



ORDINANCE O-12-2024

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 2.9 +/- ACRES OF LAND LOCATED AT 2278 BEECH ROAD FOR AN AREA KNOWN AS THE "BEECH ROAD EAST ZONING DISTRICT" FROM ITS CURRENT ZONING OF LIMITED GENERAL EMPLOYMENT (L-GE) TO LIMITED GENERAL EMPLOYMENT (L-GE) AS REQUESTED BY NEW ALBANY CROSSING LLC, C/O JACK B. REYNOLDS III

WHEREAS, the council of the city of New Albany has determined that it is necessary to rezone certain property located in the city to promote orderly growth and development of lands; and

WHEREAS, the New Albany Planning Commission and City Council on separate occasions have held public hearings and received public input into the amendment of the zoning ordinance; and

WHEREAS, pursuant to the application by New Albany Crossing LLC, c/o Jack B. Reynolds III, the Planning Commission of the city of New Albany has reviewed the proposed ordinance amendment and recommended its approval.

NOW, THEREFORE, BE IT ORDAINED by the council for the city of New Albany, counties of Franklin and Licking, State of Ohio, that:

Section 1. Council of the city of New Albany hereby amends the Zoning Ordinance Map of the city of New Albany to change the zoning classification of the following described site:

- A. A 2.9 ± acre area of land located at 2278 Beech Road for an area known as the "Beech Road East Zoning District" from its current zoning of Limited General Employment (L-GE) to Limited General Employment (L-GE).
- B. The zoning district's zoning text and site plan are hereby attached and marked Exhibit A.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2024.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Benjamin S. Albrecht
Law Director

Legislation dates:	
Prepared:	03/22/2024
Introduced:	04/16/2024
Revised:	
Adopted:	
Effective:	

BEECH ROAD EAST ZONING DISTRICT LIMITATION TEXT

September 2, 2020

Amended March 18, 2024

I. Introduction: The Beech Road East Zoning District seeks to extend similar zoning rights granted in other sections of the New Albany Business Park to include land being annexed to the City of New Albany. This new zoning district is intended to provide zoning standards and requirements that are very similar to those which apply to the Beech Road West zoning district and other surrounding commercial zoning districts directly north and south of this site. This zoning seeks to position the real property that is the subject of this application so that it attracts the types of successful development projects that have been realized in those areas. The property that is the subject of this zoning text consists of 2.9+/- acres located at 2278 Beech Road.

II. Zoning Designation: L-GE. Limited General Employment District.

III. Permitted Uses: The permitted and conditional uses contained and described in the Codified Ordinances of the City of New Albany, GE, General Employment District. Sections 1153.02 and 1153.03, provided that conditional uses are approved in accordance with Chapter 1115, Conditional Uses. The following uses from these code sections shall be prohibited:

- A. Off Premises Signs
- B. Industrial service (See Section 1153.03(a)(2))
- C. Mini-warehouses (See Section 1153.03(a)(4)(c))
- D. Personal service (See Section 1153.03 (b)(2)) and retail product sales and service (See Section 1153.03.03(b)(3)), except that such uses shall be allowed as accessory uses to a permitted use in this subarea
- E. Vehicle services (See Section 1153.03(b)(4))
- F. Radio/television broadcast facilities (See Section 1153.03(c)(1))
- G. Sexually-oriented businesses (See Section 1153.03(c)(3))

IV. Lot and Setback Commitments:

A. Lot Coverage: There shall be a maximum lot coverage in this subarea of 75%.

B. Setbacks:

- 1. Beech Road: There shall be a minimum pavement setback of 25 feet and minimum building setback of 50 feet from Beech Road.

2. Eastern (Rear) Perimeter Boundary: For any structure or service area, the required eastern (rear) yard shall not be less than 25 feet.
3. Northern and Southern (Side) Perimeter Boundaries: There shall be a minimum building and pavement setback of 25 feet.
4. Elimination of Setbacks: In the event that a parcel located within this subarea and an adjacent parcel located outside of this subarea (a) come under common ownership or control, (b) are zoned to allow compatible non-residential uses, and (c) are combined into a single parcel, then any minimum building, pavement, or landscaping setbacks set forth in this text shall no longer apply with respect to these parcels.

V. Architectural Standards:

A. Building Height: The maximum building height for structures in this subarea shall be 65 feet.

B. Service and Loading Areas: Service areas and loading docks shall be screened in accordance with City Code.

C. Building Design:

1. Building designs shall not mix architectural elements or ornamentation from different styles.
2. Buildings shall be required to employ a comparable use of materials on all elevations.
3. The number, location, spacing, and shapes of windows and door openings shall be carefully considered. Primary entrances to buildings shall be made sufficiently prominent that they can be easily identified from a distance.
4. For office buildings and complexes, achieving a human or pedestrian scale is of less concern. When achieving such a scale is desired, it may be achieved by careful attention to width of facades, size and spacing of window and door openings, and floor to floor heights on exterior walls.
5. Use of elements such as shutters, cupolas, dormers, and roof balustrades shall be avoided in building designs that are not based on traditional American architectural styles. Such elements may be employed only when they are common elements of a specific style, and this style shall be replicated in its entirety. When shutters are employed, even if they are non-operable, they must be sized and mounted in a way that gives the appearance of operability.

6. Elements such as meter boxes, utility conduits, roof and wall projections such as vent and exhaust pipes, basement window enclosures, and trash containers shall be designed, located, or screened so as to minimize their visibility and visual impact.

7. Accessory or ancillary buildings, whether attached or detached shall be of similar design, materials, and construction as the nearest primary structure. Fenestration themes that employ windows, panels and piers that are consistent with the architectural vocabulary of the building are encouraged. Accessory structures, generators, storage tanks, trash receptacles or any other similar improvement must be located behind the front facade of the primary building(s).

D. Rooftop Equipment: Complete screening of all roof mounted equipment shall be required on all four sides of buildings with materials that are consistent and harmonious with the building's facade and character. Such screening shall be provided in order to screen the equipment from off-site view and sound generated by such equipment. Solar panels may also be located on roof top areas and shall be appropriately screened from view.

E. Building Form:

1. All building elevations shall be designed to be compatible with each other and to reflect a consistent design approach.

2. Gable or hip roofs shall be avoided unless a building design replicates a traditional American architectural style that employs such roof forms. In non-stylistic contemporary designs, low or flat roofs may be employed. Roof visibility shall be minimized.

F. Materials:

1. Exterior building materials shall be appropriate for contemporary suburban designs and shall avoid overly reflective surfaces. Traditional materials such as, but not limited to, wood, stone, brick, and concrete shall be permitted, along with contemporary materials such as, but not limited to, aluminum, metal, glass, stucco, or cementitious fiberboard (e.g., hardiplank or equivalent) shall be permitted on buildings not employing traditional styles. The use of reflective or mirrored glass shall be prohibited.

2. Prefabricated metal buildings, untreated masonry block structures, and buildings featuring poured concrete exterior walls are prohibited.

3. Generally, the quantity of materials selected for a building shall be minimized. A single material selection for the independent building components of roof, wall and accents is permitted (i.e., Architectural Grade shingle roof with Brick Masonry wall and EIFS Cornice and Accents).
4. Loading docks are not required to have the same degree of finish as a main entry unless they are visible from a public right-of-way.
5. Additional Standards for Uses Not Governed by DGRs: Buildings that are constructed to accommodate certain uses are not governed by the City's Design Guidelines and Requirements (DGRs). For example, buildings that are constructed for the operation of warehousing and/or distribution uses are not subject to the DGRs and can present challenges in meeting the community standard for architectural design. Such buildings are necessarily large and typically include long walls that together form a square or rectangular box. The goal for the development of buildings that are not subject to the DGRs is to balance the practical needs of these buildings with the desire to provide exterior designs that are attractive and complimentary to the architecture: that will be found elsewhere in this zoning district.

Architecture by its nature is a subjective medium, meaning that the adoption of strict objective standards in all instances may not provide the best means for achieving appropriate design. In recognition of this fact, the standards set forth herein provide guidelines and suggestions for designing buildings that are not subject to the DGRs in an effort to set expectations for the quality of architecture that will be expected for these structures. On the other hand, these standards are meant to allow for some flexibility to encourage innovative design provided that the spirit and intent of these provisions are met.

In conjunction with an application for a certificate of appropriateness for each building or structure in this subarea that is not subject to or governed by the DGRs, the applicant shall be required to submit to the City illustrations of the proposed exterior design of the building or structure for review and approval by the Design Review Committee contemplated in Section 1144.04(q) of the City Code. In designing such buildings, the user or applicant shall take into account the following, which are intended to set a level of expectation for the quality of design:

- a. Architectural design for all portions of a building or structure that are visible from a public right-of-way (excluding public rights-of-way whose primary purpose is to accommodate truck traffic or service loading areas) shall meet the community standard in terms of quality while taking into account the unique nature of the use(s) that will be

found therein.

b. Uninterrupted blank wall facades shall be prohibited to the extent that they are visible from a public right-of-way. Design variations on long exterior walls shall be employed in order to create visual interest. Examples of such design variations include, but are not limited to, the use of offsets, recesses and/or projections, banding, windows, and/or reveals scoring of building facades; color changes; texture or material changes; and variety in building height.

c. The use of one or more architectural or design elements may be used to soften the aesthetics of the building, such as but not limited to canopies, porticos, overhangs, arches, outdoor patios, community spaces, or similar devices.

d. Contemporary exterior designs, while not required, shall be encouraged in order to create architecture that does not look aged or dated even many years after the facility is built.

e. Landscaping and/or the use of existing vegetation shall be utilized where appropriate to enhance the aesthetics of the building and to lessen its visual impact when viewed from public rights-of-way.

VI. Access, Parking, Site Circulation, and Traffic Commitments:

A. One curb cut for this zoning district is permitted by right. Additional curb cuts may be approved by the City Manager or their designee in consultation with the developer at the time that a certificate of appropriateness is issued for a project in this subarea if supported and justified by a traffic analysis that is review and approved by the city engineer.

B. Parking and loading spaces shall be provided for each use per Section 1167 of the Codified Ordinances of the City of New Albany.

VII. Buffering, Landscaping, Open Space, and Screening: The following landscaping requirements shall apply to this subarea:

A. Tree Preservation: Standard tree preservation practices will be put into place to preserve and protect trees during all phases of construction, including the installation of snow fencing at the drip line. Preservation Zones shall be deemed to include all minimum pavement setbacks along the perimeter boundaries of this zoning district that

are not adjacent to a public right-of-way. Within the Preservation Zones located within these perimeter setbacks, the developer shall preserve existing healthy and mature trees and vegetation but shall be permitted to place utilities within or allow them to cross through these areas, provided, however, that the developer shall use good faith efforts to place utilities in a manner that minimizes the impact on healthy and mature trees. Trees within these areas may be removed if they present a danger to persons or property.

B. Landscaping Along Major Street Corridors: Subject to Section VII.C below, landscaping within the pavement setbacks along Beech Road shall be coordinated and consistent throughout this zoning district. Within the required minimum building and pavement setbacks along Beech Road, the developer shall preserve existing trees stands to provide a buffer between the public right-of-way and development within the zoning district, or provide landscaping as described in this section or both. Landscaping, when installed within these setbacks, shall be provided in accordance with the following standards:

1. A minimum of ten (10) deciduous trees shall be installed for every 100 feet of frontage on the public right-of-way. Such trees shall be planted in random locations (i.e., not in rows). No more than 30% of such trees shall be of a single species.
2. Mounding shall be permitted but not required. When utilized, mounding shall have a minimum height of 3 feet and a maximum height of 12 feet. The slope of mounds shall not exceed 3:1 from the crest of the mound extending toward the private site, and shall not exceed a 6:1 slope from the crest of the mound extending toward the public right-of-way.
3. A standard New Albany white four-board horse fence may (but shall not be required to) be provided within the public right-of-way.

C. Landscaping Required Adjacent to Residential Uses: For those perimeter boundaries which abut residentially zoned and used properties (if two contiguous properties have an intervening public street right-of-way between them, they shall still be considered to be abutting) that are not owned by the developer, then the required landscaping and/or mounding (or some combination thereof) within minimum required pavement setback areas shall be enhanced to provide an opacity or 75% on the date that is five (5) years after planting to a total height of 10 feet above ground level when viewed from ort site. Existing trees may be utilized to meet this opacity requirement.

D. Street Trees: A street tree row shall be established along all publicly dedicated rights-of-way within or adjacent to this subarea and shall contain one (1) tree for every thirty (30) feet of road frontage. Trees may be grouped or regularly spaced. Street trees

shall be located within the right-of-way. Minimum street tree size at installation shall be three (3) caliper inches. This requirement may be waived in areas where existing vegetation occurs, subject to approval of the City Landscape Architect.

E. Parking Areas: Within this subarea, there shall be no less than one (1) tree planted for every ten (10) parking spaces located therein. At least five percent (5%) of the vehicular use area shall be landscaped or green space (or treed areas). Parking lots shall be designed to accommodate parking lot islands with tree(s) at the end of parking aisles.

F. Pedestrian Circulation: An internal pedestrian circulation system shall be created so that a pedestrian using a public sidewalk along a public street can access the adjacent buildings through their parking lots as delineated with markings, crosswalks, and/or different materials, directing foot traffic, where possible, away from primary access drives.

G. Minimum On-Site Tree Sizes: Unless otherwise set forth herein, minimum tree size at installation shall be no less than two and one half (2 ½) inches in caliper for shade trees, six (6) feet in height for evergreen trees, two (2) inches in caliper for ornamental trees, and thirty (30) inches in height for shrubs. Caliper shall be measured six (6) inches above grade.

H. All street trees that are not installed prior to infrastructure acceptance shall be bonded to guarantee installation.

I. All project landscape plans are subject to review and approval by the City Landscape Architect.

VIII. Lighting:

A. All parking lot and private driveway lighting shall use cut-off type fixtures and down cast. Parking lot lighting shall be from a controlled source in order to minimize light spilling beyond the boundaries of the site.

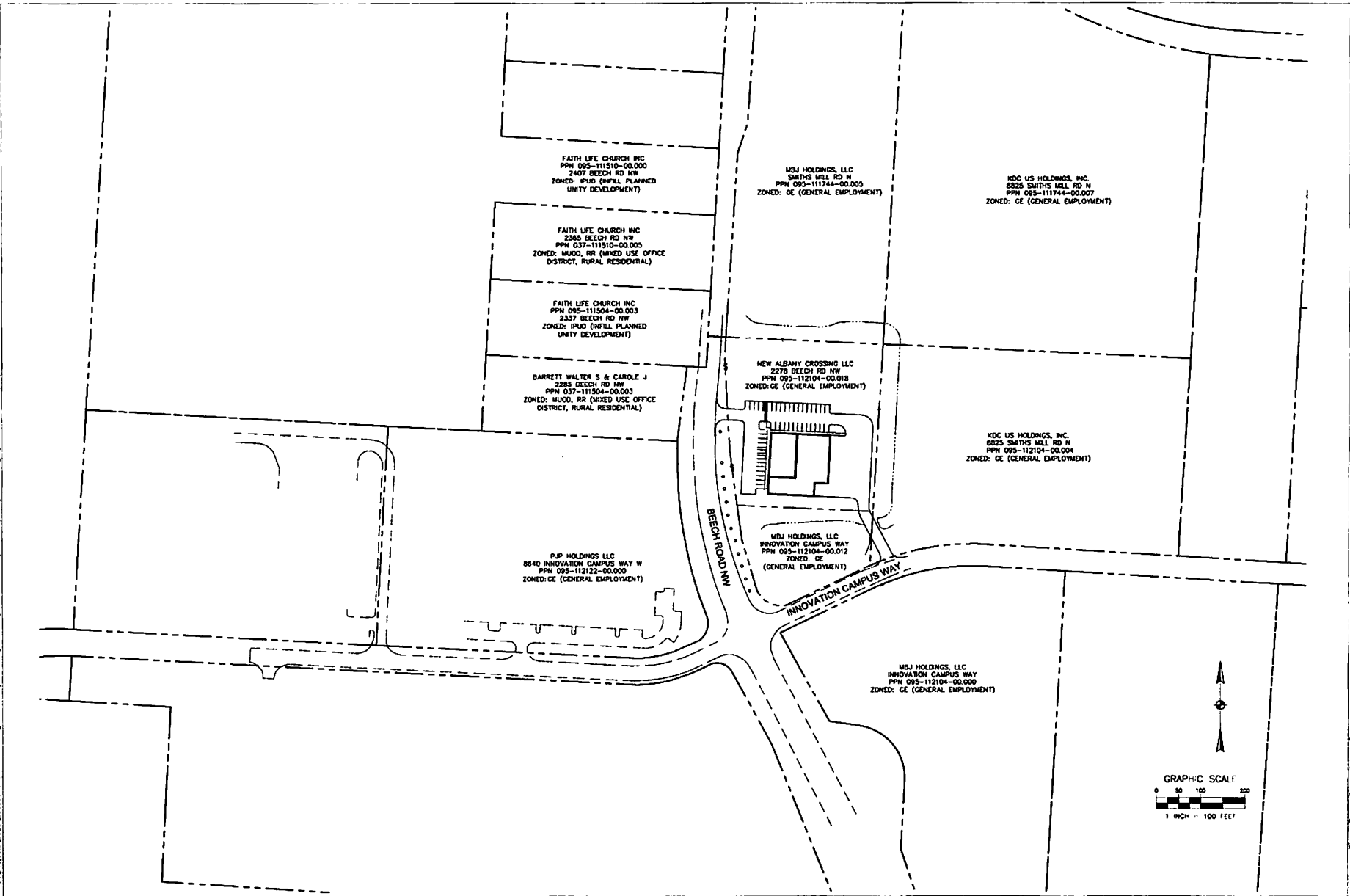
B. All parking lot lighting shall be of the same light source type and style. Building, pedestrian, and landscape lighting may be incandescent or metal halide.

C. All parking lot light poles shall be black or New Albany green and constructed of metal. Light poles shall not exceed 30 feet in height.

D. Landscape uplighting from a concealed source shall be subject to staff approval. All uplighting fixtures must be screened by landscaping. Lighting details shall be

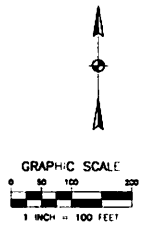
included in the landscape plan which is subject to review and approval by the City Landscape Architect.

- E. A detailed photometric plan, showing zero candle foot light intensity at the property lines must be submitted prior to the issuance of an engineering or building permit.
- F. No permanent colored lights or neon lights shall be used on the exterior of any building.
- G. All new electrical utilities that are installed in this subarea shall be located underground.
- H. All other lighting on the site shall be in accordance with City Code.
- I. Street lighting must meet the City Standards and Specifications.
- IX. Signage: Unless otherwise permitted in the Personal Care and Beauty Campus Master Landscape and Signage Plan, all signage shall conform to the standards set forth in Chapter 1169 of the Codified Ordinances of the City of New Albany.
- X. Utilities: All utilities shall be installed underground.
- XI. Outdoor Speaker Systems: Outdoor speaker systems shall be prohibited in this Zoning District.



COLUMBUS, OH
ZONING EXHIBIT
 FOR
NEW ALBANY CROSSING LLC
 2278 BEECH ROAD

DATE	
REVISIONS	
DRAWN BY	MD
CHECKED BY	SF
SCALE	1"=100'
DATE	2-27-2024
SHEET NO	





ORDINANCE O-13-2024

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF NEW ALBANY, OHIO TO PROVIDE AMENDMENTS TO TRAFFIC NEW ALBANY CITY CODE SECTIONS 301.35, 301.52, 303.98, 331.35, 331.38, 333.01, 333.03, 335.10, 337.10, 337.16, 337.22, 337.26, 337.30, 341.01, 341.04, 341.05, 351.04; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the duly elected governing authority of the City of New Albany, Ohio is authorized by ORC § 715.01 to adopt ordinances relating to its property, affairs, and local government; and

WHEREAS, the city wishes to adopt these updates to the appropriate sections to maintain consistency with State of Ohio and code.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Albany, Counties of Franklin, and Licking, State of Ohio, that:

Section 1: The Code of Ordinances of the City of New Albany, Ohio is hereby amended by adding the provisions as provided under Section 6, below.

Section 2: The addition, amendment, or removal of New Albany City Code Sections when passed in such form as to indicate the intention of the council to make the same a part of the city's municipal code shall be deemed to be incorporated in the municipal code, so that reference to the municipal code includes the additions, amendments, and removals.

Section 3. The codifier (meaning the person, agency or organization authorized to prepare the supplement to the Code of Ordinances of the City of New Albany, Ohio) is authorized to exclude and omit any provisions of this ordinance that are inapplicable to the city's municipal code.

Section 4. Supplementation of Code

- (a) In preparing a supplement to city's municipal code, all portions of this ordinance which have been repealed shall be excluded from the city's municipal code by the omission thereof from reprinted pages.
- (b) When preparing a supplement to the city's municipal code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in this ordinance and parts of this ordinance

included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the city's municipal code printed in the supplement, and make changes in such catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the city's municipal code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the city's municipal code which embody the substantive sections or the ordinance incorporated into the code); and
 - (5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the city's municipal code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the city's municipal code.
- (c) In preparing a supplement to the city's municipal code, the pages of a supplement shall be so numbered that they will fit properly into the city's municipal code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the city's municipal code will be current through the date of the adoption of the latest ordinance included in the supplement.

