with which they are in alignment.
 - (7) All new streets shall be named and shall be subject to the approval of the Planning Commission.
- (d) In addition to the aforementioned requirements, the developer shall submit a written statement which shall include:
- (1) The impact, if any, of the proposed development on area drainage and other lands at lower elevations in the vicinity.
 - (2) Potential impact of this development on area traffic loads and fire protection capability.
 - (3) Potential impact of this development on the local school district(s).
 - (4) Verification that an application, if required, has been submitted to the Ohio Environmental Protection Agency in compliance with Section 401 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain a Water Quality Certification Permit from the Ohio Environmental Protection Agency. In the case of an isolated wetland, either a general state or individual state isolated wetland permit must be obtained from the Ohio Environmental Protection Agency (Sections 6111.021 - 6111.024 of House Bill 231).
 - (5) Verification that an application, if required, has been submitted to the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act in which anyone who wishes to discharge dredged or fill material into waters of the United States must obtain either a nationwide or individual permit from the U.S. Army Corps of Engineers.
- (Ord. 28-2004. Passed 6-15-04; Ord. 31-2007. Passed 8-21-07.)

1187.05 APPROVAL OF PRELIMINARY PLAT.

After action by the Planning Commission on an application for preliminary plat approval, the Clerk of the Commission shall record the action taken as follows:

- (a) If the application was approved, three (3) copies of the approved preliminary plat shall be stamped "Approved by Planning Commission in an official meeting held (date) with the following additional provisions: (list or attach the specific provisions or contingencies, if none so note)" and shall be signed by the Chairman or Clerk attesting to action taken.
- (b) If application is disapproved, three (3) copies of the disapproved preliminary plat shall be stamped "Disapproved by the Planning Commission in an official meeting held (date) for the following reasons: (list or attach the specific reasons for denial)" and shall sign same attesting to action taken.

Two (2) copies of the signed preliminary plat shall be forwarded to the applicant and one copy retained in the permanent files in the zoning office.

The approval of a preliminary plat shall be effective for a period of twelve (12) months, or for such other time as approved by the Planning Commission.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.06 FINAL PLAT.

The owner shall submit an application with a total of thirteen (13) copies of the final plat to the Village Administrator's designee at least fifteen (15) working days prior to the meeting of the Planning Commission at which the subdivider desires his application to be heard.

The Village Administrator's designee shall review the application and plat for completeness and compliance with the requirements in this section. If he finds the application is complete and meets the requirements, he shall forward copies to the Municipal Engineer, Planner and Administrator for review and comment, and to all members of the Planning Commission at least five (5) working days prior to the meeting at which the plat will be heard. He shall also place one copy on file in the zoning office.

If the Village Administrator's designee finds that the application is not complete and does not meet requirements of this section, he shall notify the applicant, who shall be allowed to make the necessary revisions. No hearing shall be held or action of approval taken by the Planning Commission until a complete application meeting all requirements of this section has been filed with and accepted by the Village Administrator's designee.

Action will be taken by the Commission and Council within thirty (30) days after acceptance of the final plat by the Village Administrator's designee. See Section 1187.07 for approval of the final plat. If not recorded in twelve (12) months, such approval of Council and the Commission shall become null and void.

(a) The final plat submitted shall contain the following:

- (1) Boundary of plat, based on an accurate distances and bearings.
- (2) Where the subdivision does not abut to an existing subdivision, the true angle and distance to the nearest street intersection, accurately described on the plat.
- (3) Municipal, Township, County or Section lines accurately tied to the lines of the subdivision by distances and angles.
- (4) Radii, arcs and chords, points of curvature and tangency. Central angles for all curvilinear streets and radius for all rounded corners.
- (5) All lot numbers and lines with accurate dimensions in decimals of a foot and bearings in degrees, minutes and seconds.

- (6) One inch iron pins, thirty (30) inches long, with plastic caps identifying the surveyor shall be placed at such locations that the subdivisions can be readily resurveyed. As a minimum, all extreme corners shall be monumented.
 - (7) Accurate location, width of right-of-way and name of all streets or other public ways.
 - (8) All proposed developer easements, such as water, sanitary and storm sewers shall be shown. All proposed public utility easements shall be shown if they are available.
 - (9) Minimum building setback lines along all streets and other public ways.
 - (10) Accurate outlines and delineation of all drainage easements, one hundred (100) year floodway routing, flood hazard areas and other watercourses contained within or contiguous to the plat boundaries.
 - (11) Accurate outlines of any areas to be dedicated or reserved for public use, with purposes indicated thereon, and of any areas to be reserved by deed covenant, for the common use of all property owners.
 - (12) Other information deemed necessary by the Municipal Engineer or the Planning Commission in order to fully describe any special conditions or circumstances affecting the proposed plat.
 - (13) If more than one sheet is required for the plat, an index map, at a smaller scale, showing all of the lots on one contiguous drawing shall be shown on the first sheet.
- (b) The final plat submittal shall also contain:
- (1) A certification by a registered surveyor that the plat represents a survey made by him and that the monuments shown exist as located, or will be set one foot below proposed grade prior to beginning of construction, and that all dimensional and geodetic details are correct. The plat shall be prepared in accordance with the minimum plat requirements as established by the Franklin County Engineer's Office.
 - (2) A notarized certification by the owner/owners of the adoption of the plat and the dedication by them to public use of the streets and other public areas shown on the plat. No property should extend to center of rights-of-way.
 - (3) Proper form for the approval of the Planning Commission, with space for signature of the Chairperson.
 - (4) Space for approval by signature of the Mayor, Municipal Engineer, Council representative to Planning Commission and Finance Director. The signature of the Engineer shall be withheld until all easements are shown.
 - (5) Proper form for approval and acceptance by the Council, showing resolution number.

- (6) Within ten (10) working days after the review comments have been transmitted to the developer, and the tracing (final plat drawing) has been revised to reflect the review comments, it shall be submitted to the Municipal Engineer for the permanent filing.

Any additions or changes to the plat shall be made in the Engineer's office unless otherwise authorized by the Engineer.

- (7) Space for transfer by the County Auditor and recording by the County Recorder. A statement as to the expiration date of the municipal approval shall be placed just ahead of the space provided for the County Auditor's signature.
- (8) Application fees specified by separate ordinance.
- (9) Copies of any and all proposed deed covenants, deeds of right-of-way and deeds of easement.

(c) In addition to the aforementioned requirements, the developer shall submit a written statement which shall include:

- (1) Evidence that the Ohio Environmental Protection Agency has considered the applicant's application and granted such permit or determined that such permit is not applicable. If a permit was granted, four (4) copies shall be supplied by the owner to the Village Administrator's designee for distribution.
- (2) Evidence that the U.S. Army Corps of Engineers has considered the applicant's application and granted such permit or determined that such permit is not applicable. If a permit was granted, four (4) copies shall be supplied by the owner to the Village Administrator's designee for distribution. After the tracing (final plat drawing) has been revised to reflect the review comments, eight (8) copies showing all approvals, shall be supplied by the owner to the Finance Director for distribution.

After the tracing (final plat drawing) has been revised to reflect the review comments, four (4) copies showing all approvals, shall be supplied by the owner to the Village Administrator's designee for distribution.

The subdivider shall not transfer any lot, parcel or tract therefrom before the final plat has been recorded. No construction work on the proposed subdivision, including grading, shall be commenced until approval is received of the final plat and provided compliance is made with the other provisions of this chapter. Only easements may be added or revised on the final plat after approval, and only after approval by the Municipal Engineer.

All construction work and materials used in connection with public improvements in the area platted will conform to requirements of the Municipal Engineer and Municipal specifications and be inspected by the Engineer.

After all easements have been placed on the plat, and the plat has been approved and received Council acceptance, it shall be recorded by the Municipal Engineer.

The developer shall furnish two (2) checks, one for the County Auditor and one for the County Recorder.

(Ord. 28-2004. Passed 6-15-04; Ord. 31-2007. Passed 8-21-07.)

1187.07 IMPROVEMENT GUARANTEES.

(a) Before the approval of the final plat, the subdivider or developer shall sign a developer's agreement and provide a two-year letter of credit (LC) acceptable to the Municipality guaranteeing the completion of all improvements, including but not limited to streets, curbs, sidewalks, storm sewer mains and lines, sanitary sewer mains and lines, water main and lines, prior to the recording of the plat of the subject subdivision, or at such time as may be agreed to by Council. The LC shall be in an amount equal to the estimated cost of constructing the street, street-related and storm water control improvements and as approved by the Municipal Engineer. A maintenance bond in the amount of ten percent (10%) of the preliminary estimated or final construction costs shall be provided for a maintenance period of two (2) years, beginning with the date of acceptance of the subdivision and all its appurtenances by Council. A certified check in the amount of two and one-half percent (2.5%) of the initial inspection fee shall also be provided to the Village at the date of acceptance of the subdivision. This check will be applied toward the two-year maintenance inspection by the Village. An additional and separate maintenance bond in the amount of ten percent (10%) of said construction cost shall also be provided to address settlement related to the installation of storm sewer or sanitary sewer mains and lines in the front yard. This maintenance bond shall be provided for a maintenance period of five (5) years, beginning with the date of acceptance of the subdivision and all its appurtenances by Council. The Finance Director shall retain custody of the maintenance bond during that time period.

(b) The Engineer shall inspect the improvements prior to the expiration of the bond period. Upon his notification that there are no deficiencies, or that all deficiencies have been corrected to his satisfaction, the bond shall be released and the developer's guarantee shall be considered satisfied so long as all fees owed to the Municipality by the owner or developer are paid.

(c) The subdivider or developer shall, prior to construction, deposit with the Finance Director a sum of money as prescribed by Chapter 909 to defray the cost of inspection and the engineering services provided and any expense incurred by the Municipality due to the installation of the improvements and review of the plat and plans. The subdivider and developer shall hold the Municipality free and harmless from any and all claims for damages of every nature arising or growing out of the construction of such improvements, and shall defend, at his/her own cost and expense, each and every suit or action brought against said Municipality by reason thereof, until the improvement has been accepted by the Municipality.

(d) The subdivider or developer shall furnish to the Municipality at the time of commencing construction, proof of possession of liability insurance of not less than one million dollars (\$1,000,000.00) and property damage insurance of not less than three hundred thousand dollars (\$300,000.00).

(e) If any violation of, or non-compliance with, any of the provisions and stipulations of this chapter occurs, the Engineer or the Village Administrator's designee shall notify the Law Director of any violation. Before a stop work order is issued, the Law Director shall notify the developer of the violation. The developer has five (5) working days to correct any violations.

(Ord. 28-2004. Passed 6-15-04; Ord. 31-2007. Passed 8-21-07; Ord. 36-2008. Passed 10-21-08.)

1187.08 SUBDIVISION STANDARDS, STREETS.

(a) Streets shall be dedicated to public use by the subdivider. Streets shall be arranged in a simple connecting pattern. Residential streets shall be so designed so as to discourage their use by non-local traffic. Alleys should be used as driving aisles to provide access to parking areas and garages. Dead ends and cul-de-sacs should be limited in all districts. Easements for utilities must be provided along side or rear lot lines where possible. Street rights-of-way shall have the following minimum widths:

- (1) Major arterial (includes federal, state and county roads which are main arteries of access to the Municipality): one hundred (100) feet; an additional width of forty-five (45) feet shall be provided to accommodate a service drive wherever lots are to face a primary road.
- (2) Minor arterial (next in importance as avenues of access between sections of the Municipality as opposed to commercial traffic and non-local traffic): eighty (80) feet.
- (3) Collector (within new subdivision): sixty (60) feet.
- (4) Minor (completely residential in nature): fifty (50) feet.
- (5) Cul-de-sac circles: minimum right-of-way radius of sixty (60) feet with curbs and gutters and seventy (70) feet without curbs and gutters and no cul-de-sac shall exceed six hundred (600) feet in length unless lot widths exceed one hundred (100) feet at building setback lines, then the maximum length shall not exceed one thousand (1,000) feet.
- (6) Alleys: twenty (20) feet.
- (7) Easements (as required): Where alleys are not required, utility easements of not less than five (5) feet in width shall be provided on each side of rear lot lines to provide access for the installation and maintenance of all utility lines, overhead or underground. Wider easements may be required along or across lots for main storm or sanitary sewers or other utilities, or where a combination of utility lines is indicated.

(b) Narrower streets are encouraged where appropriate to promote a pedestrian friendly scale and as a tool for traffic-calming. Minimum pavement widths shall be as follows:

- (1) Major arterial: variable as conditions may require.
- (2) Minor arterial: thirty-six (36) feet from face to face of curbs.
- (3) Collector: thirty-two (32) feet from face to face of curbs or twenty-six (26) feet without curbs and no street parking permitted.

- (4) Minor: twenty-six (26) feet from face to face of curbs; 24-foot pavement width if curbs and gutters are not provided.
- (5) Cul-de-sac circles: minimum outside pavement radius of forty-eight (48) feet with a minimum twenty-four (24) feet of pavement width.
- (6) Alleys: eighteen (18) feet.
- (7) One-way divided streets: twenty (20) feet from face to face of curbs, with 50-foot radius on "hammer-head" cul-de-sacs.
- (8) Sidewalks: Five-foot minimum or greater as determined by width of existing sidewalks, as approved by the Community Development Department. Sidewalks shall be concrete, constructed per the village standard.
- (9) Leisure Trails: Eight-foot minimum unless otherwise specified by the Planning Commission. Leisure trails shall be asphalt unless otherwise specified by the Planning Commission and shall be constructed per the village standard.
- (c) The maximum grades shall be:
 - (1) Major arterial: four percent (4%).
 - (2) Minor Arterial: five percent (5%).
 - (3) Collector, minor and alleys: six percent (6%).

The minimum grade for any street shall be one-half of one percent (.5%) at the gutter, unless otherwise approved by the Municipal Engineer. Street intersections shall be rounded by radii not less than twenty (20) feet at the curb line. Sidewalks shall be located as approved by the Municipal Engineer.

All street construction and specifications for materials shall be in conformity with standards required by the Municipality.

The plans must bear the approval of the Engineer, Street Committee chairperson and Mayor, and places shall be provided for such signatures, including that of the Finance Director.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.09 SUBDIVISION STANDARDS, SANITARY SEWERS.

(a) Plans and profiles of sanitary sewers shall be submitted to the Municipal Engineer for approval. All grades, pipe sizes, manholes and other appurtenances shall be shown and such installation and materials shall be in conformity with Municipal standards. In addition, review and approval by the City of Columbus is required.

(b) Sewer plans must bear the approval of the Municipal Engineer, Mayor, the Utilities Committee chairperson, and the City of Columbus. Places shall be provided for such signatures, including that of the Finance Director.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.10 SUBDIVISION STANDARDS, WATER DISTRIBUTION SYSTEM.

(a) Plans of proposed water distribution systems shall be submitted to the Municipal Engineer for approval. All plans must show pipe sizes, locations of valves, fire hydrants and other appurtenances. Such installation and materials shall be in conformity with Municipal standards. In addition, review and approval by the City of Columbus is required.

(b) Water distribution systems must bear the approval of the Municipal Engineer, Mayor, the Utilities Committee chairperson, and the City of Columbus. Places shall be provided for such signatures, including that of the Finance Director.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.11 SUBDIVISION STANDARDS, STORM SEWER SYSTEM.

(a) Proposed storm sewers, including grades, materials, pipe sizes, manholes, inlets and appurtenances, may be shown on the street improvement plans. The plans must be submitted to the Municipal Engineer for approval. Installation and materials shall be in conformity with Municipal standards.

(b) The subdivider or developer shall follow the recommendations of the Municipal Engineer with regard to the proper method and direction of draining storm water following review of the proposed plan of such drainage as submitted by the subdivider or his engineer.

(c) The storm sewer plans, if not incorporated as a part of the street improvement plans, must bear the approval of the Municipal Engineer, the Mayor and the Utility Committee chairperson. Places shall be provided for such signatures, including that of the Finance Director.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.12 INSPECTIONS.

The construction of all improvements shall be inspected and approved by the Municipal Engineer. Under no circumstances are such installation to be made without an inspector on the job. The Municipal Engineer shall be notified three (3) working days before any construction work is begun unless waived by the Engineer.

(Ord. 13-98. Passed 4-21-98; Ord. 31-2007. Passed 8-21-07.)

1187.13 SUBDIVISION STANDARDS, LOTS AND BLOCKS.

(a) Every lot shall abut on a dedicated street. Double frontage lots shall be discouraged. At the intersection of two (2) streets, property line corners shall be rounded by an arc of a minimum of twenty (20) foot radius. Size, shape and orientation of residential lots shall be appropriate to the location of the proposed subdivision and for the type of development contemplated and in conformity with the Zoning Ordinances, with proper regard given yard areas, setback lines, etc. Excessive depth in relation to frontage shall be avoided. A proportion of two (2) to one depth to frontage shall be normal for lots having a width of sixty (60) feet or more, and depths in excess of three (3) times the lot width are not recommended. Side lines of lots shall be approximately at right

angles or radial to the street line. Corner lots shall have extra width sufficient to permit maintenance of building lines of both front and sides of lot. The maximum length of blocks may not exceed one thousand eight hundred (1,800) feet; nor shall they be less than four hundred (400) feet in length. Where blocks are longer than nine hundred (900) feet, crosswalks or crosswalk easements not less than ten (10) feet in width may be required near the center of the block, and Council may require that a sidewalk be constructed in accordance with the Municipal standards for sidewalk construction. The width of a block shall normally be sufficient to allow two (2) tiers of lots of appropriate depth. Where frontage on a primary street is involved, the long dimension of the block shall front thereon, in order to minimize access intersections.

Where sanitary sewer is not available, lots shall have a minimum frontage of one hundred fifty (150) feet and a minimum area of forty thousand (40,000) square feet. Where neither sanitary sewer or water service is available, lots shall have a minimum frontage of one hundred seventy-five (175) feet and a minimum area of fifty thousand (50,000) square feet.

(b) Minimum Maximum Floor Elevations. The following requirements shall be adopted for the purpose of regulating the first floor elevations of new single family residential dwellings constructed within the Village.

- (1) The finished first floor elevation of a single family residential dwelling shall be no less than eighteen (18) inches above approved grade and no greater than twenty-eight (28) inches above approved grade.
- (2) The finished first floor elevation shall be measured at the threshold of the front entrance to the structure.
- (3) Finished grade shall be the elevation shown on the approved subdivision grading plan. The vertical datum shall be based on the curb grade at the property line as shown on the approved subdivision street plans.
- (4) The residential architectural plans submitted to the Village for approval shall indicate the top of footer elevation, the finished grade around the structure, the finished first floor elevation and the curb grade elevations at the property lines. The architect shall be solely responsible for establishing the first floor elevation which shall be shown on the building plans.
- (5) It shall be the sole responsibility of the builder and owner to ensure that the approved first floor elevation is obtained at the construction site as indicated on the architectural plans.
- (6) Prior to the basement wall construction, a registered surveyor shall submit the "surveyor's foundation certificate" which shall include the top of the footer elevation. See attachment to Ordinance 12-2000, for additional requirements.
- (7) Prior to the occupancy permit being issued, a registered surveyor shall submit the "surveyor's final grading certificate" which shall include the first floor elevation. The surveyor shall certify on the certificate that the lot grading is in conformance with the subdivision grading plan. See attachment to Ordinance 12-2000 for additional requirements.

(8) This section is intended to regulate first floor elevation in subdivisions platted after 1990 for lots having a frontage of one hundred (100) feet or less with or without basements.

(9) The maximum driveway grade shall be eight percent (8%) from the sidewalk to the garage floor.

(Ord. 77-91. Passed 10-15-91; Ord. 12-2000. Passed 10-3-00; Ord. 31-2007. Passed 8-21-07.)

1187.14 SUBDIVISION STANDARDS, DRAINAGE.

(a) General. The Planning Commission shall not approve any subdivision having inadequate storm drainage or other physical drainage impairment, as determined by the Municipal Engineer. In areas known to be subject to periodic floods, such drainage improvements must be made as to satisfy the aforementioned public officers in order that the safety, health and welfare of the people will be protected. Storm water management principles as contained in the most current Municipal ordinance for the management and control of stormwater run off, shall be followed.

