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PREAMBLE

we the people of Lincoln Heights, Ohio, in order to form a more unified community, establish a system of Home Rule to be responsive to our people, to insure wider citizen participation in local government, to promote clear and understandable guidelines for locally elected officials, to encourage continued improvement in public services through intergovernmental cooperation, and to provide the best possible protection for our community health, safety, and welfare, do ordain and establish this Charter for Lincoln Heights, Hamilton County, Ohio. The provisions of this Charter shall apply whether Lincoln Heights is a Village or a City.

ARTICLE I. INCORPORATION AND POWERS

Section 1.01 INCORPORATION.

The municipal corporation now existing in the County of Hamilton, State of Ohio, and known as the "Village of Lincoln Heights," and herein after referred to in this Charter as the "Municipality," shall continue to be a municipal corporation with all the privileges and powers pertaining thereto. The Municipality shall have the boundaries that now exist and shall have the authority to change its boundaries by annexation, detachment, and other proceedings authorized by the general laws of the State of Ohio. Territory added to the Municipality shall immediately become subject to the provisions of this Charter.

(Adopted by electorate, May 4, 1993)

Section 1.02 POWERS.

The Municipality shall have all powers of local self-government and home rule now or hereafter granted by the Constitution and general laws of the State of Ohio. All such powers shall be exercised in the manner prescribed in this Charter or, if not prescribed herein, in such lawful manner as the Council shall determine by ordinance or resolution. The general laws of the State of Ohio not inconsistent with the Charter, except those declared inoperable by ordinance of Council, shall have the force and effect of ordinance of the Municipality. The enumeration of particular and specific powers in this Charter shall not be deemed to exclude other powers to which the Municipality of Lincoln Heights is now or hereafter entitled under the Constitution of the State of Ohio.

(Adopted by electorate, May 4, 1993)

Section 1.03 FORM OF GOVERNMENT.

The municipal government provided by this Charter shall be known as the "Council-Manager Government." All legislative powers of the Municipality, except those limitations imposed by the Constitution of the State of Ohio, shall be vested in an elected Council, which shall enact local legislation, adopt budgets, determine general policies and appoint a Manager. The Manager shall see that policies and legislation adopted by the Council are enforced and shall administer the government of the Municipality.

(Adopted by electorate, May 4, 1993)

Section 1.04 INTERGOVERNMENTAL RELATIONS.

The Municipality may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly, or in cooperation by contract or otherwise, with any one or more state or political subdivisions thereof, or the Government of the United States or any agency thereof.

(Adopted by electorate, May 4, 1993)

ARTICLE II. THE COUNCIL

Section 2.01 COMPOSITION.

There shall be a Council composed of seven members, all of whom shall be elected at large. All elections of council members shall be on a nonpartisan ballot. All council members shall be elected by procedures enumerated in Article V of this Charter.

(Adopted by electorate, May 4, 1993)

Section 2.02 QUALIFICATIONS.

Any qualified resident elector who has been a resident of the Municipality for a continuous period of time not less than one year preceding the election shall be eligible to serve as a member of Council. An Elector who is delinquent on taxes due the Village or who has been convicted of a felony, treason, or who has been imprisoned for a felony shall not be qualified to serve as a member of Council. In addition, an Elector who has been recalled by the voters of Lincoln Heights pursuant to Section 6.01 of the Charter shall not be qualified to serve as a member of Council until a period of five calendar years has passed since the date of the election by which the Elector was recalled. Council members shall not hold any other public office, or any other employment with the Municipality of Lincoln Heights except that of a Notary Public, or a member of the National Guard or a Reserve in the Armed Forces. All members of Council must be willing to accept and receive on going training in laws or other regulations pertaining to Local, County, State, National or Federal affairs.

(Adopted by electorate, November 2, 2010)

Section 2.03 TERMS OF OFFICE.

Members of Council shall be elected for four-year overlapping terms. At the first municipal election after the adoption of this Charter, November 2, 1993, each of the four candidates receiving the largest number of votes shall be elected to four-year terms of office, and each of the three candidates receiving the next highest number of votes shall be elected for a two-year term of office. Thereafter, beginning November, 1995, all members of Council shall be elected to a four-year term of office. All Council terms shall begin on the first day of January after the municipal election and Council shall meet on the same date for the purpose of organizing.

(Adopted by electorate, November 4,1997 / Legislation 97-O-37, July 30, 1997 / 99-O-84, Dec. 27, 1999)

Section 2.04 ORGANIZATION OF COUNCIL.

On the first day of January after the municipal election Council shall meet for purpose of organizing. At this meeting, the elected member shall subscribe to the oath of office set forth in Article IX of this Charter, and shall proceed by majority vote to elect one of its members to serve as Mayor and another as Vice Mayor. Each shall serve a term of two years. This Council shall appoint a Clerk who shall perform duties as prescribed in this Charter or by general law or in ordinance. The Clerk shall serve at the pleasure of Council and as Secretary to the Mayor.

(Adopted by electorate, November 4,1997 / Legislation: 97-O-37, July 30, 1997 / 99-O-85, Dec. 27, 1999)

Section 2.05 GENERAL POWERS AND DUTIES.

All powers of the Municipality shall be vested in Council, except as otherwise provided by law or this Charter, and the Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the Municipality by law. Among other powers, Council shall have the authority to:

1. Appoint and remove the Manager, and establish and modify his/her salary by ordinance.
2. Establish administrative departments or commissions and define their duties.
3. Adopt a personnel pay plan.

4. Adopt the annual tax budget and manual appropriation ordinance.

5. Adopt and modify the master plan and official map of the Municipality.

6. Inquire into the conduct of any officer or employee in the performance of his/her public duties.

7. Authorize the levying of taxes and issuance of bonds.

8. Employ a CPA to make an audit of the financial affairs of the Municipality whenever such is deemed necessary.

9. Establish zoning regulations.

10. Adopt a subdivision platting ordinance.

11. Enact a comprehensive building code.

12. Provide for the employment of professional services on a consulting basis when deemed necessary.

13. Adopt ordinances and resolutions on any subject within the scope of its powers and to provide penalties for the violation thereof.

(Adopted by electorate, May 4, 1993)

Section 2.06 THE MAYOR.

As provided in Section 2.04, Council shall elect one of its members to serve as Mayor and another as Vice Mayor.

The Mayor shall preside at Council meetings and shall have no power of veto. He/she is obligated to sign all legislation passed by Council. He/she shall be the ceremonial and representative head of the Municipality, but shall exercise no administrative power except as otherwise provided in the Charter. He/she shall be recognized as the official head of the Municipality for military purposes and by the Courts for the purposes of serving civil process, and Mayor's Court.

He/she shall have judicial authority and other related powers and privileges under the Constitution and General Laws of Ohio.

The Mayor shall perform all other duties prescribed for him/her by ordinance or resolution of Council, not inconsistent with the provisions of this Charter.

The Vice Mayor shall perform the Mayor's duties when the Mayor is absent or incapacitated.

(Adopted by electorate, May 4, 1993)

Section 2.07 THE VICE MAYOR.

The Vice-Mayor shall exercise all the powers and perform all the duties of the Mayor in case of temporary absence or disability of the Mayor and shall succeed to his/her office in case of its vacancy.

(Adopted by electorate, May 4, 1993)

Section 2.08 STIPEND / EXPENSES.

The stipend of members of Council shall be per annum, payable monthly regardless of the number of Council meetings held during each month. Council by ordinance shall establish the stipend for the Mayor, Vice Mayor, and members of Council.

The stipend of members of Council, including the Mayor and Vice-Mayor, shall not exceed the following amounts without the approval of the voters:

Mayor	$5,500.00
Vice-Mayor	$4,500.00

Councilmember	$3,500.00

Attendance at regularly scheduled Council Meetings, unless excused in accordance with the Rules of Council, is mandatory for payment of the monthly stipend. Minutes of Council will verify attendance.

Upon prior approval of Council, members shall be reimbursed for expenses incurred in accordance with the Rules of Council, while on Municipal business.

(Adopted by electorate, May 4, 1993 / / Revised 9-1-98, 98-O-66)

Section 2.09 FORFEITURE OF OFFICE.