Section 5. Provisions of Section 6 that duplicate or track state statutes which do not become effective until after the effective date of this ordinance, shall not take effect until such statutes take effect.

Section 6. The sections attached hereto as Exhibit A are new or have been amended with new matter in the Municipal Code, and are hereby approved, adopted and enacted.

Section 7. If any section, subsection, sentence, clause, phrase or portion of the ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances. The governing authority of the City of New Albany, Ohio hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be

declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

Section 8. All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 9. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section 10. Pursuant to Article VI, Section 6.07(B) of the City of New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2024.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared: 04/03/2024

Introduced: 04/16/2024

Revised:

Adopted:

Effective:

Exhibit A – O-13-2024

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~~-child care home to transport children from the child ~~day~~-care center or type A family ~~day~~-child 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~~-child care home" have the same meanings as in ORC 5104.01.

State Law reference— ORC 4511.01(F), (FFF)

301.52 WHEELCHAIR, MOTORIZED.

"Motorized wheelchair" means any self-propelled vehicle designed for, and used by, a ~~handicapped~~ with a disability person and that is incapable of a speed in excess of eight (8) miles per hour.

303.98 ENHANCED PENALTY FOR COMMITTING MOVING VIOLATION WHILE DISTRACTED IF DISTRACTION IS CONTRIBUTING FACTOR TO COMMISSION OF VIOLATION.

(a) As used in this section and each section referenced in division (b) of this section, all of the following apply:

(1) "Distracted" means doing either of the following while operating a vehicle:

A. Using an an handheld ~~handheld~~ electronic wireless communications device, as defined in ORC. 4511.204, ~~except when utilizing any of the following:~~

~~1. The device's speakerphone function;~~

~~2. A wireless technology standard for exchanging data over short distances;~~

~~3. A "voice-operated or hands-free" device that allows the person to use the electronic wireless communications device without the use of either hand except to activate, deactivate, or initiate a feature or function;~~

~~4. Any device that is physically or electronically integrated into the motor vehicle. in violation of that section;~~

B. Engaging in any activity that is not necessary to the operation of a vehicle and impairs, or reasonably would be expected to impair, the ability of the operator to drive the vehicle safely.

- (2) "Distracted" does not include operating a motor vehicle while wearing an earphone or earplug over or in both ears at the same time. A person who so wears earphones or earplugs may be charged with a violation of ORC 4511.84.
- (3) "Distracted" does not include conducting any activity while operating a utility service vehicle or a vehicle for or on behalf of a utility, provided that the driver of the vehicle is acting in response to an emergency, power outage, or a circumstance affecting the health or safety of individuals.

As used in division (a)(3) of this section:

A. "Utility" means an entity specified in division (A), (C), (D), (E), or (G) of ORC 4905.03.

B. "Utility service vehicle" means a vehicle owned or operated by a utility.

- (b) If an offender violates ORC 4511.03, 4511.051, 4511.12, 4511.121, 4511.132, 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, 4511.44, 4511.441, 4511.451, 4511.46, 4511.47, 4511.54, 4511.55, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, or 4511.73 or a substantially equivalent municipal ordinance while distracted and the distracting activity is a contributing factor to the commission of the violation, the offender is subject to the applicable penalty for the violation and, notwithstanding ORC 2929.28, is subject to an additional fine of not more than one hundred dollars (\$100.00) as follows:

- (1) Subject to Traffic Rule 13, if a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the aforementioned sections of the Revised Code that indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the offender may enter a written plea of guilty and waive the offender's right to contest the ticket, citation, or summons in a trial provided that the offender pays the total amount of the fine established for the violation and pays the additional fine of one hundred dollars (\$100.00).

In lieu of payment of the additional fine of one hundred dollars (\$100.00), the offender instead may elect to attend a distracted driving safety course, the duration and contents of which shall be established by the director of public safety. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation, but shall not be required to pay the additional fine of one hundred dollars (\$100.00), so long as the offender submits to the court both the offender's payment in full and such written evidence within ninety days of underlying violation that resulted in the imposition of the additional fine under division (b) of this section.

- (2) If the offender appears in person to contest the ticket, citation, or summons in a trial and the offender pleads guilty to or is convicted of the violation, the court, in addition to all other penalties provided by law, may impose the applicable penalty for the violation and may impose the additional fine of not more than one hundred dollars (\$100.00).

If the court imposes upon the offender the applicable penalty for the violation and an additional fine of not more than one hundred dollars (\$100.00), the court shall inform the offender that, in lieu of payment of the additional fine of not more than one hundred dollars (\$100.00), the offender instead may elect to attend the distracted driving safety course described in division (b)(1) of this section. If the offender elects the course option and attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the

fine established for the violation, but shall not be required to pay the additional fine of not more than one hundred dollars (\$100.00), so long as the offender submits to the court the offender's payment and such written evidence within ninety days of underlying violation that resulted in the imposition of the additional fine under division (b) of this section.

(C) If a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the sections of the Revised Code listed in division (B) of this section that indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the officer shall do both of the following:

- (1) Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency;
- (2) Ensure that such report indicates the offender's race.

(Ord. O-22-2020 . Passed 11-17-20.)

State Law reference— ORC 4511.991

331.35 OCCUPYING A MOVING TRAILER OR MANUFACTURED OR MOBILE HOME.

(a) ~~No~~ Except as provided in division (B) of this section, no person shall occupy any travel trailer, fifth wheel trailer or manufactured or mobile home while it is being used as a conveyance upon a street or highway.

(b) Division (A) of this section does not apply to a fifth wheel trailer when both of the following apply:

- (1) Any child riding in the fifth wheel trailer is properly secured in the manner provided in section 4511.81 of the Revised Code.
- (2) The operator of the vehicle towing the fifth wheel trailer has some means of viable communication with the passengers riding in the trailer.

As used in this division, “viable communication” includes a cellular or satellite telephone, a radio, or any other similar electronic wireless communications device.

(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.

(2) The offense established under this section is a strict liability offense and section 2901.20 of the Revised Code does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

State Law reference— ORC 4511.701

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~~ Department of Education and Workforce, 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~~ department, 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

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.
 - 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 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. 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 (1) 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 (1) 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 determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (d)(4)B. of this section.

(e) 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 (o) 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 O.V.I. 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 (1) 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 (1) violation of division (a) ~~or (b)~~ of this section, or one (1) 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, or an offender who previously has been convicted of or pleaded guilty to a specification of the type described in ORC 2941.1413 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 4511.19(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 sixty-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 (1) 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) A court may order an offender to reimburse a law enforcement agency for any costs incurred by the agency with respect to a chemical test or tests administered to the offender if all of the following apply:
- A. The offender is convicted of or pleads guilty to a violation of division (A) of this section.
 - B. The test or tests were of the offender's whole blood, blood serum or plasma, or urine.
 - C. The test or tests indicated that the offender had a prohibited concentration of a controlled substance or a metabolite of a controlled substance in the offender's whole blood, blood serum or plasma, or urine at the time of the offense.
- (9) As used in division (g) of this section, "electronic monitoring" has the same meaning as in 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). The court may grant limited driving privileges relative to the suspension under ORC 4510.021 and 4510.13. The court may grant unlimited driving privileges with an ignition interlock device relative to the suspension and may reduce the period of suspension as authorized under ORC 4510.022. If the court grants unlimited driving privileges under ORC 4510.022, the court shall suspend any jail term imposed under division (H)(1) of this section as required under that section.

- (2) If, within one (1) year of the offense, the offender previously has been convicted of or pleaded guilty to one (1) 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). The court may grant limited driving privileges relative to the suspension under ORC 4510.021 and 4510.13.
- ~~(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in 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).~~
- (43) 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.

(Ord. O-22-2020 . Passed 11-17-20.)

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 reference— 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

333.03 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 or established 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)(10) and (11) hereof. The end of every school zone may be marked by a sign

Codifier: Added material is underlined, deleted material is struck through.

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 all of the following: any school chartered under ORC 3301.16; any nonchartered school that during the preceding year filed with the Department of Education and Workforce 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; any 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. Any preschool education program operated by an educational service center that is located on a street or highway with a speed limit of forty-five (45) miles per hour or more, when the educational service center in writing requests that the county engineer of the county in which the program is located create a school zone at the location of that program. Upon receipt of such a written request, the county engineer shall create a school zone at that location by erecting the 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, except as provided in divisions (b)(12), (13), (14), (15), and (16) of this section;
 - (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, highways as provided in division (b)(9) and (10) of this section, and highways, expressways, and freeways as provided in divisions (b)(12), (13) (14), and (16) 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) Thirty-five (35) miles per hour on through highways, except state routes, that are outside municipal corporations and that are within a national park with boundaries extending through two (2) or more counties;

- (10) Sixty (60) miles per hour on two-lane state routes outside municipal corporations as established by the director under division (h)(2) of this section;
 - (11) 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)(14) and (16) of this section;
 - (12) Sixty (60) miles per hour on rural expressways with traffic control signals and on all portions of rural divided highways, except as provided in divisions (b)(13) and (14) of this section;
 - (13) Sixty-five (65) miles per hour on all rural expressways without traffic control signals;
 - (14) Seventy (70) miles per hour at all times on all rural freeways;
 - (15) Fifty-five (55) miles per hour on all portions of freeways or expressways in congested areas as determined by the director and that are located within a municipal corporation or within an interstate freeway outerbelt, except as provided in division (b)(16) of this section;
 - (16) Sixty-five (65) miles per hour on all portions of freeways or expressways without traffic control signals in urbanized areas.
- (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) (b)(8), and (9) 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 (1) violation of this section for the same conduct, although violations of more than one (1) 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 two-lane state route as provided in division (b)(10) of this section and upon a highway, expressway, or freeway as provided in divisions (b)(12), (13), (14), and (16) of this section;
 - (2) At a speed exceeding sixty (60) miles per hour upon a two-lane state route as provided in division (b)(10) of this section and upon a highway as provided in division (b)(13) of this section;
 - (3) At a speed exceeding sixty-five (65) miles per hour upon an expressway as provided in division (b)(13) or upon a freeway as provided in division (b)(16) of this section, except upon a freeway as provided in division (b)(14) of this section;
 - (4) At a speed exceeding seventy (70) miles per hour upon a freeway as provided in division (b)(14) of this section;
 - (5) At a speed exceeding the posted speed limit upon a highway, expressway, or freeway for which the Director has determined and declared a speed limit pursuant to ORC 4511.21(I)(2) or (L)(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) (b)(8), or (9) 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) 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) (b)(8),

or (9) 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) hereof. If the court finds a violation of subsection (b)(1)A., (b)(2), (b)(3), (b)(4), (b)(6), (b)(7) (b)(8), or (9) 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) 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) 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 (1) 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 (1) 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 (1) 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. Division (j)(2) of this section does not apply if penalties may be imposed under division (j)(1)(B) or (C) of this section.
- (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.

- (4) If the offender commits the offense while distracted and the distracting activity is a contributing factor to the commission of the offense, the offender is subject to the additional fine established under section 303.98.

(Ord. O-22-2020 . Passed 11-17-20; Ord. O-36-2022 . Passed 11-15-2022)

State Law reference— ORC 4511.20; ORC 4511.21(A)—(G); ORC 4511.21(O); ORC 4511.21(P)

335.10 EXPIRED OR UNLAWFUL LICENSE PLATES.

- (a) Except as otherwise provided by ORC 4503.103, 4503.107, 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 minor misdemeanor.
- (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.

(Ord. O-22-2020 . Passed 11-17-20.)

State Law reference— ORC 4503.11(A); ORC 4503.11(D); ORC 4549.11(A); ORC 4549.11(B); ORC 4549.12(A); ORC 4549.12(B)

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 As used in Section 337.01(e), 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. ORC sections 4513.11 to 4513.115~~
- (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 (a) "Boat trailer" means any vehicle and maintenance work in an area guarded by a flagperson, or where flares are used, or when operating or traveling within the limits used exclusively to transport a boat between a place of a construction area designated by the Ohio Director of Transportation, or the Municipal or County Engineer storage and a marina, 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 drawn or towed on a street or highway for a distance of no more than ten miles and 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.~~

~~(f b) As used in this section, "boat trailer Slow-moving vehicle" means any vehicle designed and used exclusively to transport "SMV" mean a boat between a place of storage and a marina trailer, unit of farm machinery, road construction machinery, or in and around a marina, when drawn or towed on a street other machinery designed by the manufacturer to operate at a speed of twenty-five (25) miles per hour 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. "Slow-moving vehicle" and "SMV" do not include bicycle, motorized bicycle, electric bicycle, or animal-drawn vehicle.~~

(j) Lights and Reflector Requirements for Multi-wheel Agricultural Tractors or Farm Machinery.

(1) A. At the times specified in ORC 4513.03, no person shall operate either of the following vehicles unless it is equipped with and displays the lamps described in division (B) of this section:

(i) A vehicle not specifically required to be equipped with lamps or other lighting devices by ORC 4513.03 to 4513.10;

(ii) A vehicle referred to in division (G) of ORC 4513.02.

(B) Vehicles described in division (A) of this section shall be equipped with both of the following:

(i) At least one lamp displaying a white light visible from a distance of not less than one thousand feet to the front of the vehicle;

(ii) Two lamps displaying red light visible from a distance of not less than one thousand feet to the rear of the vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than one thousand feet to the rear and two red reflectors visible from all distances of six hundred feet to one hundred feet to the rear when illuminated by the lawful lower beams of headlamps.

~~(C)(i) 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 At the times specified in ORC 4513.03, no person shall operate a multi-wheel agricultural tractor model year 2001 or earlier on a street or highway unless it or a substantially equivalent municipal ordinance, at a minimum shall be is equipped with and displays 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. of the following:~~

~~Ba. The Flashing lamps displaying amber light, visible to the front and ear. The lamps need not flash simultaneously and need not flash in conjunction with any directional signals of the tractor.~~

~~b. Amber reflectors, all visible to the front;~~

~~c. Red reflectors, all visible to the rear.~~

~~Cii. The lamps and reflectors required by division (j)(1)A. of this section and their placement shall meet standards and specifications contained in rules Rules adopted by the Director of Public Safety in accordance with ORC Ch. 119. The rules under this section governing the amber lamps, amber and reflectors, and red reflectors described in division (D)(i) in this section 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/SAE S279.10 OCT 98, Lighting and Marking of Agricultural Equipment on Highways.~~

- (~~2~~ D) ~~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~~ At the times specification in ORC 4513.03 or a substantially equivalent municipal ordinance ~~no person shall operate a unit of farm machinery model year 2002 or later on a street or highway unless it shall be~~ is equipped with and displays 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 S279.10 OCT 98, Lighting and Marking of Agricultural Equipment on Highways, or any subsequent revisions of that standard.
- (E) Any unit of farm machinery designed by its manufacturer to operate at a speed of twenty-five miles per hour or greater or any SMV may be equipped with and display a red flashing light that is visible from a distance of not less than one thousand feet to the rear at all times specified in ORC 4513.03. When a double-faced light is used, it shall display amber light to the front and red light to the rear.
- (~~3~~ F) ~~The lights~~ Lights and reflectors required by ~~under divisions (C) and (D) of this section and authorized under division (E) (j)(1) of this section are in addition to the slow moving vehicle emblem and other lights required or permitted by ORC 4513.11 or this section or ORC section 4513.17, or a substantially equivalent municipal ordinance, to be displayed on farm machinery being operated or traveling on a street or highway.~~
- (4 G) ~~No person~~ The Direction of Public Safety shall operate any unit of farm machinery on a street or highway or cause any unit of farm machinery to travel on a street adopt rules in accordance with ORC Chapter 119 that establishes standards and specifications for lamps and reflectors required or highway in violation of divisions (j)(1) or (j)(2) of authorized by this section. Lamps and reflectors required or authorized by this section shall meet those stands and specifications.
- (H) This section does not apply to bicycle, motorized bicycle, electric bicycle, or animal-drawn vehicle.

(~~k~~ L) Whoever violates this section is guilty of a minor misdemeanor.

State Law reference— ORC 4513.11; ~~ORC 4513.11(F)~~, 4513.111(E)

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 (1) 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.
- (2) The prohibition in division (c)(1) of this section does not apply to any of the following:

- A. Emergency vehicles, road service vehicles servicing or towing a disabled vehicle, stationary waste collection vehicles actively collecting garbage, refuse, trash, or recyclable materials on the roadside, 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, and similar equipment operated by the Department or local authorities, provided such vehicles are 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;
- B. Vehicles or machinery permitted by Section 337.10 to have a flashing red light;
- C. Farm machinery and vehicles escorting farm machinery, provided such machinery and vehicles are equipped with and display, when used on a street or highway, a flashing, oscillating, or rotating amber light. Farm machinery also may display the lights described in Section 337.10;
- D. A funeral hearse or funeral escort vehicle, provided that the funeral hearse or funeral escort vehicle is equipped with and displays, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating, or rotating purple or amber light.
- E. A vehicle being used for emergency preparedness, response, and recovery activities, as those terms are defined in section 5502.21 of the Revised Code, that is equipped with and displays, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating, or rotating amber or red and white light, provided that the vehicle is being operated by a person from one of the following and the vehicle is clearly marked with the applicable agency's or authority's insignia:
- (i) The Ohio emergency management agency;
- (ii) A countywide emergency management agency established under section 5502.26 of the Revised Code;
- (iii) A regional authority for emergency management established under section 5502.27 of the Revised Code;
- (iv) A program for emergency management established under section 5502.271 of the Revised Code.
- (3) Division (c)(1) of this section does not apply to animal-drawn vehicles subject to ORC 4513.114.
- (d) (1) Except a person operating a public safety vehicle, as defined in Section 301.27, an emergency management agency vehicle, as described in division (c)(2)(C) of this section, 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.
- (2) 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.

(Ord. O-36-2022 . Passed 11-15-2022)

State Law reference— ORC 4513.17

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 either of the device meets both of the following following apply to the device:

A. It is a “vehicle safety technology” as defined in 49 C.F.R. 393.5. and complies with 49 C.F.R. 393.60(e)(1)(ii).

B. It does not restrict the vehicle operator's sight lines to the road and highway signs and signals, and it does not conceal the vehicle identification number.

~~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 either of the device meets both of the following following apply to the device:

A. It is a “vehicle safety technology” as defined in 49 C.F.R. 393.5. and complies with 49 C.F.R. 393.60(e)(1)(ii).

B. It does not restrict the vehicle operator's sight lines to the road and highway signs and signals, and it is mounted not more than eight and one-half inches below the upper edge of the windshield.

~~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

337.26 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-child~~ 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)

337.30 VEHICLES TRANSPORTING PRESCHOOL CHILDREN.

- (a) No person shall operate any motor vehicle owned, leased or hired by a nursery school, kindergarten or ~~day~~ child 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 reference— ORC 4513.99; ORC 4513.182

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)(1) "Commercial driver's license." A license issued in accordance with ORC Ch. 4506 that authorizes an individual to drive a commercial motor vehicle. Except as otherwise specifically provided, "commercial driver's license" includes "enhanced commercial driver's license."
- (2) "Enhanced commercial driver's license" means a commercial driver's license issued in accordance with ORC 4507.021 and ORC 4506.072 that denotes citizenship and identity and is approved by the United States secretary of homeland security or other designated federal agency for purposes of entering the United States.
- (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 gross vehicle weight or combined gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more, provided that the gross vehicle weight or gross vehicle weight rating of the vehicle or vehicles being towed is in excess of ten thousand (10,000) pounds;
 - (2) Any single vehicle with a gross vehicle weight or gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more;
 - (3) Any single vehicle or combination of vehicles that is not a Class A or Class B vehicle, but is designed to transport sixteen (16) or more passengers including the driver;
 - (4) Any school bus with a gross vehicle weight or 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, or commercial driver's license temporary instruction permit, holder's self-certified status as described in ORC 4506.10(A)(1);
 - (2) A change to a lesser class of vehicle;
 - (3) Removal of commercial driver's license privileges from the individual's driver's license.
- (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, harmful intoxicant as defined in ORC 2925.01, 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 (1) 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 (1) 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) 1. Texting while driving;
 2. Using a handheld mobile telephone.