(b) Protection of Drainage Courses. No natural drainage course shall be altered and no fill, buildings or structures shall be placed in it unless provisions are made for the flow of water in a manner satisfactory to the Municipal Engineer. An easement shall be provided on both sides of any existing important surface drainage course adequate for the purpose of protecting, widening, deepening, enclosing or otherwise improving such stream for drainage purposes.

(c) Lot Drainage. A master grading plan shall be prepared for all subdivisions and shall be presented for review and approval by the Municipal Engineer. The grading plan shall show the existing topography, the proposed street grades and the proposed storm sewers with pipe sizes and proposed finish grades at the house, and shall delineate the method of rear and side yard drainage by showing proposed swales and direction of surface slope by arrows. The grading plan shall follow the standards as established for such grading by the Federal Housing Administration, except three percent (3%) grade in swales is acceptable.

Wherever possible, with exceptions being made where the topography of an area does not permit such grading practice, lots shall be graded from the rear lot line to the street. Where a lot abuts directly on two (2) streets, the grade shall be from the corner of the lot which is diagonally opposed to the corner of the two (2) streets on which the lot abuts. This regulation is included in a desire to reduce the amount of water standing in yards to a minimum.

Therefore, where it is not possible to grade a lot in the prescribed manner, the owner or developer shall provide for the adequate drainage of any and all low areas, and tie such drainage into and make it a part of the storm sewer system of the development and the Municipality, as directed by the Municipal Engineer with approval of such drainage subject to inspection by the Engineer, along with the inspection of other storm sewer installations.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.15 SUBDIVISION STANDARDS, PARKLAND DEDICATION.

(a) Land Dedication. The basic mandatory land dedication with each plat shall be twenty-four hundred (2,400) square feet per dwelling unit. Such area shall constitute ground, location facilities/ equipment (per requirements of division (c) of this section suitable for municipally-owned and

operated parks, recreation facilities and open space as reviewed and approved by the Parks and Trails Advisory Board and the Planning Commission and approved by the Council. Although encouraged, such land dedication need not be located within the area of such plat. Where a developer owns multiple parcels of development ground within the Municipality, it shall be permissible for such developer to make a park dedication for its current and future development. If such dedication is made, no parks shall be required in future development by such developer, its successors and assigns until such park dedication has been utilized through the development of dwelling units at a ratio of twenty-four hundred (2,400) square feet of such park dedication per dwelling unit.

(b) Provisions of Private Recreation Facilities. If the resulting park land dedication is determined to be of insufficient size or inappropriately located, or if public ownership and operation of such recreational areas is not feasible, the Municipality may request that an applicant plan for the provision of privately financed and owned recreational facilities. A public access easement shall be provided to the Municipality. Such privately-owned open space shall be subject to the technical assessment provision of this section.

(c) Technical Assessment. The following suitability and quality criteria shall be used to provide an assessment and recommendation relative to the appropriateness of proposed land dedication or area/facility, i.e., playground, park, recreational area/facility and open space. The criteria to be used shall include, but not be limited to the following:

(1) Minimum size for each service level:

Playgrounds	2 acres
Neighborhood Parks	5 acres
Playfields	10 acres
Community Parks	40 acres

(2) Suitability of the following for the proposed use.

- A. Soils and geology.
- B. Topography and drainage.
- C. Location and impact of designated floodways and floodway fringe areas.
- D. Extent of natural vegetation and tree cover. Preservation of wooded areas is a top priority.
- E. The degree of access of proposed area to pedestrians and vehicles, where appropriate. Public accessibility is a top priority.

(3) The proposed recreational facilities and site improvement to be made.

(4) A schedule indicating how actual construction of the proposed park/open space and improvements are to be phased in relationship with the overall project.

(5) How both ownership and maintenance of such areas is to be undertaken.

- (6) Residences must be within one thousand two hundred (1,200) feet of playground equipment and a Pocket Park or a larger size park.

The Community Development Department will conduct a review of the proposed land dedication or private facility/area or open space and include a recommendation in the staff report.

(d) Fees In-Lieu of Land Dedication. Mandatory land dedications may be waived when Council has adopted a motion establishing a priority for payment in lieu fees instead of accepting land dedications. Such in-lieu fees shall be designated for a specific community wide park, recreational or open space use. Such community wide use shall benefit the current and future residents.

- (1) Nothing in this section or any other section shall preclude the subdivider from transferring to the Municipality, land for public use, or expending in-lieu funds in excess of the mandatory requirements.
- (2) The in-lieu fees shall be established by resolution of Council as based upon the average value per acre of the total gross site prior to construction or improvements. To calculate this estimate, the total value of the development, as determined by an appraisal, shall be divided by the total gross acreage of the development. The resulting figure shall be the averaged value of the development on a per-acre basis.
- (3) The appraisal shall be conducted, completed and submitted to the Municipality prior to final plat approval. The appraisal shall be prepared by a certified appraiser approved by the Municipality and paid for by the applicant. The appraisal shall be reviewed and approved by Council.
- (4) Should the Village have concerns about the appraisal provided by the developer's appraiser, a separate appraiser may be retained by the Village to provide the appraisal for the site.

(e) Prohibition.

- (1) No permits for construction or improvements will not be issued by the Municipality for the subject subdivision until such land dedication or payment of fees in-lieu land dedications are conveyed to and accepted by Council.
- (2) Applications for zoning and/or building permits for construction or improvements will not be accepted by the Municipality for the subject site or subdivision until such land dedication or payment of fees in-lieu land dedications are conveyed to and accepted by Council.

(f) Effective Period. The land dedication and payment of in-lieu fees required by this section shall be conveyed to the Municipality following approval by Council of the final plat and within sixty (60) days of such approval by Council.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07; Ord. 42-2007. Passed 12-18-08.)

1187.16 SUBDIVISION STANDARDS, OPEN SPACE.

(a) In addition to the parkland dedication requirements in Section 1187.15, in residential developments of two (2) acres or more, a minimum of twenty percent (20%) of the gross developed land area shall be common open space. Wet and dry stormwater basins shall not be considered open space.

(b) Publicly and privately-owned parks and open space must be accessible by roadway or public access easement.

(c) The technical assessment in Section 1187.15(c) shall apply to the evaluation of the suitability of the proposed open space.

(d) Fees in-lieu dedication of land for open space shall be established by the same method as the parkland fees in-lieu of dedication in Section 1187.15(d).
(Ord. 31-2007. Passed 8-21-07; Ord. 42-2007. Passed 12-18-08.)

1187.17 SUBDIVISION STANDARDS, GENERAL.

Features of any proposed subdivision not specifically set out or provided for herein, shall be at least equal to the generally accepted good practice existing at the time such subdivision is proposed. Conformity to the applicable standards of the Franklin County Subdivision Regulations, not in conflict herewith, promulgated by the Mid-Ohio Regional Planning Commission, of which this Municipality is a contributing member, shall be deemed satisfactory compliance with this section.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.18 FEE IN-LIEU OF SIDEWALK AND TRAIL CONSTRUCTION.

(a) Council Approval Required. Council shall have the authority to approve applications for a fee in-lieu of sidewalk and/or trail construction.

(b) Criteria for Approval. A fee payment in-lieu of sidewalk or trail may be permissible when a sidewalk or trail is found by Council to be not appropriate due to one of the following conditions:

- (1) Sidewalk and/or trail construction is impracticable due to topographical conditions or site constraints;
- (2) Sidewalks and/or trails do not exist in the area, there is not a likelihood for sidewalks and/or trails to be constructed in the near future, and that a fee in-lieu would better serve the community than a sidewalk or trail installed in the required location.

(c) Calculation of Fees In-Lieu of Sidewalk or Trail Installation. The in-lieu fees shall be based upon the current cost of constructing sidewalks and/or trails in their required locations. The applicant shall provide a construction cost estimate, paid for by the applicant, to the Community Development Department a minimum of fifteen (15) working days prior to the council meeting at which the applicant desires his application to be heard. The submitted estimate shall be reviewed

by the Village Engineer. The estimate shall be evaluated based on three (3) current quotes/ estimates for construction materials and other information as needed. The estimate information shall then be reviewed and approved by Council.

(d) Effective Period. The payment of in-lieu fees required by this section shall be conveyed to the Village of New Albany following approval by Council of the fee in-lieu and within sixty (60) days of receiving notice of such approval by Council.

(e) Permits Issued. Permits for construction or improvements will not be issued by the Municipality for the subject development until payment of fees in-lieu sidewalk and/or dedications are conveyed to and accepted by the Village.

(Ord. 31-2007. Passed 8-21-07.)

1187.19 CONSTRUCTION DRAWINGS.

(a) All construction drawings shall be on a horizontal scale of one inch to fifty (50) feet, and a vertical scale of one inch to five (5) feet. The sheet size shall be twenty-two (22) inches by thirty-six (36) inches. Sheet material shall be mylar with a minimum thickness of 0.03 mils.

(b) Upon approval and acceptance of all improvements, the original construction drawings for the improvements shall be revised to reflect the actual construction. All drawings, including the master grade plan or reproductions thereof on mylar, shall become the property of the Municipality and shall be on file in the office of the Municipal Engineer.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.20 VARIANCES.

In cases where it is deemed that hardships, topography or other factual deterrent conditions prevail, variations and exceptions from the dimensional standards and improvement requirements, as set forth in these regulations, may be requested of the Planning Commission, but must be approved by Council.

(Ord. 77-91. Passed 10-15-91; Ord. 31-2007. Passed 8-21-07.)

1187.21 FEES.

Council shall have the authority to establish a schedule of fees for the filing, review and processing of applications. Council may periodically review the fee structure and make adjustments as deemed appropriate. Fees are non-refundable and shall be paid in full at the time of filing. Fees shall be set by separate ordinance.

(Ord. 31-2007. Passed 8-21-07.)

1187.22 MINOR COMMERCIAL SUBDIVISIONS.

(a) Notwithstanding anything to the contrary, approval without a plat of a minor commercial subdivision may be granted by the Community Development Director or designee if the proposed minor subdivision of a parcel of land meets all of the following conditions:

- (1) A final development plan according to Chapter 1159 or an equivalent plan has been approved by the Planning Commission;

- (2) The proposed subdivision is located along an existing public road, has frontage along a public street and involves no opening, widening or extension of any street;
- (3) No more than five (5) lots are created after the original parcel has been completely subdivided;
- (4) The proposed subdivision is not contrary to other subdivision, zoning, and other applicable regulations; and
- (5) The property has been surveyed and a survey drawing, legal description of the property and other information as may be pertinent or required for appropriate action are submitted with the application.

(b) If approval is given under these provisions, the Community Development Director or designee shall, within ten (10) working days after submission, approve such proposed minor subdivision and, upon presentation of a conveyance for said parcel, shall stamp "Approved by New Albany; No Plat Required", and the authorized representative of the Commission shall sign the conveyance.

(c) For the purpose of this section, "original parcel" means the parcel existing as of the effective date of this section of the Subdivision Regulations (February 20, 2007).

(Ord. 08-2007. Passed 2-20-07; Ord. 31-2007. Passed 8-21-07.)

1187.23 SUCCESSION IN GOVERNMENT.

All references herein to officers or departments existing under Village government shall also refer to those officials or departments succeeding to the same or similar function upon advancement to city status.

(Ord. 77-91. Passed 10-15-91; Ord. 08-2007. Passed 2-20-07; Ord. 31-2007. Passed 8-21-07.)

TITLE TEN

CABLE AND OTHER UTILITY SERVICES

Chapter 1191 Video Service Authorization

PROOFS

CHAPTER 1191 VIDEO SERVICE AUTHORIZATION

1191.01	TITLE.
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1191.10	APPLICATION TO INCUMBENT CABLE PROVIDERS.
1191.99	PENALTY.

1191.01 TITLE.

This chapter shall be known and may be cited as the Video Service Authorization Chapter.
(Ord. 22-2006. Passed 7-11-06; Ord. 49-2007. Passed 11-20-07.)

1191.02 DEFINITIONS.

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

(a) "Incumbent cable provider" means any person who on the effective date of this chapter is the holder of a cable franchise agreement with the Village as granted pursuant to requirements of 47 U.S.C. 541.

(b) "PEG" means activities or actions performed for the benefit of public, educational and government video programming by the Village.

(c) "Video service" means the service defined in ORC 1332.21(J).

(d) "Video Service Authorization" or "VSA" means the authorization granted to a video service provider in accordance with the requirements of ORC 1332.21 to 1332.34.

(e) "Video service provider" or "VSP" means a person, firm, or corporation granted a video service authorization under ORC 1332.21 to 1332.34.

(f) "Video service provider fee" or "VSP fee" means the fee paid by a VSP in accordance with the requirements of ORC 1332.32.

(Ord. 49-2007. Passed 11-20-07.)

1191.03 VSP FEE.

In accordance with the requirements of ORC 1332.32, all VSPs providing video service in the Village pursuant to a VSA obtained from the Director of the Ohio Department of Commerce shall

pay a VSP fee in the amount of five percent (5%) of gross revenues received from providing video service in the Village, which gross revenue base shall include advertising revenues. The VSP fee shall be paid quarterly, not later than sixty (60) days after the end of each calendar quarter.
(Ord. 49-2007. Passed 11-20-07.)

1191.04 VSP FEE NOTICE PROVISIONS.

Upon receipt of notice from a VSP that it will begin providing video service in the Village pursuant to a State-issued video service authorization, the Village Administrator or his or her designee is authorized and directed to provide such VSP with notice of the VSP fee as determined by Council in Section 1191.03, which notice shall be delivered in a manner that provides for proof of timely delivery.
(Ord. 49-2007. Passed 11-20-07.)

1191.05 VSP ACCESS PROVISIONS.

Upon receipt of notice from a VSP that it will begin providing video service in the Village pursuant to a VSA, the Village Administrator or his or her designee is authorized and directed to provide such VSP with notice that the VSP shall be required to provide the same number of PEG channels in the Village under the same service tier conditions and subject to the same channel reclamation conditions as may be proscribed by ORC 1332.30(A)(1)(a) and (b) for the incumbent cable provider with the most recent obligation in the Village, which notice shall be delivered in a manner that provides for proof of timely delivery and shall state the appropriate number of PEG channels and service tiers required to be provided by the VSP within the Village within one hundred twenty (120) days after delivery of such notice. Additionally, should no PEG channels currently be provided by an incumbent cable provider with such an obligation in the Village, the Village Administrator may provide written notice to a VSP of its obligation to provide PEG channels in accordance with ORC 1332.30(B)(1).
(Ord. 49-2007. Passed 11-20-07.)

1191.06 ACCESS PROGRAMMING REQUIREMENT.

In accordance with the requirements of ORC 1332.30(A)(1)(a) or (B)(1) when PEG channels are provided to the Village by an incumbent cable provider or VSP, and such PEG channels are required to be programmed by the Village with at least forty (40) hours of non-character generated content per week with at least sixty percent (60%) of the programming being non-repeat and locally produced. For the purposes of this section, "non-repeat and locally produced" shall mean the first three (3) playbacks of programming produced or provided by any local resident, the Village, or any local public or private agency that provides services to residents of the greater Columbus metro area, or any transmission of a meeting or proceeding of any local, State, or Federal governmental entity.
(Ord. 49-2007. Passed 11-20-07.)

1191.07 FEE PAYMENT REQUIREMENTS.

Any VSP fee required to be paid to the Village by a VSP shall be made quarterly and be remitted directly to the Village via a negotiable instrument made payable to the Village of New Albany, 99 West Main Street, New Albany, Ohio 43054, not later than sixty (60) days after the end of a calendar quarter.

(Ord. 49-2007. Passed 11-20-07.)

1191.08 PEG ORIGINATION POINT.

The PEG programming origination point of the Village for the delivery of VSP access services shall be located at the 99 West Main Street, New Albany, Ohio 43054 building/location.

(Ord. 49-2007. Passed 11-20-07.)

1191.09 NOTICE REQUIREMENT.

Any notice to the Village that is required of a VSP in accordance with of ORC 1332.21 through 1332.34 shall be provided in written form to the Village Administrator either by certified mail, express mail or upon personal delivery, all evidenced by a return receipt.

(Ord. 49-2007. Passed 11-20-07.)

1191.10 APPLICATION TO INCUMBENT CABLE PROVIDERS.

Nothing in this chapter shall apply to incumbent cable providers until they are granted a video service authorization in accordance with ORC 1332.21 through 1331.34.

(Ord. 49-2007. Passed 11-20-07.)

1191.99 PENALTY.

Whoever violates any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

(Ord. 49-2007. Passed 11-20-07.)

PART THIRTEEN - BUILDING CODE

TITLE ONE - BUILDING ADMINISTRATION

- Chapter 1305 Building Administration
- Chapter 1309 Fee Schedule

TITLE FIVE - STANDARDS ADOPTED

- Chapter 1321 Ohio Building Code
- Chapter 1322 Green Building Incentive Program
- Chapter 1325 Residential Code Of Ohio
- Chapter 1329 Building Numbering
- Chapter 1330 International Property Maintenance Code

TITLE ONE

BUILDING ADMINISTRATION

Chapter 1305	Building Administration
Chapter 1309	Fee Schedule

PROOFS

CHAPTER 1305 BUILDING ADMINISTRATION*

1305.01	ESTABLISHMENT.
1305.02	BUILDING OFFICIAL.
1305.03	PERMITS AND PLANS.
1305.04	INSPECTIONS.
1305.05	UNSAFE BUILDINGS AND CONDITIONS.
1305.06	COMPLIANCE REQUIRED.
1305.07	ELECTRICAL INSPECTOR; FEES.
1305.08	REGISTRATION.
1305.09	BOARD OF CONSTRUCTION APPEALS.
1305.99	PENALTY.

1305.01 ESTABLISHMENT.

(a) There is hereby established in the Municipality of New Albany, Ohio the Building Administration, which shall be under the jurisdiction of the Administrator.

(b) The Building Administration shall consist of a Zoning Officer, Building Official/Plans Examiner and such deputies and assistants as may from time to time be authorized by Council. The Zoning Officer, Building Official, deputies and assistants shall be paid such salaries or fees as may from time to time be fixed by Council. The same person may serve as the Zoning Officer and Building Official. They shall follow the provisions of the Building Code of the Municipality of New Albany and of the Ohio State Building Code.

(Ord. 57-90. Passed 9-11-90; Ord. 20-2009. Passed 6-16-09; Ord. O-07-2012. Passed 3-7-12.)

1305.02 BUILDING OFFICIAL.

The Building Inspector/Plans Examiner shall hereinafter be referred to as the Building Official.

(a) The Building Official is hereby authorized and directed to enforce the provisions of the Building Code of the Municipality of New Albany, Residential Code of Ohio and of the Ohio State Building Code.

(b) Upon presentation of proper credentials, the Building Official or his or her duly authorized representative may enter at reasonable times any building, structure or premises in the Municipality to perform any duty imposed upon him or her by the aforementioned Codes. No person shall in any way obstruct, hinder, delay or otherwise interfere with the Building Official or his or her duly authorized representative in such an entrance.

(c) He or she shall be charged with the survey and inspection of buildings and structures and with the enforcement of all parts of the Codes.

(d) Approval shall be granted before work can be commenced on a project. If a zoning permit is required, no building permit shall be issued without applicable zoning/development approvals.

*Cross reference—Fee schedule - see BLDG. Chap. 1309;
Enforcement of OBC - see ORC 3781.03 et seq.

(e) He or she shall keep proper records showing the location, value and character of every building, structure or other work for which a certificate or permit is issued and a copy of every report or inspection of a building, structure or work with the name of the Building Official making the inspection and the date thereof.

(f) The Building Official shall be a State certified Building Official. The Building Official shall be qualified to execute the duties required for the exercise of enforcement authority, the approval of construction and documents and the making of inspections under the rules of the State board.

(g) The Building Official may request and shall receive, so far as may be necessary in the discharge of his duties, the assistance and cooperation of the Municipal Engineer in fixing grades, of the Chief of Police in enforcing orders, of the Municipal Solicitor in prosecuting violations and of the other municipal officials.

(Ord. 57-90. Passed 9-11-90; Ord. 20-2009. Passed 6-16-09.)