If, at any time, a Council Member lacks any qualification for the office described in this Charter; or if he/she consistently fails to abide by the Rules of Council, he/she shall forfeit his/her office and his/her seat shall be declared vacant by resolution of Council, five members concurring.

(Adopted by electorate, May 4, 1993)

Section 2.10 REMOVALS AND VACANCIES.

The Council shall without delay declare vacant the seat of any member who shall cease to be a resident of the Municipality. Council may also declare vacant the seat of any member who persistently fails to abide by the Rules of Council or who is otherwise guilty of misconduct affecting the performance of his/her duties as a member of Council, but such action shall be taken only upon the concurrence of five members of Council at a regular meeting of the Council after service of notice upon such member of such proposed action at least seventy-two hours in advance of such meeting, at which he/she may present a defense.

Council vacancies shall be filled within sixty days by a vote of a majority of the remaining Council members. If Council fails to fill such vacancy within sixty days, the Mayor shall fill it by appointment. Such person so chosen by Council or the Mayor shall serve it until January 1st, following the next regular municipal Council election.

(Adopted by electorate, May 4, 1993)

Section 2.11 COUNCIL PROCEDURES.

(a) *Meetings.* Council shall meet regularly at least twice in every month except the month of August. Standing Committees of Council shall meet regularly at least once in every month except the month of August. Special meetings may be called by the Mayor or a majority of council members. Whenever practicable, every member shall be given at least 12 hours notice of the Special Meeting. All meetings shall be public, except that Council may recess to a closed session for the purpose of discussing any matter which would tend to defame or prejudice the reputation of any person provided that the subject to be discussed is expressed in the motion calling for such session, and the final action on the subject shall not be taken by Council until the matter is placed on the regular agenda.

(Adopted by electorate, November 4, 1997 / Legislation: 97-O-49 July 30, 1997 / Revised 9-1-98, 98-0-63)

(b) *Quorum.* Five (5) members of Council shall constitute a quorum.

(c) *Public Journal.* Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. The journal shall be a public record kept by the Clerk of Council.

(d) *Ordinances.* Action of Council shall be by ordinance, resolution or motion. Every action of a general and permanent nature or granting a franchise, or levying a tax, or appropriating money, or contracting a debt, or for the purchase, lease, or transfer of public property, or establishing an offense and fixing a penalty therefor shall be taken by ordinance or resolution. All other action may be by motion. Any member of Council may at a regular or special meeting introduce any ordinance, resolution or motion.

Except on procedural motions, voting shall be by roll call and the ayes and nays shall be recorded in the journal. The affirmative votes of at least a majority of the membership shall be required for every action.

Every ordinance shall be fully and distinctly read on three different days, unless each member has previously been furnished a copy

thereof, in which case it can be read by title only. By a vote of five (5) members, Council can suspend the rule requiring the reading of an ordinance on three different days.

Except as otherwise provided in the Charter, each ordinance approved by the Council will be effective at the end of thirty days following passage, or such longer period as is determined by the Council. If the Council determines that an ordinance should be passed on an emergency basis, the reasons for declaring such ordinances to be an emergency measure shall be set forth in one section of the ordinance which section shall be passed only upon an aye and nay vote upon a separate roll call with at least five (5) of the members voting affirmatively. No ordinance prescribing rates and charges by a public utility, or granting a franchise, or levying a tax, shall be passed as an emergency measure. An emergency ordinance shall become effective immediately upon passage, or at such later time as it may specify. It shall not automatically stand repealed as of the 90th day following the date of its adoption but this shall not prevent reenactment of the ordinance in the manner prescribed for regular ordinances.

(Adopted by electorate, November 4, 1997)

Every proposed ordinance shall be introduced in writing. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The opening clause of the ordinance shall be: "Be it ordained by the Council of Lincoln Heights, Ohio . . ." Any ordinance, which repeals or amends an existing ordinance or part of the Municipal Administrative Code, shall set out in full the ordinance, sections or subsections to be repealed or amended.

(Adopted by electorate, May 4, 1993)

Section 2.12 PUBLICATION.

The Clerk shall record in a properly indexed book all ordinances and resolutions adopted by Council. Printed copies of all ordinances and resolutions and charter amendments shall be available for public inspection in the office of the Clerk of Council. All legislation must be posted for at least 14 days after adoption in five conspicuous places in the municipality, in accordance with the Rules of Council.

(Adopted by electorate, May 4, 1993)

Section 2.13 CODES OF TECHNICAL REGULATIONS.

The Council may adopt any standard code prepared and published by private or public agencies by reference to the date and source of the code without reproducing the same in full in the ordinance. Copies of such codes shall be kept in the office of the Clerk of Council. Additional copies shall be available for sale, at cost, by the Clerk.

(Adopted by electorate, May 4, 1993)

Section 2.14 INVESTIGATION.

Council may make investigations into municipal affairs and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Any person who fails to obey a lawful order issued in the exercise of this power shall be guilty of a misdemeanor punishable by a fine of not more than $100.00 or by imprisonment for not more than 30 days or both. If such person is an employee of the administrative service of the Municipality, such refusal shall be grounds for dismissal.

(Adopted by electorate, May 4, 1993)

ARTICLE III. ADMINISTRATIVE SERVICE

Section 3.01 APPOINTMENT OF MANAGER.

The Council shall appoint, with five (5) members concurring, a Manager for an indefinite term. The Manager shall have the powers and perform the duties set forth in this Charter or by ordinance.

The first Council elected under this Charter shall select a Manager within 90 days of their taking office. In the 90-day interim period, the duties of the Manager described herein shall be exercised by the council member selected as Mayor.

(Adopted by electorate, May 4, 1993)

Section 3.02 QUALIFICATIONS.

The Manager shall be appointed solely on the basis of his/her executive, administrative, urban planning, fiscal and public executive administrative management experience. There will be special preference to actual experience in, or knowledge of, accepted practice in respect to the duties of the office as hereinafter set forth. He/she need not be a resident of the Municipality or State at the time of his/her appointment. He/she may reside outside of the Municipality while in office only with the authorization of the Council.

(Adopted by electorate, May 4, 1993)

Section 3.03 POWERS AND DUTIES OF THE MANAGER.

The Manager shall be the Chief Administrative Officer of the Municipality. He/she shall be responsible to the Council for the administration of all Municipal affairs placed in his/her charge by or under this Charter. He/she shall have the following powers and duties:

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

2. Shall direct and supervise the administration of all departments, offices and agencies of the Municipality, except as otherwise provided by this Charter or law.

3. Shall attend all Council meetings and shall have the right to participate in discussions but may not vote.

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

5. Shall prepare and submit the annual budget and capital program to the Council.

6. Shall submit to Council and make available to the public a complete report on the finances and administrative activities of the Municipality at the end of each fiscal year, within not more than 45 days after the closing of such fiscal year.

7. Shall make monthly financial reports and such other reports, as Council shall require concerning the operation of municipal departments, offices, and agencies subject to his/her direction and supervision.

8. Shall keep Council fully advised as to the financial condition and future needs of the Municipality, and shall make such recommendations to the Council concerning the affairs of the Municipality as he/she deems desirable.

9. Shall perform such other duties as are specified in this Charter or may be required by Council.

10. The Manager may be required to attend meetings of Municipal Boards and Commissions and may attend all other such meetings, as he/she deems necessary.

(Adopted by electorate, May 4, 1993)

Section 3.04 PROHIBITIONS.

The Manager, in exercising his/her appointment powers, is prohibited from appointing his/her family relation to the position of Department Head. For the purpose of this Section, "family relation: is defined as wife, husband, son, daughter, niece, nephew, first cousin, mother, father, sister, brother, aunt, uncle, and in-laws."

The Manager is prohibited from participating in any personal gain activities with the Municipality through individual or partnership for a period of five (5) years from date of separation.

(Adopted by electorate, May 4, 1993)

Section 3.05 REMOVAL.

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

1. If necessary or convenient, Council may suspend the Manager with pay pending any investigation Council might determine to be necessary.

2. The Council may, by majority vote of its members, regardless of whether there has been an investigation, adopt a resolution of intent which shall state the reasons for removal and may suspend the Manager from duty with or without pay for a period not a exceed thirty (30) days. A copy of the resolution shall be delivered to the Manager by the Law Director and/or Clerk of Council.