B. It is not a serious traffic violation if the person was texting or using a handheld mobile telephone to contact law enforcement or other emergency services.
 - (3) A conviction arising from the operation of any motor vehicle that involves any of the following:
 - A. A single charge of any speed in excess of the posted speed limit by 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, any law of another state, or any ordinance or resolution of a political subdivision of this state to another state that meets both of the following requirements:
 1. It related to traffic control, other than a parking violation;

2. It is determined to be a serious traffic violation by the United States Secretary of Transportation and is designated by the Ohio Director of Public Safety 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 or gaseous materials within a tank or tanks that are either permanently or temporarily attached to the vehicle or its chassis and have an individual rated capacity of more than one hundred nineteen (119) gallons and an aggregate rated capacity of one thousand (1,000) gallons or more. "Tank vehicle" does not include a commercial motor vehicle transporting an empty storage container tank that is not designed for transportation has a rated capacity of one thousand (1,000) gallons or more, and is temporarily attached to a flatbed trailer.
- (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, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication. "Texting" does not include the following:
- (1) Voice commands to initiate, receive, or terminate a voice communication using a mobile telephone;
 - (2) Inputting, selecting, or reading information on a global positioning system or navigation system;
 - (3) Pressing a single button to initiate or terminate a voice communication using a mobile telephone;
- or
- (4) Using, for a purpose that is not otherwise prohibited by law, a device capable of performing multiple functions, such as a fleet management system, a dispatching device, a mobile telephone, a citizens band radio, or a music player.
- (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. Texting while driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and is stopped in a location where the vehicle can safely remain stationary.
- (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.

(Ord. O-22-2020 . Passed 11-17-20.)

State Law reference— ORC 4506.01

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 (1) 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;
 - (5) Knowingly provide false statements or engage in any fraudulent act related to testing for a commercial driver's license as required in ORC 4506.09.
- (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 or commercial driver's license temporary instruction permit. No person shall drive a commercial motor vehicle in violation of a restriction established under this section that appears on the person's commercial driver's license or commercial driver's license temporary instruction permit.
- (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.
- (4) Whoever violates division (a)(5) of this section is guilty of falsification, a misdemeanor of the third degree. In addition, the provisions of ORC 4507.19 apply.

(Ord. O-22-2020 . Passed 11-17-20.)

State Law reference— ORC 4506.04(A), (B), (C); ORC 4506.12(I), (J)

341.05 CRIMINAL OFFENSES.

- (a) No person who holds a commercial driver's license or commercial driver's license temporary instruction permit or who operates a motor vehicle for which a commercial driver's license or permit is required shall do any of the following:
- (1) Drive a commercial motor vehicle while having a measurable or detectable amount of alcohol or of a controlled substance in the person's blood, breath, or urine;
 - (2) Drive a commercial motor vehicle while having an alcohol concentration of 0.04% or more by whole blood or breath;
 - (3) Drive a commercial motor vehicle while having an alcohol concentration of .048% or more by blood serum or blood plasma;

- (4) Drive a commercial motor vehicle while having an alcohol concentration of .056% or more by urine;
- (5) Drive a motor vehicle while under the influence of a controlled substance;
- (6) Drive a motor vehicle in violation of 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 driver's license or permit or other commercial driving privileges are revoked, suspended, cancelled or disqualified;
- (10) Cause a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the offenses of aggravated vehicular homicide, vehicular homicide and vehicular manslaughter;
- (11) Fail to stop after an accident in violation of 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;
- (14) Use a commercial motor vehicle in the commission of a violation of ORC 2905.32 or any other substantially equivalent offense established under federal law or the laws of another state.

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.

(c) The offenses established under this section are strict liability offenses and ORC 2901.20 does not apply. The designation of these offenses as strict liability offenses shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(Ord. O-22-2020 . Passed 11-17-20.)

State Law reference— ORC 4506.15

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)(A) Except as provided in division (1)(b) of this subsection, 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.
- (B) The operator of a motorcycle may back the motorcycle into an angled parking space so that when the motorcycle is parked it is facing in a direction other than the direction of travel on the side of the road or highway.
- (2) The operator of a motorcycle may back the motorcycle into a parking space that is located on the side of, and parallel to, a road or highway. The motorcycle may face any direction when so parked. Not more than two (2) motorcycles at a time shall be parked in a parking space as described in division (C)(2) of this section irrespective of whether or not the space is metered.
- (d) Notwithstanding any 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~~ Accessible 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~~ an accessible 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 accessible parking location if the motor vehicle is not legally entitled to be parked in that location.
- (f) (1) A. No person shall stop, stand or park any motor vehicle at ~~special accessible~~ accessible parking locations provided under subsection (e) hereof, or at ~~special accessible~~ 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 (1) of the following applies:
1. The motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a valid removable windshield placard or ~~special accessible~~ accessible license plates;
 2. The motor vehicle is being operated by or for the transport of a ~~handicapped~~ person with a disability and is displaying a parking card or ~~special handicapped accessible~~ accessible license plates.
- B. Any motor vehicle that is parked in a ~~special~~ an accessible 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.

- C. If a person is charged with a violation of subsection (f)(1)A.1. or 2. 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 (1) of the criteria contained in ORC 4503.44(A)(1).
- (2) No person shall stop, stand, or park any motor vehicle in an area that is commonly known as an access aisle, which area is marked by diagonal stripes and is located immediately adjacent to a ~~special~~ an accessible parking location provided under division (e) of this section or at a ~~special~~ an accessible clearly marked parking location provided in or on a privately owned parking lot, parking garage, or other parking area and designated in accordance with that division.
- (g) When a motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk and is displaying a removable windshield placard or a ~~temporary removable windshield placard~~ or ~~special~~ accessible license plates, or when a motor vehicle is being operated by or for the transport of a ~~handicapped~~ person with a disability and is displaying a parking card or ~~special~~ handicapped accessible 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~~ accessible parking locations are required to be designated in accordance with division (e) of this section shall fail to properly mark the ~~special~~ accessible parking locations in accordance with that division or fail to maintain the markings of the ~~special~~ accessible 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~~ accessible license plates if the parking card or ~~special~~ accessible 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~~ Person with a disability" means any person who has lost the use of one (1) or both legs, or one (1) 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~~ disabling 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~~ Accessible license plates" and "removable windshield placard" mean any license plates ~~or~~ , standard removable windshield placard, permanent 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.1. or 2. 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.1. or 2. 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.3. 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~~ accessible 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.2. 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~~ accessible 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.1. or 2. of this section be sentenced to any term of imprisonment.
- C. An arrest or conviction for a violation of subsection (f)(1)A.1. or 2. of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.
- D. The Clerk of the Court shall pay every fine collected under divisions (k)(2) and (3) of this section to the municipality. Except as provided in division (k)(2) of this section, the municipality shall use the fine moneys it receives under divisions (k)(2) and (3) of this section to pay the expenses it incurs in complying with the signage and notice requirements contained in division (e) of this section. The municipality may use up to fifty percent (50%) of each fine it receives under divisions (k)(2) and (3) of this section to pay the costs of educational, advocacy, support and assistive technology programs for persons with disabilities, and for public improvements within the municipality that benefit or assist persons with disabilities, if governmental agencies or nonprofit organizations offer the programs.
- (3) Whoever violates division (f)(2) of this section shall be fined not less than two hundred fifty (250) nor more than five hundred dollars (\$500.00).

In no case shall an offender who violates division (f)(2) of this section be sentenced to any term of imprisonment. An arrest or conviction for a violation of division (f)(2) of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

- (4) Whoever violates division (h) of this section shall be punished as follows:
- A. Except as otherwise provided in division (k)(4) of this section, the offender shall be issued a warning.
 - B. If the offender previously has been convicted of or pleaded guilty to a violation of division (h) of this section or of a municipal ordinance that is substantially equivalent to that division,

the offender shall not be issued a warning but shall be fined not more than twenty-five dollars (\$25.00) for each parking location that is not properly marked or whose markings are not properly maintained.

(Ord. O-22-2020 . Passed 11-17-20.)

State Law reference— ORC 4511.69

Section 7. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule, or regulation adopted or issued in pursuance thereof shall be punished by a fine or imprisonment, or both. The fine shall not exceed five hundred dollars (\$500.00) and imprisonment shall not exceed six months.

Section 8. If any section, subsection, sentence, clause, phrase or portion of the Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances. The governing authority of the City of New Albany, Ohio hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

Section 9. All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 10. The adoption date of this ordinance is _____ and the effective date of this ordinance shall be _____.

ORDAINED this ____ day of _____, _____.

City of New Albany, Ohio

Mayor

ATTEST:

City Clerk

I certify that the foregoing ordinance was duly passed by the governing authority of the said City Council on this ____ day of _____.

City Clerk

APPROVED AS TO FORM:

City Attorney



ORDINANCE O-14-2024

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF NEW ALBANY, OHIO TO PROVIDE AMENDMENTS TO GENERAL OFFENSES NEW ALBANY CITY CODE SECTIONS 509.04, 509.06, 513.01, 513.03, 513.04, 513.12, 517.08, 521.10, 521.11, 525.05, 525.13, 525.15, 529.02, 529.07, 533.01, 533.06, 533.07, 537.06, 537.07, 537.15, 537.16, 537.19, 537.20, 537.23, 545.05, 549.02, 549.04, 549.10, 549.11; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the duly elected governing authority of the City of New Albany, Ohio is authorized by ORC § 715.01 to adopt ordinances relating to its property, affairs, and local government; and

WHEREAS, the city wishes to adopt these updates to the appropriate sections to maintain consistency with State of Ohio and modernize city code.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Albany, Counties of Franklin, and Licking, State of Ohio, that:

Section 1: The Code of Ordinances of the City of New Albany, Ohio is hereby amended by adding the provisions as provided under Section 6, below.

Section 2: The addition, amendment, or removal of New Albany City Code Sections when passed in such form as to indicate the intention of the council to make the same a part of the city's municipal code shall be deemed to be incorporated in the municipal code, so that reference to the municipal code includes the additions, amendments, and removals.

Section 3. The codifier (meaning the person, agency or organization authorized to prepare the supplement to the Code of Ordinances of the City of New Albany, Ohio) is authorized to exclude and omit any provisions of this ordinance that are inapplicable to the city's municipal code.

Section 4. Supplementation of Code

- (a) In preparing a supplement to city's municipal code, all portions of this ordinance which have been repealed shall be excluded from the city's municipal code by the omission thereof from reprinted pages.
- (b) When preparing a supplement to the city's municipal code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in this ordinance and parts of this ordinance

included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the city's municipal code printed in the supplement, and make changes in such catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the city's municipal code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the city's municipal code which embody the substantive sections or the ordinance incorporated into the code); and
 - (5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the city's municipal code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the city's municipal code.
- (c) In preparing a supplement to the city's municipal code, the pages of a supplement shall be so numbered that they will fit properly into the city's municipal code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the city's municipal code will be current through the date of the adoption of the latest ordinance included in the supplement.

Section 5. Provisions of Section 6 that duplicate or track state statutes which do not become effective until after the effective date of this ordinance, shall not take effect until such statutes take effect.

Section 6. The sections attached hereto as Exhibit A are new or have been amended with new matter in the Municipal Code, and are hereby approved, adopted and enacted.

Section 7. If any section, subsection, sentence, clause, phrase or portion of the ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances. The governing authority of the City of New Albany, Ohio hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be

declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

Section 8. All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 9. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section 10. Pursuant to Article VI, Section 6.07(B) of the City of New Albany Charter, this ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2022.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared:	04/03/2024
Introduced:	04/16/2024
Revised:	
Adopted:	
Effective:	

Exhibit A – O-14-2024

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; ~~Except as otherwise provided in this division, disturbing a lawful meeting is a misdemeanor of the fourth degree. Disturbing a lawful meeting is a misdemeanor of the first degree if either of the following applies:~~

(1) The violation is committed with the intent to disturb or disquiet any assemblage of people met for religious worship at a tax-exempt place of worship, regardless of whether the conduct is within the place at which the assemblage is held or is on the property on which that place is located and disturbs the order and solemnity of the assemblage.

(2) The violation is committed with the intent to prevent, disrupt, or interfere with a virtual meeting or gathering of people for religious worship, through use of a computer, computer system, telecommunications device, or other electronic device or system, or in any other manner.

(c) As used in this section:

(1) “Computer,” “computer system,” and “telecommunications device” have the same meanings as in ORC 2913.01.

(2) “Virtual meeting or gathering” means a meeting or gathering by interactive video conference or teleconference, or by a combination thereof.

State Law reference— ORC 2917.12

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~~ director of education and workforce 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~~ chancellor of higher education 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

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 any controlled substance, marihuana, cocaine, L.S.D., heroin, any fentanyl-related compound, and hashish and except as provided in division (2), (5), or (6) 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;
 - 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.
- (6) For any compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and any other compound, mixture, preparation, or substance included in schedule III, schedule IV, or schedule V, if the defendant is charged with a violation of ORC 2925.11 and the sentencing provisions set forth in divisions (c)(10)(b) and (c)(11) of that section will not apply regarding the defendant and the violation, the bulk amount of the controlled substance for purposes of the violation is the amount specified in division (d)(1), (2), (3), (4), or (5) of this section for the other schedule III, IV, or V controlled substance that is combined with the fentanyl-related compound.

- (d) "Certified grievance committee." A duly constituted and organized committee of the Ohio State Bar Association or of one (1) 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 (1) 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 prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or may be dispensed only upon a prescription.
 - B. Under 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~~ Person with a drug dependency." 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." a resin or a preparation of a resin to which both the following apply:
- (1) It is contained in or derived from any part of the plant of the genus cannabis, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.
 - (2) It has a delta-9 tetrahydrocannabinol concentration of more than three-tenths per cent.
- "Hashish" does not include a hemp byproduct in the possession of a licensed hemp processor under Chapter 928. of the Revised Code, provided that the hemp byproduct is being produced, stored, and disposed of in accordance with rules adopted under section 928.03 of the Revised Code.
- (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) "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.
- (dd) "L.S.D." Lysergic acid diethylamide.
- (ee) "Major drug offender." Has the same meaning as in ORC 2929.01.
- (ff) "Mandatory prison term." Has the same meaning as in ORC 2929.01.
- (gg) "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.

- (hh) "Manufacturer." A person who manufactures a controlled substance, as "manufacture" is defined by this section.
- (ii) "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."
- (jj) "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.
- (kk) "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.
- (ll) "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.
- (mm) "Person." Means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.
- (nn) "Pharmacist." A person licensed under ORC Ch. 4729 to engage in the practice of pharmacy.
- (oo) "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.
- (pp) "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.
- (qq) "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.
- (rr) "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.
- (ss) "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.
- (tt) "Professionally licensed person." Any of the following:

- (1) 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;
- (2) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under ORC Ch. 4703;
- (3) 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;
- (4) A person licensed under ORC Ch. 4707;
- (5) A person who has been issued a certificate of registration as a registered barber under ORC Ch. 4709;
- (6) 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;
- (7) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, advanced cosmetologist's license, advanced hair designer's license, advanced manicurist's license, advanced esthetician's license, advanced natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license, or tanning facility permit under ORC Ch. 4713;
- (8) 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;
- (9) 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;
- (10) 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;
- (11) A person who has been licensed to practice optometry or to engage in optical dispensing under ORC Ch. 4725;
- (12) A person licensed to act as a pawnbroker under ORC Ch. 4727;
- (13) A person licensed to act as a precious metals dealer under ORC Ch. 4728;
- (14) A person licensed under ORC Ch. 4729 as a pharmacist or pharmacy intern or registered under that chapter as a registered pharmacy technician, certified pharmacy technician, or pharmacy technician trainee;
- (15) A person licensed under ORC Ch. 4729 as a manufacturer of dangerous drugs, outsourcing facility, third-party logistics provider, repackager of dangerous drugs, wholesale distributor of dangerous drugs, or terminal distributor of dangerous drugs;
- (16) A person who is authorized to practice as a physician assistant under ORC Ch. 4730;
- (17) A person who has been issued a license to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery under ORC Ch. 4731 or has been issued a certificate to practice a limited branch of medicine under that chapter;

- (18) A person licensed as a psychologist, independent school 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 environmental health specialist under ORC Ch. ~~4736~~ 3776;
- (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 licensed professional clinical counselor, licensed professional counselor, social worker, independent social worker, independent marriage and family therapist, or marriage and family therapist, or registered as a social work assistant under 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 issued a home inspector license under ORC Ch. 4764;
- (37) A person who has been admitted to the bar by order of the Ohio Supreme Court in compliance with its prescribed and published rules.
- (uu) "Public premises." Any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.
- (vv) "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.

- (ww) "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.
- (xx) "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.
- (yy) "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~~ Director of Education and Workforce 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.
- (zz) "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.
- (aaa) "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~~ Director of Education and Workforce 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.
- (bbb) "Standard Pharmaceutical Reference Manual." The current edition, with cumulative changes if any, of references that are approved by the State of Board of Pharmacy.
- (ccc) "Theft offense." Has the same meaning as in ORC 2913.01.
- (ddd) "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.
- (eee) "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.
- (fff) "Delta-9 tetrahydrocannabinol" has the same meaning as in ORC 928.01.
- (ggg) An offense is "committed in the vicinity of a substance addiction services provider or a recovering addict" if either of the following apply:
- (1) The offender commits the offense on the premises of a substance addiction services provider's facility, including a facility licensed prior to June 29, 2019, under ORC 5119.391 to provide methadone treatment or an opioid treatment program licensed on or after that date under ORC 5119.37, or within five hundred (500) feet of the premises of a substance addiction

services provider's facility and the offender knows or should know that the offense is being committed within the vicinity of the substance addiction services provider's facility.

- (2) The offender sells, offers to sell, delivers, or distributes the controlled substance or controlled substance analog to a person who is receiving treatment at the time of the commission of the offense, or received treatment within thirty (30) days prior to the commission of the offense, from a substance addiction services provider and the offender knows that the person is receiving or received that treatment.

(hhh) "Substance addiction services provider" means an agency, association, corporation or other legal entity, individual, or program that provides one (1) or more of the following at a facility:

- (1) Either alcohol addiction services, or drug addiction services, or both such services that are certified by the director of mental health and addiction services under ORC 5119.36;
- (2) Recovery supports that are related to either alcohol addiction services, or drug addiction services, or both such services and paid for with federal, state, or local funds administered by the department of mental health and addiction services or a board of alcohol, drug addiction, and mental health services.

(iii) "Premises of a substance addiction services provider's facility" means the parcel of real property on which any substance addiction service provider's facility is situated.

(jjj) "Alcohol and drug addiction services" has the same meaning as in ORC 5119.01.

(kkk) "Overdose reversal drug" means both of the following:

(1) Naloxone;

(2) Any other drug that the state board of pharmacy, through rules adopted in accordance with ORC Chapter 119., designates as a drug that is approved by the federal food and drug administration for the reversal of a known or suspected opioid-related overdose.

(Ord. O-21-2020 . Passed 11-17-20; Ord. O-35-2022 . Passed 11-15-2022.)

State Law reference— ORC 2925.01, 3719.01, 3719.011, 3719.013, 4729.01

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) A. 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.

B. If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration;

C. Any person who sells, offers for sale, prescribes, dispenses or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug and Cosmetic Act", 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;

- D. Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs if the prescription was issued for a legitimate medical purpose and not altered, forged, or obtained through deception or commission of a theft offense.

As used in division (b)(1)D. of this section, "deception" and "theft offense" have the same meanings as in ORC 2913.01.

(2) A. As used in division (b)(2) of this section:

1. "Community addiction services provider" has the same meaning as in ORC 5119.01.
2. "Community control sanction" ~~and "drug treatment program"~~ has the same meanings as in ORC 2929.01.
3. "Health care facility" has the same meaning as in ORC 2919.16.
4. "Minor drug possession offense" means a violation of this section that is a misdemeanor or a felony of the fifth degree.
5. "Post-release control sanction" has the same meaning as in ORC 2967.28.
6. "Peace officer" has the same meaning as in ORC 2935.01.
7. "Public agency" has the same meaning as in ORC 2930.01.
8. "Qualified individual" means a person who ~~is not on community control or post release control and is a person~~ acting in good faith who seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person who experiences a drug overdose and who seeks medical assistance for that overdose, or a person who is the subject of another person seeking or obtaining medical assistance for that overdose as described in division (b)(2)B. of this section.
9. "Seek or obtain medical assistance" includes, but is not limited to, making a 9-1-1 call, contacting in person or by telephone call an on-duty peace officer, or transporting or presenting a person to a health care facility.

B. Subject to division (b)(2)~~FE~~. of this section, a qualified individual shall not be arrested, charged, prosecuted, convicted, or penalized pursuant to this chapter for a minor drug possession offense or a violation of ORC 2925.12, 2925.14(C)(1), or 2925.141 if all of the following apply:

1. The evidence of the obtaining, possession, or use of the controlled substance or controlled substance analog, drug abuse instruments, or drug paraphernalia that would be the basis of the offense was obtained as a result of the qualified individual seeking the medical assistance or experiencing an overdose and needing medical assistance.
2. Subject to division (b)(2)~~GF~~. of this section, within thirty (30) days after seeking or obtaining the medical assistance, the qualified individual seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional.
3. Subject to division (b)(2)~~GF~~. of this section, the qualified individual who obtains a screening and receives a referral for treatment under division (b)(2)B.2. of this section, upon the request of any prosecuting attorney, submits documentation to the prosecuting attorney that verifies that the qualified individual satisfied the requirements of that division. The documentation shall be limited to the date and time of the screening obtained and referral received.