1305.03 PERMITS AND PLANS.

(a) Issuance and approval of permits, retention of permits, and expiration of permits shall be pursuant to Chapter 1109 of the Zoning Code.

(b) Commercial plans shall include all utility drawings as defined: "Utility(ies)" means any water, sewer, gas, drainage, or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, cable or operator thereof. Drawings shall include existing and future improvements.

(c) Revocation of permits shall be subject to revocation by the Building Official whenever it appears that work being done thereunder in violation of this Building Code or any statute of the State of Ohio. Such revocation shall be in writing, shall state the reasons for its issuance, and shall be served upon the owner or upon the person in charge of such work. No person shall continue work on a job or cause same to be done after the permit therefor has been revoked as provided herein.

(Ord. 57-90. Passed 9-11-90; Ord. 20-2009. Passed 6-16-09.)

1305.04 INSPECTIONS.

(a) All construction or work for which a permit is required shall be subject to inspection by the Building Official and/or Zoning Officer (whomever is applicable), who may enter premises where such work is in progress at all reasonable times for the purpose of making such inspections.

(b) Work requiring a building permit shall not commence until the permit holder or his or her agent shall have posted an inspection record card in a conspicuous place on the premises and in such position as to allow the Building Official to conveniently make the required entries thereon regarding inspection of the work. Such card shall be maintained in such position by the permit holder until the certificate of occupancy has been issued.

(c) No work shall be done on any part of the building or structure beyond the point indicated in each successive inspection without first obtaining the written approval of the Building Official. Approval shall be given only after an inspection has been made of each successive step in the construction as indicated by each of the inspections required in subsection (e) hereof.

(d) No reinforcing steel or structural framework or any other part of any building or structure or appurtenant installation therein shall be covered or concealed in any manner whatever without first obtaining the approval of the Building Official.

(e) The Building Official upon notification from the permit holder or his or her agent shall make the following inspections of buildings and shall either approve the portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with the law:

- (1) Foundation and footing. To be made after trenches are excavated and forms are erected and when all materials for the foundation and footing are delivered on the job.
- (2) Frame. To be made after the roof, all framing, fire-blocking and bracing is in place and all pipes, chimneys and vents are complete and all rough plumbing, electrical and heating and ventilating and related work has been completed; provided, however, that such framing shall not be commenced until an inspection has been made and approval given to the completed foundation work.

(f) There shall be a final inspection of the building and all features, installations and appurtenances therein, to be made after all work is finished and the building completed and ready for occupancy.

(g) Additional inspections may be made by the Building Official of any construction work that he or she deems necessary to ascertain compliance with the provisions of this chapter and other laws which are enforced by the Department.

- (1) Fiber lateral connection(s) are required to each commercial building and in no case shall there be less than one connection provided. Multiple connections are preferred to each commercial building. Connections (conduit/fiber location and specifications from/to building to Blue Albany Networks) must be shown on the commercial building plans.

(Ord. 57-90. Passed 9-11-90; Ord. 20-2009. Passed 6-16-09.)

1305.05 UNSAFE BUILDINGS AND CONDITIONS.

(a) All buildings or structures which are structurally unsafe, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to an existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation or obsolescence, are, for the purpose of this chapter, "unsafe buildings." All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair and rehabilitation or by demolition, in accordance with the procedure set forth in this chapter.

(b) The Building Official shall examine or cause to be examined every building or structure or portion thereof reported as dangerous or damaged, and if same is found to be an unsafe building as defined in this section, he or she shall give to the building owner or person having charge or control thereof written notice stating the defects that cause the building to be unsafe. This notice shall require the building owners or person having charge or control of such building to commence within thirty (30) days and to continue work either to complete the specified repairs or improvements, or to demolish and remove the building or structure, or portion thereof, leaving the premises in a clean, safe, and sanitary condition, such condition being subject to the approval of the Building Official excepting that in cases of emergency, making immediate repairs necessary, the Building Official may order the changes to be made within a shorter period.

If deemed necessary, such notice shall also require that the building, structure or portion thereof be vacated forthwith. Should the building, structure or portion thereof be approved for improvements or repairs by the Building Official, such notice, if necessary, shall also require that the building, structure or portion thereof be vacated and not reoccupied until the specified repairs and improvements are completed, inspected and approved by the Building Official.

(c) Proper service of such notice shall be by personal service, residence service, or by registered mail; provided, however, that such notice shall be deemed to be properly served upon such owner or other person having charge or control of said building if a copy thereof is sent by registered mail to his or her last known address. If any party to be served cannot be located nor his or her address ascertained, such notice shall be deemed to be properly served if a copy thereof is posted in a conspicuous place in or about the building or structure affected by such notice. If such notice is by registered mail, the thirty (30) day period within which such owner is required to comply with the order of the Building Official shall begin as of the date on which he or she received such notice.

(d) The Building Official shall cause to be posted at each entrance to such building a notice which shall read "DO NOT ENTER. UNSAFE TO OCCUPY. NEW ALBANY BUILDING AUTHORITY, MUNICIPALITY OF NEW ALBANY, OHIO." Such notice shall remain posted until the required repairs have been made or demolition completed and inspected and approved by the Building Official.

It shall be unlawful for any person to remove, cover, obscure or obliterate such notice without permission of the Building Official, or for any person to enter the building except for the purpose of making the required repairs or of demolishing same.

(e) In case the owner shall fail, neglect or refuse to comply with the notice to repair, rehabilitate or demolish and remove such building or structure or portion thereof within the time specified, such owner or other party shall be subject to the provisions of Section 1305.99 and the Building Official shall proceed with the work specified in such notice. The owner shall be personally liable for the cost of such work and if such costs are not promptly paid, the amount thereof shall be transmitted to Council, which shall cause the same to be paid and levied as a tax assessment against such property.

(f) Costs incurred under subsection (e) of this section shall be paid out of the Municipal Treasury. Such costs shall be charged to the owner of the premises involved as a special assessment on the land on which the building or structure is located and shall be collected in the manner provided for special assessments, or the taking of a judgment against said owner.

(g) In the event the Building Official orders work stopped or finds that changes required in his or her written order to stop work have not been complied with or if he or she refuses to grant or issue any permit required by ordinance, the person affected by such action may appeal to the Board of Construction Appeals within twenty (20) days from the date he or she receives notice of the action of the Building Official by filing a written notice of appeal with the Building Official. The Board of Construction Appeals shall hear such appeal within not more than thirty (30) days from the date such notice of appeal is filed, unless the person appealing agrees in writing to a later hearing. After hearing such appeal, the Board of Construction Appeals shall render its decision. Such decision shall specifically set forth the reasons and facts upon which it is based. The decision of the Board of Construction Appeals may reverse, modify or affirm the order and action of the Building Official.

(Ord. 57-90. Passed 9-11-90; Ord. 20-2009. Passed 6-16-09; Ord. O-07-2012. Passed 3-7-12.)

1305.06 COMPLIANCE REQUIRED.

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, remove, demolish, equip, convert, use, occupy or maintain any building or structure, or any portion of any building or structure in the Municipality, contrary to or in violation of any provision of this chapter, or to cause or permit the same to be done.

(Ord. 57-90. Passed 9-11-90; Ord. 20-2009. Passed 6-16-09.)

1305.07 ELECTRICAL INSPECTOR; FEES.

(a) Definitions. As used in this chapter:

- (1) "Electrical Inspector" means a person or a corporation, partnership, proprietorship or firm undertaking inspection of electrical systems in residential, commercial and industrial buildings for the Municipality of New Albany.
- (2) "Inspection" means that after the installation of or alteration to any residential, commercial or industrial electrical system, the person responsible for the installation or alteration shall make arrangements to have the system inspected by the Municipal Electrical Inspector.

(b) Authority. The Municipality is hereby authorized to contract for an Electrical Inspector, who shall report to the Building Official/Municipal Engineer the results of inspections. All inspections for installation of subdivision electrical system improvements or those improvements required by development standards shall be by request of the Building Official/Municipal Engineer.

(c) Inspection Fees. The payment of fees shall be submitted with the application for permit prior to undertaking any such work and prior to the request for inspection.

(d) The Electrical Inspector shall approve or disapprove installations.
(Ord. 57-90. Passed 9-11-90.)

1305.08 REGISTRATION.

(a) Definitions. As used in this chapter:

- (1) "Registered contractor" means a person or a corporation, partnership, proprietorship, firm or other such business organization which has as its employee, partner or principal, a person who has been registered to perform work in this Municipality, pursuant to this section. For purposes of this section, a contractor is not thereby a registered contractor if he contracts with a subcontractor who is registered, nor is a subcontractor registered if he contracts with a registered contractor to perform work in this Municipality pursuant to this section.
- (2) "Registered heating and air conditioning contractor" means a contractor registered to perform heating and air conditioning work.
- (3) "Heating and air conditioning work" means the installation, maintenance, alteration or repair of air conditioning and refrigeration systems, or heating systems.
- (4) "Plumbing contractor" means a contractor registered to perform plumbing work.
- (5) "Plumbing work" means the construction, installations, alteration or repairing of any plumbing drain, vent, sump, water closet, sink, lavatory or other plumbing fixture, but shall not include repairs not affecting sanitation, such as mending leaks in faucets, valves or water supply pipes, mending of broken fixtures, tanks, water heaters, releasing frozen pipes or rodding and flushing of any house sewer or drain.
- (6) "Registered electrical contractor" means a contractor registered to perform electrical work.
- (7) "Electrical work" means the installation, maintenance, alteration, or repair of electrical equipment, except repairing flush and snap switches, replacing fuses, changing lamp sockets and receptacles, taping bare joints, repairing drop cords, repairing electrical parts or any appliance or electrical equipment.
- (8) "Remodeling work" means the repair, replacement, remodeling, modernization or improvement of the land and building used as a commercial building and/or as a residence and a dwelling place, including, but not limited to: decks, porches and garages, but shall not include new homes, roofing, siding or landscaping.

(b) Registration Required.

- (1) General contractors, remodelers, framers, concrete and masonry contractors, electrical, HVAC, plumbers, fire suppression, fire alarm and all other state licensed trades shall

register with the Community Development Department prior to performing any work in the Municipality. No person shall allow a contractor or subcontractor who has failed to register with the Community Development Department to perform work in the City.

- (2) A contractor or subcontractor seeking to be registered shall submit the following to the Department:
 - A. An application for registration on a form prescribed by the Department;
 - B. A copy of the current qualification certificate issued pursuant to ORC Ch. 4740 by the Ohio Construction Industry Examining Board to the contractor or an employee of the contractor, if such a certificate is required for the contractor's trade; and
 - C. A registration fee in accordance with the City of New Albany Schedule of Fees and Service Charges.
- (3) Upon submission of the items required above, the City Manager or his or her designee shall issue a registration certificate. The City Manager or his or her designee may deny an application for registration if the contractor fails to submit any of the items required above.

(c) Term and Renewal.

- (1) A registration certificate issued pursuant to this section shall be effective from the date of issuance until December 31 of the same year.
- (2) A registration certificate issued pursuant to this section may be renewed within thirty (30) days following expiration of the registration certificate upon payment of a fee in accordance with the City of New Albany Schedule of Fees and Service Charges, and a copy of the current qualification certificate as required by subsection (b)(2) hereof.

(d) Assignment, Transfer or Use by Third Persons. A registered contractor shall not assign, transfer or allow any other person to use its registration certificate for any purpose.

(e) Suspension and Revocation.

- (1) The City Manager's designee may immediately suspend or revoke a registration certificate or deny renewal of a registration certificate if:
 - A. The contractor fails to comply with the applicable requirements of all building codes as adopted by municipal ordinances or as regulated by the State;
 - B. The contractor's qualification certificate issued by the Ohio Construction Industry Examining Board is suspended or revoked;
 - C. The holder of the qualification certificate issued by the Ohio Construction Industry Examining Board becomes disassociated with the contractor and a qualification certificate of another employee of the contractor is not submitted to the City Manager's designee within ninety (90) days after the disassociation;
 - D. The contractor violates any provision of this section.

- (2) An order of the City Manager's designee suspending or revoking a registration certificate shall be effective upon written notice served upon the contractor or subcontractor.

(f) Appeals. If the City Manager's designee denies a contractor's application for registration, suspends or revokes a contractor's registration certificate, or denies renewal of a registration certificate, the contractor shall have the right to appeal to the City Manager. The contractor shall submit a notice of appeal to the City Manager within five (5) days from the receipt of the order of the Zoning Officer. The decision of the City Manager shall be final.

(g) Penalty. A person, firm, partnership, or corporation violating subsections (b), (c) and (e) hereof is deemed guilty of a misdemeanor of the fourth degree; each and every day during which said illegal activity continues may be deemed a separate offense.

(h) Exemptions. No registration shall be required for: the occupying owner, and immediate family of the occupying owner, of a residential unit, who personally performs the work at such residence, provided that the work must comply with all other requirements of the Building Code. (Ord. 16-98. Passed 5-19-98; Ord. 43-2002. Passed 12-10-02; Ord. 20-2009. Passed 6-16-09; Ord. O-07-2012. Passed 3-7-12.)

1305.09 BOARD OF CONSTRUCTION APPEALS.

(a) It is necessary to form a Board of Building Appeals for the City of New Albany. The board shall be created pursuant to Section 10.01 of the City Charter, Boards and Commissions. The Board shall be created to hear all appeals not related to the Ohio Building Code (OBC); namely, one-, two- and three-family residential dwellings within the corporation limits, or the Property Maintenance Code. The Board shall also have jurisdiction over licensing procedures in situations where a determination is required in issuing, detaining or revoking a license.

(b) There shall be a non-refundable fee, as set forth from time to time by ordinance, to be filed at the time of the appeal.

(c) The Board shall be established by Council and shall consist of a minimum of five (5) members. The members shall have qualifying experience and/or training pertaining to residential construction such as persons trained in mechanical/structural engineering, building, architecture, and the like. All members shall be residents of the City of New Albany. One member of the Council shall serve as a non-voting liaison to the Board.

(d) The terms of the members of the Board shall be as follows:

- (1) The initial term of one member as designated by Council shall be one year.
- (2) The initial term of two (2) members as designated by Council shall be for two (2) years.
- (3) The initial term for two (2) members as designated by Council shall be for three (3) years.
- (4) Upon the expiration of the term of each initial appointee, Council shall either reappoint the member or appoint a successor for a term of three (3) years. All subsequent terms shall be for a period of three (3) years.

(e) Meetings of the Board shall be called by the Community Development Department designee.

(f) The decision of the Board shall be reached by a simple majority vote of a quorum and shall be final.

(Ord. 11-2001. Passed 3-20-01; Ord. 20-2009. Passed 6-16-09; Ord. O-07-2012. Passed 3-7-12.)

1305.99 PENALTY.

Any person who violates any provision of this Part Thirteen-Building Code, for which no other penalty is provided, or of any valid order issued pursuant thereto shall be deemed guilty of a misdemeanor of the fourth degree.

(Ord. 57-90. Passed 9-11-90.)

CHAPTER 1309 FEE SCHEDULE

Editor's note—Former Chapter 1309 was repealed by Ordinance 43-2002, passed December 10, 2002.

PROOFS

TITLE FIVE

STANDARDS ADOPTED

Chapter 1321	Ohio Building Code
Chapter 1322	Green Building Incentive Program
Chapter 1325	Residential Code Of Ohio
Chapter 1329	Building Numbering
Chapter 1330	International Property Maintenance Code

PROOFS

CHAPTER 1321 OHIO BUILDING CODE*

1321.01	ADOPTION.
1321.02	PURPOSE.
1321.03	SCOPE.
1321.04	COMPLIANCE.
1321.05	EXISTING STRUCTURES.
1321.06	VIOLATIONS.
1321.07	STOP WORK ORDER.
1321.08	CONFLICT.
1321.09	ENFORCEMENT.
1321.99	PENALTY.

1321.01 ADOPTION.

There is hereby adopted by the Municipality, the Ohio Building Code (OBC) and related codes as adopted by the Ohio Board of Building Standards, Department of Industrial Relations, effective March 1, 2005, and as identified and published in Division 4101:1 et seq. of the Ohio Administrative Code (OAC).

1321.02 PURPOSE.

The purpose of the Ohio Building Code is to establish uniform minimum requirements for the erection, construction, repair, alteration, and maintenance of buildings, including construction of industrialized units. Such requirements shall relate to the conservation of energy, safety, and sanitation of buildings for their intended use and occupancy with consideration for the following:

- (a) Performance. Establish such requirements, in terms of performance objectives for the use intended.
- (b) Extent of Use. Permit to the fullest extent feasible, the use of materials and technical methods, devices, and improvements which tend to reduce the cost of construction without

***Cross reference**—See sectional histories for similar state law;

Removal of unsafe structures - see ORC 715.26(B), 715.261;

Power to enact further and additional regulations - see ORC 3781.01;

Authorization by Board of Building Standards - see ORC 3781.12;

Enforcement - see ORC 3781.03, 3781.031, 3781.10(E), 3781.102, 3781.19;

Final jurisdiction - see ORC 3781.04;

Application - see ORC 3781.06, 3781.10(E), 3781.11(A);

Submission of plans - see ORC 3791.04;

Dead bolt locks in apartment buildings - see ORC 3781.103;

Smoke detection system for apartments and condominiums - see ORC 3781.104;

Automatic sprinkler systems - see ORC 3781.105, 3791.041 et seq.;

Fire suppression systems - see ORC 3781.108;

Use of public buildings by handicapped persons - see ORC 3781.111;

Energy conservation - see ORC 3781.181, 3781.182, 3781.21;

Abandoned service stations - see ORC 3791.11 et seq.;

Safety standards for refuse containers - see ORC 3791.21

affecting minimum requirements for the health, safety, and security of the occupants of buildings without preferential treatment of types or classes of materials or products or methods of construction.

- (c) **Standardization.** To encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material and techniques, including methods employed to produce industrialized units.

The rules of the Board of Building Standards and proceedings shall be liberally construed in order to promote its purpose. When the Building Official finds that the proposed design is a reasonable interpretation of the provisions of this Code, it shall be approved. Materials, equipment and devices approved by the Building Official pursuant to Section 118 of the Ohio Building Code shall be constructed and installed in accordance with such approval.

Cross reference—OBC 101.3

1321.03 SCOPE.

The provisions of the Ohio Building Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures. As provided in ORC 3791.04(B), no plans or specifications shall be approved or inspection approval given unless the building represented by those plans or specifications would, if constructed, repaired, erected or equipped according to those plans or specifications, comply with ORC Chs. 3781 and 3791 and any rules adopted by the Board.

An owner may exceed the requirements of the Ohio Building Code in compliance with Section 102.7 of the Ohio Building Code.

- (a) Detached one-, and two-, and three-family dwellings and structures incidental to those dwellings which are not constructed as industrialized units shall comply with local residential codes, if any, adopted by the authority having jurisdiction. This exception does not include the energy provisions required in "Chapter 13, Energy Efficiency" of the OBC (see ORC 3781.06, 3781.181 and 3781.182);
- (b) Buildings owned by and used for a function of the United States Government;
- (c) Buildings or structures which are incident to the use for agricultural purposes of the land on which said buildings or structures are located, provided such buildings or structures are not used in the business of retail trade; for the purposes of this section, a building or structure is not considered used in the business of retail trade if fifty percent (50%) or more of the gross income received from sales of products in the building or structure by the owner or operator is from sales of products produced or raised in a normal crop year on farms owned or operated by the seller. (See ORC 3781.06 and 3781.061);
- (d) Agricultural labor camps;
- (e) Type A or Type B family day-care homes;

- (f) Buildings or structures which are designed, constructed and maintained in accordance with federal standards and regulations and are used primarily for federal and state military purposes where the U.S. Secretary of Defense, pursuant to 10 U.S.C. Sections 18233(a)(1) and 18237, has acquired by purchase, lease, or transfer, and constructs, expands, rehabilitates, or corrects and equips, such buildings or structures as he determines to be necessary to carry out the purposes of Chapter 1803 of the U.S.C.;
- (g) Manufactured homes constructed under "24 CFR Part 3280", "Manufactured Home Construction and Safety Standards".