3. Within five (5) days after a copy of the resolution is delivered to the Manager, the Manager may file with the Clerk of Council a written request for a public hearing. This hearing shall be held at a regular or special Council meeting not earlier than ten (10) days nor later than twenty (20) days after the request is filed. The date of the public hearing shall be set by the Mayor. The only notice required shall be that notice required for a Special Council Meeting. The Manager may file with the Clerk of Council a written reply to the resolution of intent, not later than five (5) days before the hearing.

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

5. The decision of the Council to suspend or remove the Manager shall be in the sole discretion of the Council.

6. If the Manager is suspended from duty, the Council shall appoint, by vote of a majority of its members, an acting Manager until the Manager is restored to duty or until Council shall appoint a person to the position of Manager as provided for under this Charter. The Acting Manager so appointed shall exercise all powers, duties, and functions of the Manager under this Charter.

(Adopted by electorate, May 4, 1993)

Section 3.06 ABSENCE OR DISABILITY.

By letter filed with the Municipal Clerk, the Manager shall designate, subject to the approval of a majority of the Council, a qualified Municipal administrative officer to exercise the powers and perform the duties of Manager during his/her temporary absence or disability. During such absence or disability, the Council may revoke such designation at any time and appoint another officer to serve until the Manager shall return or his/her disability shall cease.

(Adopted by electorate, May 4, 1993)

Section 3.07 ADMINISTRATIVE DEPARTMENTS.

Council shall have the power to create after consultation with the Manager any departments as may become necessary. Each department shall be headed by a person appointed by the Manager. The Manager may appoint the same person as head of more than one department. The Manager may serve as Director of one or more departments, except that of Legal Services, if approved by Council.

(Adopted by electorate, May 4, 1993)

Section 3.08 INTERFERENCE BY COUNCIL.

Neither Council, its committees or members, nor the Mayor, shall direct or request the Manager to make the appointment of any person to, or suspension or removal from, office or employment by the Manager, or in any manner take part in the appointment, discipline, or removal of subordinates and employees in the service of the Municipality. Council, its committees and members shall deal with that portion of the service of the Municipality for which the Manager is responsible solely through the Manager, and neither Council nor its committees or members, shall give any orders to any subordinate in office. Council may, however, inquire into the

conduct of any office or department, the performance of any contract, or any of the affairs of the Municipality, and may, in the exercise of such power, compel or authorize one of its committees to compel the attendance and testimony of witnesses and the production of books, records, papers, and other evidence under penalty of law.

(Adopted by electorate, May 4, 1993)

Section 3.09 ADMINISTRATIVE CODE.

Subject to the provisions of this Charter and after consultation with the Manager, the Council shall adopt an Administrative Code, which shall provide in detail the organization of the government, define the powers and duties of each municipal agency, and determine the administrative procedures to be followed. Amendments to and revisions of the Administrative Code shall be made by the Council only after consultation with the Manager. Provisions of the Administrative Code shall supersede those of the State law in case of conflict.

(Adopted by electorate, May 4, 1993)

Section 3.10 DIRECTOR OF LEGAL SERVICES.

The Director of Legal Services shall be an attorney licensed to practice law in the State of Ohio. He/she shall perform such duties as may be assigned to the office of Municipal Solicitor by general law as well as those imposed by the Administrative Code and this Charter. The Director shall be appointed by the Manager with the approval of Council.

(Adopted by electorate, May 4, 1993)

Section 3.11 CHIEF OF POLICE

The Chief of Police shall be appointed by the Manager with the approval of Council. The Chief of Police shall be a member of the Administrative Service under the supervision and control of the Village Manager pursuant to Section 3.03 of the Charter.

(Adopted by electorate, May 4, 1993 / Revised 2-9-98, 98-O-6)

ARTICLE IV. FINANCIAL PROCEDURES

Section 4.01 FISCAL YEAR.

The fiscal year of the Municipality shall begin on the first day of January and shall end on the last day of December.

(Adopted by electorate, May 4, 1993)

Section 4.02 ANNUAL TAX BUDGET.

On or before the first day of June of each year, the Manager shall submit to the Council a budget for the ensuing fiscal year, and an accompanying message. For that purpose, at such time as he shall determine, he shall obtain from the head of each department or agency of the Village, plans for the work to be undertaken by such department during the next fiscal year, together with estimates for the cost of performing such work. The Director of Finance or chief fiscal officer, shall supply the Manager with estimates of available revenue. From this data, the Manager shall prepare the consolidated estimates for the annual tax budget.

(Adopted by electorate, May 4, 1993)

Section 4.03 BUDGET MESSAGE.

The Manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies for the ensuing year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues, together with the reasons for such changes, summarize the Municipality's debt position and include such materials as the Manager deems desirable.

(Adopted by electorate, May 4, 1993)

Section 4.04 GENERAL PROVISIONS: BUDGET.

The budget shall provide a complete financial plan for all municipal funds and activities for the ensuing fiscal year, and except as required by law or this Charter, shall be in such form as the Manager deems desirable or the Council may require. In organizing the budget, the Manager shall utilize the most feasible combination of expenditures classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year or years. It shall indicate in separate sections.

(1) Proposed expenditures for current operations during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures.

(2) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable and the proposed method of financing each such capital expenditure; and

(3) Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the Municipality and the proposed method of its disposition; subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached appendices to the budget. The total proposed expenditures shall not exceed the total estimated income.

(Adopted by electorate, May 4, 1993)

Section 4.05 COUNCIL ACTION ON BUDGET.

(a) *Notice of Hearings.* The Council shall publish in one of general circulation, the general summary of the budget and a notice stating:

1. The times and places where copies of the message and budget are available for inspection by the public; and

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

(b) *Amendment Before Adoption.* After the public hearing, the Council may adopt the budget with or without amendments. In amending the budget, it may add or increase programs or amounts and except expenditures required by law or for debt service or for estimated cash deficit, provided that no amendment to the budget shall increase the authorized expenditures to an amount greater than the total of estimated income.

(c) *Adoption.* The Council shall adopt the budget on or before the 15th day of July of the fiscal year currently ending, as provided in R.C. § 5705.28. The Director of Finance shall transmit the budget so adopted to the, County Budget Commission in the form required by law, on or before the 20th day of July, or at such later time as is prescribed by the Board of Tax Appeals.

(Adopted by electorate, May 4, 1993)

Section 4.06 CAPITAL IMPROVEMENTS PROGRAMS.

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

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

1. A clear summary of its contents;

2. A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with

appropriate supporting information as to the necessity for such improvements;

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

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

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

(Adopted by electorate, May 4, 1993)

Section 4.07 COUNCIL ACTION ON CAPITAL PROGRAM.

(a) *Notice of Hearing*. The Council shall publish in one or more newspapers, the general summary of the capital program and notice stating:

1. The times and places where copies of the capital program are available for inspection by the public; and

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

(b) *Adoption*. The Council by resolution shall adopt the capital program with or without amendment after the public hearing and on or before the 1st day of March of the current fiscal year.

(Adopted by electorate, May 4, 1993)

Section 4.08 PUBLIC RECORDS.

Copies of the budget and the capital improvements program as adopted shall be public records and shall be made available to the public at suitable places in the Municipality.

(Adopted by electorate, May 4, 1993)

Section 4.09 APPROPRIATION ORDINANCE.

On or before the 15th day of November of the fiscal year, the Manager shall prepare and submit to Council an appropriation ordinance containing a financial plan for conducting the affairs of the Municipality during the ensuing fiscal or calendar year. Council shall specify the form of and the information to be contained in the Appropriation ordinance, as required by the Bureau of Inspection and Supervision of Public Offices. The appropriation ordinance shall be based on the Annual Tax Budget as certified and/or revised by the County Budget Commission.

(a) *Adoption*. Council shall adopt a temporary appropriation ordinance on or before the 31st of December of the fiscal year currently ending. The ordinance shall be passed with five members concurring, at a single reading, and shall become effective upon its adoption.

(b) *Permanent Appropriation Ordinance*. If Council fails to adopt a temporary appropriation ordinance by December 31 of the current year, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it prorated accordingly. But no later than the first day of April of the current year, a permanent appropriation ordinance shall be adopted. Council shall provide for a public hearing upon such permanent appropriation ordinance, and may amend such ordinance at any time. Adoption of an appropriation ordinance shall constitute appropriations of the amount specified therein as expenditures from the funds indicated.