~~C. If a person is found to be in violation of any community control sanction and if the violation is a result of either of the following, the court shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty specified in ORC 2929.13, 2929.15, or 2929.25, whichever is applicable, after which the court has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty with the mitigating factor specified in any of those applicable sections:~~

- ~~1. Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;~~
- ~~2. Experiencing a drug overdose and seeking medical assistance for that overdose or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (b)(2)B. of this section.~~

~~D. If a person is found to be in violation of any post release control sanction and if the violation is a result of either of the following, the court or the parole board shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty specified in ORC 2929.141 or 2967.28, whichever is applicable, after which the court or the parole board has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty with the mitigating factor specified in either of those applicable sections:~~

- ~~1. Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;~~

~~2. Experiencing a drug overdose and seeking medical assistance for that emergency or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (b)(2)B. of this section~~ If a person who is serving a community control sanction or is under a sanction on post-release control acts pursuant to division (2)(B)2 of this section, ORC 2929.141(B), ORC 2929.15(B)(2), ORC 2929.25(D)(3), or ORC 2967.28(F)(3) applies to the person with respect to any violation of the sanction or post-release control sanction based on a minor drug possession offense, as defined in ORC 2925.11, or a violation of ORC 2925.12, 2925.14(C)(1), or 2925.141.

~~E~~D. Nothing in division (b)(2)B. of this section shall be construed to do any of the following:

1. Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regards to a defendant who does not qualify for the protections of division (b)(2)B. of this section or with regards to any crime other than a minor drug possession or a violation of ORC 2925.12, 2925.14(C), or 2925.141 offense committed by a person who qualifies for protection pursuant to division (b)(2)B. of this section ~~for a minor drug possession offense;~~
2. Limit any seizure of evidence or contraband otherwise permitted by law;
3. Limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in that division;
4. Limit, modify, or remove any immunity from liability available pursuant to law in effect prior to the September 13, 2016 to any public agency or to an employee of any public agency.

~~EE~~. Division (b)(2)B. of this section does not apply to any person who twice previously has been granted an immunity under division (b)(2)B. of this section. No person shall be granted an immunity under division (b)(2)B. of this section more than two (2) times.

~~GF~~. Nothing in this section shall compel any qualified individual to disclose protected health information in a way that conflicts with the requirements of the "Health Insurance Portability and Accountability Act of 1996," 104 Pub. L. No. 191, 110 Stat. 2021, 42 U.S.C. 1320d et seq., as amended, and regulations promulgated by the United States department of health and human services to implement the act or the requirements of 42 C.F.R. Part 2.

(c) Whoever violates subsection (a) hereof is guilty of one (1) 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 (1) 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 may suspend the offender's driver's or commercial driver's license or permit for not more than five (5) years. However, if the offender pleaded guilty to or was convicted of a violation of ORC 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five (5) years. If applicable, the court also shall do the following:
- (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) 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.
- (f) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to the September 13, 2016 may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of ORC 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under division (f) of this section, the sentencing court, in its discretion, may terminate the suspension.

(Ord. O-21-2020 . Passed 11-17-20.)

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)(1) 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.

Codifier: Added material is underlined, deleted material is struck through.

- (2) ORC 2925.11(B)(2) applies with respect to a violation of this section when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.
- (c) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, violation of this section is a misdemeanor of the first degree.
- (d) (1) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five (5) years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of ORC 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five (5) years.
- (2) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section ~~prior to the effective date of this amendment~~ September 13, 2016, may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of ORC 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under division (d)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.

(Ord. O-21-2020 . Passed 11-17-20.)

State Law reference— ORC 2925.12

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, except for those exempted in division (d)(4) of this section;
 - (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 divisions (d)(2) (d)(3) and (d)(4) 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 marihuana.
- (3) ORC Division (B)(2) of section 2925.11 applies with respect to a violation of division (c)(1) of this section when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.
- (4) Division (c)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound.
- (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)(A) Division (e) of this section applies with respect to any drug paraphernalia that was used or possessed in violation of this section.
- (B) ORC 2925.11(B)(2) applies with respect to a violation of this section when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.
- (6)(A) Whoever violates division (h)(3) of this section is guilty of illegal use or possession of marihuana drug paraphernalia, a minor misdemeanor.

(B) Arrest or conviction for a violation of division (C) 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.

- (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

517.08 RAFFLES.

(a) (1) Subject to division (a)(2) of this section, a person or entity may conduct a raffle to raise money for the person or entity and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit if the person or entity is any of the following:

(A) Exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(B) A school district, community school established under ORC Chapter 3314., STEM school established under ORC Chapter 3326., college-preparatory boarding school established under ORC Chapter 3328., or chartered nonpublic school;

(C) Subject to subsection (a)(2) of this section, a person or entity that is exempt ~~Exempt~~ from federal income taxation under subsection 501(a) and is described in subsection 501(c)(~~34~~), ~~501(c)(4)~~, 501(c)(6), 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 person or entity and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.~~

(2) If a person or entity 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,~~ this section conducts a raffle, the person or entity 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 (1) 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.

(Ord. O-35-2022 . Passed 11-15-2022)

State Law reference— ORC 2915.092

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~~ persons with mental illness; 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~~ the person has a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing ~~himself or herself~~ self to other persons, except when seeking medical aid.
- (b) No person, having charge or care of a person whom ~~he or she~~ the person having charge or care knows or has reasonable cause to believe ~~is suffering from~~ has 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 reference— ORC 3701.81; ORC 3701.99(C)

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 persons with drug dependent persons dependencies 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 reference— ORC 2921.13; ORC 2921.22

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

525.15 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, the police dog or horse 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, at the time the physical harm is caused or attempted, is assisting or serving a person who is blind, deaf, or hearing impaired; or ~~mobility impaired a person at the time the physical harm is caused or attempted~~ with a mobility impairment.
 - (2) The dog, at the time the physical harm is caused or attempted, is not assisting or serving person who is blind, deaf, or hearing impaired; or ~~mobility impaired a person at the time the physical harm is caused or attempted~~ with a mobility impairment, 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 person who is blind, deaf, or hearing impaired; or ~~a person with a mobility impaired person impairment~~ 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 person who is blind, deaf, or hearing impaired; or a person with a mobility impaired person impairment 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 person who is blind, deaf, or hearing impaired; or a person with a mobility impaired person impairment 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 person who is blind, deaf, or hearing impaired; or a person with a mobility impaired person impairment 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 person who is blind, deaf, or hearing impaired; or a person with a mobility impaired person impairment 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 "person with a mobility impaired person impairment" 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

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~~ 2953.33. 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 reference— ORC 4301.63; ORC 4301.69; ORC 4301.633; ORC 4301.634; ORC 4301.99(C), (E), (F), (I)

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, D-9, 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;

F. Beer or intoxicating liquor to be consumed in an outdoor area described in ORC 4303.188(B)(1).

- (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 reference— ORC 4301.62; ORC 4301.99(A)

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.
 - (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.
- (q) "Place where a person has a reasonable expectation of privacy" means a place where a reasonable person would believe that the person could fully disrobe in private.
- (r) "Private area" means the genitals, pubic area, buttocks, or female breast below the top of the areola, where nude or covered by an undergarment.

State Law reference— ORC 2907.01

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 knowingly commit trespass or otherwise ~~surreptitiously invade the privacy of another to~~ secretly or surreptitiously videotape, film, photograph, broadcast, stream, or otherwise record ~~the other~~ another person, in a ~~state of nudity~~ place where a person has a reasonable expectation of privacy, for the purpose of viewing the private areas of that person.
- (c) No person, ~~for the purpose of sexually arousing or gratifying himself or herself,~~ shall knowingly commit trespass or otherwise ~~surreptitiously invade the privacy of another to~~ secretly or surreptitiously videotape, film, photograph, broadcast, stream, or otherwise record ~~the other~~ another person, in a ~~state of nudity~~ place where a person has a reasonable expectation of privacy, for the other person is for the purpose of viewing the private areas of the a minor.
- (d) No person shall secretly or surreptitiously videotape, film, photograph, or otherwise record another person above, 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, defendant, defendant's attorney, alleged juvenile offender, or alleged juvenile offender's attorney 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 or prosecution 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.

Codifier: Added material is underlined, deleted material is struck through.

- (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.
- (7) "Alleged juvenile offender" has the same meaning as in ORC 2930.01.

State Law reference— ORC 2907.10

537.06 MENACING.

(a)(1) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

(2) No person shall knowingly place or attempt to place another in reasonable fear of physical harm or death by displaying a deadly weapon, regardless of whether the deadly weapon displayed is operable or inoperable, if either of the following applies:

(a) The other person is an emergency service responder, the person knows or reasonably should know that the other person is an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against an emergency service responder.

(b) The other person is a family or household member or co-worker of an emergency service responder, the person knows or reasonably should know that the other person is a family or household member or co-worker of an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against a family or household member or co-worker of an emergency service responder.

(B) Whoever violates this section is guilty of menacing.

Except as otherwise provided in this division, 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 victim of the offense is an emergency service responder in the performance of the responder's official duties, menacing is one of the following:

(1) Except as otherwise provided in division (b)(2) of this section, a misdemeanor of the first degree;

~~(b)2) 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 or an emergency service responder, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties or to the responder's performance of the responder's official duties, menacing is a felony and shall be prosecuted under appropriate state law.~~

(c) A prosecution for a violation of this section does not preclude a prosecution of a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section of the Revised Code, or both sections. However, if an offender is convicted of or pleads guilty to a violation of this section and also is convicted of or pleads guilty to a violation of ORC 2903.13 based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under ORC 2941.25.

(d) As used in this section:

“Emergency service responder,” “family or household member,” and “co-worker” have the same meanings as in ORC 2903.13.

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~~ child with a mental or physical disability 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~~ disability 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~~ child with a mental or physical disability 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)

537.15 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) Violating a protection order is a felony of the fifth degree if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for any of the following:
 - A. A violation of a protection order issued or consent agreement approved pursuant to ORC 2151.34, 2903.213, 2903.214, 2919.26, or 3113.31;
 - B. Two (2) or more violations of ORC 2903.21, 2903.211, 2903.22, or 2911.211, or any combination of those offenses, that involved the same person who is the subject of the protection order or consent agreement;
 - C. One or more violations of this section.
 - (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) In a prosecution for a violation of this section, it is not necessary for the prosecution to prove that the protection order or consent agreement was served on the defendant if the prosecution proves that the defendant was shown the protection order or consent agreement or a copy of either or a judge, magistrate, or law enforcement officer informed the defendant that a protection order or consent agreement had been issued, and proves that the defendant recklessly violated the terms of the order or agreement.

- (e) As used in this section, "protection order issued by a court of another state" means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. "Protection order issued by a court of another state" does not include an order for support or for custody of a child.

(Ord. O-21-2020 . Passed 11-17-20.)

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. "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.
- (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. In the case of cigarettes, a person who is:

- ~~1~~a. Licensed as a cigarette wholesale dealer under ORC 5743.15;
- ~~2~~b. Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;
- ~~3~~c. An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;
- ~~4~~d. An operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555;
- ~~5~~e. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;

6f. A department, agency, instrumentality, or political subdivision of the Federal government or of this State;

7g. A person having a consent for consumer shipment issued by the Tax Commissioner under ORC 5743.71.

2. In the case of electronic smoking devices or vapor products, a person who is:

a. Licensed as a distributor of tobacco or vapor products under ORC 5743.61;

b. A retail dealer of vapor products, as defined in ORC 5743.01(C)(3), that is not licensed as a vapor distributor, as long as the tax levied by ORC 5743.51, 5743.62, or 5743.63, as applicable, has been paid;

c. An operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555;

d. An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;

e. A department, agency, instrumentality, or political subdivision of the federal government or of this state.

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, electronic smoking devices, vapor products, 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, electronic smoking devices, vapor products, 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, electronic smoking devices, vapor products, 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, electronic smoking devices, vapor products, 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, electronic smoking devices, vapor products, other tobacco products and/or alternative nicotine products.

(4) No person engaged in the business of selling cigarettes, electronic smoking devices, vapor products, other tobacco products, and/or alternative nicotine products who ships or causes to be shipped cigarettes, electronic smoking devices, vapor products, 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, electronic smoking devices, vapor products, are shipped with the words "cigarettes", "tobacco products", ~~and/or~~ "alternative nicotine products" , "electronic smoking devices," and/or "vapor products" as applicable.

(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.)

State Law reference— ORC 2927.021; ORC 2927.022; ORC 2927.023; ORC 2919.25

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~~ the person's child with a mental or physical disability 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) (1) 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:
- A. Is legally obligated to support; or
 - B. Was legally obligated to support, and an amount for support:
 1. Was due and owing prior to the date the person's duty to pay current support terminated; and
 2. Remains unpaid.
 - (2) The period of limitation under ORC 2901.13 applicable to division (b)(1)(B) of this section shall begin to run on the date the person's duty to pay current support terminates.
- (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~~ had a mental or physical disability and was 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.

(Ord. O-21-2020 . Passed 11-17-20.)

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~~ child with a mental or physical disability 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~~ persons with mental illnesses or an institution for persons with intellectual disabilities.
- (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.

Codifier: Added material is underlined, deleted material is struck through.

(Ord. O-21-2020 . Passed 11-17-20.)

State Law reference— ORC 2919.23

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~~ person with a functional impairment 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~~ Person with a functional impairment" means any person who has a physical or mental impairment that prevents ~~him or her~~ the person from providing for ~~his or her~~ the person's own care or protection, or whose infirmities caused by aging prevent ~~him or her~~ the person from providing for ~~his or her~~ the person's own care or protection.

- (b) No caretaker shall knowingly fail to provide a ~~functionally impaired person~~ person with a function impairment 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~~ person with a function impairment when such failure results in physical harm or serious physical harm to the ~~functionally impaired person~~ person with a function impairment.
- (c) No caretaker shall recklessly fail to provide a ~~functionally impaired person~~ person with a function impairment 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~~ person with a function impairment when such failure results in serious physical harm to the ~~functionally impaired person~~ person with a function impairment.
- (d) Whoever violates subsection (b) hereof is guilty of knowingly failing to provide for a ~~functionally impaired person~~ person with a function impairment, a misdemeanor of the first degree, provided the ~~functionally impaired person~~ person with a function impairment 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 ~~functionally impaired person~~ person with a function impairment, a misdemeanor of the second degree, provided the ~~functionally impaired person~~ person with a function impairment 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 reference— ORC 2903.10; ORC 2903.16

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;

Codifier: Added material is underlined, deleted material is struck through.

- (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~~ misdemeanor 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)

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, before or at the time a law enforcement officer asks if the person is carrying a concealed handgun, knowingly disclose that the person then is carrying a concealed handgun, provided that it is not a violation of this division if the person fails to disclose that fact to an officer during the stop and the person already has notified another officer of that fact during the same stop;
 - (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 has been issued a concealed handgun license that is valid at the time of the alleged carrying or possession of a handgun or who, at the time of the alleged carrying or possession of a handgun is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in ORC 2923.125(G)(1), 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) (1) 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.
- (2) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B)(1) of this section as it existed prior to ~~the effective date of this amendment~~ June 13, 2022, the person may file an application under ORC ~~2953.37~~ 2953.35 requesting the expungement of the record of conviction.
- (f) (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this division or divisions (f)(2), (6), and (7) of this section, carrying concealed weapons in violation of division (a) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division or divisions (f)(2), (6), and (7) of this section, if the offender previously has been convicted of a violation of this section or any substantially equivalent state law or municipal ordinance or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of division (a) of this section is

a felony to be prosecuted under appropriate state law. Except as otherwise provided in divisions (f)(2) and (6) 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) A person shall not be arrested for a violation of subsection (a)(2) of this section solely because the person does not promptly produce a valid concealed handgun license. If a person is arrested for a violation of subsection (a)(2) of this section and is convicted of or pleads guilty to the violation, 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 and (f)(2)B and (f)(6) of this section do not apply, the offender shall be punished under division (f)(2) or (7) of this section.
- (3) Carrying concealed weapons in violation of division (b)(1) of this section is a misdemeanor of the second degree.
- (4) Reserved.
- (5) Carrying concealed weapons in violation of division (b)(3) of this section is a felony to be prosecuted under appropriate state law.
- (6) If a person being arrested for a violation of division (A)(2) of this section is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in ORC 2923.125(G)(1), 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 division. If the person is not able to promptly produce a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in ORC 2923.125(G)(1) and if the person is not in a place described in ORC 2923.126(B), the officer shall issue a citation and the offender shall be assessed a civil penalty of not more than five hundred dollars (\$500.00). The citation shall be automatically dismissed and the civil penalty shall not be assessed if both of the following apply:

- A. Within ten (10) days after the issuance of the citation, the offender presents a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in ORC 2923.125(G)(1), which were both valid at the time of the issuance of the citation to the law enforcement agency that employs the citing officer.
 - B. At the time of the citation, the offender was not knowingly in a place described in ORC 2923.126(B).
- (7) If a person being arrested for a violation of division (A)(2) of this section is knowingly in a place described in ORC 2923.126(B)(5) and is not authorized to carry a handgun or have a handgun concealed on the person's person or concealed ready at hand under that division, the penalty shall be as follows:
- A. Except as otherwise provided in this division, if the person produces a valid concealed handgun license within ten (10) days after the arrest and has not previously been convicted or pleaded guilty to a violation of division (A)(2) of this section, the person is guilty of a minor misdemeanor;
 - B. Except as otherwise provided in this division, if the person has previously been convicted of or pleaded guilty to a violation of division (A)(2) of this section, the person is guilty of a misdemeanor of the fourth degree;
 - C. Except as otherwise provided in this division, if the person has previously been convicted of or pleaded guilty to two (2) violations of division (A)(2) of this section, the person is guilty of a misdemeanor of the third degree;
 - D. Except as otherwise provided in this division, if the person has previously been convicted of or pleaded guilty to three (3) or more violations of division (A)(2) of this section, or convicted of or pleaded guilty to any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is a dangerous ordnance, the person is guilty of a misdemeanor of the second degree.
- (g) If a law enforcement officer stops a person to question the person regarding a possible violation of this section, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, ORC 2923.163(B) applies.
- (h) For purposes of this section, "deadly weapon" or "weapon" does not include any knife, razor, or cutting instrument if the instrument was not used as a weapon.

(Ord. O-35-2022 . Passed 11-15-2022.)

State Law reference— ORC 2923.12

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 (1) 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 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 all-purpose vehicle as defined in ORC 1531.01 from private or publicly owned lands or from a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife.
- 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 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 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 all-purpose vehicle as defined in ORC 1531.01 on private or publicly owned lands or on or in a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife.
- (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~~ 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~~ 2953.35 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 (1) 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 (1) 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 (1) 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; Ord. O-21-2020 . Passed 11-17-20; Ord. O-35-2022 . Passed 11-15-2022.)

State Law reference— ORC 2923.16

549.10 POSSESSING REPLICIA 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 ordnance and is acting within the scope of the officer's, agent's, or employee's duties;
- B. 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;
- C. Any person not described in divisions (b)(1)A to B of this section 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, provided both of the following apply:
 1. Either the person has successfully completed the curriculum, instruction, and training established under ORC 5502.703, or the person has received a certificate of having satisfactorily completed an approved basic peace officer training program or is a law enforcement officer;
 2. The board or governing body has notified the public, by whatever means the affected school regularly communicates with the public, that the board or governing body has authorized one (1) or more persons to go armed within a school operated by the board or governing authority.

A district board or school governing body that authorizes a person under division C.2 of this section shall require that person to submit to an annual criminal records check conducted in the same manner as ORC 3319.39 or 3319.391.

D. 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 has been issued [a] concealed handgun license that is valid at the time of the conveyance, attempted conveyance, or possession 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~~ Director of Education and Workforce 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 ORC 4510.02(A)(4) and shall deny the offender the issuance of any permit or license of that type during the period of the suspension.
- If the offender is not a resident of this State, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in ORC 4510.02(A)(4).
- (2) If the offender shows good cause why the court should not suspend one (1) of the types of licenses, permits, or privileges specified in subsection (d)(1) of this section or deny the issuance of one (1) 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.

(Ord. O-35-2022 . Passed 11-15-2022)

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 license is valid 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.
- (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 if the licensee's carrying the concealed handgun is 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- child~~ care home, or a type B family ~~day- child~~ care home, except that this division does not prohibit a licensee who resides in a type A family ~~day- child~~ care home, or a type B family ~~day- child~~ 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 and ORC section 2923.1214, 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 has been issued a license under that section that is valid at the time in question.
- (5) A. A peace officer has the same right to carry a concealed handgun in this State as a person who was issued a concealed handgun license under ORC 2923.125, provided that the officer when carrying a concealed handgun under authority of this division is carrying validating identification. For purposes of reciprocity with other States, a peace officer shall be considered to be a licensee in this State.
 - B. A tactical medical professional who is qualified to carry firearms while on duty under ORC 109.771 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.
- (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 has been issued a license issued under that section that is valid at the time in question. 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 (1) 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.
 - D. "Tactical medical professional" has the same meaning as in ORC 109.71.
 - E. "Validating identification" means a photographic identification issued by the agency for which an individual serves as a peace officer that identifies the individual as a peace officer of the agency.

(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.

(Ord. O-35-2022 . Passed 11-15-2022)

(Ord. O-21-2020 . Passed 11-17-20; Ord. O-35-2022 . Passed 11-15-2022.)