Cross reference—OBC 101.2

1321.04 COMPLIANCE.

(a) No owner or any other person shall construct, erect, build or equip any building or structure to which the Ohio Building Code is applicable, or make any addition thereto or alteration thereof, except in case of repairs for maintenance without affecting the construction, sanitation, safety or other vital feature of such building or structure, without complying with this chapter, ORC Chs. 3781 and 3791 or the Ohio Building Code, or fail to comply with any lawful order issued pursuant thereto.

(b) No architect, builder, engineer, plumber, carpenter, mason, contractor, subcontractor, foreman or employee shall violate or assist in violating this chapter, ORC Chs. 3781 and 3791 or the Ohio Building Code, or fail to comply with any lawful order issued pursuant thereto.

(c) No owner shall proceed with the construction, erection, alteration or equipment of any building to which the Ohio Building Code is applicable until the plans or drawings, specifications, and data have been approved as ORC 3791.04 requires, or the industrialized unit inspected at the point of origin. No plans or specifications shall be approved or inspection approval given unless the building represented would, if constructed, repaired, erected, or equipped comply with ORC Chs. 3781 and 3791 and any rule made under those chapters.

State law reference—ORC 3791.01—ORC 3791.04

1321.05 EXISTING STRUCTURES.

The provisions of Chapter 34 of the Ohio Building Code shall control the alteration, repair, addition, and change of occupancy of any existing structure.

The occupancy of any structure currently existing on the date of adoption of this Code shall be permitted to continue without change provided the alleged occupancy can be shown to have existed for more than two (2) years and there are no orders of the Building Official pending, no evidence of fraud, or no serious safety or sanitation hazard.

Buildings constructed in accordance with plans which have been approved prior to the effective date of this Code are existing buildings.

Cross reference—OBC 102.6

1321.06 VIOLATIONS.

(a) Adjudication Orders Required Before Legal Proceedings. Before the Municipality attempts to enforce ORC Chs. 3781 and 3791 or any rules adopted pursuant thereto, by any remedy, civil or criminal, it shall issue an adjudication order within the meaning of ORC 119.06 to 119.13 or a stop work order as provided in Section 1321.07. Every adjudication order shall:

- (1) Cite the law or rules directly involved and shall specify what appliances, site preparations, additions, or alterations to structures, plans, materials, assemblages or procedures are necessary for the same to comply with ORC Chs. 3781 and 3791.
- (2) Include notice to the party of the procedure for appeal and right to a hearing if requested within thirty (30) days of the mailing of the notice. The notice shall also inform the party that at the hearing he may be represented by counsel, present his arguments or contentions orally or in writing and present evidence and examine witnesses appearing for or against him.

(b) Notice of Violation. The Building Official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure. When the Building Official finds that work or equipment is contrary to approved construction documents and the rules of the Board of Building Standards, the Building Official shall send a notice in writing to the owner of said building or the owner's agent which shall state where and in what respect the work or equipment does not conform to the approved plans for same and the rules of the Board. The notice shall specify a reasonable period of time in which to conform to said plans or the rules of the Board. Before any work may continue on the construction, erection, alteration, or equipment of any building for which the approval is invalid, the owner of the building shall resubmit the plans or drawings and specifications for approval as required under Section 105.3 of the Ohio Building Code.

(c) Prosecution of Violation. Upon the issuance of any order provided for in this section or Section 1321.07, the person receiving an order shall cease work upon the site preparations or structure to be constructed, or in the case of an industrialized unit, the installation of the unit, or shall cease using the appliance, materials, assemblages or manufactured product identified in the order until such time as the appeal provided for in accordance with the provisions of ORC 3781.19 and all appeals from such hearing have been completed, or the order has been released.

Cross reference—OBC 113

1321.07 STOP WORK ORDER.

(a) Authority. Whenever the Building Official finds any work regulated by this Code being performed in a manner contrary to the provisions of this Code or in a dangerous or unsafe manner, the Building Official is authorized to issue a stop work order whenever the Building Official finds, after inspection, that the site preparations or structure to be constructed, or in the case of an industrialized unit, the installation of the unit, or that the use of an appliance, materials,

assemblage, or manufactured product does not comply with the provisions of ORC Chs. 3781 and 3791 or the rules adopted pursuant thereto. The effect of such an order shall be limited to the matter specified in the order.

(b) Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent and the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

(c) Unlawful Continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition. Failure to cease work after receipt of a stop work order is hereby declared a public nuisance.

Cross reference—OBC 114

1321.08 CONFLICT.

(a) General. Where, in any specific case, different sections of the Ohio Building Code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

(b) Other Laws. The provisions of any building codes adopted by the Municipality shall not be deemed to nullify any provisions of state or federal law. The Municipality, under ORC 3781.01, may make further and additional regulations, not in conflict with ORC Chs. 3781 and 3791 or with the rules of the Board of Building Standards. However, under ORC 3781.12, approval by the Board of Building Standards of any fixture, device, material, system, assembly or product of a manufacturing process, or method or manner of construction or installation shall constitute approval for their use anywhere in Ohio. The rules of the Board of Building Standards shall supersede and govern any order, standard, or rule of the Division of the Fire Marshal, Ohio Fire Code or Industrial Compliance in the Department of Commerce, and Department of Health and of counties and townships, in all cases where such orders, standards or rules are in conflict with the Board of Building Standards, except that rules adopted and orders issued by the Fire Marshal pursuant to ORC Ch. 3743, prevail in the event of a conflict.

(Ord. O-51-2015. Passed 1-5-16.)

Cross reference—OBC 102

1321.09 ENFORCEMENT.

(a) In General. The Building Official shall enforce provisions of the rules of the Board of Building Standards and of ORC Chs. 3781 and 3791, relating to construction, arrangement, and the erection of buildings or parts thereof as defined in the rules of the Board in accordance with the certification. The Building Official shall exercise exclusive responsibility for the enforcement of all design and construction requirements found in the Ohio Building Code and in other codes and

referenced standards to the extent that the Building Code refers to those documents for design data, facts, figures, requirements, criteria, conditions, measures, and information except as follows:

- (1) Fire. The Fire Marshal or Fire Chief shall enforce all provisions of the rules of the Board relating to fire prevention. For those design and construction requirements and other requirements found in the Fire Prevention Code to which the Building Code refers, to the extent of the reference they shall be enforced by the Building Official.
- (2) Health. The Department of Health, or the boards of health of the City or general health districts the Division of Industrial Compliance of the Department of Commerce, or the Departments of Building Inspection of municipal corporations shall enforce such provisions relating to sanitary construction.
- (3) Engineering. The Department of the City Engineer, in cities having such departments, has complete supervision and regulation of the entire sewerage and drainage system of the City, including the house drain and the house sewer and all laterals draining into the street sewers. Said department shall have control and supervision of the installation and construction of all drains and sewers that become a part of the sewerage system of the City and shall issue all the necessary permits and licenses for the construction and installation of all house drains and house sewers and of all other lateral drains that empty into the main sewers. Such department shall keep a permanent record of the installation and location of every drain and sewerage system of the City.
- (4) Enforcement. This section does not exempt any officer or department from the obligation of enforcing any provision of the rules of the Board.

The Building Official shall have the authority to render interpretations of the Ohio Building Code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code.

(b) Applications and Approvals. The Building Official shall receive applications, require the review of submitted construction documents and issue plan approvals for the erection, and alteration, demolition and moving of buildings and structures, inspect the premises for which such approvals have been issued and enforce compliance with the provisions of this Code.

(c) Notices and Orders. The Building Official shall issue all necessary notices or orders to ensure compliance with this Code. When the Building Official finds that work or equipment is contrary to approved plans therefor and the rules of the Board, the Building Official shall send a notice in writing to the owner of said building or the owner's agent. The notice shall state where and in what respect the work or equipment does not conform to the approved plans for same and the rules of the Board, and specify a reasonable period of time in which to conform to said plans or the rules of the Board.

(d) Inspections. If the plans for the erection, construction, repair, alteration, relocating, or equipment of a building are subject to inspection by the Building Official, under Section 109 of the Ohio Building Code, the Building Official shall cause to be made such inspections, investigations, and determinations as are necessary to determine whether or not the work which has been performed and the installations which have been made are in conformity with the approved plans and to safety and sanitation, except special inspections required under Section 1704 of the Ohio Building Code.

(e) Identification. The Building Department personnel shall show, when requested, proper identification when entering structures or premises in the performance of duties under this Code.

(f) Right of Entry. The Building Official, or Building Official's designee, is authorized to enter a structure or premises at reasonable times to inspect or to perform the duties imposed by this Code, provided that credentials are presented to the occupant and that entry is requested and obtained. Where permission to enter has not been obtained, is denied, or the Building Official has probable cause to believe that there exists in a structure or upon a premises a condition which is a serious hazard the Building Official shall have recourse to the remedies provided by law to secure entry.

(g) Department Records. The Building Official shall keep official records of applications received, certificate of plan approval issued, notices and orders issued, certificate of occupancy, and other such records required by the rules of the Board of Building Standards. Such information shall be retained in the official permanent record for each project. One set of approved construction documents shall be retained by the Building Official for a period of not less than one hundred eighty (180) days from date of completion of the permitted work, or as required by document retention regulations.

(h) Liability. Liability of certified Building Department personnel for any tortuous act will be determined by Ohio courts to the applicable provisions of ORC 2744.

Cross reference—OBC 104

1321.99 PENALTY.

Whoever violates any provision of this chapter or any Code adopted herein or fails to comply with any lawful order issued pursuant thereto is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months or both. Each day during which noncompliance or a violation continues shall constitute a separate offense. The Municipality may institute injunction proceedings in Common Pleas Court to abate the nuisance of failure to cease work after receipt of a stop work order as referred to in Section 1321.07.

CHAPTER 1322 GREEN BUILDING INCENTIVE PROGRAM

1322.01 Green Building Incentive Program.

1322.01 Green Building Incentive Program.

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

- (1) "Green building" means generally the resource-efficient design, construction, and operation of buildings by employing environmentally sensible construction practices, systems, and materials.
- (2) "L.E.E.D. 2.2" means the Leadership in Energy and Environmental Design Rating System, Version 2.2, of the U.S. Green Building Council.
- (3) "L.E.E.D. 2.2 certification" means that a qualified third party; the USGBC, or its designee, has certified the building's design and construction has satisfied all of the requirements associated with the standard.
- (4) "USGBC" means the U.S. Green Building Council.

(b) Intent and Purpose. The purpose of this program shall be to provide commercial offices and businesses with incentives to utilize green building efforts. This program will be voluntary for all participants. This program will promote sustainable and environmentally friendly practices of design and construction.

(c) Scope. This program applies only to commercial projects within New Albany.

(d) Green Standards. All standards must meet Village codes and design guidelines. New buildings must satisfy at least twelve (12) of the twenty-four (24) standards listed below and must satisfy at least one standard in every category. Renovations must meet at least three (3) standards, in any combination or category. Compliance with the standards is determined by the Village. Standards and measurements of the Village Green Standards will be based on information from the U.S. Green Building Council and other reputable sources.

(1) New buildings.

A. HVAC.

1. Use Energy Star rated appliances, furnaces, boilers, and water heaters.
2. Install energy recovery ventilators for exhaust and make-up air systems.
3. Install individual thermal comfort controls.

B. Lighting.

1. Install a mechanism so lights are turned off during non-essential times (interior or exterior); can be occupancy or daylight-related.
2. Install parking light cutoff fixtures to contain light on site.
3. At least ninety percent (90%) of fixtures use compact fluorescent bulbs or LED.

C. Plumbing.

1. At least ninety percent (90%) of fixtures are low flow fixtures.
2. Install all waterless urinals.
3. Install all dual-flush toilets.
4. Install no permanent irrigation and utilize native vegetation. Irrigation may be used to help establish plants.

D. Environment.

1. Preserve at least seventy-five percent (75%) of existing trees in healthy condition and are at least four (4) to six (6) inches in diameter.
2. Exceed the open lot coverage by twenty-five percent (25%).
3. Exceed parking lot and/or minimum tree requirements by at least twenty-five percent (25%).

E. Energy.

1. Use solar panels.
2. Use geothermal heating system.
3. Install windows with at least a U-factor of 0.40.
4. Purchase green power.
5. Use occupancy sensor power strips.
6. Exceed code energy regulations by LEED standards.
7. Install a full or partially vegetated or high albedo roof surface

F. Materials.

1. Use low-VOC or zero-VOC paints.
2. Use recycled materials for at least twenty-five percent (25%) of the entire.
3. Participate in recycling program; recycled construction waste, etc.

G. Other green strategies. Subject to approval by the Village.(2) Existing building renovations.A. HVAC.

1. Use Energy Star rated appliances, furnaces, boilers, and water heaters.
2. Install energy recovery ventilators for exhaust and make-up air systems.
3. Install individual thermal comfort controls.

B. Lighting.

1. Install a mechanism so lights are turned off during non-essential times (interior or exterior); can be occupancy or daylight-related.
2. Install parking light cutoff fixtures to contain light on site.

3. At least ninety percent (90%) of fixtures use compact fluorescent bulbs or LED.

C. Plumbing.

1. At least ninety percent (90%) of fixtures are low flow fixtures.
2. Install all waterless urinals.
3. Install all dual-flush toilets.
4. Install no permanent irrigation and utilize native vegetation. Irrigation may be used to help establish plants.

D. Environment.

1. Preserve at least seventy-five percent (75%) of existing trees in healthy condition and are at least four (4) to six (6) inches in diameter.
2. Exceed the open lot coverage by twenty-five percent (25%).
3. Exceed parking lot and/or minimum tree requirements by at least twenty-five percent (25%).

E. Energy.

1. Use solar panels.
2. Use geothermal heating system.
3. Install windows with at least a U-factor of 0.40.
4. Purchase green power.
5. Use occupancy sensor power strips.
6. Exceed code energy regulations by LEED standards.
7. Install a full or partially vegetated or high albedo roof surface.

F. Materials.

1. Use low-VOC or zero-VOC paints.
2. Use recycled materials for at least twenty-five percent (25%) of the entire.
3. Participate in recycling program; recycled construction waste, etc.

G. Other green strategies. Subject to approval by the Village.

(e) Incentives. The program shall consist of incentives designed to encourage the use of the program and L.E.E.D. 2.2 certification through the following incentives:

- (1) New buildings. If the minimum Village standard is met, then the Village shall provide a twenty percent (20%) reduction in commercial building permit application fees.
- (2) Renovations. If the minimum Village standard is met, then the Village may award a twenty percent (20%) reduction in applications fees for minor renovations. For major renovations, the Village may award a twenty percent (20%) reduction in commercial building permit applications fees.

- (3) For full L.E.E.D. 2.2 certification, an additional fee reduction incentive between one percent and five percent (5%), in addition to the Village commercial building permit fee reduction, shall be awarded. Total percentages shall be awarded for each level of certification met, as follows:

Certified: twenty-one percent (21%) total reduction.

Silver: twenty-two percent (22%) total reduction.

Gold: twenty-three percent (23%) total reduction.

Platinum: twenty-five percent (25%) total reduction.

Therefore, a maximum of a twenty-five percent (25%) reduction in commercial building permit application fees may be awarded for each commercial building application.

(Ord. 34-2008. Passed 10-21-08.)

CHAPTER 1325 RESIDENTIAL CODE OF OHIO*

1325.01	ADOPTION.
1325.02	AMENDMENTS, DELETIONS AND ADDITIONS. (REPEALED)
1325.99	PENALTY.

1325.01 ADOPTION.

There is hereby adopted and incorporated by reference as if set out at length herein, for the purpose of establishing rules and regulations for the erection, construction, enlargement, alteration, repair, improvement, removal, conversion, demolition, equipment, use, occupancy or maintenance of houses and their accessory structures, which are not constructed as industrialized units, that certain code known as the Residential Code of Ohio, which shall be known as the Residential Code for the Village of New Albany. One copy of such Code has been and is now set out at length herein, and from the date on which this chapter shall take effect, the provisions thereof shall be controlling within the limits of the Village of New Albany.

(Ord. 06-2004. Passed 3-16-04; Ord. 35-2005. Passed 12-6-05; Ord. 14-2007. Passed 4-17-07.)

1325.02 AMENDMENTS, DELETIONS AND ADDITIONS. (REPEALED)

Editor's note—Section 1325.02 was repealed by implication due to the adoption of the Residential Code of Ohio, as set forth in Section 1325.01.

1325.99 PENALTY.

Any person who violates any provision of this Part Thirteen - Building Code, for which no other penalty is provided, or of any valid order issued pursuant thereto shall be deemed guilty of a misdemeanor of the fourth degree.

(Ord. 06-2004. Passed 3-16-04; Ord. 35-2005. Passed 12-6-05.)

***Cross reference**—Adoption by reference - see CHTR. 4.06;
Regulation of industrialized units - see ORC 3781.06, 3781.10

CHAPTER 1329 BUILDING NUMBERING

1329.01 INSTALLATION; OWNER RESPONSIBILITY.
1329.99 PENALTY.

1329.01 INSTALLATION; OWNER RESPONSIBILITY.

An owner, occupant or other person having control over a residential, industrial, commercial or public building shall install, display and maintain in good repair the numerical address of the building in Arabic numbers not less than four (4) inches in height as follows:

- (a) Color of the numbers shall contrast to the color of the surface on which they are mounted and the numbers shall be clearly visible from the street on which the building is numbered.
- (b) Numbers shall be placed on the front of the building facing the street on which the building is numbered.
- (c) For buildings having multiple and separate occupied units, numbers of all units within such building shall be placed either on the wall of the building facing the street on which the building is numbered or on a sign.
- (d) For buildings situated in excess of fifty (50) feet from the right of way of the street on which they are numbered, the minimum address number height and proportion shall be increased as necessary to allow the address number to be easily seen and read from the street or an additional set of address numbers complying with the requirements of this section shall be provided and maintained within fifty (50) feet of the right of way of the street on which the building is numbered.
- (e) The owner of a residential building may post multiple sets of address numbers provided one set complies with the provisions of this section.
- (f) Whoever is in noncompliance with this section or any part thereof, upon being notified in writing of such noncompliance by the Building Inspector or his designated representative shall have thirty (30) days in which to comply with provisions of this section.

(Ord. 16-86. Passed 12-9-86.)

1329.99 PENALTY.

Editor's note—See Section 1305.99 for general Building Code penalty.

CHAPTER 1330 INTERNATIONAL PROPERTY MAINTENANCE CODE

1330.01 ADOPTION.
1330.02 AMENDMENTS AND ADDITIONS.

1330.01 ADOPTION.

There is hereby adopted and incorporated by reference the International Property Maintenance Code, 2003 Edition, as if set out at length herein, for the purpose of establishing rules and regulations governing the conditions and maintenance of all property, buildings and/or structures; by providing standards for supplied utilities and facilities and other physical conditions essential to ensure that structures are safe, sanitary and fit for occupation and/or use; and the condemnation of buildings and/or structures unfit for human occupancy and/or use, and the demolition of such existing structures within the Village of New Albany: providing for the issuance of permits and collection of fees therefore; which shall be known as the Property Maintenance Code of the Village of New Albany, save and except such portions as are herein deleted, modified or amended by this chapter. This chapter shall take effect upon the effective date of Ordinance 03-2005. The provisions thereof shall be controlling within the limits of the Village of New Albany. (Ord. 03-2005. Passed 5-17-05.)

1330.02 AMENDMENTS AND ADDITIONS.

The International Property Maintenance Code, 2003 Edition, shall be amended as follows:

**SECTION 101
GENERAL**

101.1 Title. These regulations shall be known as the Property Maintenance Code of the Village of New Albany, hereinafter referred to as "this code".

101.2 Scope. The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance: the responsibility of owners, operators and occupants: the occupancy of existing structures and premises, and for administration, enforcement and penalties. Nothing contained herein shall be constructed to require an owner, operator or occupant to alter, remove, modify or otherwise abate a condition under the following parameters:

1. Existing conditions which are considered violations under this code which were permissible when the structure or premises was originally constructed and/or issued a building permit shall be permitted to remain provided the condition of the property is maintained in a condition similar to that at the time of original construction and said condition does not constitute an serious hazard.