(Adopted by electorate, November 4, 1997 / Legislation 97-0-40, July 30, 1997)

Section 4.10 AMENDMENTS AFTER ADOPTION.

(a) *Supplemental Appropriations*. If during the fiscal year the Manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the Council by ordinance may make supplemental appropriations for the year up

to the amount of such excess.

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

(c) *Reduction in Appropriations.* If at any time during the fiscal year it appears probable to the Manager that the revenue available will be insufficient to meet the amount appropriated, he/she shall report to the Council without delay, indicating the estimated amount of the deficit, any remedial action taken by him/her and his/her recommendations as to any other steps that may be/should be taken. The Council shall then take such further action as it deems necessary to prevent or minimize any deficit and for that purpose it may by ordinance reduce one or more appropriations.

(d) *Transfer of Appropriations.* At any time during the fiscal year, the Manager may transfer part of or all of any unencumbered appropriation balance among programs within a department, office or agency. He may request Council to transfer by ordinance part or all of any unencumbered appropriation balance from one department, office or agency to another. The request for transfer of appropriations from one department, office or agency to another shall be submitted in writing to Council for action prior to such transfer.

(e) *Limitations: Effective Date.* No appropriation for debt service may be reduced by transfer, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this article may be made effective immediately upon adoption.

(Adopted by electorate, May 4, 1993)

Section 4.11 LAPSE OF APPROPRIATIONS.

Every appropriation except an appropriation for capital expenditure shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation.

(Adopted by electorate, May 4, 1993)

Section 4.12 ADMINISTRATION OF THE BUDGET.

(a) *Work Programs and Allotments.* At such time as the Manager shall specify, each department, officer or agency shall submit work programs for the ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The Manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He/she may revise such allotments during the year if he/she deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations made pursuant to Section 4.10.

(b) *Payments and Obligations Prohibited.* No payment shall be made or obligation incurred against any allotment or appropriation except in accordance with appropriations duly made and unless the Manager or his/her designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable.

Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made, illegal; such action shall be cause for removal of any officer who knowingly authorized or makes such payment or incurred such obligation, and he/she shall also be liable to the Municipality for any amount so paid.

However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the end of the fiscal year, provided that such action is made or approved by ordinance.

(Adopted by electorate, May 4, 1993)

Section 4.13 BONDED INDEBTEDNESS.

Council may borrow for any purpose valid under the Constitution of the State of Ohio, and in accordance with the applicable statutory provisions.

(Adopted by electorate, May 4, 1993)

Section 4.14 TAX LEVY.

Council shall not have authority or power to levy any tax on real or personal property without a vote of the people except as may be provided by the provisions of this Charter, the Constitution, and general laws of the State of Ohio.

(Adopted by electorate, May 4, 1993)

Section 4.15 EARNING TAX.

No tax upon the earnings or income of any person, business, or corporation within majority of electors the Municipality shall be levied without the approval of a voting thereon. Taxpayers residing in Lincoln Heights who are 65 years of age or older during the taxable year shall receive a tax credit of $50.00, or such amount as shall be allowed in the computation of Ohio State Income Tax Liability.

(Adopted by electorate, May 4, 1993)

Section 4.16 FEES.

All fees received by any officer or employee of the Municipality in connection with his/her employment with the Municipality shall be accounted for and paid into the municipal treasury.

(Adopted by electorate, May 4, 1993)

Section 4.17 INVESTMENT OF FUNDS.

The Manager, with authorization of the Investment Board, may direct investments of any surplus, reserve, or inactive funds into such investments as are permitted by the general laws of Ohio. Such investments shall be supervised by the Investment Board consisting of the Manager, Director of Finance, and three (3) members of Council. Each council member's term or said Board shall expire on the date of expiration of his/her term as council member.

(Adopted by electorate, May 4, 1993)

ARTICLE V. NOMINATIONS AND ELECTIONS

Section 5.01 MUNICIPAL ELECTIONS.

The regular municipal election for council members shall be held in odd-numbered years on the first Tuesday after the first Monday of November.

(Adopted by electorate, May 4, 1993)

Section 5.02 QUALIFIED VOTERS.

All citizens qualified by the Constitution and laws of the State of Ohio to vote in the Municipality and who satisfy the requirements for registration prescribed by law shall be qualified voters of the Municipality within the meaning of this Charter.

(Adopted by electorate, May 4, 1993)

Section 5.03 NOMINATIONS.

There shall be no primary election for Municipal offices. Nominations for the office of Council Member shall be made by petition only in the standard forms for the nomination of non-partisan candidates for such offices filed with the Hamilton County Board of Elections at least 75 days before the day of the election. Candidates for Council shall file petitions containing the signatures of no less than 25 voters.

(Adopted by electorate, May 4, 1993)

Section 5.04 SPONSOR'S ACCEPTANCE.

Each candidate may have a sponsoring committee of five (5)-qualified voters, (The Committee) whose names and addresses shall appear on each copy of the candidate's petition. Each candidate shall file a separate petition. The signature of the candidate indicating his/her acceptance of the nomination and willingness to accept office if elected shall appear on each copy of the petition. The petition may be in a number of parts, but each part shall be verified under oath by the circulator of that particular petition. All parts shall be assembled by the sponsoring Committee prior to submission to the Board of Elections.

(Adopted by electorate, May 4, 1993)

Section 5.05 BALLOTS.

Candidate's names shall be printed on the official ballot without party designation. If two candidates with the same surname or with names similar enough to cause confusion are nominated, their residence addresses shall be printed below their names.

(Adopted by electorate, May 4, 1993)

Section 5.06 WATCHERS AND CHALLENGERS.

At each municipal election, each regularly nominated candidate shall be entitled on written application to the Board of Elections at least eleven days prior to the election, to appoint one person and one alternate to represent him/her as a watcher and challenger at each polling place during the casting and counting of ballots, and one person and one alternate to represent him/her as watcher and challenger during the canvas[s] of votes at the Board of Elections

(Adopted by electorate, May 4, 1993)

Section 5.07 PLURALITY FOR ELECTION.

A simple plurality of valid votes cast shall be sufficient to elect.

(Adopted by electorate, May 4, 1993)

Section 5.08 STATEMENT OF CAMPAIGN EXPENSES.

Each successful and unsuccessful candidate shall file a statement of receipts and expenditures on behalf of his/her campaign required by law with the Board of Elections of Hamilton County, and with the Clerk of the Municipality in accordance with the requirements of the Hamilton County Board of Elections. Such statement shall be filed under oath, and shall be a public record. Failure to file such statement with the Clerk shall disqualify a successful candidate from receiving the oath of office.

(Adopted by electorate, May 4, 1993)

ARTICLE VI. RECALL

Section 6.01 RECALL.

The voters of Lincoln Heights shall have the power to recall and remove from office any member of Council before the expiration of his/her office. A recall may be started by the filing with the Clerk of Council a petition signed by qualified voters equal in number to 25 percent of those who cast ballots in the preceding municipal election, requesting that a Council member, named in the petition, be removed from office. Such petition shall contain a specific statement of not less than twenty-five words and not more than two hundred words of the particular grounds upon which the removal of such person is sought. Provided, however, that the question of the removal of any Council member from office shall not be submitted to the voters until such Council member has served for at least one year of the term during which he/she is sought to be recalled.

If the Clerk, finds the petition sufficient, he/she shall certify it to the Board of Elections of Hamilton County, to be placed on the ballot at the next succeeding, municipal, or general election occurring not less than ninety days thereafter, the Question: "Shall (name of Councilperson) be recalled from office in the Municipality of Lincoln Heights? Yes___ No___."

If, at the election, a majority of the votes cast on the question shall be in favor of recall, the official shall forthwith retire from office, and the resulting vacancy filled in a manner prescribed in this Charter; provided however, no member of Council who has been recalled pursuant to Article VI of this Charter shall be eligible for reappointment to any seat in Council during the same term of the Council member office from which he has been recalled.

(Adopted by electorate, November 4, 1997 / Legislation 97-0-41, July 30, 1997; Amended by electorate, November 4, 2008/Legislation 2008-O-24, July 7, 2008)

Section 6.02 FORM OF PETITIONS.