State Law reference— ORC 2923.126; ORC 2923.1211(B), (C); ORC 2923.1212

Section 7. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule, or regulation adopted or issued in pursuance thereof shall be punished by a fine or imprisonment, or both. The fine shall not exceed five hundred dollars (\$500.00) and imprisonment shall not exceed six months.

Codifier: Added material is underlined, deleted material is struck through.

Section 8. If any section, subsection, sentence, clause, phrase or portion of the Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances. The governing authority of the City of New Albany, Ohio hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

Section 9. All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 10. The adoption date of this ordinance is _____ and the effective date of this ordinance shall be _____.

ORDAINED this ____ day of _____, _____.

City of New Albany, Ohio

Mayor

ATTEST:

City Clerk

I certify that the foregoing ordinance was duly passed by the governing authority of the said City Council on this ____ day of _____, _____.

City Clerk

APPROVED AS TO FORM:

City Attorney



RESOLUTION R-10-2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COLLECTIVE BARGAINING SUCCESSOR AGREEMENT AS A RESULT OF THE LABOR NEGOTIATIONS WITH THE FRATERNAL ORDER OF POLICE, CAPITAL CITY LODGE #9 REGARDING WAGES, HOURS, TERMS AND CONDITIONS OF EMPLOYMENT FOR SWORN OFFICERS BELOW THE RANK OF SERGEANT

WHEREAS, the City of New Albany (“City”) and the Fraternal Order of Police – Capital City Lodge No. 9 (“Lodge”) are parties to a Collective Bargaining Agreement which expired December 31, 2023, and proceeded with labor negotiations to the point of a tentative agreement; and

WHEREAS, on March 8, 2024, the parties reached a tentative successor agreement for a Collective Bargaining Agreement regarding wages, hours, terms and conditions of employment for full-time sworn officers below the rank of sergeant effective January 1, 2024, to December 31, 2026 (“Agreement”) with wages retroactive to January 1, 2024; and

WHEREAS, Council has determined that the Agreement between the City and the Lodge should be ratified.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. Council accepts the tentative Successor Agreement, Exhibit A, and authorizes the city manager to enter into the Agreement with the FOP regarding wages, hours, terms and conditions of employment for all full-time police officers below the rank of sergeant.

Section 2. This Successor Agreement shall supersede and replace all applicable state and local laws, which it has the authority to supersede and replace.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4. Pursuant to Article 6.07 of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2024.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Benjamin S. Albright
Law Director

Legislation dates:

Prepared: 03/21/2024

Introduced: 04/16/2024

Revised:

Adopted:

Effective:

Exhibit A - R-10-2024

**COLLECTIVE BARGAINING
AGREEMENT**

between

The City of New Albany, Ohio

and

Fraternal Order of Police, Capital City Lodge No. 9

January 1, 2024-December 31, 2026

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ARTICLE 1

AGREEMENT

Section 1.1 Agreement. This Agreement is between the City of New Albany, as employer, hereinafter referred to as "City" or "Department," and the Fraternal Order of Police, Capital City Lodge No. 9, hereinafter referred to as the "Lodge."

Section 1.2 Purpose. This Agreement is made for the purpose of setting forth the understandings and agreements between the City and the Lodge governing the wages, hours, terms and conditions of employment for those employees (hereinafter referred to as "Members" or "Member") included in the bargaining units identified herein, regardless of whether the employee is a member of the Lodge.

Section 1.3 References. Should any part of this Agreement be held invalid by operation of law or by final order issued by any tribunal of competent jurisdiction, or should compliance with or enforcement of any part of this Agreement be restrained by any such tribunal pending a final determination as to its validity, such invalidation or temporary restraint shall not invalidate or affect the remaining portions hereof or the application of such portions to persons or circumstances other than those to whom or to which such invalidation is applicable. Should such events take place, and upon written request by either the City or the Lodge to the other, the City and the Lodge shall meet within thirty (30) days of receipt of the written request in an attempt to modify the invalidated provisions by good faith negotiations.

No representative of the City or the Lodge shall make or ask a Member to make any written or verbal agreement which would conflict with this Agreement. No Member shall ask any representative of the City to make any written or verbal agreement which would conflict with this Agreement.

Unless otherwise specifically provided in this Agreement, no changes in this Agreement shall be negotiated during its duration unless there is written accord by and between the City and the Lodge make such change(s). To be incorporated within this Agreement, any changes must be in writing and signed by the authorized representatives of the City and the Lodge.

ARTICLE 2

RECOGNITION

Section 2.1 Recognition. The City recognizes the Lodge as the sole and exclusive representative of all Members in any and all matters relating to wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of this Agreement and for the administration of this Agreement.

Section 2.2 Bargaining Unit. The bargaining unit ("Bargaining Unit") covered by this Agreement shall consist of all full-time sworn police officers below the rank of Sergeant who are employed by the City. References throughout this Agreement to Member or Members

shall mean employees within the bargaining unit, regardless of membership in the Lodge, unless specified otherwise.

ARTICLE 3

LODGE SECURITY

Section 3.1 Dues Deduction. The City agrees to deduct Lodge membership dues in the amount certified by the Lodge to the City, from the bi-weekly pay of any Lodge member requesting the same in writing. The City also agrees to deduct Lodge Initiation fees and assessments, in the amount certified by the Lodge to the City, in the month which such fees and assessments are due, from the bi-weekly pay of any appropriate Lodge member.

If a deduction is desired, the Lodge Member shall sign a payroll deduction form which shall be furnished to the Financial Secretary of the Lodge. Once each calendar month, a check in the aggregate amount of the deductions made for that calendar month, together with a listing of the Lodge members for whom deductions were made, shall be forwarded to the Lodge. Nothing herein shall prohibit Lodge members covered by this Agreement from submitting dues directly to the Lodge.

The City shall make available, at the request of the Lodge, one additional payroll deduction for the bargaining unit, provided that the City's payroll accounting system possesses sufficient capacity and capability for additional deductions.

The Lodge agrees to hold the City harmless should any deductions be found to have been unlawfully, illegally or improperly taken. Further, to the extent permitted by law, the Lodge agrees to indemnify the City and at the City's request, to provide legal counsel in defending any action claiming that a deduction has been unlawfully, illegally or improperly made and will further reimburse the City for any payments made by the City as a result of any finding by an administrative agency or court of law that it has unlawfully, illegally or improperly made deductions.

Section 3.2 Fair Share Fee. As a consequence of the decision in *Janus v. AFSCME, Council 31, et al.* (decided June 27, 2018), the City and the Lodge have agreed to remove prior provisions pertaining to the payment of fair share fees by non-members; and, the City and Lodge agree that fair share fees may no longer be deducted from non-members' pay. The City and the Lodge agree further that, in the event there are changes in the law that permit the collection of fees or other financial support from non-members of the Lodge through payroll deduction, the Lodge and the City shall enter into good faith negotiations to address and permit the collection of such fees and/or financial support through payroll deduction.

Section 3.3 Bulletin Boards. The Lodge shall be permitted to maintain a Lodge bulletin board at Department headquarters. The location of the board will be determined by the Chief and will be reasonably accessible to all Members. Said board shall be provided by the Lodge at its own expense. Lodge bulletins and Lodge material will be permitted to be posted on this board. Non-bargaining unit members shall not be permitted to remove, add to, or alter the material posted on this board. Any material which contains obscene, racially, or sexually offensive

information shall be brought to the attention of a Grievance Representative for immediate removal.

Section 3.4 Meeting Locations. The Lodge shall be permitted, upon providing prior notification to the Chief, to hold meetings for Members at police headquarters. The notification required under this Section shall be in writing, shall be delivered to the Chief or designee at least twenty-four (24) hours prior to the time of the meeting, and shall state the date, time, and requested location of the meeting.

The City agrees to hold the requested location open for use by the Lodge on the date and at the time specified in the Lodge's notification to the Chief. However, if it is not practicable for the City to provide the requested location to the Lodge, the City will so notify the Lodge and make every effort to provide for an alternate meeting location in another City building, room, or facility. No Member shall attend the above-referenced meetings while on duty without receiving prior approval from the Chief or designee.

Section 3.5 Ballot Boxes. The Lodge shall be permitted, upon prior notification to the Chief, to place a ballot box at Department headquarters for a period of up to seventy-two (72) hours for the purpose of collecting Members' ballots on contract ratification and fact-finding votes. Such box shall be the property of the Lodge and neither the ballot box nor its contents shall be subject to the Department's review.

Section 3.6 Use of Internal Mail and E-Mail System. The Lodge shall be permitted to utilize the internal mail system and e-mail system for the purpose of providing information to Members pertaining to Lodge business or bargaining unit representation. The Lodge agrees that the use of these systems will be reasonable and limited to providing information that is necessary for the normal conduct of Lodge business or bargaining unit representation. The Lodge also agrees and understands that with respect to the City's e-mail system, there shall be no reasonable expectation of privacy and that all e-mail is subject to monitoring by the City. All e-mail usage by the Lodge under this Section shall be in a manner consistent with the City's policies regarding employee e-mail usage and such e-mail messages may be monitored by the City for specific reasons, such as evaluating the effectiveness of the operation of the e-mail system, finding lost messages, investigation of suspected criminal acts, breach of security or other policies, and recovery from system failures. The City shall refrain from accessing a Member's e-mail, unless reasons for doing so are consistent with the City's need for supervision, control, and efficiency in the workplace. The Lodge also understands that e-mail may be a public record subject to disclosure in the same manner as other records of the City, pursuant to applicable law. All internal mail placed into the mail system by the Lodge shall be the property of the Member to whom it is addressed, and such mail shall not be subject to the City's review, so long as the mail is sealed, addressed to the Member only and marked "Personal and Confidential."

ARTICLE 4

NON-DISCRIMINATION

Section 4.1 Joint Pledge. Pursuant to state and federal law, neither the City nor the Lodge shall discriminate against any Member in the application of this Agreement in violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act and the Ohio Civil Rights Act. The provisions of this Agreement shall be applied equally to all Members.

Section 4.2 Employer Pledge. The City agrees not to interfere with the right of a Member to become and/or remain a Lodge member. There shall be no disparate treatment, interference, restraint or coercion by the City or any representative of the City against any Member because of Lodge membership or because of any lawful activity engaged in by a Lodge member in an official capacity on behalf of the Lodge.

Section 4.3 Lodge Pledge. The Lodge, within the terms of its Constitution and By-Laws, agrees not to interfere with the desires of any Member to become and remain a member of the Lodge, or to refrain from Lodge membership. The Lodge agrees to fairly represent all employees of the bargaining unit subject to the provisions and procedures of applicable state law.

ARTICLE 5

MANAGEMENT RIGHTS

Section 5.1 Management Rights. Except as expressly modified or restricted by a specific provision of this Agreement or by law, all statutory and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in the City, including, but not limited to, the rights, in accordance with its sole and exclusive judgment and discretion:

To determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the City, standards of services, its overall budget, utilization of technology, and organizational structure;

1. To direct, supervise, evaluate or hire employees;
2. To maintain and improve the efficiency and effectiveness of its operations;
3. To determine the overall methods, process, means, or personnel by which operations are to be conducted;
4. To reprimand, suspend, discipline, demote, or discharge for just cause, or layoff, transfer, assign, schedule, promote, or retain employees;
5. To determine the size and adequacy of the work force;
6. To determine the overall mission of the employer as a unit of government;

7. To effectively manage the work force;
8. To take whatever actions are necessary or advisable to determine, manage, fulfill, and carry out the mission of the public employer as a governmental unit;
9. To determine qualifications and assign and direct work;
10. To determine the amount and forms of compensation for employees;
11. To set the starting and quitting time and the number of hours and shifts to be worked;
12. To expand, reduce, alter, combine, transfer, assign, or cease any job, department, operation, or service;
13. To control and regulate the use of facilities, equipment, and other property of the City;
14. To introduce new or improved methods of equipment;
15. To determine the number, location and operation of departments, divisions, and all other units of the City;
16. To issue, amend and revise policies, rules, regulations, and practices.

The City's failure to exercise any right, prerogative, or function hereby reserved to it, or the City's exercise of any such right, prerogative, or function in a particular way, shall not be considered a waiver of the City's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the express provisions of this Agreement.

ARTICLE 6

LABOR/MANAGEMENT MEETINGS

Section 6.1 Meetings. In the interest of sound labor/management relations, to discuss pending issues and/or problems, and to promote a more harmonious labor/management relationship, up to five (5) representatives of the City shall meet with up to five (5) representatives of the Lodge, up to three (3) of whom may be members of the Bargaining Unit. Members may adjust their work schedules (including work hours and/or work days) with supervisory approval, provided that said changes do not create any overtime and/or compensatory time obligation to the City. In addition, attendance of Members at said meetings cannot take any shift below minimum staffing levels as determined by the Department. These meetings will be held, upon written request of the City or the Lodge, at mutually agreeable dates and times. Unless waived by agreement, these meetings will be held on a semi-annual basis, but may be held more often by mutual agreement.

An agenda will be exchanged by the parties at least three (3) calendar days in advance of the scheduled meeting with a list of matters to be discussed in the meeting and the names of the Lodge

and City representatives who will be attending. All matters on the agenda will be discussed. By mutual agreement, the City and the Lodge may waive the exchange of an agenda.

The purpose of such meeting shall be to:

1. Discuss the administration of this Agreement;
2. Discuss grievances, when such discussions are mutually agreed to by the parties;
3. Disseminate general information of interest to the City and the Lodge;
4. Consider and discuss health and safety matters relating to Members; and
5. Discuss any other items affecting the labor/management relationship.

ARTICLE 7

BARGAINING UNIT BUSINESS

Section 7.1 Grievance Representatives. The bargaining unit shall select two (2) Grievance Representatives, one of whom shall be designated as the Grievance Chairperson. The selection of these representatives shall be approved by the Lodge President who shall notify the City Manager of their selection and any change thereto.

One (1) Grievance Representative, upon giving reasonable notice, and upon receiving approval from Grievance Representative's supervisor, shall be released with pay during regular working hours to investigate grievances, to consult with the City in addressing labor/management issues, to process grievances, or to assist in the settlement of disputes. Permission to perform these functions shall not be unreasonably denied.

If written notice is provided to the Chief at least ten (10) days in advance, up to two (2) Grievance Representatives will be released from duty to attend Lodge training sessions and conferences, provided that the Grievance Representatives must use their own accrued paid leave (other than sick leave) to attend such training sessions and conferences. Such a release shall not create any overtime and/or compensatory time obligation to the City and shall not take any shift below minimum staffing levels as determined by the City.

Section 7.2 Negotiating Committee. Lodge Team members may be permitted to attend Team negotiation meetings and negotiation preparation sessions during their duty hours, provided such attendance does not interfere with the Member's regular police duties, does not create any overtime and/or compensatory time obligation to the City, and it does not take any shift below minimum staffing levels as determined by the Department. Time spent by a Member attending Lodge negotiation meetings and negotiation preparation sessions, outside their scheduled shift, shall not constitute hours worked.

ARTICLE 8

GRIEVANCE PROCEDURE

Section 8.1 Definition. A "grievance" is an allegation by one or more Members, or the Lodge, that there has been a breach, misinterpretation, or improper application of this Agreement. It is not intended that the Grievance Procedure be used to make changes in this Agreement, nor in those matters not covered by this Agreement.

Section 8.2 Jurisdiction. Nothing in this Agreement shall preclude a Member from seeking recourse for an alleged violation of the Member's rights through any forum available at law. However, once a Member elects to pursue a claim or appeal to obtain a particular remedy from a court, agency or tribunal outside of this procedure, and that court, agency or tribunal accepts jurisdiction over the Member's claim or appeal, the Member is thereafter precluded from seeking a remedy under this procedure.

Section 8.3 Grievance Qualifications and Filing.

- A. **Purpose.** It is the mutual desire of the City and the Lodge to provide for prompt resolution of grievances, with a minimum amount of interruption of the work schedules. Every responsible effort shall be made by the City and the Lodge to affect the resolution of grievances at the earliest possible step.
- B. **Timeliness of Grievance Processing.** All grievances must be reduced to writing and first filed with the City at the applicable Step within fourteen (14) calendar days from incident or occurrence which gave rise to the grievance. Grievances filed beyond the fourteen (14) day time limit need not be considered. All grievances must be presented at the proper step and time in progression in order to be considered at subsequent steps. A grievance shall be considered withdrawn at any point where the grievant submits a written statement to that effect, or where time requirements at any step have lapsed without further appeal by the grievant. Any grievance not answered by the City within the stipulated time limits may be advanced by the grievant to the next Step in the grievance procedure. All time limits on grievances set forth herein may be extended only by mutual written consent of the City and the Lodge.
- C. **Filing.** To be deemed "filed" with respect to the grievance procedure, the grievance form or appeal to the next step shall be hand-delivered to the appropriate City representative designated below, sent via fax to a City-designated fax number or sent via e-mail to a City designated e-mail address.
- D. **Multiple Grievants.** A grievance may be brought by an aggrieved Member covered by this Agreement. Where more than one (1) Member desires to file a grievance involving an incident affecting several Members in the same or similar manner, one (1) Member shall be selected by the affected Members to process the grievance. Each aggrieved Member who desires to be included in the grievance shall sign the grievance.

Section 8.4 Applicable Step to Initiate Grievance.

- A. In cases involving any subject other than a disciplinary action, the proper step to initiate the grievance procedure is Step 1.
- B. In cases involving a disciplinary action, the proper step to initiate the grievance is as follows:
 - 1. Informal (oral) reprimand: Step 2
 - 2. Formal (written) reprimand: Step 2
 - 3. Suspension from duty without pay for 5 or less working days: Step 3
 - 4. Suspension from duty without pay for 6 or more working days: Step 4
 - 5. Demotion in rank that results in reduction in salary: Step 4
 - 6. Dismissal: Step 4

Section 8.5 Grievance Form. A written grievance form, which shall provide the following information, shall be used in the processing of all grievances:

- 1. Grievant(s)' name(s) and signature(s);
- 2. Date, time and location of grievance;
- 3. Description of incident giving rise to the grievance;
- 4. Article or Section of the Agreement alleged to be violated;
- 5. Date grievance was first discussed;
- 6. Name of supervisor with whom grievance was first discussed;
- 7. Date grievance was filed in writing;
- 8. Desired remedy to resolve the grievance; and
- 9. A number assigned by the Lodge.

The Lodge shall have the responsibility for duplication and distribution of, and its own accounting for, the grievance forms.

Section 8.6 Grievance Procedure.

- A. **Step 1 - Immediate Supervisor.** The Member shall file a written grievance with the Member's immediate supervisor holding the rank of Sergeant or higher. The supervisor shall investigate, including meeting with the grievant and/or the Lodge Representative.

The supervisor shall provide a written response to the grievant and/or Lodge Representative within fourteen (14) calendar days of the filing of the Step 1 grievance.

- B. Step 2 - Chief of Police. Within fourteen (14) calendar days of the Step 1 response, the grievant and/or Lodge Grievance Representative shall file the written grievance with the Chief or designee. The Chief or designee shall investigate, including meeting with the grievant and/or the Lodge Representative. The Chief or designee shall provide a written response to the grievant and/or Lodge Grievance Representative within fourteen (14) calendar days of the filing of the Step 2 grievance.

A grievance regarding an informal (oral) reprimand shall not be subject to appeal beyond Step 2.

- C. Step 3 - City Manager. Within fourteen (14) calendar days of the Step 2 response, the grievant and/or Lodge Grievance Representative shall file the written grievance with the City Manager or designee. The City Manager or designee shall investigate, including meeting with the grievant and/or the Lodge Representative. The City Manager shall provide a written response to the grievant and/or Lodge Representative within twenty-one (21) calendar days of the filing of the Step 3 grievance.

A grievance regarding a written reprimand shall not be subject to appeal beyond Step 3.

- E. Step 4 - Personnel Appeals Board or Arbitration. Within fourteen (14) calendar days of the Step 3 response, the Lodge President shall file written notice with the City Manager or designee of the Lodge's intent to submit the grievance to arbitration; or the Member shall file written notice with the City Manager or designee of the Member's intent to submit the grievance to the Personnel Appeals Board. If written notice from the Lodge President of the Lodge's intent to submit the grievance to arbitration or the Member's intent to submit the grievance to the Personnel Appeals Board is not filed with the City Manager or designee within fourteen (14) calendar days of the Step 3 grievance response, the grievance shall be considered resolved. In the event that both the Lodge and the Member filed notice of intent to submit the matter to arbitration or the Personnel Appeals Board, the notice filed first in time shall be the method of grievance resolution and such method of grievance resolution shall be the exclusive method for that grievance. The Lodge has no obligation to process the matter through the Personnel Appeals Board if the Member chooses that option.

- F. A Member appeal of a grievance following Step 4 to the Personnel Appeals Board is only available for grievances resulting from: (1) suspension from duty without pay for six (6) or more working days; (2) demotion in rank that results in reduction in salary; and (3) dismissal in accordance with the City Charter and the applicable Sections of Chapter 155 of the City Ordinances.