2. Existing conditions within structures built before March 1, 1959 and/or are listed on the National Register of Historic Structures. These conditions are exempted from this code unless the condition is deemed to be a serious health, safety or welfare of the public or the occupants.

101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with the provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with the requirements of the Village of New Albany Residential One, Two and Three-Family Dwelling Code or the Ohio Building Code, whichever is applicable for the structure or dwelling.

101.4 Severability. If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 102 APPLICABILITY

102.1 General. The provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 101. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

102.2 Maintenance. Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Village of New Albany Codified Ordinances which includes the Residential One, Two and Three-Family Dwelling Code, National Electric Code and provisions of the Ohio Building Code, Ohio Mechanical Code, Ohio Plumbing Code, International Energy Code, International Fuel Gas Code and other codes as adopted from time to time when applicable to the Village of New Albany.

102.4 Existing remedies. The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

102.5 Deleted.

102.6 Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the Code Official to be safe and in the public interest of health, safety and welfare.

102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 8 and considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

102.8 Requirements not covered by code. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the Code Official.

SECTION 103**DEPARTMENT OF PROPERTY MAINTENANCE INSPECTION**

103.1 General. The Department of Property Maintenance Inspection is hereby created.

103.2 Appointment. The Code Official shall be appointed by the chief appointing authority of the jurisdiction; and the Code Official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the Code Official shall have the authority to appoint a deputy Code Official, other related technical officers, inspectors and other employees.

103.4 Liability. The Code Official, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The Code Official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the Department of Property Maintenance Inspection, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the Village of New Albany schedule of fees and service charges.

SECTION 104

DUTIES AND POWERS OF THE CODE OFFICIAL

104.1 General. The Code Official shall enforce the provisions of this code.

104.2 Rule-making authority. The Code Official shall have authority as necessary in the interest of public health, safety and general welfare, to adopt and promulgate rules and procedures; to interpret and implement the provisions of this code; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this code, or of violating accepted engineering methods involving public safety.

104.3 Inspections. The Code Official shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Code Official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

104.4 Right of entry. The Code Official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the Code Official is authorized to pursue recourse as provided by law.

104.5 Identification. The Code Official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

104.6 Notices and orders. The Code Official shall issue all necessary notices or orders to ensure compliance with this code.

104.7 Department records. The Code Official shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records as long as the building or structure to which such records relate remains in existence, unless otherwise provided for by other regulations.

104.8 Coordination of inspections. Whenever in the enforcement of this code or another code or ordinance, the responsibility of more than one Code Official of the jurisdiction is involved, it shall be the duty of the Code Officials involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code not within the inspector's authority to enforce, the inspector shall report the findings to the Code Official having jurisdiction.

SECTION 105

APPROVAL

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the Code Official shall have the authority to grant modifications for individual

cases, provided the Code Official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

105.2 Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material or method of construction shall be approved where the Code Official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

105.3 Required testing. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the Code Official shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

105.3.1 Test methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the Code Official shall be permitted to approve appropriate testing procedures performed by an approved agency.

105.3.2 Test reports. Reports of tests shall be retained by the Code Official for the period required for retention of public records.

105.4 Material and equipment reuse. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved.

SECTION 106 VIOLATIONS

106.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

106.2 Notice of violation. The Code Official shall serve a notice of violation or order in accordance with Section 107.

106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the Code Official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure

in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

106.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

SECTION 107 NOTICES AND ORDERS

107.1 Notice to person responsible. Whenever the Code Official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 108.3.

107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

107.4 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.4.

107.5 Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Code Official and shall furnish to the Code Official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

SECTION 108 UNSAFE STRUCTURES AND EQUIPMENT

108.1 General. When a structure or equipment is found by the Code Official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

108.1.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

108.1.2 Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the Code Official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

108.1.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

108.2 Closing of vacant structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Code Official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the Code Official shall cause the premises to be closed and secured through any available

public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource.

108.3 Notice. Whenever the Code Official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 107.3. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

108.4 Placarding. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Code Official shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

108.4.1 Placard removal. The Code Official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Code Official shall be subject to the penalties provided by this code.

108.5 Prohibited occupancy. Any occupied structure condemned and placarded by the Code Official shall be vacated as ordered by the Code Official. Any person who shall occupy a placarded premise or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premise or operate placarded equipment shall be liable for the penalties provided by this code.

SECTION 109 EMERGENCY MEASURES

109.1 Imminent danger. When, in the opinion of the Code Official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the Code Official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The Code Official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the Code Official, there is imminent danger due to an unsafe condition, the Code Official shall order the necessary work to be done, including the boarding up of openings, to

render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the Code Official deems necessary to meet such emergency.

109.3 Closing streets. When necessary for public safety, the Code Official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

109.4 Emergency repairs. For the purposes of this section, the Code Official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the Appeals Board, be afforded a hearing as described in this code.

SECTION 110 DEMOLITION

110.1 General. The Code Official shall order the owner of any premises upon which is located any structure, which in the Code Official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two (2) years, to demolish and remove such structure.

110.2 Notices and orders. All notices and orders shall comply with Section 107.

110.3 Failure to comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the Code Official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

110.4 Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be

promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

SECTION 111 MEANS OF APPEAL

111.1 Application for appeal. Any person directly affected by a decision of the Code Official or a notice order issued under this code shall have the right of appeal to the Village of New Albany Board of Construction Appeals, provided a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

111.2 Deleted.

111.2.1 Deleted.

111.2.2 Deleted.

111.2.3 Deleted.

111.2.4 Deleted.

111.2.5 Deleted.

111.3 Deleted.

111.4 Open hearing. All hearings before the Board shall be open to the public. The appellant, the appellant's representative, the Code Official and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two-thirds of the Board membership.

111.4.1 Procedure. The Board shall adopt and make available to the public through the Secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

111.5 Postponed hearing. When the full Board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

111.6 Board decision. The Board shall modify or reverse the decision of the Code Official only by a concurring vote of a majority of the total number of appointed Board members.

111.6.1 Records and copies. The decision of the Board shall be recorded. Copies shall be furnished to the appellant and to the Code Official.

111.6.2 Administration. The Code Official shall take immediate action in accordance with the decision of the Board.

111.7 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.

111.8 Stays of enforcement. Appeals of notice and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the appeal is heard by the Appeals Board.

CHAPTER 2 DEFINITIONS

SECTION 201 GENERAL

201.1 Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter.

201.2 Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, International Zoning Code, International Plumbing Code, International Mechanical Code, International Existing Building Code or the ICC Electrical Code, such terms shall have the meanings ascribed to them as in those codes.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

201.5 Parts. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit", "housekeeping unit" or "story" are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."

SECTION 202 GENERAL DEFINITIONS

APPROVED. Approved by the Code Official.

BASEMENT. That portion of a building which is partly or completely below grade.

BATHROOM. A room containing plumbing fixtures including a bathtub or shower.

BEDROOM. Any room or space used or intended to be used for sleeping purposes.

CODE OFFICIAL. The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

CONDEMN. To adjudge unfit for occupancy.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

EASEMENT. That portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on or above a said lot or lots.

EXTERIOR PROPERTY. The open space on the premises and on adjoining property under the control of owners or operators of such premises.

EXTERMINATION. The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serves as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

GARBAGE. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

GUARD. A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

HABITABLE SPACE. Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

HOUSEKEEPING UNIT. A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

IMMINENT DANGER. A condition which could cause serious or life-threatening injury or death at any time.

INFESTATION. The presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

INOPERABLE MOTOR VEHICLE. A vehicle which cannot be driven upon the public streets for reasons including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

LABELED. Devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

LET FOR OCCUPANCY or LET. To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

OCCUPANCY. The purpose for which a building or portion thereof is utilized or occupied.

OCCUPANT. Any individual living or sleeping in a building, or having possession of a space within a building.

OPENABLE AREA. That part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.

OPERATOR. Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

OWNER. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PERSON. An individual, corporation, partnership or any other group acting as a unit.

PREMISES. A lot, plot or parcel of land, easement or public way, including any structures thereon.

PUBLIC WAY. Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

ROOMING HOUSE. A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

RUBBISH. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

STRICT LIABILITY OFFENSE. An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

STRUCTURE. That which is built or constructed or a portion thereof.

TENANT. A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

TOILET ROOM. A room containing a water closet or urinal but not a bathtub or shower.

VENTILATION. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

WORKMANLIKE. Executed in a skilled manner; e.g., generally plumb, level, square, inline, undamaged and without marring adjacent work.

YARD. An open space on the same lot with a structure.

CHAPTER 3 GENERAL REQUIREMENTS

SECTION 301 GENERAL

301.1 Scope. The provisions of this chapter shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

301.2 Responsibility. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

301.3 Vacant structures and land. All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

SECTION 302 EXTERIOR PROPERTY AREAS

302.1 Sanitation. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

302.2 Grading and drainage. All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

Exception: Approved retention areas and reservoirs.

302.3 Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

302.4 Deleted.

302.5 Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.

302.6 Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

302.7 Accessory structures. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

302.8 Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

302.9 Deleted.

SECTION 303

SWIMMING POOLS, SPAS AND HOT TUBS

303.1 Swimming pools. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

303.2 Enclosures. Private swimming pools, hot tubs and spas, containing water more than twenty-four (24) inches (610 mm) in depth shall be completely surrounded by a fence or barrier at least 48 inches (1219 mm) in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches (1372 mm) above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches (152 mm) from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

SECTION 304

EXTERIOR STRUCTURE

304.1 General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

304.2 Protective treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather-resistant and watertight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

304.3 Deleted.

304.4 Structural members. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

304.5 Foundation walls. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

304.6 Exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

304.8 Decorative features. All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

304.9 Overhang extensions. All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

304.10 Stairways, decks, porches and balconies. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

304.11 Chimneys and towers. All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

304.12 Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

304.13 Window, skylight and door frames. Every window, skylight, door and frame shall be kept in sound condition, good repair and weather-tight.

303. 13.1 Glazing. All glazing materials shall be maintained free from cracks and holes.

303.13.2 Openable windows. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

304.14 Insect screens. Food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly-fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every swinging door shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

304.15 Doors. All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guestrooms shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

304.16 Basement hatchways. Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

304.17 Guards for basement windows. Every basement window that is openable shall be supplied with rodent shields, storm windows or other approved protection against the entry of rodents. Every egress window well that is installed within three feet of a pedestrian walk way or vehicular access driveway shall be protected with an openable guard system capable of withstanding a live load of 100 pounds per square foot.

304.18 Building security. Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security for the occupants and property within.

304.18.1 Doors. Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock meeting specifications set forth

herein. Such deadbolt locks shall be operated only by the turning of a knob or a key and shall have a lock throw of not less than 1 inch. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock. Such deadbolt locks shall be installed according to manufacturer's specifications and maintained in good working order. All deadbolt locks required by this section shall be designed and installed in such a manner so as to be operable inside of the dwelling unit, rooming unit or housekeeping unit without the use of a key, tool, combination thereof or any other special knowledge or effort.

304.18.2 Windows. Operable windows located in whole or in part within 6 feet (1828 mm) above ground level or a walking surface below that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a window sash locking devices.

304.18.3 Basement hatchways. Basement hatchways that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

SECTION 305 INTERIOR STRUCTURE

305.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

305.2 Structural members. All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

305.3 Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

305.4 Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

305.5 Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

305.6 Interior doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

SECTION 306 HANDRAILS AND GUARDRAILS

306.1 General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches (762 mm) above the floor or grade below shall have guards. Handrails shall not be less than 30 inches (762 mm) high or more than 42 inches (1067 mm) high, measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches (762 mm) high above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

Exception: Guards shall not be required where exempted by the adopted building code.

SECTION 307 RUBBISH AND GARBAGE

307.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

307.2 Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

307.2.1 Rubbish storage facilities. The owner of every occupied premises shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.

307.2.2 Refrigerators. Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on premises without first removing the doors.

307.3 Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers.

307.3.1 Garbage facilities. The owner of every dwelling shall supply one of the following: an approved mechanical food waste grinder in each dwelling unit; an approved incinerator unit in the structure available to the occupants in each dwelling unit; or an approved leak-proof, covered, outside garbage container.

307.3.2 Containers. The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leak-proof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

SECTION 308 EXTERMINATION

308.1 Infestation. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

GENERAL REQUIREMENTS

308.2 Owner. The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

308.3 Single occupant. The occupant of a one-family dwelling or of a single-tenant nonresidential structure shall be responsible for extermination on the premises.

308.4 Multiple occupancy. The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

308.5 Occupant. The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception: Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

CHAPTER 4 LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS

SECTION 401 GENERAL

401.1 Scope. The provisions of this chapter shall govern the minimum conditions and standards for light, ventilation and space for occupying a structure.

401.2 Responsibility. The owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant, or permit another person to occupy, any premises that do not comply with the requirements of this chapter.

401.3 Alternative devices. In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with Section 102.3 shall be permitted.

SECTION 402 LIGHT

402.1 Deleted.

402.2 Common halls and stairways. Every common hall and stairway in residential occupancies, other than in one- and two- family dwellings, shall be lighted at all times with at least a 60- watt standard incandescent light bulb for each 200 square feet (19 m²) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm).

In other than residential occupancies, means of egress, including exterior means of egress stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings and treads.

402.3 Other spaces. All other spaces shall be provided with natural or artificial light sufficient to permit maintenance of sanitary conditions, and the safe occupancy of the space and utilization of appliances, equipment, fixtures.

SECTION 403 VENTILATION

403.1 Deleted.

403.2 Deleted.

403.3 Cooking facilities. Unless approved through the certificate of occupancy, cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in a rooming unit or dormitory unit.

Exception: Where specifically approved in writing by the Code Official.

403.4 Process ventilation. Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the exterior and not be recirculated to any space.

403.5 Clothes dryer exhaust. Clothes dryer exhaust systems shall be independent of all other systems and shall be exhausted in accordance with the manufacturer's instructions.

SECTION 404 OCCUPANCY LIMITATIONS

404.1 Deleted.

404.2 Minimum room widths. A habitable room, other than a kitchen, shall not be less than 7 feet (2134 mm) in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

404.3 Deleted.

404.4 Bedroom requirements. Every bedroom shall comply with the requirements of Sections 404.4.1 through 404.4.5.

404.4.1 Area for sleeping purposes. Every bedroom occupied by one person shall contain at least 70 square feet (6.5 m²) of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet (4.6 m²) of floor area for each occupant thereof.

404.4.2 Access from bedrooms. Bedrooms shall not constitute the only means of access to other bedrooms or habitable spaces and shall not serve as the only means of egress from other habitable spaces.

Exception: Units that contain fewer than two bedrooms.

404.4.3 Deleted.

404.4.4 Prohibited occupancy. Kitchens and non-habitable spaces shall not be used for sleeping purposes.

404.4.5 Other requirements. Bedrooms shall comply with the applicable provisions of this code including, but not limited to, the light, ventilation, room area, ceiling height and room width requirements of this chapter; the plumbing facilities and water-heating facilities requirements of Chapter 5; the heating facilities and electrical receptacle requirements of Chapter 6; and the smoke detector and emergency escape requirements of Chapter 7.

404.5 Overcrowding. Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of Table 404.5.

**TABLE 404.5
MINIMUM REQUIREMENTS**

SPACE	MINIMUM	AREA IN SQUARE FEET	
<i>1-2 occupants</i>	<i>3-5 occupants</i>	<i>6 or more occupants</i>	
Living room	No requirements	120	150
Dining room	No requirements	80	100
Bedrooms	Shall comply with Section 404.4		
For SI: 1 square foot = 0.093 m2.			
a See Section 404.5.2 for combined living room/dining room spaces.			
b. See Section 404.5.1 for limitations on determining the minimum occupancy area for sleeping purposes.			

404.5.1 Sleeping area. The minimum occupancy area required by Table 404.5 shall not be included as a sleeping area in determining the minimum occupancy area for sleeping purposes. All sleeping areas shall comply with Section 404.4.

404.5.2 Combined spaces. Combined living room and dining room spaces shall comply with the requirements of Table 404.5 if the total area is equal to that required for separate rooms and if the space is located so as to function as a combination living room/dining room.

404.6 Efficiency unit. Nothing in this section shall prohibit an efficiency living unit from meeting the following requirements:

1. A unit occupied by not more than two occupants shall have a clear floor area of not less than 220 square feet (20.4 m²). A unit occupied by three occupants shall have a clear floor area of not less than 320 square feet (29.7 m²). These required areas shall be exclusive of the areas required by Items 2 and 3.

2. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.
3. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.
4. The maximum number of occupants shall be three.

404.7 Food preparation. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

CHAPTER 5 PLUMBING FACILITIES AND FIXTURE REQUIREMENTS

SECTION 501 GENERAL

501.1 Scope. The provisions of this chapter shall govern the minimum plumbing systems, facilities and plumbing fixtures to be provided.

501.2 Responsibility. The owner of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as owner- occupant or permit another person to occupy any structure or premises which does not comply with the requirements of this chapter.

SECTION 502 REQUIRED FACILITIES

502.1 Dwelling units. Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

502.2 Rooming houses. At least one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.

502.3 Hotels. Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten occupants.

502.4 Employees' facilities. A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.

502.4.1 Drinking facilities. Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in toilet rooms/bathrooms.

SECTION 503

DELETED

503.1 Deleted.

503.2 Deleted.

503.3 Deleted.

503.4 Deleted.

SECTION 504

PLUMBING SYSTEMS AND FIXTURES

504.1 General. All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

504.2 Fixture clearances. Plumbing fixtures shall have adequate clearances for usage and cleaning.

504.3 Plumbing system hazards. Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, inadequate venting, cross-connection, backsiphonage, improper installation, deterioration or damage or for similar reasons, the Code Official shall require the defects to be corrected to eliminate the hazard.

SECTION 505

WATER SYSTEM

505.1 Deleted.

505.2 Contamination. The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which hoses are attached and left in place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

505.3 Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

505.4 Water heating facilities. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C). A gas-burning

water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

SECTION 506 SANITARY DRAINAGE SYSTEM

506.1 General. All plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.

506.2 Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

SECTION 507 STORM DRAINAGE

507.1 General. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance.

CHAPTER 6 MECHANICAL AND ELECTRICAL REQUIREMENTS

SECTION 604 GENERAL

601.1 Scope. The provisions of this chapter shall govern the minimum mechanical and electrical facilities and equipment to be provided.

601.2 Responsibility. The owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises which does not comply with the requirements of this chapter.

SECTION 602 HEATING FACILITIES

602.1 Facilities required. Heating facilities shall be provided in structures as required by this section.

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the International Energy Code and the International One, Two and Three-Family Code as adopted from time to time by the Village of New Albany. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in accordance with Chapter 11 of the International One, Two and Three-Family Residential Code as adopted by the Village of New Albany.
2. In areas where the average monthly temperature is above 30°F (-1°C) a minimum temperature of 65°F (18°C) shall be maintained.

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

602.5 Room temperature measurement. The required room temperatures shall be measured 3 feet (914 mm) above the floor near the center of the room and 2 feet (610 mm) inward from the center of each exterior wall.

SECTION 603 MECHANICAL EQUIPMENT

603.1 Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

603.2 Removal of combustion products. All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

Exception: Fuel-burning equipment and appliances which are labeled for unvented operation.

603.3 Clearances. All required clearances to combustible materials shall be maintained.

603.4 Safety controls. All safety controls for fuel-burning equipment shall be maintained in effective operation.

603.5 Combustion air. A supply of air for complete combustion of the fuel and for ventilation of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

603.6 Energy conservation devices. Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless labeled for such purpose and the installation is specifically approved.

SECTION 604 ELECTRICAL FACILITIES

604.1 Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 605.

604.2 Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the National Electric Code. Dwelling units shall be served by a three-wire, 120/240 volt, single-phase electrical service having a rating of not less than 60 amperes.

604.3 Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the Code Official shall require the defects to be corrected to eliminate the hazard.

SECTION 605 ELECTRICAL EQUIPMENT

605.1 Installation. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

605.2 Receptacles. Each habitable space in a dwelling shall contain at least two separate and remote receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter. Every bathroom shall contain at least one receptacle. Any new bathroom receptacle outlet shall have ground faulty circuit interrupter protection.