All petition papers circulated for the purpose of recall shall be uniform in size and style. To each petition paper there shall be attached an affidavit of the circulator that he/she personally circulated the petition, that it bears a stated number of signatures, that each signature was affixed in his/her presence, and that he/she believes them to be the genuine signatures of the persons whose names they purport to be. Each signature shall be in ink or indelible pencil. Each signer shall insert after his/her name his/her place of residence and date of signing. There shall appear on each copy of the petition the names and addresses of five voters who, as a Committee of the Petitioners shall be regarded as responsible to the Municipality for the circulation and filing of the petition. This committee shall file a copy of the petition with the Clerk before any signatures are obtained.

(Adopted by electorate, May 4, 1993)

Section 6.03 FILING AND EXAMINATION OF PETITIONS.

All separate papers comprising a recall petition shall be assembled and filed with the Clerk as a single instrument. Within twenty (20) days thereafter, the Clerk shall examine the petitions and determine their validity and sufficiency, and report to Council.

(Adopted by electorate, May 4, 1993)

Section 6.04 AMENDMENT OF PETITIONS.

In case any petition is found to be insufficient, the Clerk shall notify the committee of the petitioners and the petition may be amended within ten (10) days after the date of such notice. The Clerk shall, within five (5) days after such an amendment has been filed, reexamine the petition, and if it is still insufficient, the petition shall be rejected and no further action taken thereon.

(Adopted by electorate, May 4, 1993)

ARTICLE VII. INITIATIVE AND REFERENDUM

Section 7.01 INITIATIVE.

The initiative powers are reserved by this Charter to the people of the Municipality of Lincoln Heights. Such powers shall be exercised in the manner provided by the Constitution and laws of the State of Ohio, except that all documents, which according to the laws of the State are to be filed with the Auditor, shall be filed with the Clerk of the Municipality.

(Adopted by electorate, May 4, 1993)

Section 7.02 REFERENDUM.

The powers of referendum are hereby reserved to the people on all questions which the Council is authorized to control by legislative action with the exception of the following.

1. Ordinances making or transferring the annual appropriation, or amendments thereto.
2. Measures providing for the discharge of any obligation legally due from the Municipal.
3. Measures directing the performance of any official duty.
4. Repealing measures passed by Council pursuant to a referendum petition.
5. Measures relating to any public improvements subsequent to the ordinances determining to proceed.

The powers of referendum shall be exercised in a manner provided by the Constitution and laws of the State of Ohio, except that all documents, which according to the laws of the State are to be filed with the Auditor, shall be filed with the Clerk of the Municipality.

(Adopted by electorate, May 4, 1993)

ARTICLE VIII. PERSONNEL MERIT SYSTEM

Section 8.01 MERIT PRINCIPLE.

Appointments and promotions in municipal service shall be made according to merit, to be determined, as far as practicable, by competitive examination.

(Adopted by electorate, May 4, 1993)

Section 8.02 EXEMPT POSITIONS.

All positions in the municipal service shall be filled as stated in Section 8.01, except the following:

(a) Members of the Council

(b) Members of Boards and Commissions

(c) Manager

(d) Department Heads

(e) Clerk of Council

(f) Secretary to the Manager

(g) Chief of Police

(h) Fire Chief

(i) Temporary Employees of exceptional professional or scientific qualifications engaged as consultants for limited periods of times. Seasonal and part-time employees.

(Adopted by electorate, May 4, 1993)

Section 8.03 PERSONNEL.

The Manager shall be responsible for the performance of the following duties, whether by him/herself or designee:

1. Supervise the recruitment of qualified persons for positions;
2. Conduct examinations or cooperate with other merit system agencies with regard to any phase of examination;
3. Create lists of eligible persons from examination results;
4. Certify eligible persons to appointing authorities for appointment or promotion;
5. Establish a job classification plan;
6. Develop conduct, provide/and or make available information and actual training programs for all employees including Council.
7. Act as secretary to the Personnel Advisory and Appeal Board;
8. Ensure that all employees (exempt and non-exempt) are evaluated not less than 120 days after appointment of the Manager. Thereafter, evaluations will be conducted pursuant to the Personnel Policies and Procedures.
9. Perform other such personnel related duties may be designated in the Administrative Code or Personnel Policies Procedures.

(Adopted by electorate, May 4, 1993)

Section 8.04 CLASSIFICATION OF PERSONNEL.

All persons appointed by Council or the Manager, who direct the functions of government shall be classified as Officials. Other members of the paid work force shall be classified as Employees.

An employee holding a municipal position at the time the merit system takes effect, who was serving in the same or a comparable position at the time, shall not be subject to competitive tests as a condition of continuing employment in the same position, but in all other respects shall be subject to the merit system provided for in this section.

(Adopted by electorate, May 4, 1993)

Section 8.05 PERSONNEL ADVISORY AND APPEALS BOARD.

There shall be a Personnel Appeals Board consisting of three (3) members appointed by Council for overlapping terms of three (3) years, except that the members first selected shall be appointed for such terms that the term of one (1) member shall expire annually thereafter. Each member of the Board shall be and remain a qualified elector of the Municipality and shall neither hold nor be a candidate for any public office or be a Municipal officer. Its members shall serve without compensation. The Manager shall provide clerical assistance to the Board.

(Adopted by electorate, May 4, 1993)

Section 8.06 DUTIES OF THE PERSONNEL ADVISORY AND APPEALS BOARD.

The Personnel Appeals Board shall hear appeals upon request of any employee in the non-exempt service who feels aggrieved by an action of the Manager or his/her designated personnel officer, or by any department director. Actions subject to appeal include but are not limited to: (1) suspension without pay for more than three (3) work days, (2) demotion in job classification, or (3) dismissal. The

Board shall also have authority to subpoena witnesses, and to require the production of records. For that purpose, Council, by ordinance, shall prescribe the process of citing witnesses, administering oaths and producing evidence, and its enforcement through the Department of Law. The judgment of the Personnel Appeals Board shall, for the purposes of the Municipality, be final.

(Adopted by electorate, May 4, 1993)

Section 8.07 PERSONNEL ADVISORY AND APPEAL PROCEDURE.

Any non-exempt employee who has passed his/her probationary period may appeal to the Board under the rules set forth by the Board. Actions subject to appeal include but are not limited to: 1) suspension without pay for more than three (3) work days, 2) demotion in job classification, or 3) dismissal. The Board shall hear the appeal within 30 days of the effective date of the disciplinary action and shall render a judgment either to affirm, reverse or modify the decision of the appointing authority. Such judgment shall be final. In the appeal process, the Board shall have the power to subpoena witnesses and require production of records.

(Adopted by electorate, May 4, 1993)

Section 8.08 RULES OF THE MANAGER.

The Manager shall prepare a Personnel Policy outlining rules and regulations necessary to carry out a system of merit employment. Upon approval by Council, the rules shall be incorporated into the Administrative Code and shall have the force and affect of law. Amendments may be made by the same procedure as they are deemed necessary.

(Adopted by electorate, May 4, 1993)

Section 8.09 TRANSITION.

Until such time as the Personnel Policy is adopted under this Charter, the present Civil Service laws, and the Municipality's existing personnel policy will remain in effect.

(Adopted by electorate, May 4, 1993)

ARTICLE IX. GENERAL PROVISIONS

Section 9.01 OATH OF OFFICE.

Every officer and employee of the Municipality shall, before entering his/her duties, take and subscribe to the following oath to be filed with the Clerk:

"I solemnly swear (or affirm) that I will support the Constitution of the United States and of the State of Ohio and will obey the laws thereof, and that I will, in all respects, observe the provisions of the Charter and ordinances of the Municipality of Lincoln Heights and will faithfully discharge the duties of upon which I am about to enter."

(Adopted by electorate, May 4, 1993)

Section 9.02 OFFICIAL BONDS.

All officers and employees of the Municipality whose duties require them to handle or be concerned with the management of its money or other property shall furnish to the Clerk a corporate surety bond issued by a company authorized to do business in Ohio, to protect the Municipality against loss due to their acts. The amount of such bond shall, in each case, be determined by the Council. The premiums of such bonds shall be paid from the funds of the Municipality. All such bonds shall be filed with the Clerk of Council.