- G. In grievances that are subject to arbitration, after receipt of a notice to arbitrate from the Lodge President, the City and the Lodge shall attempt to agree on an arbitrator. If this attempt is not successful or is waived, the arbitrator shall be selected by the parties

making a joint request to the Federal Mediation and Conciliation Service for a panel list of seven (7) arbitrators with business addresses in Ohio. The parties shall then choose an arbitrator by alternately striking names from the list until such time as one (1) name remains as the arbitrator chosen by the parties. The party having the first strike of an arbitrator shall be determined by a coin toss. Prior to beginning the striking procedure, either the City or the Lodge may reject the list and submit a request for another list from the arbitration tribunal. Each party may only reject the list once. Unless the parties agree otherwise, if the parties fail to select an arbitrator within thirty (30) days of receipt of the final panel from the Federal Mediation and Conciliation Service, the matter shall be considered resolved based upon the answer at Step 3, or applicable Step.

- H. In issuing an award, the arbitrator shall be limited to the enforcement of the specific provisions of the Agreement. The arbitrator may not alter, amend, modify, add to or subtract from the provisions of the Agreement.
- I. The question of arbitrability of a grievance may be raised by the City or the Lodge before the arbitration hearing on the grounds that the matter is nonarbitrable or beyond the arbitrator's jurisdiction. The first question to be placed before an arbitrator will be whether or not the alleged grievance is within the purview of arbitrability. Thereafter, the alleged grievance will be heard on its own merits before the same arbitrator.
- J. The decision of the arbitrator shall be final and binding, subject to appeal under applicable state law. The arbitrator shall be without authority to recommend any right to relief on any alleged grievance occurring at any other time than the agreement period in which the right originated. The arbitrator shall not establish any new or different wage rates not negotiated as part of the Agreement.
- K. Both the Lodge and the City shall share equally in the cost of the arbitration proceedings. In the event that either party requests the presence of a court reporter, the non-requesting party shall not be obligated to split the costs of the appearance or transcript unless the party has mutually agreed or if that party or the arbitrator orders a copy of the transcript.
- L. Any Member whose testimony is relevant to the arbitration, shall be released with pay and without the requirement of a subpoena to attend the hearing, provided that the hearing is held during the Member's regular work hours and the release does not create any overtime and/or compensatory time obligation to the City and it does not take any shift below minimum staffing levels as determined by the Department. The expenses of any subpoenaed and/or non-member witnesses shall be borne by the party requesting the non-member's attendance at the Arbitration Hearing.
- M. The arbitrator shall render in writing his or her findings and the award as quickly as possible within thirty (30) calendar days after the hearing is closed and post-hearing briefs are submitted. The arbitrator shall forward such findings and award to the City Manager, or designee, and to the Lodge President, or designee.

Section 8.7 Right to Representation. The grievant, the Lodge and the City have the right to representation in all Steps of the Grievance Procedure and shall have an opportunity to fairly present the grievance or responses by presentation of witnesses and/or other pertinent information. The grievant and appropriate witnesses shall be entitled to be present at any Step in the Grievance Procedure (subject to an order to separate witnesses) and shall not lose pay as a result of such attendance if a meeting is scheduled during working hours. Grievance meetings shall be scheduled at mutually agreeable times. The grievant, Lodge or the City may request that the party's attorney(s) be present at any Step of the Grievance Procedure. A party shall provide at least 24-hours' notice to the other party that they intend to have an attorney(s) present, and once notice is provided, other parties may also have their attorney(s) present.

Section 8.8 Preliminary Discussion and Resolution of Grievances Prior to Filing. Nothing contained in this Article shall prevent any informal resolution of grievances. Therefore, in cases involving any subject other than a disciplinary action, the Member or the Lodge may orally present any potential grievance to the Member's immediate supervisor holding the rank of Sergeant or higher for consideration and informal resolution. The immediate supervisor shall review the potential grievance and provide an appropriate answer following an informal meeting at this Preliminary Discussion. The utilization of this process does not negate the Member's (or the Lodge's) responsibility to file a written grievance under the applicable Step under Section 8.4 within fourteen (14) calendar days from the incident or occurrence which gave rise to the grievance.

Section 8.9 Additional Grievance Step. In the event that during this Agreement or any successor to this Agreement the City adds an intermediate rank between that of the Chief and Sergeants, the City and the Lodge will work together in good faith to add an appropriate step to the procedures outlined in Section 8.6 herein. Such step shall to allow such officer to participate in the grievance procedure and review all grievances resulting from decisions made by his/her subordinates under this Agreement prior to such step involving the Chief.

ARTICLE 9

INVESTIGATIVE PROCEDURES

Section 9.1 Scope. With the approval of the City Manager, investigative procedures shall be undertaken any time a Member is suspected of or charged with an act which could result in criminal and/or administrative charges being filed against such Member. The investigative procedure for an administrative and/or criminal investigation shall be set forth hereinafter.

- A. When any anonymous complaint is made against a Member 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. A Member shall be informed of the nature of an investigation prior to any questioning. Any request made by the Member and/or the Member's Lodge Representative or Lodge Attorney for any records relative to the investigation, not deemed confidential by the Ohio Public Records Act, shall be honored. Such request shall not delay any questioning of the

Member. In a manner consistent with the State Employment Relations Board's interpretation and application of NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975), the Member may exercise the right to have Lodge representation during any questioning, and the Lodge Representative or Lodge Attorney shall be afforded a reasonable opportunity to consult with the Member during questioning.

- C. A Member who is to be questioned as a suspect in an investigation that may lead to criminal charges shall be advised of his constitutional rights in accordance with law and shall then and continually thereafter have a right to counsel or other representative of his 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 Member.
- E. A Member 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 constitutional rights as referenced in subsection (C) hereof. Before a Member may be charged with insubordination or like offenses for refusing to answer questions or participate in any investigation, the Member shall be advised that such conduct, if continued, may be made the basis for such a charge.
- F. The interrogation of a Member 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 a Member is advised of the Member's 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, either a Member or the City may request that the Member be given a polygraph examination, in compliance with applicable laws. Any polygraph examination shall be voluntary.

During the course of an investigation, interviews of Member(s) not the subject of such investigation may be conducted. Where appropriate, the procedures set forth herein shall be followed with respect to such other Member(s).

- J. Upon request, a Member shall be afforded reasonable access to written documents and to taped interviews made in accordance with subsection (G) hereof during which time the Member may listen to and make personal notes. If a written transcript of a recorded interview is made, the Member 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 Article 10, disciplinary actions shall be taken. A Member whose conduct is the subject of such disciplinary action shall be afforded access to all evidence gathered during the investigation.

- L. If any of these procedures are alleged to have been violated, such allegations shall be subject to the grievance procedure provided in Article 8 beginning at Step 2 of the grievance procedure.

ARTICLE 10

DISCIPLINE

Section 10.1 Just Cause. No Member shall be reduced in pay or position, suspended (paid or unpaid), removed or reprimanded except for just cause, including incompetency, in efficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of any policy, work rule, or codified ordinance of the City, 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.

Section 10.2 Progressive Discipline. 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."

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

1. Informal (oral) reprimand;
2. Formal, written reprimand which becomes part of the Member's personnel file;
3. Suspension from duty with or without pay;
4. Demotion in rank that results in reduction in salary;
5. Dismissal.

Disciplinary action taken against a Member, which is other than in the nature of an oral reprimand, shall be in writing and made a part of the Member's personnel file.

A suspension from duty without pay for a period exceeding five (5) working 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 five (5) days or less shall not require prior approval by the City Manager. All demotions in rank that result in a reduction 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 the Chief of Police such action is necessary.

Disciplinary actions shall in all cases be dealt with in a confidential manner to the extent practical under public records laws. Specifically, Members 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 outside of

the City management, except those persons who by this Agreement or other law are entitled to such information.

Section 10.3 Copy of Discipline Record. Whenever a disciplinary action is taken which results in a disciplinary action of record, the Member shall be given a written copy of such record at the time it is placed in the Member's personnel file. No public statement regarding the final decision shall be made until the written decision has been distributed to the Member.

Section 10.4 Pre-Disciplinary Conference. When charges are brought by the Chief or designee, and such charges may result in either suspension from duty without pay; demotion in rank that results in reduction in salary, or dismissal, a Pre-disciplinary Conference shall be scheduled to give the Member an opportunity to respond to the charges. Pre-disciplinary Conferences will be conducted by the Chief of Police, or designee.

Not less than three (3) business days prior to the scheduled Pre-disciplinary Conference, the Chief will provide the Member with written notice of the charges. The Member may choose to: 1) appear at the Conference to present an oral or written statement in the Member's defense; 2) appear at the Conference with a Lodge Representative and/or Lodge Attorney; or 3) elect to waive (in writing) the opportunity to have a Pre-disciplinary Conference.

At the Pre-disciplinary Conference, the Chief or designee, will ask the Member to respond to the charges. The Member may choose to respond through the Member's Lodge Representative and/or Lodge Attorney and in such case such representative or attorney shall respond on the member's behalf. At the Pre-disciplinary Conference, the Member, or Member through the Member's representative or attorney, may offer testimony and/or evidence in response to the charges. Pre-disciplinary Conferences may be audio-recorded by either party. If audio-recorded, the parties, upon request, shall provide a copy to the other within two (2) business days within the close of the Conference.

A written report and decision will be prepared by the Chief or designee, summarizing the findings of fact and if applicable, the disciplinary action to be taken. A copy of this written report will be delivered to the Member or the Member's Lodge Representative and/or Lodge Attorney within fourteen (14) calendar days of the close of the Conference. No public statements regarding the final decision shall be made by the City until the written decision has been provided to the Member or the Member's Lodge Representative and/or Lodge Attorney.

The written decision of the Chief or designee shall be a prerequisite to proceeding to the grievance procedure contained in Article 8 of this Agreement.

Section 10.5 Appeal. A Member may elect to file a grievance regarding the decision made by the Chief or designee following a Pre-disciplinary Conference as provided in Article 8 herein. The grievance must be reduced to writing and filed with the City at the applicable Step within fourteen (14) calendar days from the date of the written decision of the Chief or designee.

ARTICLE 11

PERSONNEL FILES

Section 11.1 Personnel File — General. One, and only one, personnel file shall be maintained for each Member and shall be in the custody of the City's designated Human Resources Officer. The personnel file shall contain all the official records of the City regarding an individual Member. Members may review their personnel file at reasonable times in the presence of the Human Resources Officer upon written request to the Personnel Officer. Copies of documents contained in the file shall be made available to the Member at no cost to the Member. All such copies shall be marked "copy". The confidentiality of matters contained in the personnel files shall be the responsibility of the Human Resources Officer who shall release only such information that is determined to be a public record or is otherwise required by law. No anonymous complaints will be kept in a Member's personnel file unless the complaint has been substantiated with other evidence.

When a request is made by any non-City employee, City employee whose job duties do not provide access to such files, or outside party to review records contained in a Member's personnel file, the City will make all reasonable efforts to notify the Member of that request by calling the Member's telephone and/or sending an email to the Member's City email address prior to the production of any requested information. If possible, the Member will be granted the opportunity to review the requested records before granting the public request. In every case where records pertaining to a Member are provided to a person or entity other than the City or the Lodge, the City shall provide copies of the records to the member, and notify the Member of the identity of the party requesting the records, if known, and the date and time that such request was (or will be) honored.

Section 11.2 Retention of Records. All actions of records, including appointment, evaluations, promotions, transfers, demotions, written reprimands, dismissals, and suspensions, will be maintained in each Member's personnel file throughout the Member's period of employment with the following exceptions: Records of written reprimands will be removed from the file upon the written request of the Member two years after the date such reprimand was given, provided no further repeated or related disciplinary action has occurred within that two year period of time. Records of suspensions of three (3) days or less and demotions as a result of disciplinary action will be removed from the file upon the written request of the Member five (5) years after the date such discipline was given, provided no further disciplinary action has occurred within that five (5) year period of time. All written requests from Members seeking removal of records from their personnel file shall be directed to the Human Resources Officer. Disciplinary records that are properly removed from a Member's personnel file shall not be used in connection with further discipline, demotion, evaluation or promotion. In any case in which a written reprimand, suspension, demotion or dismissal is a disaffirmed on appeal through the grievance 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.

Section 11.3 Inaccurate Documents. If a Member has reason to believe that there are inaccuracies in documents contained in the Member's personnel file, the Member may write a

memorandum to the Human Resources Officer explaining the alleged inaccuracy. If the Human Resources Officer concurs with the Member's contentions, the Human Resources Officer shall either correct or remove the faulty document or attach the Member's memorandum to the document and note thereon concurrence with the memorandum. The Human Resources Officer may also attach the memorandum to the document and note disagreement with memorandum's contents. The decision of the Human Resources Officer with regard to inaccurate documents shall be final.

ARTICLE 12

WORK RULES AND DIRECTIVES

Section 12.1 New Work Rules. The City and the Lodge agree that the City has the management right to issue, amend and revise directives, procedures, policies, rules, regulations, practices and to enact ordinances. Unless otherwise specifically provided for within or otherwise in conflict with a provision of this Agreement, such existing or new directives, procedures policies, rules, regulations, practices and ordinances shall be the sole prerogative of the City. The City agrees that that new or amended directives, procedures, policies, rules, regulations, practices and ordinances adopted after the effective date of this Agreement shall be reduced to writing (absent exigent circumstances) and provided to Lodge Grievance Representatives and all Members in advance of their enforcement. If such exigent circumstances require enforcement prior to written distribution, oral notice shall be given and such shall be reduced to writing as soon as practicable thereafter.

Section 12.2 Effect of Work Rules. Any allegation by a Member of the Lodge that a revised directive, procedure, policy, rule, regulation, practice and/or ordinance is applied to Members is in violation of this Agreement shall be the proper subject of a grievance, as in an allegation that a work rule had not been applied or interpreted uniformly to all affected Members. No Member shall be disciplined for an alleged violation of a revised directive, procedure, policy, rule, regulation, practice and/or ordinance, which has not been promulgated as set forth in Section 12.1 of the Article.

ARTICLE 13

LAYOFFS/JOB ABOLISHMENT

Section 13.1 Action. When the City determines that a layoff or job abolishment is necessary, the City shall notify the affected Members at least twenty-eight (28) days in advance of the layoff or job abolishment. In deciding who to select for layoff, seniority alone is not the governing principle. The City may consider any and all factors, including, without limitation, the job or position to which the Members are assigned, the skills and abilities of the Members, the job performance of the Members, the attendance of the Members, the disciplinary record of the Members and the Member's seniority when determining who is selected for layoff. The City shall have sole discretion in such selection process. Layoffs must first be made from all Members with less than nine (9) years of service. Once all of the Members with less than nine (9) years of service have been laid off, the City can then make layoffs from all the Members

with nine (9) or more years of service. No Member may be laid off unless all non-bargaining unit law enforcement officers below the rank of Sergeant have been laid off or separated from service; and, during the period of any layoff for a Member, no non-bargaining unit law enforcement officer below the rank of Sergeant may be employed by or perform any services for the City.

The City agrees to discuss with the Lodge the impact of the layoff or job abolishment on Members prior to the City's notification to the affected Members, provided the City retains the right to determine all aspects of the layoff except as otherwise set forth in this Article.

Section 13.2 Recall and Reinstatement. When Members are to be laid off, the City shall create a recall list. The City shall recall Members from layoff as needed. The recall shall be according to reverse order of layoff. A Member shall be eligible for recall for a period of one (1) year after the effective date of the layoff.

Notice of recall from a layoff shall be sent to the Members by certified mail with copies to the Lodge. The mailing shall be to the last mailing address provided by the Member and the Member has an obligation to keep the City advised of the Member's current mailing address.

The recalled Member shall have ten (10) calendar days following the receipt of the recall notice to notify the City of his intention to return to work and shall have twenty-one (21) calendar days following the receipt of the recall notice in which to report to duty, unless a different date is otherwise specified.

ARTICLE 14

MISCELLANEOUS NON ECONOMIC

Section 14.1 Seniority. Seniority will be based on each Member's continuous time served as a full-time sworn law enforcement officer with the City (including continuous time as a sworn law enforcement officer with the Village of New Albany). Any lawful separation from employment as a bargaining unit member, including but not limited to retirement, promotion and termination, will constitute a break in continuous service; however, any Member who is restored to service from a disability separation/retirement or is recalled from layoff shall be credited with seniority for all continuous service prior to the date of their disability, separation or layoff.

Section 14.2 Communicable Disease Testing. The City will pay for any medically appropriate testing for Members who may have been exposed to communicable diseases while in the performance of their duties.

Section 14.3 Health and Safety. It is agreed that safety is a prime concern and responsibility of the City, the Members, and the Lodge. In this regard:

1. The City agrees to maintain, in reasonable and good working order, the equipment, facilities, vehicles, supplies and tools required for members to safely carry out their duties. Members are responsible for properly caring for and avoiding intentional misuse or reckless or negligent use of equipment, facilities, vehicles, supplies, and tools provided by the City.

2. The Member accepts the responsibility to follow all safety rules and safe working methods of the City. All unsafe working conditions shall be reported by the Member to his supervisor as soon as any unsafe working condition is known.
3. The City and the Lodge shall consider and discuss safety and health related matters and explore ideas for improving safety at the Labor Relations Committee meetings.

Section 14.4 Probationary Periods. Newly hired Members shall serve a twelve (12) month probationary period from the date they become sworn full-time police officers of the City, notwithstanding any other provisions regarding probationary periods applicable to non-union employees of the City. The parties agree that an employee who is required by the City to complete a state-certified police academy as an initial condition of employment shall not be considered a "sworn full-time police officer" and a Member of the bargaining unit until they have successfully completed the required police academy. Any probationary Member who is off duty on an approved leave for thirty (30) or more calendar days shall have their probationary period extended for the same time period that they were on leave. During the applicable probationary period, a Member may be discharged from employment at the City without cause. Disciplinary action taken by the City against Members during their probationary period, including but not limited to termination from employment, are not subject to appeal to either the Personnel Appeals Board or arbitration.

ARTICLE 15

REGULAR WORK PERIODS AND OVERTIME

Section 15.1 Workweek and Definitions. The workweek shall be a recurring period of seven (7) consecutive twenty-four (24) hour periods. The workweek for Members shall consist of forty (40) hours. "Paid Status" for purposes of calculating overtime shall include hours worked and all hours in paid status while on any approved leave, including vacation, personal, injury, paid military leave, sick, training or other paid leave accrued to a Member on an hour-for-hour basis except as provided below. The use of compensatory time, holiday leave, any Court Pay as described in Section 15.6 herein, and/or any hours for which a time and one-half (minimum) premium are paid (with the exception of hours worked on a holiday), are specifically excluded from Paid Status for purposes of calculating overtime.

Section 15.2 Work Schedules. Work schedules are defined as a Member's regularly assigned hours of the day and days of the week. The City may temporarily change work schedules with advance notice to the affected Member for the needs and efficiency of the operations of the Department and/or due to exigent circumstances. Such changes shall not be used to reduce the Member below a forty (40) hour workweek. Work schedules shall be made so that work days are consecutive and days off are consecutive, except days off may be the first and last day of the workweek and days off may not be consecutive for scheduled training. In the event that such change is expected to last more than one hundred twenty (120) calendar days, the Chief of Police, or designee, shall repost schedules for the duration of the vacancy in a manner consistent with Section 15.3, below.

Section 15.3 Regular Assignments and Schedules.

- A. No later than October 31 of each year, the Chief of Police, or designee, will determine and post: (1) the Sergeants' assignments and work schedules for the twelve (12) month period beginning with the first full pay period in January through the last pay period beginning in December (i.e., the next calendar year); and, (2) all regular patrol assignments and work schedules for bargaining unit members and, subject to Section 15.3(B), the assignments and work schedules for assignments for other than regular patrol (e.g., DARE, SRO, Investigative) and for K-9, for the next calendar year. Within thirty (30) calendar days of the first date of posting, bargaining unit members shall, in order of seniority, designate which work schedule they desire for the following year. All assignments resulting from this bid process shall be posted no later than ten (10) calendar days following the date the Members designations are due.

- B. When any vacancy in an assignment for bargaining unit members is determined for other than regular patrol (e.g., DARE, SRO, Investigative), the vacant assignment shall be posted by the Chief of Police. Upon completion of the posting, a bargaining unit member who applies and is determined by the Chief of Police to possess the necessary qualifications for the assignment will be selected to fill the vacancy. When more than one Member applies, the most qualified Member shall be selected, and when such qualifications of more than one Member are equal, the most senior qualified Member shall be selected. The determination of such qualifications shall be in the discretion of the Chief of Police. The creation, retention, and/or abolishment of such assignments shall be within the discretion of the Chief of Police. Any mounted (equine) and K-9 assignments shall be arranged with the mutual consent of the City, the Lodge and the interested and qualified Member(s). Any such arrangements shall be in writing pursuant to a memorandum of understanding. The creation, retention, and/or abolishment of mounted and K-9 assignments shall be within the discretion of the Chief of Police. A Member assigned under this Section must bid on a schedule for such assignment in order to remain in the assignment.

- C. Assignments that are filled pursuant to Sections (A) and (B) of this Article will be honored except when the Chief of Police, or designee, determines that a particular Member's choice is inconsistent with Department goals and priorities or based on a demonstrated need.