605.3 Lighting fixtures. Every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room, boiler room and furnace room shall contain at least one electric lighting fixture.

SECTION 606 ELEVATORS, ESCALATORS AND DUMBWAITERS

606.1 General. Elevators, dumbwaiters and escalators shall be maintained to sustain safely all imposed loads, to operate properly, and to be free from physical and fire hazards. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter; or the certificate shall be available for public inspection in the office of the building operator.

606.2 Elevators. In buildings equipped with passenger elevators, at least one elevator shall be maintained in operation at all times when the building is occupied.

Exception: Buildings equipped with only one elevator shall be permitted to have the elevator temporarily out of service for testing or servicing.

SECTION 607 DUCT SYSTEMS

607.1 General. Duct systems shall be maintained free of obstructions and shall be capable of performing the required function.

CHAPTER 7 FIRE SAFETY REQUIREMENTS

SECTION 701 GENERAL

701.1 Scope. The provisions of this chapter shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided.

701.2 Responsibility. The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner- occupant or permit another person to occupy any premises that does not comply with the requirements of this chapter.

SECTION 702 MEANS OF EGRESS

702.1 General. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

702.2 Aisles. The required width of aisles in accordance with the International Fire Code shall be unobstructed.

702.3 Locked Doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the International Building Code.

702.4 Emergency Escape Openings. Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with

the code that was in effect at the time of construction and such devices shall be resealed or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

SECTION 703 FIRE-RESISTANCE RATINGS

703.1 Fire-resistance-rated assemblies. The required fire-resistance rating of fire-resistant walls, fire stops, shaft enclosures, partitions and floors shall be maintained.

703.2 Opening protectives. Required opening protectives shall be maintained in an operative condition. All fire and smokestop doors shall be maintained in operable condition. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable.

SECTION 704 FIRE PROTECTION SYSTEMS

704.1 General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the International Fire Code.

704.2 Smoke alarms. Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each story within a dwelling unit, including basements and cellars but not crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening floor between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level. Single or multiple-station smoke alarms shall be installed in other groups in accordance with the International Fire Code.

704.3 Power Source. In Group R occupancies and in dwellings not regulated as Group R occupancies, single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception: Smoke alarms are permitted to be solely battery-operated in buildings where no construction is taking place, buildings that are not served from a commercial power source and in existing areas of buildings undergoing alterations or repairs that do not result in the removal of

interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.

704.4 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling unit in Group R-2, R-3, R-4 and in dwellings not regulated as Group R occupancies, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

Exceptions:

1. Interconnection is not required in buildings which are not undergoing alterations, repairs, or construction of any kind.
2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.

(Ord. 03-2005. Passed 5-17-05.)

PART FIFTEEN - FIRE PREVENTION CODE

Chapter 1501	Ohio Fire Code
Chapter 1505	Explosive Materials
Chapter 1511	Fire Hydrants
Chapter 1523	Open Burning

PROOFS

CHAPTER 1501 OHIO FIRE CODE*

1501.01	ADOPTION.
1501.02	FEES AND PERMITS.
1501.03	FIRE INSPECTOR APPOINTED.
1501.04	BUILDING CONSTRUCTION FIRES.
1501.05	COMPLIANCE.
1501.99	VIOLATIONS, CITATIONS, AND PENALTY.

1501.01 ADOPTION.

The document, a copy of which is on file in the office of the New Albany Community Development Department, being marked and designated as "The most current edition of the Ohio Fire Code, as adopted by the Ohio Department of Commerce, Division of the State Fire Marshal", is hereby adopted as the Fire Prevention Code of the City of New Albany, Franklin and Licking Counties, Ohio, and as published in Division 1301:7-7 of the Ohio Administrative Code, shall govern the planning, design, construction of new buildings and structures herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of the Ohio Fire Code are hereby adopted and made a part hereof, as if fully set out in this Chapter.

(Ord. O-50-2015. Passed 1-5-16.)

1501.02 FEES AND PERMITS.

Such permit or application fees as shall be from time to time deemed necessary by the City Manager may be adopted by the City Council pursuant to the Ohio Fire Code. Permits for open burning shall be issued by the appropriate township fire department as determined by jurisdictional boundaries.

(Ord. O-50-2015. Passed 1-5-16.)

1501.03 FIRE INSPECTOR APPOINTED.

The City Manager shall appoint the Chief of the Plain Township Division of Fire, the Chief of the Monroe Township Fire Department and the Chief of the West Licking Joint Fire District or their respective designees as Fire Safety Inspectors within the portion of their respective jurisdictions located within the City's corporate limits. All such Fire Safety Inspectors shall be certified in accordance with the Ohio Fire Code.

(Ord. O-50-2015. Passed 1-5-16.)

1501.04 BUILDING CONSTRUCTION FIRES.

Upon the effective date of this chapter, all fires associated with and incidental to construction of buildings, except permitted fires associated with the clearing of trees and brush to prepare sites for

***Editor's note**—Ord. O-50-2015, passed adopted January 5, 2016, repealed Ch. 1501, §§ 1501.01—1501.07, and reenacted a new chapter as set out herein. Former Ch. 1501 pertained to similar subject matter and derived from Ord. 62-93, passed Nov. 23, 1991.

installation of roadways, underground utilities and related construction, shall be prohibited. The burning of construction debris is hereby prohibited. Violators of this provision shall be subject to penalties as provided in this chapter.

(Ord. O-50-2015. Passed 1-5-16.)

1501.05 COMPLIANCE.

No person shall knowingly violate any provision of the Ohio Fire Code as adopted herein or any order issued pursuant thereto. No person shall fail to comply with the fire prevention measures or fire protection activities as prescribed in the Ohio Fire Code, or fail to obtain a permit or license for the various uses or activities as required by such Code, or fail to comply with the municipal application and plan submission and processing requirements including payment of fees designated therefor.

(Ord. O-50-2015. Passed 1-5-16.)

1501.99 VIOLATIONS, CITATIONS, AND PENALTY.

Civil penalties may be sought for each day of violation and each violation of this code in accordance with ORC 3737.51. Alternatively, whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both, or the applicable penalty set forth in the Ohio Fire Code.

(Ord. O-50-2015. Passed 1-5-16.)

CHAPTER 1505 EXPLOSIVE MATERIALS

1505.01	LICENSE REQUIRED.
1505.02	USE AND HANDLING OF EXPLOSIVES.
1505.03	PERMIT REQUIRED.
1505.04	BLASTING PROHIBITED IN CERTAIN AREAS.
1505.05	PERMIT FEE ESTABLISHED.
1505.06	STOP WORK ORDER.
1505.99	PENALTY.

1505.01 LICENSE REQUIRED.

No person shall be permitted to use hazardous explosives within the Village of New Albany for any purpose who does not possess valid applicable federal and state licenses.
(Ord. 15-95. Passed 4-4-95.)

1505.02 USE AND HANDLING OF EXPLOSIVES.

(a) The use, handling, transportation, manufacturing, sale and other disposition of explosives shall conform to and be in accordance with the applicable requirements and/or provisions of:

- (1) The latest revision of State of Ohio Administrative Code Chapter 4121:1-3 issued by the Department of Industrial Relations and the Industrial Commission of the State of Ohio;
- (2) The Ohio Explosive Laws, ORC 3743.01-3743.26 and amendments thereto;
- (3) All applicable federal codes;
- (4) This chapter and such other pertinent ordinances as shall be adopted by the Council of the Village of New Albany.

(b) The storage of explosives within the corporate boundaries of the Village of New Albany is hereby prohibited.

(Ord. 15-95. Passed 4-4-95.)

1505.03 PERMIT REQUIRED.

Any contractor carrying out construction within the Village of New Albany, which construction requires the use of explosives for blasting, shall secure a permit from the Village of New Albany. Prior to issuance of a permit, applicant shall provide the following information:

- (a) Name, address and qualifications including licensing of the company designated to carry out the blasting.
- (b) Area maps and site plan showing exact location(s) of blasting, a proposed schedule of blasting, and a description of the work to be done stating what hazardous materials are to be used.
- (c) A completed pre-blast survey of every structure within two thousand (2,000) feet of the blasting area, including static level of water within wells in use within the designated area.

- (d) Proof of public liability insurance (accidental death, bodily injury and property damage) of a minimum of two million dollars (\$2,000,000.00) which shall protect the contractor and any subcontractor performing work covered by the permit from claims or damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations covered by the permit, whether such operation is by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall name the Village of New Albany as an additional insured. Such insurance shall be in full force and effect during the period of operations covered by the permit.
 - (e) A list of methods by which vibration monitoring will be carried out, including sites proposed for such monitoring.
 - (f) A description of mats or other mechanisms the contractor will use to control fly rock.
 - (g) An estimate of the type of explosive and amount of explosive per blast expected to be used at each site.
 - (h) Such other information as may be required by the Village Engineer or the hazardous materials officer of the Plain Township Fire Department.
 - (i) Proof of compliance with laws governing Workers' Compensation.
 - (j) The mechanism by which residents within the surveyed area shall be notified as to the time and location of each blast.
 - (k) A fee, as established by Council.
- (Ord. 15-95. Passed 4-4-95.)

1505.04 BLASTING PROHIBITED IN CERTAIN AREAS.

No blasting shall be permitted for any reason within three hundred (300) feet of any dwelling. For purposes of this chapter, "dwelling" means any dwelling used on a daily or intermittent basis for any purpose.

(Ord. 15-95. Passed 4-4-95.)

1505.05 PERMIT FEE ESTABLISHED.

At the time an application for a blasting permit is submitted, the applicant shall remit to the Village of New Albany a permit application fee in accordance with the Village of New Albany Schedule of Fees and Service Charges.

(Ord. 43-2002. Passed 12-10-02.)

1505.06 STOP WORK ORDER.

Failure to obtain a permit or to comply with all regulations outlined in this chapter shall result in the immediate issuance of a stop work order by the Chief Building Official or his designate, or the Village Engineer or his designate.

(Ord. 15-95. Passed 4-4-95.)

1505.99 PENALTY.

Upon a finding that a violation of this chapter has occurred, the violator shall be fined one thousand dollars (\$1,000.00). Each day a violation occurs shall be considered a separate offense and shall be subject to additional fines in the amount of one thousand dollars (\$1,000.00) each time an offense occurs.

(Ord. 15-95. Passed 4-4-95.)

PROOFS

CHAPTER 1511 FIRE HYDRANTS

1511.01	PERMIT REQUIRED.
1511.02	TAMPERING PROHIBITED.
1511.03	PERMIT FEE.
1511.99	PENALTY.

1511.01 PERMIT REQUIRED.

(a) The Zoning Officer will issue a fire hydrant permit, which is hereby attached to original Ordinance 32-91 as Exhibit A.

(b) An applicant for the permit will follow all established restrictions as stated on the permit. (Ord. 32-91. Passed 5-21-91.)

1511.02 TAMPERING PROHIBITED.

No person shall recklessly, without privilege or authorization to do so, use, tamper with, injure, destroy, steal, remove, or otherwise impair the effectiveness of any village hydrant. All authorizations for use of fire hydrants within the Village shall be first obtained from the Zoning Officer. (Ord. 32-91. Passed 5-21-91.)

1511.03 PERMIT FEE.

A permit fee is hereby assessed in accordance with the Village of New Albany Schedule of Fees and Service Charges. This fee is due when the permit is issued and checks are to be made payable to the Village of New Albany. (Ord. 43-2002. Passed 12-10-02.)

1511.99 PENALTY.

Whoever violates this section shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both, or if the violation creates a risk of physical harm to any persons, the fine shall be not more than one thousand dollars (\$1,000.00) or imprisonment of not more than six (6) months or both. (Ord. 32-91. Passed 5-21-91.)

CHAPTER 1519 FIREWORKS*

1519	Fireworks
1519.01	DEFINITIONS.
1519.02	PUBLIC EXHIBITION PERMIT REQUIRED; FEE; BOND; RECORDS.
1519.03	UNLAWFUL CONDUCT BY EXHIBITOR.
1519.04	POSSESSION, SALE OR DISCHARGE PROHIBITED; EXCEPTIONS.
1519.05	APPLICATION.
1519.99	PENALTY.

1519.01 DEFINITIONS.

As used in this chapter:

- (a) "Beer" and "intoxicating liquor" have the same meanings as in ORC 4301.01.
- (b) "Booby trap" means a small tube that has a string protruding from both ends, that has a friction-sensitive composition and that is ignited by pulling the ends of the string.
- (c) "Cigarette load" means a small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.
- (d) (1) "1.3 G fireworks" means display fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.3" in Title 49, Code of Federal Regulations.
- (2) "1.4 G fireworks" means consumer fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.4" in Title 49, Code of Federal Regulations.
- (e) "Controlled substance" has the same meaning as in ORC 3719.01.
- (f) "Fireworks" means 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 Section 1519.05.
- (g) "Licensed exhibitor of fireworks" or "licensed exhibitor" means a person licensed pursuant to ORC 3743.50 to 3743.55.
- (h) "Licensed manufacturer of fireworks" or "licensed manufacturer" means a person licensed pursuant to ORC 3743.02 to 3743.08.
- (i) "Licensed wholesaler of fireworks" or "licensed wholesaler" means a person licensed pursuant to ORC 3743.15 to 3743.21.

***Cross reference**—Manufacturers to comply with building and zoning ordinances - see ORC 3743.06(F);
 Wholesalers to comply with building and zoning ordinances - see ORC 3743.19(G);
 Arrests, seizure of fireworks by certified fire safety inspector - see ORC 3743.68;
 Conflict of Fire Marshal's rules with rules of Ohio Board of Building Standards - see ORC 3781.11(D)

(j) "Novelties and trick noisemakers" include the following items:

- (1) Devices that produce a small report intended to surprise the user, including, but not limited to, booby traps, cigarette loads, party poppers and snappers;
- (2) Snakes or glow worms;
- (3) Smoke devices;
- (4) Trick matches.

(k) "Party popper" means a small plastic or paper item that contains not more than sixteen (16) milligrams of friction-sensitive explosive composition, that is ignited by pulling string protruding from the item, and from which paper streamers are expelled when the item is ignited.

(l) "Railroad" means any railway or railroad that carries freight or passengers for hire, but does not include auxiliary tracks, spurs and sidings installed and primarily used in serving a mine, quarry or plant.

(m) "Smoke device" means a tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(n) "Snake or glow worm" means a device that consists of a pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning, which ash expands in length as the pellet burns.

(o) "Snapper" means a small, paper-wrapped item that contains a minute quantity of explosive composition coated on small bits of sand, and that, when dropped, implodes.

(p) "Storage location." A single parcel or contiguous parcels of real estate approved by the Fire Marshal pursuant to ORC 3743.04(I) or ORC 3743.17(G) that are separate from a licensed premises containing a retail showroom, and which parcel or parcels a licensed manufacturer or wholesaler of fireworks may use only for the distribution, possession, and storage of fireworks in accordance with this chapter.

(q) "Trick match" means a kitchen or book match that is coated with a small quantity of explosive composition and that, upon ignition, produces a small report or a shower of sparks.

(r) "Wire sparkler" means a sparkler consisting of a wire or stick coated with a non- explosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than one hundred (100) grams of this mixture.

State law reference—ORC 3743.01

1519.02 PUBLIC EXHIBITION PERMIT REQUIRED; FEE; BOND; RECORDS.

(a) A licensed exhibitor of fireworks who wishes to conduct a public fireworks exhibition within the Municipality shall apply for approval to conduct the exhibition to the Fire Chief and from the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer.

The required approval shall be evidenced by the Fire Chief or Fire Prevention Officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or

similar chief law enforcement officer, signing a permit for the exhibition, the form for which shall be prescribed by the State Fire Marshal. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the Fire Marshal or, if it is available, from the Fire Chief, Fire Prevention Officer, Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer.

(b) Before a permit is signed and issued to a licensed exhibitor of fireworks, the Fire Chief or Fire Prevention Officer in consultation with the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, 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 or Fire Prevention Officer.

The Fire Chief or Fire Prevention Officer and the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall give 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 Fire Marshal pursuant to ORC 3743.53(B) and (E) and that the applicant is, in fact, a licensed exhibitor of fireworks. The Fire Chief or Fire Prevention Officer in consultation with the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke the permit for noncompliance with the rules.

(c) The Fire Chief or Fire Prevention Officer and the Police Chief or other similar officer, shall not issue a permit until the applicant pays a permit fee in accordance with the Village of New Albany Schedule of Fees and Service Charges plus any necessary costs of investigation of the applicant and of inspecting the premises on which the exhibition will be conducted.

Each exhibitor shall provide an indemnity bond in the amount of at least one million dollars (\$1,000,000.00), with surety satisfactory to the Fire Chief or Fire Prevention Officer and to Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death or loss to persons or property emanating from the fireworks exhibition, or proof of insurance coverage of at least one million dollars (\$1,000,000.00) for liability arising from injury, death or loss to persons or property emanating from the fireworks exhibition. The Legislative Authority may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this subsection. The Fire Chief or Fire Prevention Officer and Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this subsection.

- (d) (1) Each permit for a fireworks exhibition issued by the Fire Chief or Fire Prevention Officer and by the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall contain a distinct number, designate the Municipality, 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 or Fire Prevention Officer and by the Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, issuing it to the Fire Marshal, who shall keep a record of the permits received. A permit is not transferable or assignable.
- (2) The Fire Chief, Fire Prevention Officer and Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, Fire Prevention Officer, Police Chief or other similar chief law enforcement officer, or a designee of such Police Chief or similar chief law enforcement officer, 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 of the permit issued to the exhibitor for the exhibition.

(e) The governing authority having jurisdiction in the location where an exhibition is to take place 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 and ORC Ch. 3743.

(Ord. 43-2002. Passed 12-10-02.)

State law reference—ORC 3743.54

1519.03 UNLAWFUL CONDUCT BY EXHIBITOR.

(a) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the Fire Marshal pursuant to ORC 3743.53(B) and (E) or to comply with Divisions (C) and (D) of that section.

(b) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to Section 1519.02 or if a permit so secured is revoked by the Fire Chief or Fire Prevention Officer in consultation with the Police Chief or other similar chief law enforcement official or a designee of such Police Chief or other similar law enforcement official pursuant to that section.

(c) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance with ORC 3743.54 and 3743.55.

(d) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of, any intoxicating liquor, beer or controlled substance while on the premises on which the exhibition is being conducted.

(e) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the Fire Marshal under ORC 3743.56.

State law reference—ORC 3743.64

1519.04 POSSESSION, SALE OR DISCHARGE PROHIBITED; EXCEPTIONS.

(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 ORC 3743.02 to 3743.08, a licensed wholesaler of fireworks as authorized by ORC 3743.15 to 3743.21, an out-of-state resident as authorized by ORC 3743.44, a resident of this State as authorized by ORC 3743.45, or a licensed exhibitor of fireworks as authorized by ORC 3743.50 to 3743.55 and Section 1519.02 and except as provided in Section 1519.05.

(b) Except as provided in Section 1519.05 and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to ORC 3743.50 to 3743.55 and Section 1519.02, 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 eighteen (18) years of age. No person under eighteen (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 eighteen (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) No person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder shall possess 1.3G fireworks in this Municipality.

State law reference—ORC 3743.65

1519.05 APPLICATION.

This chapter does not prohibit or apply to the following:

- (a) The manufacture, sale, possession, transportation, storage or use in emergency situations, of pyrotechnic signaling devices and distress signals for marine, aviation or highway use;
- (b) The manufacture, sale, possession, transportation, storage or use of fusees, torpedoes or other signals necessary for the safe operation of railroads;

- (c) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals or for ceremonial purposes;
- (d) The manufacture for, the transportation, storage, possession or use by, or sale to the Armed Forces of the United States and the militia of this State of pyrotechnic devices;
- (e) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns or other devices in which paper or plastic caps containing twenty-five hundredths grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;
- (f) The manufacture, sale, possession, transportation, storage or use of novelties and trick noisemakers, auto burglar alarms or model rockets and model rocket motors designed, sold and used for the purpose of propelling recoverable aero models;
- (g) The manufacture, sale, possession, transportation, storage or use of sparklers on a wire stick, as this term is defined in the regulations of the United States Department of Transportation.