(Adopted by electorate, May 4, 1993)

Section 9.03 AMENDMENTS TO CHARTER.

It is the desire of the people of Lincoln Heights that this Charter be flexible and be able to meet changing conditions as the Municipality grows and develops. Amendments to this Charter may be made in the manner outlined in Article XVIII, Section 9 of the Ohio Constitution; that is a proposed amendment may be placed on the ballot by a two-thirds vote of Council or by a petition signed by 10% of the qualified voters at the last preceding municipal election.

(Adopted by electorate, May 4, 1993)

Section 9.04 CHARTER REVISION COMMITTEE.

There shall be a Charter Revision Committee which shall consist of three members who are electors of the Municipality, appointed by the Mayor with the concurrence of Council for staggered five-year terms. At the time of the first appointment under this Charter, two members shall be appointed for five-year terms and one member shall be appointed for a three-year term. Thereafter, all appointments shall be for five years. Members shall serve without compensation. The Committee shall adopt such rules, as it deems necessary for the performance of its function. The Committee shall periodically review the Charter and make written reports to Council recommending amendments to the Charter to be submitted to the voters.

(Adopted by electorate, May 4, 1993 / revised 9-1-98, 98-O-64)

Section 9.05 SEVERABILITY.

If any provisions of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter.

(Adopted by electorate, May 4, 1993)

ARTICLE X. TRANSITION PROVISION

Section 10.01 WHEN CHARTER TAKES EFFECT.

This Charter shall be presented to the electors and voted upon at a primary election to be held on May 4, 1993. If approved by the voters, it shall go into effect immediately upon certification of its adoption by the Board of Elections of Hamilton County for purposes of authorizing the election of a Council under this Charter at the general election in November 4, 1993. For all other purposes, this Charter shall go into effect on January 1, 1994.

(Adopted by electorate, May 4, 1993)

Section 10.02 EFFECT OF PRESENT ORDINANCES.

All ordinances of the Municipality of Lincoln Heights in effect at the time of the adoption of this Charter shall remain in effect except as superseded by the provisions of this Charter, until amended or repealed.

(Adopted by electorate, May 4, 1993)

Section 10.03 EFFECT ON PRESENT OFFICIALS.

The existing elective offices of Mayor, Vice Mayor, Village Clerk, Treasurer and all other offices held under the statutory form of government are hereby abolished by this Charter effective December 31, 1993. The term of council members and other elected municipal officials elected prior to the election to be held on November 2, 1993, shall cease and terminate on December 31, 1993, at which time the first Council elected under this Charter shall take office and this Charter shall go into effect for all municipal purposes.

(Adopted by electorate, May 4, 1993)

Section 10.04 EFFECT ON PRESENT BOARDS AND COMMISSIONS.

All positions on boards and commissions in existence in the Municipality prior to the adoption of this Charter shall be vacated on December 31, 1993.

(Adopted by electorate, May 4, 1993)

Section 10.05 EFFECT ON MUNICIPAL EMPLOYEES.

All persons, except those designated in Section 10.03, holding employment at the time this Charter takes effect shall continue in the performance of their duties until provisions shall have been made, in conformance with this Charter for the performance of such duties by a successor, or the employment is abolished.

(Adopted by electorate, May 4, 1993)

Section 10.06 PROVISION FOR TRANSITIONAL ELECTION.

For the purpose of bringing about a timely transition to the form of government prescribed in this Charter, the first council members shall be elected on November 2, 1993. Their terms shall be staggered with the four persons receiving the highest number of votes serving a term of four years and the three receiving the next highest number of votes serving a term of two years.

(Adopted by electorate, May 4, 1993)

Section 10.07 TRANSFER OF RECORDS AND PROPERTY.

All public records and property in the custody of officers and employees of the Municipality shall be transferred and delivered promptly to their successors when these have been designated as provided under this Charter.

(Adopted by electorate, May 4, 1993)

Section 10.08 CONTINUANCE OF CONTRACTS AND PUBLIC IMPROVEMENTS.

All contracts entered into by the Municipality for its benefit prior to the taking effect of this Charter shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws existing at the time this Charter takes effect shall be completed, as nearly as practicable, under the provisions of such laws.

(Adopted by electorate, May 4, 1993)

Section 10.09 PENDING ACTIONS AND PROCEEDINGS.

No action or proceeding, civil or criminal, pending at the time when this Charter takes effect, brought by or against the Municipality or any office, agency or officer thereof shall be abated or affected by anything herein contained, but all such actions shall be prosecuted or defended under laws in effect when they were filed.

(Adopted by electorate, May 4, 1993)

ARTICLE XI. BOARDS AND COMMISSIONS

Section 11.01 ADVISORY BOARDS/COMMISSIONS.

The Council shall appoint the following advisory boards/commissions and such others as deemed desirable. However, no such advisory boards/commissions shall have the power of appointment of municipal employees. Members of all boards/commissions shall serve without compensation. These Boards/Commissions shall serve in an advisory capacity to the Council and will serve in accordance with ordinances thereof. The health, welfare, education and safety of the citizens of the Village of Lincoln Heights shall be of the highest priority to the members of the Boards/Commissions and all citizens of the Municipality shall be afforded access to these Boards/Commissions.

(Adopted by electorate, May 4, 1993)

Section 11.02 PLANNING COMMISSION.

There shall be a Planning Commission of five members appointed by the Mayor with the approval of Council. They shall be electors of the Municipality. They shall serve for four year staggered terms. At the time of the first appointment under this Charter, three members will be appointed for 4-year terms and two will be appointed for 2-year terms. Members shall serve without compensation. The Planning Commission shall be an advisory body to the Manager/Council in the areas of planning, zoning and urban development. The Planning Commission shall perform such duties as prescribed by this Charter, the Administrative Code, ordinances of the Municipality or State law. Administrative staff assistance is to be provided for the Commission under the direction of the Manager.

(Adopted by electorate, May 4, 1993)

Section 11.03 RECREATION COMMISSION.

There shall be a Recreation Commission of five members appointed by the Council. They shall be electors of the Municipality and shall serve for four year staggered terms. At the time of the first appointment under this Charter, three members shall be appointed for four year terms. The Recreation Commission shall act as an advisory body to the Manager/Council in the areas of maintenance and operation of playgrounds and recreational facilities and programs for the Municipality. They shall also perform such duties as outlined in the Administrative Code or other municipal ordinances. Administrative staff assistance is to be provided, when needed, through the Manager.

(Adopted by electorate, May 4, 1993)

Section 11.04 ZONING BOARD OF APPEALS.

There is hereby established by Council a Zoning Board of Appeals consisting of three members. The Council shall appoint members of said Board. Each member shall have knowledge of zoning laws and building structures. All rules, regulations, procedures, requirements necessary for the operations of said Board shall be established by ordinance. The Zoning Board of Appeals shall hear appeals of persons or companies affected by the decision of the building inspector and/or zoning regulations.

(Adopted by electorate, May 4, 1993 / Revised 9-1-98, 98-O-65)

Section 11.05 HOUSING BOARD OF APPEALS.

Council shall establish a Housing Board of Appeals. Members of said Board shall be appointed by the Mayor with approval of Council. All rules, regulations and requirements necessary for the operations of said Board shall be established by ordinance. Housing Board of Appeals shall hear appeals of persons or companies affected by the decision of the building inspector.

(Adopted by electorate, May 4, 1993)

Section 11.06 TAX BOARD OF REVIEW.

The Council shall create and establish a Tax Board of Review and the membership of the Board shall be appointed by the Mayor with approval of Council. All rules, regulations, procedures, and requirements necessary for the operations of said Board shall be

established by ordinance.

(Adopted by electorate, May 4, 1993)

Section 11.07 PUBLIC IMPROVEMENTS COMMISSION.

Section 11.07 is hereby repealed and the Public Improvements Commission abolished.

(Adopted by electorate, May 4, 1993 / Revised 9-1-98, 98-O-62)

Section 11.08 EDUCATION COMMISSION.

There shall be an Education Commission consisting of five (5) Lincoln Heights citizens, appointed by the Council. At the time of the first appointment under this Charter, three (3) members will be appointed for four (4) year terms, and two (2) will be appointed for two-year terms. Thereafter all appointments will be for four (4) years. Membership shall consist of two high school-aged students and three adults. All rules, regulations, procedures, requirements necessary for the operation of said Commission shall be prescribed by ordinance.