- D. If, during the year following the annual posting of patrol assignments, the Chief of Police determines that a work schedule vacancy exists within a patrol assignment, including temporary vacancies, such vacancy will be posted to notify bargaining unit members that they may submit a written request to be placed in the vacant assignment. Such written requests must be submitted to the Chief of Police, or designee, within ten (10) calendar days following the posting of the vacancy. Except for filling temporary vacancies, which may not last longer than one hundred twenty (120) calendar days, all such requests will be granted in accordance with the provisions of Sections (A) and (B) of this Article. In the event that at the commencement of or during a temporary vacancy, such vacancy is expected to last more than one hundred twenty (120) calendar days, the

Chief of Police, or designee, shall repost schedules for the duration of the vacancy in a manner consistent with this Section.

- E. Notwithstanding any other provision of this Article, probationary members shall have no assurance of work schedule assignment preference unless: (1) they are no longer assigned to the Field Training program and (2) the posting of work schedule assignments occur within the last ninety (90) days of their probationary period.

Section 15.4 Overtime. All hours in paid status in excess of forty (40) hours per workweek shall be compensated at the overtime rate of one and one-half (1.5) times the Member's straight time hourly rate of pay.

No Member shall be paid for overtime work, which has not been authorized by a supervisor. Members shall be permitted to elect compensatory time off in lieu of cash payment for overtime hours in accordance with the provisions of Section 15.5. Any Member who works during the time changes related to Daylight Savings Time shall be paid for all hours actually worked, notwithstanding the start and end time of the Member's shift. Any overtime resulting from such time change shall be paid at one and one-half (1½) times the Member's regular rate. Any shortfall during the workweek resulting from such time change will be unpaid or the Member may elect to use vacation or compensatory time to cover such time change.

Section 15.5 Compensatory Time. Compensatory time shall be earned or granted to Members, at the election of the Member, in lieu of payment for overtime worked, and shall be earned at a rate consistent with this Article. Such election must be made by the Member in timely manner pursuant to applicable City policies. The amount of compensatory time in a Member's bank is limited to eighty (80) hours. Compensatory time is to be taken in a minimum of one (1) hour increments and shall be taken at times mutually convenient to the Member and the City. Members may carry a maximum of sixteen (16) hours of compensatory time over from one calendar year to the next. Members will receive payment for the balance remaining at the conclusion of the first pay period ending in December of that year.

Section 15.6 Court Pay. When a Member is required by subpoena or order to make an appearance in court during off duty hours, a minimum of three (3) hours shall be paid at one and one-half (1½) times his regular pay. The three (3) hour minimum pay will not apply in situations where the court time overlaps the beginning or ending of a Member's regularly scheduled work period. Whenever a Member's subpoena is cancelled less than two (2) hours before the time stated on the subpoena, the Member will be paid a minimum of three (3) hours at the Member's regular rate of pay. The Member shall have functioning telephone service for communication under this Section and provide such number(s) to the Department.

Members may elect to be placed on stand-by with the court by obtaining approval from the prosecutor, but stand-by under this provision will be in a nonpaid status. Any Member who elects to be placed on stand-by status will be considered released from stand-by, and will not be bound by the subpoena, if the Member does not receive an instruction to appear by the time stated on the subpoena or 12 p.m., whichever is earlier. The Member shall have functioning

telephone service for communication under this Section and provide such number(s) to the Department.

Section 15.7 Substitution (Trading) of Time. A Member, with the approval of a supervisor, may agree to trade work hours with another Member, so long as such trade occurs within the same workweek for both Members involved in the trade and the trade does not create overtime for either Member.

Section 15.8 Call in Pay and Off-Duty Remote Consultation Pay. When a Member is ordered to report to work at a time other than during the Member's regularly scheduled shift, the Member shall be paid for a minimum of three (3) hours pay at the rate of one and one-half (1½) times the Member's straight time hourly rate of pay. The three (3) hour minimum pay will not apply in situations where the period of the call-in abuts the beginning or end of a scheduled work period. When a Member is contacted by a Supervisor (or other person having authorization from a Supervisor) by telephone or other electronic means (e.g., email or text message) during the Member's off-duty hours and is required to provide information, advice or other consultation regarding Departmental business, the Member is entitled to compensation for the time spent on such communication. Payment shall be made at one and one-half (1½) times the Member's straight time hourly rate for the actual time spent on the communication. All time spent during a calendar day shall be aggregated for purposes of this Section and rounded to the nearest quarter hour for purposes of compensation. If the total time spent is less than ten (10) minutes, it shall be considered de minimis and the Member shall not be entitled to compensation. Off-Duty Remote Consultation Pay only shall be paid as wages and not as compensatory time.

Section 15.9 Variable Work Hours. Members may alter their daily work schedule with the approval of their immediate supervisors ("flex time") so long as such flex time occurs within the same workweek and it does not create overtime.

Section 15.10 Overtime Sign-up. When overtime assignments are posted, these assignments shall be filled by seniority, provided that a more senior Member may not dislodge a less senior Member from an overtime assignment after the overtime posting period has closed. If a Member selected to work an overtime assignment is unable to work the assignment, it is the Member's responsibility to obtain a replacement; and, a supervisor must approve any such replacement.

ARTICLE 16

VACATION, HOLIDAYS AND PERSONAL LEAVE

Section 16.1 Vacation Time. The following shall be the vacation accrual rate for Members:

Years of Service	Hours Accrued Per Pay Period
Upon employment	3.077 hours
Upon completion of 4 years of employment	4.615 hours

Upon completion of 9 years of employment	6.160 hours
Upon completion of 14 years of employment	7.700 hours

Section 16.2 Vacation Scheduling. All Members shall be permitted to schedule up to 120 hours of vacation during the annual vacation bid process, which shall begin on December 1 of each year. Vacation scheduled in accordance with the annual vacation bid process will be for the twelve-month period beginning with the first full pay period of January and continuing through the last pay period beginning in December. Vacation selection will be based on seniority, with the most senior Member making the first selection of up to 120 hours of vacation from any available dates during the following year in one-week blocks of 40 hours. Members shall not be denied a vacation selection under the annual bid process unless another more-senior Member with the same regularly scheduled work hours selects the same date. All vacation selection during the annual bid process will be completed by December 24 and will be posted no later than December 31.

During the annual bid process and thereafter as events may arise, the City will designate dates for which vacation will be unavailable generally to all Members, absent exceptional circumstances (e.g., Independence Day, Pelotonia, Presidential visit, etc.) If a Member's vacation had been previously approved during the annual bid process, the Member's vacation shall not be denied. In addition to vacation scheduled through the annual vacation bid process, vacation may be granted with supervisor approval on a first-come / first-served basis.

Except for designated dates that are otherwise unavailable generally to all members during the annual bid process which shall be designated by the City (e.g. Independence Day, Pelotonia, Presidential visit, etc.), members shall not be ordered in on their two regularly assigned days off that abut either side of their 40-hour block(s) of vacation scheduled pursuant to the annual vacation bid. Such prohibition shall not be applicable to regularly assigned days off abutting vacation scheduled outside the annual vacation bid process.

Section 16.3 Vacation Carry-Over. Members may carry vacation time over from one calendar year to the next. In no event may Members carry over more than two and one-half (2.5) times their annual accumulation rate. Any excess vacation that cannot be carried over is forfeited.

Section 16.4 Holidays.

- A. The following days are declared paid Holidays from which Members shall receive eight (8) hours of compensation at their base rate.

Holiday	Date Observed
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, four -(4) hours
Christmas Day	December 25

- B. The holiday shall be observed on the actual holiday designated above.
- C. When a Member works on a holiday, the Member shall be compensated at the rate of one and one-half (1.5) Member's base rate of pay for all hours worked. Members who begin a shift on the day prior to the designated holiday, but work more than 50% of their hours on the holiday, shall be credited for the holiday on the date that their shift begins.
- D. At the commencement of each calendar year, the City shall deposit all 84 hours for the above-referenced holidays into a holiday leave bank. Members can use holiday leave hours for any reason (i.e., either for the actual holiday or for holiday, vacation, personal, etc.). Holiday leave must be scheduled in advance with supervisor approval.
- E. In the event a Member does not use all 84 hours of annual holiday leave, the City will cash out the Member's balance of the unused holiday leave remaining as of the next to last pay period of the fiscal year. Such amount will be paid to the Member at the Member's base rate in the last pay period of the fiscal year.
- F. For a Member's initial year of employment, the City shall deposit the pro-rated amount of hours for remaining holidays in the Member's holiday leave bank. If a Member terminates employment for any reason, any holiday hours that have not accrued (i.e. holiday has not yet occurred) shall be forfeited. Any holiday hours that are accrued but unused at the time of termination shall be paid to the Member at Member's base rate. If a Member has used more holiday hours than accrued at the time of termination, the City shall withhold such holiday pay from the Member's final paycheck. If there are not sufficient earnings to cover such withholding, the Member shall reimburse the City in cash.
- G. Upon the effective date of this Agreement, a pro-rated amount of the remaining holidays will be deposited in each Member's holiday leave bank.
- H. For Members in assignments other than regular patrol (e.g., DARE, SRO, Investigative), such Members are required to observe the Holiday on the Date Observed in Subsection A,

above, if the City's offices are closed in the case of Investigative or the New Albany Plain Local Schools are closed in the case of DARE and SRO. However, such Member has the option to work on such Holiday provided that the Member gives at least twenty-eight (28) calendar days' written notice to his or her supervisor of the Member's intent to work on that Holiday. In the event that the New Albany Plain Local Schools are open on a date that a Holiday is observed by the City, such Members shall be paid in accordance with Subsection C, above. This subsection does not prevent a Member in such an assignment who has not provided the 28-day notice from voluntarily agreeing to work on a Holiday for another Member with supervisor approval.

Section 16.5 Personal Days.

- A. In addition to the observed holidays set forth in Section 16.4, all full-time Members shall be authorized to utilize two (2) paid days off (16 hours) annually, 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. Any unused personal days remaining after the last pay period of the calendar year shall be paid out at the Member's base rate of pay for that calendar year on the first full payroll period of January of the following year. Any unused personal days shall not be paid out upon termination of employment. Personal days shall be scheduled in full-day (8-hour) increments.
- B. New Members hired before June 30 will be authorized to utilize both personal days. New Members hired between July 1 and November 30 will be authorized to utilize one (1) personal day. New Members hired December 1 or after will not be eligible for any personal days that year.

Section 16.6 Base Rate. Pay for vacation, holiday or personal days shall be computed on the basis of the Member's existing hourly base rate of pay.

ARTICLE 17

SICK LEAVE / INJURY LEAVE / BEREAVEMENT LEAVE

Section 17.1 Accrual and Use of Sick Leave.

- A. All Members shall be credited sick leave at the rate of 4.615 hours for each bi-weekly pay period in paid status. Any credit for sick leave for a portion of a pay period in unpaid status shall be pro-rated.
- B. Sick leave may be accumulated without limit, subject to the terms below.
- C. When used, sick leave shall be deducted from the cumulative total on an hour-for-hour basis.
- D. Members may use sick 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 Member's spouse, child, mother, father, or other relative residing in the Member's household. Sick leave may also be used for medical, vision or dental related examination and care.

- E. Members may be required to provide 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 Member's household, and requiring the continuing presence of the Member to make arrangements for hospitalization or other care, shall not exceed three (3) consecutive workdays. The Chief, or designee, 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. Members for whom a shift 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 (1) hour prior to the start of their shift on the first day of their absence. Members must report accordingly on each succeeding day of their absence unless other arrangements are authorized.
- I. Following the fourth (4th) occurrence of sick leave absence of one day or more in a 12-month period of time, the Member 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 12-month period. This documentation shall be sent to Human Resources Personnel to be placed in the appropriate personnel file.

Section 17.2 Sick Leave Incentive Members with a balance in excess of four hundred eighty (480) hours of accrued sick leave may elect, no later than September 1 of each year, to convert thirty-two (32) hours of sick leave for payment in the first full pay period in January of the next calendar year (payable at the Member's regular rate of pay as of December 31 of the year of the election). Members with a balance in excess of eight hundred (800) hours of accrued sick leave may elect, no later than September 1 of each year, to convert forty-eight (48) hours of sick leave for payment in the first full pay period in January of the next calendar year (payable at the Member's regular rate of pay as of December 31 of the year of the election). All payments shall be at a one-for-one rate (i.e., one (1) hour of pay for every hour of converted sick leave). For Members employed by the City after 1/1/12, the incentive described in this Section applies only to sick leave accrued while employed by the City.

Section 17.3 Termination of Service. Upon retirement or separation in good standing, Members may convert unused accrued sick leave to a lump sum monetary payment on the following conditions:

- 1. For the first 120 hours (15 days) of sick leave accrued, payment shall be hour for hour. Accumulated sick leave above 120 hours shall be paid at the rate of eight hours pay for every 24 hours accumulated.

2. Payment will be at the hourly rate in effect at the time of retirement or termination.
3. Members terminated for cause or who fail to give two weeks written notice of intent to terminate are not eligible for the sick leave conversion benefit.

Section 17.4 Paid Injury Leave. When a full-time Member's absence from work is necessitated because of an illness or injury incurred while on the job with the City and the illness or injury is compensable under Ohio Workers' Compensation Law, injury leave shall be granted for each such illness or injury for a period of time not to exceed 1040 hours. Such leave shall not be charged against the Member'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 Member must report the illness/injury to the Member's supervisor within three workdays of the incident giving rise to the illness/injury. Simultaneously with the request for injury leave, the Member shall make application and actively pursue a claim for benefits under Ohio Workers' Compensation Law. Paid injury leave does not apply for injuries occurring while on special duty, unless in the discretion of the Chief or designee, such injury occurs while acting in a law enforcement capacity.

Section 17.5 Coordination of Injury Leave With Workers' Compensation. Members receiving injury leave with pay shall be required to reimburse the City for any wage or salary benefits received by the Member from the Bureau of Workers' Compensation for the time period for which injury pay is awarded.

Section 17.6 Bereavement Leave.

1. A full-time Member may be granted up to five (5) regularly scheduled workdays without loss of pay in case of a death in the immediate family.
2. Sick leave, vacation, holiday leave, or compensatory time may be used for bereavement leave for additional days for immediate family, with the approval of the Chief or designee.
3. Up to three (3) days of leave is permissible for deaths other than the immediate family, but such leave shall be charged to holiday leave, vacation or compensatory time.
4. For purposes of this Section, "immediate family" means parents, parents-in-law, step-parents, brother-in-law, sister-in-law, spouse, children, step-children, brothers, sisters, grandchildren, grandparents and grandparents-in-law unless otherwise specified in Chapter 155 of the New Albany Codified Ordinances.

ARTICLE 18

GENERAL PROVISIONS

Section 18.1 Strikes/Lockouts. The Lodge and the Members recognize that law enforcement officers are prohibited by the laws of the State of Ohio from striking, including any continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole or in part from the full, faithful, and proper performance of the duties of employment. The City recognizes that it is prohibited by the laws of the State of Ohio from instituting a lockout of Members. Therefore, during the term of this Agreement, there shall be no strikes or lockouts of any kind.

Section 18.2 Complete Agreement. This Agreement sets forth the complete agreement of the parties, and it may only be altered, changed, added to, deleted from, or modified only through the voluntary consent of the City and the Lodge in a written and signed amendment or memorandum of understanding.

ARTICLE 19

SUBSTANCE ABUSE AND TESTING/TOBACCO USE

Section 19.1 Purpose for Substance Abuse Testing. The City and the Lodge recognize that the ability of a Member to properly perform the Member's duties depends, in part, on a workplace which is free of substance abuse. In an effort to promote public safety, to provide Members who may be drug or alcohol dependent with an opportunity for treatment and for remaining productive members of the Police Department, and in recognition that substance abuse is a problem which, depending on individual circumstances, may require intervention, rehabilitation, or discipline, it is the purpose of this Article to provide a method for responding to the risks presented by the presence of substance abuse in the workplace by:

1. Dealing with incidents of substance abuse which present a reasonable likelihood of significant risk to Members, the general public, or other employees of the City;
2. Providing assistance to a Member with drug or alcohol dependency problems; and
3. Disciplining a Member whose satisfactory work performance is adversely affected by substance abuse.

Section 19.2 Definitions. The following definitions shall govern this Article:

1. "Under the influence" means that the Member is adversely affected in the satisfactory performance of the Member's duties by any illegal drug, medical marijuana, CBD oil containing sufficient THC to cause impairment, or alcohol, or the combination of any illegal drug and alcohol; a blood alcohol content of greater than 0.02%; or the detectable presence of any illegal drug in the Member's body.

2. "Legal drug" means prescribed drugs or over-the-counter drugs which have been legally obtained for the user and are used for the purpose for which they were prescribed and manufactured.
3. "Illegal drug" means any drug (1) which is not legally obtainable, or (2) which is legally obtainable but has not been legally obtained (3) prescribed drugs not being used for prescribed purposes and/or by person to whom prescribed (4) medical marijuana and/or (5) CBD oil containing sufficient THC to cause impairment.
4. "Reasonable belief" is an articulated belief that a Member is using illegal drugs or misusing alcohol such that the Member's work performance is adversely affected by the presence of alcohol or illegal drugs. This articulated belief must be drawn from specific and particularized objective behavior and conduct exhibited by the Member, and reasonable inferences therefrom. Reasonable belief may be based upon a Member's slurred speech, odor, disorientation, abnormal appearance, conduct or behavior, or other observable cause.

Section 19.3 Prohibited Conduct. For purposes of this Article, no Member shall, while performing the Member's duties for the City, while in the City's facilities or vehicles, while in uniform, during their on-duty meal period, or while off-duty in public when wearing any City-issued apparel which clearly identifies them as employees of the City:

1. Consume alcohol and/or be under the influence of alcohol (unless in the line of duty with approval of the Chief or designee);
2. Use or be under the influence of any illegal drug, including medical marijuana, CBD oil containing sufficient THC to cause impairment, or while using any legal drug be impaired to the point that the Member cannot satisfactorily perform the Member's assigned duties; or
3. Unlawfully use, sell, purchase, transfer or possess an illegal drug (unless in the line of duty with approval of the Chief or designee).

Section 19.4 Testing. A Member shall be tested for alcohol or illegal drug usage when there is a reasonable belief that the Member's satisfactory work performance is adversely affected by the presence of alcohol or illegal drugs in the Member's system, on a programmatic random basis or following an accident in which the Member is at fault that results in injury to persons or when, in the opinion of the Chief or designee, substantial damage to property occurs. If the City adopts a programmatic random testing for other sworn law enforcement personnel and/or police dispatcher personnel employed within the Police Department, Members shall then be only included in that Departmental pool and subject to random testing no more frequently than such Departmental programmatic random testing.

Section 19.5 Testing Determination. Upon determining that a Member must submit to testing (whether urinalysis for drugs or breath for alcohol) because reasonable belief has been established, a random selection has been made, or post-accident, the supervisor shall give the Member an opportunity, prior to the test, to request the presence of or to seek the

advice from a Lodge representative. Refusal, for any reason, to submit to the test shall be grounds for disciplinary action, up to and including discharge. The Lodge representative, if available, may accompany the Member to and be present with the Member at the collection/testing site.

Section 19.6 Discipline/Rehabilitation. A positive test result for alcohol or illegal drug usage may, depending on individual circumstances, result either in discipline, subsequent random testing and/or referral to a program for rehabilitation purposes. Any Member who voluntarily seeks assistance with a drug or alcohol dependency problem prior to being notified of a random test selection shall not be required to, but may, submit to a test without any disciplinary action being taken and without any requirement for follow-up random testing. Such self-identification to avoid any disciplinary action and/or follow-up random testing shall not apply if the test is based upon reasonable suspicion or post-accident.

Any discipline to be imposed shall be for just cause and shall take into account all facts and circumstances, including the need for testing, the Member’s desire for and progress in rehabilitation, and the Member’s past work performance.

A Member who is convicted of any alcohol or drug-related offense, whether or not duty-related and including any OVI-related offense, may be subject to discipline.

Section 19.7 Tobacco Free. The City is a tobacco-free employer. All City facilities and vehicles are and shall remain tobacco free. Tobacco products shall not be used by any Member while on duty, special duty and/or in uniform.

ARTICLE 20

RATES OF PAY/WAGES

Section 20.1 Wages. Effective upon ratification of this Agreement and retroactive to January 1, 2024, the City shall adjust step salaries as follows:

Year	Step 1	Step 2	Step 3	Step 4	Step 5
2024	\$ 69,070.00	\$ 78,990.00	\$ 88,910.00	\$98,830.00	\$ 108,750.00

Effective January 1, 2025 the Step salaries shall be increased by three and one-quarter percent (3.25%).

2025	\$71,314.78	\$81,557.18	\$91,799.58	\$102,041.98	\$112,284.38
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Effective January 1, 2026 the Step salaries shall be increased by three and one-quarter percent (3.25%).