State law reference—ORC 3743.80

1519.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the first degree for a first offense and shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six (6) months or both.

State law reference—ORC 3743.99(C)

CHAPTER 1523 OPEN BURNING*

1523.01	DEFINITIONS.
1523.02	RELATIONS TO OTHER PROHIBITIONS.
1523.03	OPEN BURNING IN RESTRICTED AREAS.
1523.04	PERMISSION AND NOTICE TO OPEN BURN.
1523.05	BONFIRES.
1523.99	PENALTY.

1523.01 DEFINITIONS.

- (a) As used in Chapter 3745-19 of the Ohio Administrative Code and this chapter:
- (1) "Agricultural waste" means any waste material generated by crop, horticultural, or live-stock production practices, and includes such items as woody debris and plant matter from stream flooding, bags, cartons, structural materials, and landscape wastes that are generated in agricultural activities, but does not include land clearing waste; buildings (including dismantled/fallen barns); garbage; dead animals; animal waste; motor vehicles and parts thereof; nor economic poisons and containers thereof, unless the manufacturer has identified open burning as a safe disposal procedure.
 - (2) "Economic poisons" include but are not restricted to pesticides such as insecticides, fungicides, rodenticides, miticides, nematocides and fumigants; herbicides; seed disinfectants; and defoliants.
 - (3) "Emergency burning" means the burning of clean wood waste or deceased animals caused by a natural disaster or an uncontrolled event such as the following:
 - A. A tornado.
 - B. High winds.
 - C. An earthquake.
 - D. An explosion.
 - E. A flood.
 - F. A hail storm, a rain storm, or an ice storm.
 - (4) "Garbage" means any waste material resulting from the handling, processing, preparation, cooking and consumption of food or food products.
 - (5) "Land clearing waste" means plant waste material which is removed from land, including plant waste material removed from stream banks during projects involving more than one

***Cross reference**—See sectional histories for similar state law;
 Air pollution control - see ORC Ch. 3704;
 Permit to burn construction debris - see ORC 3704.11(C);
 Spreading fire through negligence - see ORC 3737.62;
 Open burning - see OAC Ch. 3745

property owner, for the purpose of rendering the land useful for residential, commercial, or industrial development. "Land clearing waste" also includes the plant waste material generated during the clearing of land for new agricultural development.

- (6) "Landscape waste" means any plant waste material, except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings, and crop residues.
- (6) "Ohio EPA" means the Ohio Environmental Protection Agency Director or agencies delegated authority by the Director of the Ohio Environmental Protection Agency pursuant to ORC 3704.03 or the Chief of any Ohio Environmental Protection Agency District Office.
- (7) "Open burning" means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. "Open burning" includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of O.A.C. 3745-17-09 or 3745-17-10.
- (8) "Residential waste" means any waste material, including landscape wastes, generated on the property of a one-, two- or three-family residence as a result of residential activities, but not including garbage, rubber, grease, asphalt, liquid petroleum products, or plastics.
- (9) "Restricted area" means the following:
 - A. Except as provided in division B. of this definition, the area within the boundary of any municipal corporation established in accordance with the provisions of ORC Title 7, plus a zone extending one thousand (1,000) feet beyond the boundaries of any such municipal corporation having a population of one thousand (1,000) to ten thousand (10,000) persons and a zone extending one mile beyond any such municipal corporation having a population of ten thousand (10,000) persons or more according to the latest Federal Census.
 - B. "Restricted area" shall not include any municipal corporation the territory of which is located on an island in Lake Erie except that, during the yearly period between Memorial Day and Labor Day, any such municipal corporation shall be required to comply with the requirements of Section 1523.03.
- (10) "Unrestricted area" means all areas outside the boundaries of a "restricted area" as defined above.
- (11) "Inhabited building" means any inhabited private dwelling house and any public structure which may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public. Examples would include, but are not limited to, highway rest stops, restaurants, motels, hotels and gas stations.

(b) Referenced material. This section includes references to certain matter or materials. The text of the incorporated materials is not included in the regulations contained in this section. Information on the availability of the referenced materials as well as the date of, and/or the particular edition or version of the material is included in this section. For materials subject to change, only the specific versions specified in the regulation are incorporated. Material is incorporated as it exists on the effective date of this section. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not incorporated unless and until this regulation has been amended to specify the new dates.

- (1) Availability. The referenced materials are available as follows: National Fire Protection Association - Information on the National Protection Association codes may be obtained by contacting the association at 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, 617-770-3000. Codes may be ordered online at: www.nfpa.org/catalog/home/index.asp. Copies of the code are available at most public libraries and at the State Library of Ohio.
- (2) Referenced materials. NFPA publication 1403, *Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures*, published April 30, 2007.
- (c) As used in this chapter, "Bonfire" means an outdoor fire utilized for ceremonial purposes.
Cross references—OAC 1301:7-7-04; OAC 3745-19-01

1523.02 RELATIONS TO OTHER PROHIBITIONS.

(a) Notwithstanding any provision in Ohio Administrative Code Chapter 3745-19, no open burning shall be conducted in an area where an air alert, warning or emergency under Ohio Administrative Code Chapter 3745-25 is in effect.

(b) No provisions of Ohio Administrative Code Chapter 3745-19, permitting open burning, and no permission to open burn granted by the Ohio EPA, shall exempt any person from compliance with any section of the Ohio Revised Code, or any regulation of any State department, or any local ordinance or regulation dealing with open burning.

Cross reference—OAC 3745-19-02

1523.03 OPEN BURNING IN RESTRICTED AREAS.

(a) No person or property owner shall cause or allow open burning in a restricted area except as provided in Sections 1523.02 to 1523.04 or in ORC 3704.11.

(b) Open burning shall be allowed for the following purposes without notification to or permission from the Ohio EPA:

- (1) Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs.

- (2) Bonfires, campfires and outdoor fireplace equipment, whether for cooking food for human consumption, pleasure, religious, ceremonial, warmth, recreational, or similar purposes, if the following conditions are met:
 - A. They are fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood;
 - B. They are not used for waste disposal purposes; and
 - C. They shall have a total fuel area of three (3) feet or less in diameter and two (2) feet or less in height.
 - (3) Disposal of hazardous explosive materials, military munitions or explosive devices that require immediate action to prevent endangerment of human health, public safety, property or the environment and that are excluded from the requirement to obtain a hazardous waste permit pursuant to O.A.C. 3745-50-45(D)(1)(d).
 - (4) Recognized training in the use of fire extinguishers for commercial or industrial fire prevention.
 - (5) Fires allowed by divisions (b)(1), (b)(2) and (b)(4) of this section shall not be used for waste disposal purposes and shall be of minimum size sufficient for their intended purpose; the fuel shall be chosen to minimize the generation and emission of air contaminants.
- (c) Open burning shall be allowed for the following purposes with prior notification to the Ohio EPA in accordance with Section 1523.04(b):
- (1) Prevention or control of disease or pests, with written or verbal verification to the Ohio EPA from the Ohio Department of Health or local health department, the Centers for Disease Control and Prevention, cooperative extension service, Ohio Department of Agriculture, or U.S. Department of Agriculture, that open burning is the only appropriate disposal method.
 - (2) Bonfires or campfires used for ceremonial purposes that do not meet the requirements of division (b)(2) of this section, provided the following conditions are met:
 - A. They have a total fuel area no greater than five (5) feet in diameter by five (5) feet in height and burn no longer than three (3) hours;
 - B. They are not used for waste disposal purposes; and
 - C. They are fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood.
 - (3) Disposal of agricultural waste generated on the premises if the following conditions are observed:
 - A. The fire is set only when atmospheric conditions will readily dissipate contaminants;

- B. The fire does not create a visibility hazard on the roadways, railroad tracks, or air fields;
- C. The fire is located at a point on the premises no less than one thousand (1,000) feet from any inhabited building not located on said premises;
- D. The wastes are stacked and dried to provide the best practicable condition for efficient burning; and
- E. No materials are burned which contain rubber, grease, asphalt, liquid petroleum products, plastics or building materials.

(d) Open burning shall be allowed for the following purposes upon receipt of written permission from the Ohio EPA, in accordance with Section 1523.04(a), provided that any conditions specified in the permission are followed:

- (1) Disposal of ignitable or explosive materials where the Ohio EPA determines that there is no practical alternate method of disposal, excluding those materials identified in division (b)(3) of this section;
- (2) Instruction in methods of fire fighting or for research in the control of fires as recognized by the State Fire Marshal Division of the Ohio Department of Commerce and the guidelines set forth in the National Fire Protection Association's (NFPA) publication 1403, *Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures*, provided that the application required in Section 1523.04(a)(1) is submitted by the commercial or public entity responsible for the instruction;
- (3) In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Director and performed as identified in the appendix to O.A.C. 3745-19-03. If deemed necessary, the open burning may be authorized with prior oral approval by the Director followed by the issuance of a written permission to open burn within seven (7) working days of the oral approval;
- (4) Recognized horticultural, silvicultural (forestry), range, or wildlife management practices; and
- (5) Fires and/or pyrotechnic effects, for purposes other than waste disposal, set as part of commercial film-making or video production activities for motion pictures and television.

Cross reference—OAC 3745-19-03

1523.04 PERMISSION AND NOTICE TO OPEN BURN.

(a) Permission.

- (1) An application for permission to open burn shall be submitted in writing to Ohio EPA. The applicant shall allow Ohio EPA at least ten (10) working days to review the permit. Applicant may proceed with burn upon receipt of written permission from Ohio EPA. Saturday, Sunday, and legal holidays shall not be considered working days. The application shall be in such form and contain such information as required by the Ohio EPA.

- (2) Except as provided in divisions (a)(6) and (a)(7) of this section, such applications shall contain, as a minimum, information regarding:
 - A. The purpose of the proposed burning;
 - B. The quantity or acreage and the nature of the materials to be burned;
 - C. The date or dates when such burning will take place;
 - D. The location of the burning site, including a map showing distances to residences, populated areas, roadways, air fields, and other pertinent landmarks; and
 - E. The methods or actions which will be taken to reduce the emissions of air contaminants.
- (3) Permission to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the Ohio EPA that open burning is necessary to the public interest; will be conducted in a time, place, and manner as to minimize the emission of air contaminants, when atmospheric conditions are appropriate; and will have no serious detrimental effect upon adjacent properties or the occupants thereof. The Ohio EPA may impose such conditions as may be necessary to accomplish the purpose of O.A.C. Chapter 3745-19.
- (4) Except as provided in division (a)(6) of this section, permission to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while written permission is sought, the fire may be set with oral permission of the Ohio EPA.
- (5) Violations of any of the conditions set forth by the Ohio EPA in granting permission to open burn shall be grounds for revocation of such permission and refusal to grant future permission, as well as for the imposition of other sanctions provided by law.
- (6) The Ohio Department of Commerce, Division of State Fire Marshal, may request permission to open burn on an annual basis for the purpose of training firefighters on pre-flashover conditions using the Ohio Fire Academy's mobile training laboratory at either the academy or at other training sites in Ohio. The annual application required pursuant to division (a)(1) of this section shall contain information as required in division (a)(2) of this section, except the information required in divisions (a)(2)(c) and (a)(2)(d) of this section need not be provided unless it is available at the time of submittal of the application. The Academy shall contact the appropriate Ohio EPA District Office or local air agency at least five (5) working days before each training session of the date or dates when the training session will take place and its location. Saturday, Sunday, and legal holidays shall not be considered a working day.
- (7) For open burning defined under Section 1523.03(d)(2) and O.A.C. 3745-19-04(C)(2), permission to open burn shall not be granted unless the applicant provides proof of written notice of intent to demolish received by the appropriate Ohio EPA field office in accordance with O.A.C. 3745-20-03.

(b) Notification.

- (1) Notification shall be submitted in writing at least ten (10) working days before the fire is to be set. Saturday, Sunday, and legal holidays shall not be considered a working day. It shall be in such form and contain such information as shall be required by the Ohio EPA.
- (2) Such notification shall inform the Ohio EPA regarding:
 - A. The purpose of the proposed burning;
 - B. The nature and quantities of materials to be burned;
 - C. The date or dates when such burning will take place; and
 - D. The location of the burning site.
- (3) The Ohio EPA, after receiving notification, may determine that the open burning is not allowed under O.A.C. Chapter 3745-19 and the Ohio EPA shall notify the applicant to this effect.

Cross reference—OAC 3745-19-05

1523.05 BONFIRES.

(a) Approval Required. A bonfire shall be allowed after obtaining approval from the Fire Official.

An application for a bonfire shall be submitted in writing at least ten (10) days before the fire is set and shall be in such form and contain such information as required by the Fire Official. All permits shall be requested by and issued to the owner of the land upon which the bonfire is to be kindled.

(b) Prohibition. The Fire Official shall prohibit a bonfire that will be offensive or objectionable due to smoke or odor emissions when atmospheric conditions or local circumstances make such fires hazardous. The Fire Official shall order the extinguishment, by the permit holder or the Fire Department, of any bonfire that creates or adds to a hazardous or objectionable situation.

(c) Location. The location for any bonfire shall not be less than fifty (50) feet (15240 mm) from any structure, and provisions shall be made to prevent the fire from spreading to within fifty (50) feet (15240 mm) of any structure. Fires in approved containers shall be permitted, provided that such fires are not less than fifteen (15) feet (4572 mm) from any structure.

(d) Attendance. Any bonfire shall be constantly attended until the fire is extinguished. At least one portable fire extinguisher with a minimum 4-A rating, two (2) portable fire extinguishers with a minimum 2-A rating each, or other approved on-site fire extinguishing equipment, such as dirt, sand, water barrel, garden hose, or water truck, shall be available for immediate utilization.

(e) Bonfire Size and Duration. A bonfire shall not be more than five (5) feet (1524 mm) by five (5) feet (1524 mm) by five (5) feet (1524 mm) in dimension and shall not burn longer than three (3) hours. The maximum size and duration of a bonfire shall not be increased by the Fire Official unless it is determined that fire safety requirements of the situation and the desirable duration of burn warrant the increase.

(f) Material. Fuel for a bonfire shall consist only of seasoned dry firewood and shall be ignited with a small quantity of paper. The fire shall not be utilized for waste disposal purposes, and the fuel shall be chosen to minimize the generation of air contaminants.

Cross reference—OAC 1301:7-7-04

1523.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both.

PART SIXTEEN - HEALTH CODE

Chapter 1601 General Provisions

PROOFS

CHAPTER 1601 GENERAL PROVISIONS*

1601.01 Adoption of regulations.

1601.01 Adoption of regulations.

The Council of New Albany, Ohio does hereby adopt the following Franklin County Public Health Board Regulations in their entirety, as they currently exist, or as they may be subsequently amended, to the extent that such regulations are not inconsistent with New Albany Codified Ordinances:

#703 - Plumbing

#709 - Rabies Control

#710 - Housing Maintenance & Occupancy

#712 - Rat Control

#715 - Dead Animals

#716 - Weeds

#717 - Manure

#718 - Nuisance

#719 - Approval of Building Plans

#720 - Sewage Treatment Systems

#800 - Solid Waste

(Ord. O-03-2012. Passed 2-15-12.)

*Cross reference—Contract for health services authorized - see ORC 3709.08

CODE COMPARATIVE TABLE - 1997 CODE*

This table gives the location within this Code of those sections of the 1997 Code, as amended through March 19, 2013, which are included herein. Sections of the 1997 Code, as amended, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.

Ord. No.	Date	C.O. Section
10-82	5-25-82	733.01 to 733.23
13-82	6-8-82	733.99
16-86		1329.01
Res. 5-90	9-25-90	187.03
Res. 7-90	10-2-90	187.04
20-90	6-19-90	1103.01 to 1103.06, 1105.01, 1105.02, 1109.01 to 1109.08, 1109.99, 1113.08, 1117.01 to 1117.08, 1125.01 to 1125.04, 1127.01, 1127.02, 1129.01, 1129.02, 1129.04, 1129.06, 1131.01 to 1131.05, 1133.01, 1133.03, 1133.05, 1135.01, 1135.03, 1137.01, 1137.03, 1137.05, 1139.01, 1139.03, 1139.05, 1141.01 to 1141.07, 1143.01 to 1143.04, 1145.01 to 1145.04, 1147.01 to 1147.04, 1149.01 to 1149.04, 1151.01 to 1151.07, 1153.01 to 1153.06, 1155.01 to 1155.04(d) to (f), 1155.05, 1155.06(a), (b), 1155.07, 1155.08, 1157.01 to 1157.03, 1157.04(b), 1157.05 to 1157.11, 1157.99, 1159.01 to 1159.08, 1159.10(a), (b), 1159.11 to 1159.14(h), 1159.15 to 1159.24, 1165.01 to 1165.06, 1165.08, 1165.09, 1167.01 to 1167.06, 1169.01 to 1169.09, 1171.01 to 1171.05(d), 1171.06, 1171.07, 1173.01 to 1173.04, 1175.01 to 1175.05, 1177.01 to 1177.07, 1177.99
25-90	5-15-90	141.01(a)

***Editor's note**—Source material for the Codified Ordinances of New Albany was either ordinances or resolutions enacted by Council, or new matter ordained by the Adopting Ordinance. Sections of the Codified Ordinances without any history indicate that such sections contain new matter ordained by the Adopting Ordinance. In the following table, the disposition of all source material in the New Albany Codified Ordinances is indicated.