(Adopted by electorate, May 4, 1993)

ADOPTING ORDINANCE

Ordinance No. 2008-O-5

AN ORDINANCE ENACTING A CODE OF ORDINANCES FOR THE VILLAGE OF LINCOLN HEIGHTS AND REVISING, AMENDING, RESTATING, CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES OF THE VILLAGE OF LINCOLN HEIGHTS DEALING WITH SUBJECTS EMBRACED IN SUCH CODE OF ORDINANCES, AND DECLARING AN EMERGENCY.

WHEREAS: The present general and permanent ordinances of the Village of Lincoln Heights are insufficient for the complete preservation of the public peace, health, safety and general welfare of the Village and for the proper conduct of its affairs; and

WHEREAS: The Acts of the Legislature of the State of Ohio empower and authorize the Village of Lincoln Heights to revise, amend, restate, codify and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS: Council for the Village of Lincoln Heights has authorized a general compilation, revision and codification of the ordinances of the Village of a general and permanent nature and publication of such ordinance in book form; and

WHEREAS: It is necessary to provide for the usual daily operation of the Village and for the immediate preservation of the public peace, health, safety and general welfare of the Village that this Ordinance take effect at an early date.

NOW, THEREFORE, BE IT ORDAINED by the Council for the Village of Lincoln Heights, Hamilton County, Ohio as follows:

SECTION I: The general ordinances of the Village of Lincoln Heights as revised, amended, restated, codified, and compiled in book form are hereby adopted as and shall constitute the "Code of Ordinances" for the Village of Lincoln Heights.

SECTION II: Such Code of Ordinances as adopted in Section 1 shall consist of the following Titles:

LINCOLN HEIGHTS, OHIO

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SECTION III: All prior ordinances pertaining to the subjects treated in such Code of Ordinances shall be deemed repealed from and after the effective date of this Ordinance except as they are included and reordained in whole or in part in such Code of Ordinances; provided, such repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of this Ordinance, nor shall such repeal affect the provisions of ordinances levying taxes, appropriating money, annexing or detaching territory, establishing franchises, or granting special rights to certain persons, authorizing public improvements, authorizing the issuance of bonds or borrowing of money, authorizing the purchase or sale of real or personal property, granting or accepting easements, plat or dedication of land to public use, vacating or setting the boundaries of streets or other public places; nor shall such repeal affect any other ordinance of a temporary or special nature or pertaining to subjects not contained in or covered by the Code of Ordinances.

SECTION IV: Such Code of Ordinances shall be deemed published as of the day of its adoption and approval by the Council for the Village of Lincoln Heights and the Clerk of Council is hereby authorized and ordered to file a copy of such Code of Ordinances in the Office of the Clerk.

SECTION V: Such Code of Ordinances shall be in full force and effect as provided in Section VI, and such Code of Ordinances shall be presumptive evidence in all courts and places of the ordinance and all provisions, sections, penalties and regulations therein contained and of the date of passage, and that the same is properly signed, attested, recorded, and approved and that any public hearings and notices thereof as required by law have been given.

SECTION VI: This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the peace, health, safety and general welfare of the people of this Village, and shall take effect immediately.

Passed this 25th day of February, 2008.

/s/ LaVerne Mitchell

Mayor, Village of Lincoln Heights

/s/ Elizabeth Smith

Clerk of Council

PARALLEL REFERENCES

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2002-O-23	4-22-2002	71.08
2003	- -	39.26
2003-O-01	2-10-2003	37.40
2003-O-11	2-10-2003	37.01
2003-O-14	2-10-2003	37.13
2003-O-33	6-23-2003	37.46
2003-O-43	9-22-2003	132.24
2003-O-5	12-22-2003	39.35
2001-O-53	12-22-2003	39.20 - 39.31
2003-O-53	12-22-	39.26
2003-O-53	12-22-2003	39.99
2004-O-15	7-20-2004	70.99
2005-O-14	4-11-2005	38.022
2006-O-10	2-13-2006	150.80
2007-O-12	1-22-2007	118.05
2007-O-14	1-22-2007	70.98
2007-O-15	1-22-2007	10.99
2007-O-17	2-16-2007	130.98
2007-O-20	4-9-2007	10.99
2008-O-2	3-17-2008	110.23
2008-O-3	3-17-2008	110.23
2008-O-4	2-11-2008	112.41
2008-O-5	2-25-2008	Adopting Ordinance
2008-O-9	6-9-2008	10.02
2008-O-11	4-28-2008	40.04
2008-O-12	4-28-2008	37.45
2008-O-13	4-28-2008	38.076
2008-O-15	6-9-2008	38.065
2008-O-23	6-9-2008	33.01
2008-O-24	7-7-2008	Charter § 6.01; 42.09
2008-O-24.1	6-9-2008	38.019
2008-O-27	9-22-2008	38.143
2008-O-28	10-27-2008	38.090
2008-O-30	10-27-2008	130.28

2008-O-31	10-27-2008	38.074
2009-O-8	4-27-2009	38.141
2009-O-9	6-22-2009	35.12
2009-O-13	10-26-2009	90.99
2009-O-19	12-28-2009	38.090
2010-O-1	1-1-2010	38.141
2010-O-2	4-26-2010	37.01, 37.13
2010-O-3	5-25-2010	139.08
2010-O-4	6-14-2010	36.08

TABLE OF SPECIAL ORDINANCES

(EDITOR'S NOTE: The following tables are from the 1995 Code of Ordinances. Ordinances and resolutions affecting these tables passed 1995-2007 are not included)

Table

I. APPROPRIATION OF PROPERTY

II. DEDICATIONS

III. SALE OF PROPERTY

IV. STREET NAME CHANGES

V. VACATIONS

VI. FRANCHISES

VII. CONTRACTS AND AGREEMENTS

VIII. ZONING

IX. BONDS

TABLE I: APPROPRIATION OF PROPERTY

Ord. No.	*Date Passed*	*Description*
76-O-17	4-26-1976	A fee simple interest in lots 7, 14, 25, and 125 of Washington Subdivision, lots 76, 185, 220, and 276 of Oak Park Subdivision, and lot 92 of Woodlawn Terrace Subdivision.
77-O-12	3-14-1977	A fee simple interest in lots 216, 222, 247, 273, and 293 of Cincinnati Industrial Subdivision, lot 195 of Grandview Heights Realty Co., lots 24, 25, 64, and 162 of Lincoln Heights Subdivision, lots 5, 55, 56, 78, 79, 108, 125, 126, 127, 143, 144, 145, 294, and 295 of Woodlawn Terrace Addition Subdivision, and in certain other parcels of real estate.
79-O-10	4-23-1979	A fee simple interest in lot 217 of Cincinnati Industrial Subdivision, lots 87 and 99 of Grandview Heights Realty Co. Subdivision, lots 23, 26, 65, and 163 of Lincoln Heights Subdivision, and in certain other parcels of real estate.

79-O-32	9-10-1979	A fee simple interest in lots 218 and 236 of Cincinnati Industrial Subdivision, lot 77 of Woodlawn Terrace Addition Subdivision, and in certain other parcels of real estate.
79-O-33	9-24-1979	A fee simple interest in lots 319, 320, and 321 of Grandview Heights Subdivision.
79-O-41	11-12-1979	A fee simple interest in lots 218 and 236 of Cincinnati Industrial Subdivision and lot 77 of Woodlawn Terrace Addition Subdivision.
80-O-31	5-12-1980	A fee simple interest in lot 41 at Chester Rd. and Jackson St.
80-O-31	5-12-1980	A fee simple interest in lot 51 of Martin Luther King Estates.
Res. 80-R-60	7-14-1980	A fee simple interest in the Princeton Valley East Building, Kindergarten building, and athletic field.
81-O-18	7-31-1981	A fee simple interest in block 1, parcels 2 and 4 and block 2, parcels, 1 - 5 of the Community Development Program.
81-O-25	9-28-1981	A fee simple interest in block 2, parcels 11 and 12 of the Community Development Program.
82-O-46	12-27-1982	A fee simple interest in block 3, parcel 3 of the Community Development Program.
Res. 82-R-53	11-22-1982	Appropriating property for the Community Development Block Grant.
83-O-25	11-14-1983	Village Manager to purchase property in the proposed commercial district.
86-O-47	12-17-1986	Purchasing property at 1242 Simmons Street.
Res. 2008-R-74	12-22-2008	Accepting the donation of real property located at 1187 Steffen Avenue from Eugene E Wise, Jr.
Res. 2009-R-29	10-13-2009	Authorizing the Village Manager to acquire 1242 Adams, 1034 Adams, and 1028 Adams.