2026	\$73,632.51	\$84,207.79	\$94,783.07	\$105,358.34	\$115,933.62
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Section 20.2 Personal Development Compensation Enhancement. Effective upon January 1, 2016 and January 1, 2017, Members who have attained or complete certain personal and/or career development objectives shall receive an amount added to their base annual salary. Step increases are not calculated based upon this additional amount. This additional amount is added to the applicable step salary. This compensation enhancement is effective upon the later of the dates indicated above or upon the attainment or completion of the applicable category below. The table below summarizes the development objectives and related annual base salary percentage increases:

Development Experience	Percentage Increase to Annual Base Salary
Associate's degree	0.10%
Honorable discharge from military service ("Military Service")	0.25%
Bachelor's degree ("Bachelor's Degree")	0.25%
Military Service and Bachelor's Degree	0.50%
Masters or professional degree ("Master's Degree")	0.75%
Military Service and Master's Degree	1.00%

Section 20.3 Police Officer Step Advancement. The following shall apply to the advancement from Step 1 through Step 5 for those Members hired after January 1, 2011. Any Member who does not attain the minimum performance evaluation score shall continue to serve in the existing step until the Member attains the satisfactory performance evaluation score at the next annual performance evaluation.

- A. Step 1 shall be the hiring step for the rank of Police Officer for those Members hired after January 1, 2011. A Member shall be advanced from Step 1 to Step 2 upon completion of: (1) one year of continuous service at Step 1; and (2) attaining a minimum of a 70% grade on the Member's most recent performance evaluation while serving in Step 1.
- B. A Member shall be advanced from Step 2 to Step 3 upon completion of: (1) of one year of continuous service at Step 2; and (2) attaining a minimum of a 70% grade on the Member's most recent performance evaluation while service in Step 2.
- C. A Member shall be advanced from Step 3 to Step 4 upon completion of: (1) one year of continuous service at Step 3; and (2) attaining a minimum of a 70% grade on the Member's most recent performance evaluation while serving in Step 3.

- D. A Member shall be advanced from Step 4 to Step 5 upon completion of: (1) one year of continuous service at Step 4; and (2) attaining a minimum of a 70% grade on the Member's most recent performance evaluation while serving in Step 4.

Section 20.4 Appointment and Advance Step Hiring. The City retains the sole discretion to place a newly hired Member into an advanced step based upon the Member's level of relevant experience.

Section 20.5 Merit Bonuses. In recognition of exceptional City service, each Member shall be eligible for additional compensation in the form of a merit bonus program. A Member becomes eligible for merit compensation in the year following the Member's advancement to Step 5. In order to be eligible for merit compensation, the Member shall attain a minimum score of 80% on the Member's annual performance evaluation. The table below summarizes the job performance for the merit bonus program based upon years of service:

Years of Service	Job Performance	Amount
Up to 11	Less than 80%	\$0.00
	80% or greater but less than 90%	\$300.00
	90% and greater	\$600.00
12-18	Less than 80%	\$0.00
	80% or greater but less than 90%	\$400.00
	90% and greater	\$800.00
18+	Less than 80%	\$0.00
	80% or greater but less than 90%	\$750.00
	90% and greater	\$1000.00

Section 20.6 Shift Differential. A shift differential of one dollar (\$1.00) per hour shall be provided (excluding hours in paid status while on approved leaves, restricted duty, and off-duty court time hours) for all Members 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 shall 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.

ARTICLE 21

RATES FOR MEMBERS FOLLOWING CERTAIN PERSONNEL ACTIONS

Section 21.1 Officer-In-Charge. Any Member who is designated by the Chief or designee as "officer-in-charge" ("OIC") shall be compensated at the greater of the base rate equal to the base rate for a second-step Sergeant or in an amount equal to seven percent (7%) above the Member's base hourly rate. The Member shall be eligible for such pay on an hour-for-hour basis. The officer-in-charge designation shall be made when there is no supervisor scheduled or when a supervisor calls off and no other supervisor is working during that shift. In the event that a supervisor is scheduled but does not complete the shift, the Chief or designee may designate an officer-in-charge. Such officer-in-charge pay shall be paid in addition to FTO pay under Section 21.4 below if such Member is designated as officer-in-charge and is also serving as an FTO on the same shift.

Section 21.2 Return from Military Service. Pursuant to the Ohio Revised Code Section 5903.03, any Member who leaves, or has left, the City service to enter the active service of the Armed Forces of the United States, or any branch thereof, and who subsequently is reinstated to employment with the City, shall be entitled to receive compensation at the Step rate to which the Member would have been entitled had service with the City not been interrupted by service in the Armed Services.

Section 21.3 Reinstatement from Authorized Leave. Time spent on authorized leave in paid status and/or approved Family and Medical Leave Act leave shall be credited for purposes of step advancement.

Section 21.4 Field Training Officer. A Member who is designated by the Chief or designee as a Field Training Officer (FTO) shall be paid in the amount of three dollars and twenty-five cents (\$3.25) above the Member's base hourly rate. The Member shall be eligible for such pay on an hour-for-hour basis for all hours worked during a shift as an FTO provided that such Member works a minimum of four (4) consecutive hours as an FTO. Such FTO pay shall be in addition to officer-in-charge pay under Section 21.1 above.

ARTICLE 22

UNIFORMS, EQUIPMENT, AND ALLOWANCES

Section 22.1 Initial Issue Stipend. Upon initial appointment, the City shall provide each new Member with all personal uniforms, uniform parts, leather gear and required equipment (other than Departmental-issued uniforms, uniform parts, leather gear, required equipment, service pistol and less-than-lethal weapons that shall remain the property of the City). The initial appointment issuance shall include personal uniforms, uniform parts, leather gear and required equipment contained in the City's Uniform Specification that shall be published by the City from time to time.

Section 22.2 Body Armor. Body Armor shall be replaced every five (5) years at the City's expense.

Section 22.3 Uniform Specification. The City shall publish the Uniform Specification on an annual basis and identify City authorized vendor(s) for such uniform specifications. Within sixty (60) days of the effective date of this Agreement, all Members shall have the minimum required uniforms to comply with the Uniform Specification. To the extent a Member does not have the minimum required uniforms the Members shall order or replace such uniforms pursuant to Section 22.4. Within sixty (60) days of the effective date of this Agreement, all Members shall have the minimum required equipment to comply with the Uniform Specification. To the extent a Member does not have the minimum required equipment, the Member shall order or replace such equipment pursuant to Section 22.4.

Section 22.4 Uniform Replacement. Whenever a personal uniform, uniform part, leather gear and/or required equipment is worn or damaged by ordinary wear and tear or in the line of duty to the point that it is unserviceable, it shall be turned in and replaced by the City as soon as possible at no cost to the Member. If damage is due to the Member's negligence or intentional misuse, the item shall be replaced at the Member's expense. The reasonable cost of alterations for replacement uniforms shall be reimbursed to the Member on a one-time basis per uniform piece.

Section 22.5 Plain Clothes and Equipment Stipend. Each plain clothes Member upon the Member's initial plain clothes assignment, shall receive a one-time stipend in the amount of \$1,000 for the purpose of purchasing appropriate attire for plain clothes duty. The plain clothes Member is still required to maintain uniforms, uniform parts, leather gear and required equipment including necessary replacement thereof pursuant to Section 22.3, above, subject to any modifications to the uniform specification. The dress code for each plain clothes Member is business attire (e.g., suit or dress pants and jacket and dress shirt and tie) as determined by the City, unless the Member is wearing a uniform or if the Member's specific tasks or assignment requires the Member to wear something other than business attire. Each plain clothes Member shall receive, no later than January 30 of each calendar year, an annual stipend in the amount of \$500 for the purpose of maintaining appropriate attire for plain clothes duty. This stipend shall not be paid in the event that the Member was first assigned to a plain clothes assignment in the same calendar year.

Section 22.6 Required Purchases. Uniformed Members shall be required to purchase uniform parts and equipment as defined by appropriate orders, regulations, codes, or other policies of the Chief and City Manager. Plain clothes Members will be expected to purchase the clothing and equipment necessary to function as a plain clothes officer, as required by appropriate orders, regulations, codes, or other policies of the Chief and City Manager.

Section 22.7 Damaged or Destroyed Personal Property. In general, personal property of a Member, approved for City use, which is damaged or destroyed in the line of duty shall be replaced by the City, via a reimbursement procedure, up to a maximum value of \$175.00 on a per occurrence basis. Personal property of a Member which is damaged or destroyed in the line of duty as a result of the Member's reckless or negligent care shall not be reimbursed. Requests for replacement of damaged or destroyed personal property must be submitted in writing to the Chief identifying the circumstances under which the damage or destruction occurred and the type, brand name, model, value, condition prior to damage of said property, together with the damaged property. If such request is subsequently approved, the Member

shall be reimbursed for the purchase of replacement personal property which, in all respects, is substantially similar to that which was damaged or destroyed, up to the maximum value identified above, provided that the Member submits a valid receipt identifying the type, brand name, model, dollar amount, etc. of the property purchased as a replacement. Specifically excepted from the above mentioned \$175.00 maximum reimbursement shall include prescription eyewear, the maximum reimbursement for which shall be the replacement value of said item not to exceed \$350.00.

Section 22.8 Non-Uniform Specification Authorized Equipment. Any Member can use equipment outside of the Uniform Specification provided such member receives approval from the Member's Supervisor prior to the use of such equipment. The initial cost of such equipment shall be the obligation of the Member and if damaged or destroyed shall be subject to Section 22.7.

Section 22.9 Termination of Employment. Upon termination of employment (regardless of the reason), Members shall return to the Department all Department-issued uniforms, uniform parts, leather gear and equipment in good condition, minus normal wear. It is recognized that the Departmental-issued items shall be considered the property of the City.

Section 22.10 Evaluation of Uniform and Equipment Specification Replacement. The Parties agree that the replacement of uniforms and equipment pursuant to this Article shall be an appropriate subject for discussion at labor/management meetings pursuant to Article 6 of this Agreement may be subject to further collective bargaining in a successor agreement.

ARTICLE 23

INSURANCE BENEFITS

Section 23.1 Health, Prescription, Dental and Vision. The City shall make available group medical, prescription drug, dental, and vision benefits to all full-time Members and their eligible dependents. The benefits shall be based on the benefits of the carrier or carriers and shall be the same benefits offered to all city non-union employees. The Members' premium contributions shall be fifteen percent (15%) of the established total premium amount for such coverage and remain at fifteen percent (15%) during the remainder of effective period of this Agreement. Members' premium contributions shall not exceed fifteen percent (15%) of the established premium amount for COBRA contributions.

Section 23.2 Life Insurance and Death and Dismemberment Insurance. All full-time Members shall be entitled to group term life and accidental death and dismemberment insurance coverage. The City shall provide term life and accidental death coverage in the amount equal to one and one-half (1.5) times the Member's annual base wages, rounded up to the nearest thousand dollars. The maximum coverage shall be one hundred fifty thousand dollars (\$150,000).

ARTICLE 24

DURATION / SUCCESSOR AGREEMENT

Section 24.1 Duration. This Agreement shall be effective upon signing and shall continue in full force and effect until midnight on December 31, 2026. This Agreement shall automatically renew for successive one-year terms unless a party to the Agreement provides written notice as provided in Section 24.2 below.

Section 24.2 Successor Negotiations. Unless otherwise provided in this Article, all negotiations for a successor collective bargaining agreement will be conducted in accordance with Chapter 4117 of the Ohio Revised Code. If either party to this Agreement desires to enter into collective bargaining to amend or modify this Agreement or to negotiate new terms for a successor agreement, the party who so desires shall serve written notice of such desire upon the other party not less than sixty (60) days prior to the expiration date of this Agreement.

Section 24.3 Mutually Agreed Dispute Resolution. If the publication of findings and recommendations by a fact-finder in accordance with Ohio Revised Code 4117.14 does not result in an agreement, all issues remaining in dispute between the parties shall be resolved by utilizing the following dispute resolution procedure in lieu of the provisions in Ohio Revised Code Section 4117.14 for conciliation:

- A. Arbitration.** Either party may provide written notice to the other party and the State Employment Relations Board that such party desires binding arbitration to resolve the open issues. Thereafter, the parties shall submit all issues in dispute to binding arbitration confined to a choice of the last offer of each party on each issue submitted. Each party must provide to the other its last offer on all open issues at least fourteen (14) calendar days prior to any arbitration hearing. Mediation may continue pending the arbitration hearing.
- B. Citizen's Conciliation Council.** The arbitration shall be conducted by a three (3) Member Citizen's Conciliation Council (the "CCC"). The City and the Lodge shall each select one member, who shall mutually select the third member who shall also be the CCC Chairperson. In the event that the Members of the CCC selected by the parties are unable to mutually agree upon the third Member, the parties shall request that the State Employment Relations Board provide a panel of five (5) conciliators from its list of conciliators. The parties shall then choose a conciliator by alternately striking names from the list until such time as one (1) name remains as the conciliator chosen by the parties. The party having the first strike of a conciliator shall be determined by a coin toss. The conciliator selected by the members of the CCC selected by the parties or by the striking of names from the State Employment Relations Board panel shall serve as the third member and Chairperson of the CCC.
- C. Arbitrator Qualifications.** The members of the CCC selected by the parties shall consist solely of residents and electors of the City of New Albany. The members selected cannot be employed by or have an immediate family member employed by the City or by the Lodge or be a Member of a bargaining unit represented by the Lodge.

D. Arbitration Guidelines. The following guidelines shall apply to final offer settlement arbitration proceedings under this Article.

1. The City and the Lodge shall submit to arbitration by the CCC those issues upon which they have not reached agreement, and other matters mutually agreed to by the City and the Lodge.
2. The City and the Lodge, in conjunction with the CCC, shall arrange for an arbitration hearing to be held not later than thirty (30) days after the selection of the CCC. Not later than five (5) business days before the arbitration hearing, each of the parties shall submit to the CCC and the other party a written report summarizing the unresolved issues, each party's final offer as to the issues, and the rationale and arguments in support of their positions.
3. At the arbitration hearing, the CCC, at the request of either the City or the Lodge, or on its own initiative, shall hear testimony from the parties and accept other evidence relevant to the issues in dispute. The CCC shall have the authority to issue subpoenas and administer oaths, pursuant to Revised Code Chapter 2711. Such hearing, upon the agreement of the parties or by order of the CCC, may be audio recorded or stenographically recorded. Without such agreement or order, such hearing may be audio recorded or stenographically recorded at a party's own cost.
4. After the hearing, the CCC shall, as expeditiously as practicable, resolve the dispute between the City and the Lodge by selecting, on an issue-by-issue basis, from between each party's final offers on those issues in dispute, taking into consideration the following items (not in any particular order):
 - a. Past Agreements between the parties;
 - b. Comparison of the issues submitted to final offer settlement and each party's final offer as to each issue with respect to wages, hours, and terms and conditions of employment generally prevailing in Police Departments of similar size in Central Ohio communities of similar size;
 - c. The interests and welfare of the public, the ability of the City to finance and administer the issues proposed, the comparison of the issues submitted to final offer settlement with respect to similar matters affecting employees of the City who are not covered by the terms of this Agreement, and the effect of the adjustments on the normal standards of public service;
 - d. The lawful authority of the City;
 - e. The stipulation of the parties;
 - f. Such other factors as may be relevant to the decision of the CCC.

The determination of all issues shall require the majority vote of the CCC. The CCC shall make written findings of fact and shall issue a written opinion and order upon the issues presented to it, and upon the record made before it and shall mail or otherwise deliver a true copy thereof to the City and the Lodge.

- E. Effective Date. Increases in rates of compensation and other matters with cost implications awarded by the CCC shall be effective when determined by the CCC but in no event earlier than the fiscal year next commencing after the date of the CCC's decision. The parties may, at any time, amend or modify the CCC award or order by mutual agreement or agree that the CCC can award retroactive compensation and other matters with cost implications to some other date.
- F. Agreement Continues. The parties shall continue in full force and effect all of the terms and conditions of this Agreement until a new Agreement has been reached or the final decision of the CCC has been issued and incorporated into a new Agreement, whichever occurs first. The decision of the CCC, in accordance with Section 4117.14(0), of the Ohio Revised Code, is final and will be binding upon the parties. The City and the Lodge shall take whatever actions are necessary to implement the decision of the CCC in the shortest practicable period of time.
- G. State Law. The award of the CCC made under this Agreement is subject to Chapter 2711 of the Ohio Revised Code.
- H. Costs. Each Member of the CCC shall be compensated at no more than Five Hundred Dollars (\$500) per day and the parties shall bear equally the cost of the arbitrators, arbitration procedure and any costs for the court reporter. The Five Hundred Dollar per day maximum shall not apply to a conciliator selected from a State Employment Relations Board panel pursuant to Section 24.3(B), above.

WHEREFORE, this Agreement is hereby executed by Representatives of the Parties this

_____ day of _____, 2024.

For the City:

Joseph Stefanov
City Manager

Greg Jones
Chief of Police

Bethany Staats
Finance Director

Lindsay Rasey
HR Officer

Benjamin S. Albrecht
Counsel for the City

For the Lodge:

Ryan Southers
Bargaining Committee

Joe Rehnert
Bargaining Committee

Leland M.A. Kelly
Bargaining Committee

Kevin Wightman
FOP Lodge 9 Liaison

Nicole E. Wannemacher
Counsel for FOP Lodge 9

**MEMORANDUM OF UNDERSTANDING
Regarding Critical Incidents**

Notwithstanding the City's right to issue, amend and revise directives, procedures, policies, rules, regulations, practices and to enact ordinances consistent with Article 12, Work Rules and Directives, the City and Union agree that in the event of a critical incident during which a body worn camera was worn, the video may be obtained and reviewed by the officer consistent with the following:

- A. When preparing written reports or statements, officers should review their recordings as a resource. However, officers shall not retain personal copies of recordings. Officers should not use the fact that a recording was made as a reason to write a less detailed report.
- B. Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the officer's performance.
- C. Department personnel may review digital video files from the file server for the following reasons:
 - 1. To review a file for a statement of facts and/or evidentiary purposes.
 - 2. To review a file for training purposes.
 - 3. To review a file as part of the complaint/internal affairs process.
 - 4. To review a file for periodic evaluation purposes.

WHEREFORE, this Memorandum of Understanding is hereby executed by

Representatives of the Parties this _____ day of _____, 2021.

For the City:

For the Lodge:

Joseph Stefanov
City Manager

Jason Pappas
President

Lindsay Rasey
HR Officer

Ian McCord
Bargaining Committee

Greg Jones
Chief of Police

Joe Rehnert
Bargaining Committee

Bethany Staats
Finance Director

Leland M.A. Kelly
Bargaining Committee

Benjamin S. Albrecht
Counsel for the City

Nicole E. Wannemacher
Counsel for the Lodge



RESOLUTION R-11-2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO INCREASE THE GUARANTEED MAXIMUM PRICE WITH MESSER CONSTRUCTION FOR THE PURPOSE OF ADDING TO THE SCOPE OF WORK OF PHASE 2 OF THE TAYLOR FARM PARK PROJECT

WHEREAS, Council approved R-35-2023 that authorized the city manager to enter into a GMP Amendment with Messer Construction for phase two of the Taylor Farm Park Project; and

WHEREAS, there is a desire to add additional elements to the scope of work being performed at the park, including an expanded parking lot, a picnic shelter, a shade structure/sun sails over the playground and a memorial tree grove; and

WHEREAS the 2024 capital budget included \$250,000 funding for a shade structure/sun sails and \$400,000 for a picnic shelter and a family desires to donate \$30,000 to the project for the memorial tree grove; and

WHEREAS R-09-2024 authorized \$213,562.50 for the shade structure/sun sails to be installed over the park's playground leaving \$36,437.50 left to go towards other additional elements to be built within the park; and

WHEREAS the most efficient and cost-effective method to construct this additional scope of work is to utilize the existing construction manager at risk contract by increasing the GMP by \$466,437.50.

NOW, THEREFORE, BE IT RESOLVED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. The city manager is hereby authorized to increase the GMP with Messer Construction to add to the scope of work for phase 2 of Taylor Farm Park.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2024.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared: 03/22/2024

Introduced: 04/16/2024

Revised:

Adopted:

Effective:



RESOLUTION R-12-2024

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO ANY AND ALL CONTRACTS FOR THE PURCHASE OF A HEAVY-DUTY AUTOMOTIVE LIFT

WHEREAS, Council desires to make capital equipment investments as necessary to maintain the city's fleet and equipment to a high standard; and

WHEREAS, the City of New Albany needs an additional heavy-duty lift to increase operational efficiency and expand maintenance activity on heavy vehicles and equipment; and

WHEREAS, the City of New Albany will purchase the subject heavy-duty lift through state purchasing contract #RS900921-1; and

WHEREAS, the total cost of the subject heavy-duty lift is \$192,072.49; and

WHEREAS, funding for this purchase was approved in the 2023 Capital Equipment budget and considered as part of the final 2023 appropriations ordinance.

NOW, THEREFORE, be it resolved by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that;

Section 1. The city manager is hereby authorized and directed to enter into any and all contracts for the purchase of a heavy-duty automotive lift.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2024.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared: 04/05/2024

Introduced: 04/16/2024

Revised:

Adopted:

Effective:

PROPOSED