NEW ALBANY CODE

Ord. No.	Date	C.O. Section
26-90	5-15-90	171.02
57-90	9-11-90	1305.01 to 1305.07, 1305.99
77-90	11-20-90	1309.10
83-90	12-18-90	1309.11
84-90	12-18-90	1309.12
85-90	12-18-90	187.02
86-90	12-18-90	187.01
87-90	1-22-91	171.01
Res. 1-91	1-22-91	187.01
32-91	5-21-91	1511.01 to 1511.03, 1511.99
39-91	6-18-91	125.05
64-91	8-6-91	909.01 to 909.08
73-91	9-17-91	1183.01 to 1183.06, 1183.99
74-91	9-17-91	1181.01 to 1181.10, 1181.99
77-91	10-15-91	1187.01 to 1187.20
10-92	3-3-92	1187.07
14-92	3-3-92	905.01 to 905.05
16-92	3-17-92	187.05
25-92	5-5-92	123.16
26-92	5-5-92	187.06
27-92	4-9-92	187.07
32-92	6-23-92	1157.04(a)
44-92	8-4-92	1129.03, 1129.05
51-92	9-15-92	171.03
56-92	11-3-92	187.02
72-92	12-15-92	1105.02(6), (23), (36), (39), 1143.04(h), 1145.04(j), 1147.04(g), 1149.04(h), 1159.09, 1159.10(c), 1159.14(i), 1159.15, 1159.17, 1159.20, 1159.21, 1165.02, 1165.07, 1167.03, 1167.05, 1171.05(e)
Res. 11-93	9-7-93	1309.13
20-93	4-20-93	739.01 to 739.10, 739.99
21-93	4-20-93	155.01—155.08(e), 155.09—155.29 (Repealed)
25-93	5-4-93	187.08
27-93	5-4-93	125.04
30-93	5-18-93	1107.01 to 1107.04, 1111.01 to 1111.06, 1113.01 to 1113.07, 1115.01 to 1115.07
33-93	7-6-93	705.01 to 705.08, 705.99
36-93	7-6-93	155.08(f) (Repealed)
38-93	7-20-93	531.01

CODE COMPARATIVE TABLE—1997 CODE

Ord. No.	Date	C.O. Section
40-93	8-3-93	1309.01 to 1309.07
51-93	10-5-93	373.11
52-93	10-19-93	1109.09 to 1109.11
53-93	10-5-93	1309.09
62-93	11-23-93	1501.01 to 1501.07
67-93	12-7-93	185.01
7-94	2-15-94	1187.04, 1187.06
11-94	3-22-94	143.01
13-94	3-22-93	1325.01, 1325.02 (Repealed)
14-94	4-5-94	123.17
21-94	4-19-94	931.01 to 931.09
36-94	10-4-94	935.01 to 935.05
52-94	10-4-94	155.30 (Repealed)
54-94	10-25-94	183.01 to 183.20, 183.99
60-94	12-6-94	187.09
61-94	12-6-94	139.01(b), (c), 139.02 to 139.06
1-95	2-7-95	139.01(a)
15-95	4-4-95	1505.01 to 1505.06
29-95	8-15-95	1155.03(l) to (s), 1155.04(a) to (c), 1155.05(b)(4), (d)(2) to (4), 1155.06(c), 1155.08(a)
34-95	9-19-95	1131.02, 1131.04, 1133.02, 1133.04, 1135.02, 1135.04, 1137.02, 1137.04, 1139.02, 1139.04
49-95	11-29-95	1309.08
2-96	1-23-96	145.01 to 145.03, 145.99
12-96	2-20-96	141.01(b)
Res. 13-96	7-2-96	183.17, 187.13
21-96	7-2-96	933.01 to 933.08
25-96	4-16-96	171.04
Res. 26-96	9-17-96	157.01, 157.04, 157.06 to 157.09, 157.10, 157.11
30-96	4-2-96	1125.04
40-96	6-18-96	187.10
47-96	8-27-96	1187.15
49-96	10-1-96	333.11
51-96	9-17-96	351.14
59-96	10-1-96	333.11
64-96	11-5-96	187.11
74-96	12-17-96	183.17, 187.12
75-96	12-17-96	183.17

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Ord. No.	Date	C.O. Section
77-96	12-17-96	155.33, 155.34 (Repealed)
82-96	1-21-97	1144.01 to 1144.04
1-97	2-4-97	187.14
12-97	3-18-97	1309.14
Adopting Ordinance		101.01 to 101.08, 101.99, 103.01, 119.01 to 119.04, 123.01 to 123.15, 125.01 to 125.03, 301.01 to 301.52, 303.01 to 303.11, 303.99, 305.01 to 305.05, 311.01 to 311.03, 311.99, 313.01 to 313.10, 313.99, 331.01 to 331.43, 331.99, 333.01 to 333.09, 333.99, 335.01 to 335.14, 335.99, 337.01 to 337.29, 337.99, 339.01 to 339.11, 341.01 to 341.06, 341.99, 351.01 to 351.13, 371.01 to 371.11, 373.01 to 373.10, 375.01 to 375.07, 375.99, 501.01 to 501.12, 501.99, 505.01 to 505.14, 505.99, 509.01 to 509.07, 513.01 to 513.13, 513.99, 517.01 to 517.09, 521.01 to 521.10, 525.01 to 525.15, 529.01 to 529.08, 533.01 to 533.13, 533.99, 537.01 to 537.18, 541.01 to 541.08, 545.01 to 545.20, 549.01 to 549.09, 553.01 to 553.03, 1321.01 to 1321.09, 1321.99, 1519.01 to 1519.05, 1519.99
16-97	5-5-97	1309.04
17-97	10-6-98	1178.01 to 1178.19
18-97	10-6-98	1179.01 to 1179.11
26-97	6-17-97	187.15
32-97	10-19-97	333.99
38-97	10-7-97	1309.01
43-97	10-21-97	159.01—159.10, repeals 155.30
44-97	12-16-97	1159.01 to 1159.07
48-97	12-16-97	155.01—155.24 (Repealed)
49-97	12-16-97	123.01 to 123.17
2-98	2-3-98	155.17 (Repealed)
7-98	3-17-98	145.01 to 145.04
9-98	3-17-98	1187.04
10-98	8-4-98	1157.01 to 1157.07, 1157.09—1157.11, 1157.99

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13-98	4-21-98	1187.07, 1187.12
15-98	5-5-98	157.08
16-98	5-19-98	1305.08
23-98	9-1-98	1111.01 to 1111.07
25-98	8-18-98	123.12
26-98	9-15-98	339.01
27-98	9-15-98	1309.04
28-98	9-15-98	123.121
34-98	1-5-99	183.17, 187.02
3-99	1-26-99	155.17(h) (Repealed)
4-99	3-2-99	1309.09
5-99	4-6-99	939.01, 939.02
6-99	1-26-99	159.02
7-99	5-4-99	145.01, 145.03, 145.04
12-99	10-5-99	1157.02, 1157.06
13-99	4-20-99	1309.15
14-99	4-20-99	1309.16
16-99	6-15-99	1160.01 to 1160.09
21-99	7-6-99	933.09
22-99	7-20-99	183.17
29-99	10-5-99	187.16
33-99	11-16-99	909.04, repeals 909.07
35-99	12-7-99	1309.01, 1309.06, 1309.07, 1309.09, 1309.14
05-00	4-11-00	155.01, 155.02 (Repealed)
6-00	5-16-00	933.10
12-00	10-3-00	1187.13
22-00	8-15-00	139.01 to 139.06
24-00	9-19-00	183.07
30-00	10-3-00	1309.01
32-00	10-17-00	140.01 to 140.99
35-00	10-17-00	1309.07
40-00	11-21-00	155.03, 155.07 (Repealed)
42-00	12-5-00	143.01
43-00	12-5-00	1309.07
02-01	1-16-01	337.99
05-01	1-16-01	183.21 to 183.22
07-01	2-6-01	1325.01 to 1325.99
08-01	2-6-01	123.12
21-2001	6-19-01	303.09 to 303.12
22-2001	6-19-01	521.12, 521.13

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Ord. No.	Date	C.O. Section
27-2001	8-21-01	1167.04
29-2001	8-21-01	1165.06
30-2001	8-21-01	1105.02
37-2001	8-21-01	123.12 repeals 123.13
38-2001	11-20-01	1111.07
40-2001	9-18-01	739.01 to 739.99
41-2001	10-2-01	741.01 to 741.99, 1309.07
42-2001	9-18-01	371.06
43-2001	10-2-01	1309.07
50-2001	11-6-01	531.01
52-2001	12-4-01	931.01 to 931.99
53-2001	12-4-01	1309.07
57-2001	2-5-02	1159.07, 1159.09, 1159.10
06-2002	2-5-02	155.16 (Repealed)
20-2002	6-4-02	155.01—155.25 (Repealed)
31-2002	9-3-02	333.11
34-2002	9-17-02	Repeals 187.12, 187.15
35-2002	9-17-02	739.01 to 739.99
43-2002	12-10-02	705.03, 705.06, 733.10, 733.21, 733.22, 739.05, 905.01; 905.02 (Repealed); 909.04, 909.06, 931.10, 933.09, 935.04, 1178.08, 1505.05, 1511.03, 1519.02, repeals 1309.01 to 1309.16
06-2003	2-11-03	333.11
07-2003	2-18-03	183.02, 183.05, 183.13
10-2003	2-18-03	705.03, 705.06
19-2003	6-17-03	933.09
20-2003	6-17-03	935.04
21-2003	9-16-03	1111.03, 1111.06, 1111.07
22-2003	9-16-03	1159.07 to 1159.10
36-2003	1-13-04	1153.02, 1153.03
37-2003	12-2-03	743.01 to 743.21
43-2003	1-13-04	183.01 to 183.99
01-2004	1-20-04	155.18 (Repealed)
05-2004	2-3-04	Repeals 143.01
06-2004	3-16-04	1325.01 to 1325.99
08-2004	3-3-04	135.01, 135.02
19-2004	5-4-04	505.11
20-2004	4-20-04	331.44
21-2004	4-20-04	521.14
28-2004	6-15-04	1187.04, 1187.06, 1187.07

CODE COMPARATIVE TABLE—1997 CODE

Ord. No.	Date	C.O. Section
29-2004	6-15-04	1159.07, 1159.08
37-2004	8-17-04	1147.01 to 1147.04
43-2004	10-19-04	155.16 (Repealed)
52-2004	11-23-04	159.02
56-2004	12-7-04	113.01, 113.02, repeals 113.03, 113.04
02-2005	3-1-05	739.01 to 739.99
03-2005	5-17-05	1330.01, 1330.02
08-2005	5-17-05	745.01 to 745.08, 745.99
23-2005	10-18-05	351.03
35-2005	12-6-05	1325.01, 1325.02 (Repealed)
37-2005	1-3-06	905.01 to 905.05, Repeals 905.02
Adopting Ordinance		101.02, 123.12, 301.01, 301.27, 301.51, 313.01, 331.38, 333.011, 333.03, 335.02, 337.33, 339.02, 339.07, 341.01, 341.02, 341.04, 341.05, 341.06, 375.01, 375.06, 501.05, 501.99, 505.13, 509.01, 521.02, 521.11, 525.02, 533.07, 533.98, 537.12, 537.16, 545.01, 545.04, 545.24, 549.10, 549.11, 1519.02, 1523.01
Repeals		545.21
01-2006	1-17-06	139.01 to 139.06
08-2006	9-5-06	1105.01, 1105.02, 1129.01 to 1129.07, 1131.01 to 1131.06, 1133.01 to 1133.06, 1135.01 to 1135.06, 1137.01 to 1137.01, 1139.01 to 1139.06, 1141.01 to 1141.08, 1143.01 to 1143.04, 1144.01 to 1144.04, 1145.01 to 1145.04, 1147.01 to 1147.04, 1149.01 to 1149.03, 1151.01 to 1151.07, 1153.01 to 1153.06
18-2006	5-16-06	351.03
22-2006	7-11-06	1191.01
31-2006	7-18-06	187.09
32-2006	9-5-06	155.01—155.26 (Repealed)
34-2006	8-15-06	187.10
35-2006	11-28-06	1178.18
07-2007	2-20-07	1144.01 to 1144.04, 1153.01 to 1153.06, 1167.01 to 1167.06
08-2007	2-20-07	1187.01, 1187.20, 1187.21
11-2007	3-6-07	337.20
14-2007	4-17-07	1325.01, repeals 1325.02

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Ord. No.	Date	C.O. Section
15-2007	4-17-07	139.01 to 139.06
16-2007	4-17-07	159.01 to 159.10
Adopting Ordinance		331.01, 331.07, 331.13, 331.37, 333.01, 333.03, 333.04, 335.03, 335.031, 335.07, 335.071 to 335.073, 337.18, 337.26, 339.03, 373.01, 373.02, 373.04, 373.05, 501.01, 501.06, 501.09, 501.13, 513.01 to 513.04, 513.08, 513.12, 513.14, 525.02, 525.03, 525.15, 529.01, 529.02, 529.07, 529.08, 529.09, 529.10, 533.01, 533.05, 533.06, 533.07, 533.14, 533.15, 537.02, 537.07, 537.12, 537.16, 541.07, 545.01, 545.05, 545.21, 549.02, 549.04, 549.10, 549.11, 549.12, 1523.01, 1523.03, 1523.04
25-2007	7-10-07	1159.01 to 1159.12
27-2007	8-21-07	1165.01 to 1165.10
28-2007	9-18-07	1167.01 to 1167.06
29-2007	8-21-07	1157.01 to 1157.14, 1157.99
30-2007	8-21-07	1171.01 to 1171.09
31-2007	8-21-07	1187.01 to 1187.23
42-2007	12-18-07	1187.15, 1187.16
43-2007	11-6-07	157.01 to 157.11
49-2007	11-20-07	1191.01 to 1191.10, 1191.99
01-2008	2-5-08	1157.08
10-2008	4-22-08	Repeals Ch. 147
20-2008	7-15-08	1153.01 to 1153.06
24-2008	8-19-08	521.14
28-2008	9-2-08	155.17 (Repealed)
34-2008	10-21-08	1322.01
35-2008	10-21-08	909.04
36-2008	10-21-08	1187.07
44-2008	10-21-08	187.16
Adopting Ordinance		301.20, 333.08, 337.10, 337.18, 375.06, 501.06, 509.06, 517.01, 517.15, 525.10, 529.08, 533.01, 533.16, 533.98, 537.051, 537.08, 537.16, 537.17, 537.22, 549.04, 1523.01
06-2009	3-17-09	1165.08
07-2009	3-17-09	1171.08
08-2009	3-17-09	1187.02, 1187.08

CODE COMPARATIVE TABLE—1997 CODE

Ord. No.	Date	C.O. Section
19-2009	6-16-09	909.02
20-2009	6-16-09	1305.01 to 1305.09
21-2009	6-16-09	1178.02, 1178.05
44-2009	11-3-09	371.06
53-2009	12-1-09	1107.02, 1111.03, 1111.07
Adopting Ordinance		301.04, 301.19, 301.325, 313.12, 331.38, 333.01, 333.03, 333.031, 335.031, 335.05, 335.15, 337.02, 337.26, 337.27, 339.10, 373.02, 375.05, 375.06, 501.14, 501.99, 513.01, 513.02, 513.03, 525.02, 525.05, 529.05, 529.07, 529.09, 533.05, 533.06, 533.07, 533.16, 537.02, 537.03, 537.15, 537.14, 541.05, 545.01, 545.05, 549.01, 549.02, 549.04, 549.07, 549.10, 549.11, 1519.04
O-07-2010	2-16-10	184.01—184.14, 184.99
10-2010	3-23-10	123.05
O-13-2010	4-6-10	331.45
O-26-2010	8-3-10	187.18
O-38-2010	12-7-10	1169.01—1169.18, 1169.99
O-02-2011	2-15-11	931.01—931.11, 931.99, 1181.01—1181.10, 1181.99, 1183.01—1183.06, 1183.99
O-08-2011	5-17-11	1107.03, 1113.01—1113.11, 1157.01—1157.13, 1157.99, 1165.11, 1167.05, 1169.03, 1169.10, 1169.13
O-09-2011	5-17-11	1140.01—1140.05, 1140.99, 1158.01—1158.07, 1158.99
O-14-2011	6-21-11	521.15
O-15-2011	8-16-11	1153.01—1153.06
O-17-2011	8-16-11	187.17
O-18-2011	8-16-11	739.04
O-19-2011	9-20-11	161.01, 161.02

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Ord. No.	Date	C.O. Section
Adopting Ordinance		303.081, 333.01, 335.01, 335.02, 335.05, 335.06, 335.07, 335.072, 335.073, 335.10, 335.12, 335.13, 335.14, 337.02, 337.03, 337.04, 337.05, 337.06, 337.08, 337.10, 337.11, 337.12, 337.13, 337.14, 337.15, 337.16, 337.17, 337.19, 337.20, 337.21, 337.22, 337.24, 351.04, 373.02, 375.05, 375.06, 501.01, 501.02, 505.01, 509.06, 509.07, 513.01, 513.02, 513.03, 517.01, 517.02, 517.05, 517.06, 517.07, 521.01, 521.08, 525.01, 525.02, 525.03, 529.07, 537.10, 537.12, 537.14, 537.15, 537.19, 537.24, 537.25, 541.02, 541.05, 545.02, 545.04, 545.05, 545.07, 545.08, 545.09, 545.10, 545.13, 545.14, 545.15, 545.17, 545.18, 549.04
O-01-2012	1-24-12	1125.01—1125.06
O-03-2012	2-15-12	1601.01
O-07-2012	3-7-12	1305.01, 1305.05, 1305.08, 1305.09
O-25-2012	10-16-12	123.12
O-26-2012	1-22-13	1173.02
O-30-2012	11-27-12	155.01—155.28, repeals Ch. 155
O-05-2013	3-19-13	501.15
Adopting Ordinance		301.035, 301.165, 301.167, 301.17, 301.185, 301.252, 301.365, 301.45, 301.46, 301.47, 303.01, 303.041, 313.03, 313.04, 313.05, 313.06, 331.12, 331.46, 335.07, 335.072, 335.09, 337.01, 337.09, 337.18, 337.20, 337.23, 337.26, 337.30, 339.03, 339.06, 339.07, 339.08, 341.01, 341.05, 341.07, 351.04, 373.02, 375.01, 375.06, 501.01, 501.11, 501.99, 505.01, 505.13, 505.15, 513.01, 513.02, 513.03, 513.12, 513.14, 517.01, 517.02, 517.06, 517.07, 517.09, 517.10, 517.11, 525.02, 529.02, 529.04, 529.07, 529.08, 533.08, 533.09, 537.12, 537.16, 545.01, 545.05, 549.01, 549.02, 549.04, 549.10, 549.11, 1523.01, 1523.03, 1523.04
O-50-2015	1-5-16	

CODE COMPARATIVE TABLE—1997 CODE

Ord. No.	Date	C.O. Section
O-51-2015	1-5-16	1321.08(b)

PROOFS

CODE COMPARATIVE TABLE - ORDINANCES

This table gives the location within this Code of those ordinances which are included herein, beginning with the 2016 Republication. Ordinances not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

Ordinance Number	Date	Section	Section this Code
O-43-2010	1-11-2011	1	521.12
O-09-2013	5-21-2013	1	521.12
O-15-2013	6-4-2013	1(Exh. A)	1144.02(f)
		1(Exh. B)	1151.02
		1(Exh. C)	1153.02, 1153.03
O-37-2013	12-3-2013	1	113.01, 113.02
O-03-2014	2-18-2014	1	521.14(d)(2)
O-06-2014	3-18-2014	1	Rpld 1178.01—1178.99
			Added 907.01—907.99
O-07-2014	3-18-2014	1	140.16
		2	549.04
		549.06	
O-12-2014	6-3-2014	1(Exh. A)	1111.07(a)
		1(Exh. B)	1159.09(b)
			1159.10(b)
O-34-2014	11-18-2014	1	303.08(a)(1)
O-37-2014	12-16-2014	1(Exh. A)	Rpld 1179.01—1179.11
			Added 1179.01—1179.11
O-05-2015	2-24-2015	1(Exh. A)	1167.06
		1(Exh. B)	1167.05(d)
O-07-2015	3-3-2015	1(Exh. A)	1105.02(g)
		1(Exh. B)	1144.02
		1(Exh. C)	1153.02, 1153.03
O-19-2015	5-19-2015	1	123.07
O-35-2015	11-3-2015	1(Exh. A)	Added 181.01—181.99
O-41-2015	11-17-2015	1	Added 747.01—747.99
O-42-2015	11-17-2015	1(Exh. A)	537.16
O-47-2015	12-15-2015	1(Exh. A)	1158.03
O-50-2015	1-5-2016	1(Exh. A)	Rpld 1501.01—1501.07
			Added 1501.01—1501.99
O-51-2015	1-5-2016	1	1321.08(b)
O-06-2016	3-1-2016	1	Ch. 373 (tit.)
			373.01
			Added 373.13, 373.14



Prepared: 01/05/2017
Introduced: 01/17/2017
Revised:
Adopted:
Effective:

RESOLUTION R-05-2017

A RESOLUTION TO APPROVE A FEE IN LIEU OF LEISURE TRAIL CONSTRUCTION AT 8257 CENTRAL COLLEGE ROAD AS REQUESTED BY MEMMER HOMES

WHEREAS, the city's Strategic Plan cites leisure trails as a critical component to the success and livability of New Albany; and

WHEREAS, the city's Codified Ordinance Sections 1187.02(d) and 1187.02(e) requires the developer/owner to provide and pay the entire cost of improvements to land including construction of leisure trails and/or sidewalks; and

WHEREAS, the city's Codified Ordinance Section 1187.18 sets forth a process by which city council may approve a fee in-lieu of a leisure trail and a calculation to determine the fee payment; and

WHEREAS, the property is located on the south side of Central College Road, east of Evans Road. The City Leisure Trail Master Plan shows the property at 8257 Central College Road is located on a rural roadway corridor and recommends a leisure trail should be located along the road; and

WHEREAS, this section of Central College Road currently does not have any existing leisure trails or sidewalks on either side of the road.

NOW, THEREFORE, BE IT RESOLVED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. That the Council of the City of New Albany hereby agrees that the developer/owner has proven that the construction of the leisure trail is not appropriate due to one of the following conditions outlined in Section 1187.18 of the City Codified Ordinance:

- a. Sidewalk and/or trail construction is impracticable due to topographical conditions or sidewalk constraints;
- b. Sidewalk and/or trails do not exist in the area, there is not a likelihood for sidewalks and/or trails to be constructed in the near future, and that a fee in-lieu would better serve the community than a sidewalk or trail installed at the required location.

Section 2. That the Council of the City of New Albany hereby approves a recommendation from the City Engineer regarding the calculation of the fee and requires that final occupancy is not issued for the subject development until the fee payment is received.

Section 3. Pursuant to Article 6.07 of the New Albany Charter, this Resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2017.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director