TABLE II: DEDICATIONS

Ord. No.	*Date Passed*	*Description*
75-76	9-2-1975	Shepherd Drive.

79-O-40	12-17-1979	Shepherd Drive.
80-O-55	10-15-1980	Magnolia Drive.

TABLE III: SALE OF PROPERTY

Ord. No.	*Date Passed*	*Description*
75-9	2-24-1975	Lot 16 to Marie Phillips Kilgore and lot 59 to Myrtis Epps of the Martin Luther King Subdivision.
75-32	4-28-1975	Lot 11 of the Martin Luther King Estates to McArthur Phillips.
75-33	4-28-1975	Lots 57 and 58 of the Martin Luther King Estates to Robert Porter Construction Company.
76-12	4-12-1976	Lot 10 of Block A of the Martin Luther King Estates to Porter Construction Company.
76-O-27	8-27-1976	Lot 8 to Mr. and Mrs. James Gray, lot 20 to Mrs. Christine Shivers, and lot 73 to Rev. and Mrs. Talbert Brown of the Martin Luther King Estates.
76-O-29	9-13-1976	Lot 14 to Mr. and Mrs. Horace McCarter, lot 71 to Mrs. Loretta Warren, and lot 75 to Mr. Willie Waver of the Martin Luther King Estates.
77-O-11	3-28-1977	Tracts A, D, and E in Sycamore Township and tracts B and C in Springfield Township to Mt. Zion Centennial Estate Cooperative Housing Community Urban Redevelopment Corporation.
77-O-13	4-11-1977	Lot 9 to Mr. and Mrs. Alan L. Brown and lot 51 to Mr. and Mrs. Frank Perry of the Martin Luther King Estates.
77-O-16	4-11-1977	Lot 63 to Charles Ferguson, lot 65 to William Anglin, and lots 78 and 79 to William Harris, of the Martin Luther King Estates Subdivision.
77-O-17	4-11-1977	Lot 66 of the Martin Luther King Estates to Mr. and Mrs. Alan L. Brown.
77-O-20	4-25-1977	Lot 64 of the Martin Luther King Estates to

		Consultant Management Investment, Inc.
77-O-22	4-25-1977	Lot 49 of the Martin Luther King Estates to Mr. and Mrs. Robert Shank.
77-O-23	5-9-1977	Amending Ord. 77-O-11.
77-O-24	6-27-1977	Lots 134 and 135 to Frank and Eula Powers.
77-O-27	6-27-1977	Lots 21 and 23 of the Martin Luther King Estates to Bernice Browning Realty.
77-O-30	8-8-1977	Lot 9 of the Martin Luther King Estates to Mr. and Mrs. Matthew Brady.
77-O-31	8-8-1977	Lot 69 of the Martin Luther King Estates to Mr. and Mrs. William Polk.
77-O-43	10-25-1977	Lot 11 of the Martin Luther King Estates to Mr. and Mrs. Richard Green, Jr.
78-O-4	5-8-1978	1.75 acres of land in the north-east industrial tract to Charles Todd Cleaning Company, Inc.
78-O-5	5-8-1978	Lot 56 of the Martin Luther King Estates to Mrs. Dorothy Martin.
79-O-7	4-23-1979	Lot 38 of the Martin Luther King Estates to Thomas Robinson and Leatha Williams.
79-O-24	8-13-1979	Lot 3 of the Martin Luther King Section of the northeast Industrial Park to Benedict Enterprise Inc. of Monroe, Ohio.
79-O-25	8-13-1979	Lot 173 of the Lincoln Heights Subdivision to Towns Chapel Christian Methodist Episcopal Church.
79-O-26	8-13-1979	Lots 294 and 295 of the Woodlawn Terrace Addition Subdivision to Ms. Anna Perry.
79-O-35	9-24-1979	Lot 30 of the Martin Luther King Estates to Stewart M. and Janice E. Harris.
80-O-16	3-10-1980	Lot 108 of Woodlawn Terrace Addition Subdivision to Charles and Mary Jean Watts.
80-O-40	6-9-1980	Lot 28 of Martin Luther King Estates to James and Millie Starr.
81-O-14	4-13-1981	Enter contract with Village Manager to sell certain parcels to C & H Estates, Inc.
Res. 81-R-54(A)	8-10-1981	Enter contract with Village Manager to sell lot 3 of Lincoln Heights Industrial Park.
81-O-20(A)	9-1-1981	Enter contract with Village Manager to sell certain parcels to C & H Estates, Inc.
82-O-12	5-24-1982	Village Manager enter agreement with C & H Estates, Inc. for purchase of various parcels of land.

82-O-13	5-10-1982	Village Manager enter agreement with C & H Estates, Inc. for purchase of various parcels of land.
82-O-22	5-26-1982	Village Manager to execute option on lot 5B of Lincoln Heights Industrial Park and to execute easement agreement.
82-O-24	5-26-1982	Village Manager to sell lot 1 of Lincoln Heights Industrial Park and enter into agreement pursuant to Urban Development Action Grant.
83-O-12	4-25-1983	Sell surplus property.
Res. 85-R-10	3-11-1985	Village Manager to receive $65,211.89 from land sale.
86-O-27	4-23-1986	Mayor to sell lots 15, 23 and 47.
89-O-7	4-26-1989	Conveying real estate to Cincinnati Habitat for Humanity Inc.
90-O-32	6-13-1990	Mayor to execute contract of sale for private redevelopment with Innercity Development Company.
90-O-35	6-27-1990	Purchase of tax delinquent and forfeited nonproductive lands.
90-O-37	7-2-1990	Sale of private redevelopment with L.C.H. Group Company.
90-O-46	9-12-1990	Repurchasing of real estate in Martin Luther King Estate Subdivision.
90-O-57	11-14-1990	Purchase and sell village owned real estate to Ken Stringer, DBA M.G.S Homes Improvements.
90-O-62	12-12-1990	Purchase and sell agreement for real estate to Ken Stringer, DBA M.G.S Homes Improvements.
92-O-40	12-9-1992	Sale of property by auction.
93-O-14	- -	Sale of property by bid.

TABLE IV: STREET NAME CHANGES

Ord. No.	*Date Passed*	*Description*
77-O-28	4-10-1978	Lockland Rd. and Grant St. changed to

		Mangham Dr.
80-O-54	10-15-1980	Van Buren St. at the northeast corner of Mangham Dr. changed to Magnolia Dr.

TABLE V: VACATIONS

Ord. No.	*Date Passed*	*Description*
75-54	6-25-1975	A portion of Dorothy Avenue, Section 34, Town 4, entire Range 1, Sycamore Township.
77-O-10	3-28-1977	A portion of Wabash Avenue, lot 23, Woodlawn Terrace Addition, Springfield Township.
80-O-43	8-25-1980	Van Buren St., beginning at the southeast corner of Adams and Van Buren Streets.
80-O-43	8-25-1980	Jackson St., beginning at the northeast corner of Adams and Jackson Streets.
80-O-43	8-25-1980	Adams St., beginning at the northeast corner of Grant and Adams Streets.
80-O-43	8-25-1980	Independence Ave. and La Salle St., beginning at the southeast corner of lot 3 Martin Luther King Section 2.
80-O-43	8-25-1980	Chicago Ave. and La Salle St., beginning at the northeast corner of lot 3 Martin Luther King Section 2.
80-O-43	8-25-1980	Congress Ave., beginning at the northeast corner of lot 3 of Martin Luther King Section 2.
90-O-44	9-12-1990	Vacating right-of-way of Rose Street and portions of Simmons Street.
91-O-21.1	7-30-1991	Vacating eastern 25 feet of Douglas Avenue.

TABLE VI: FRANCHISES

Ord. No.	*Date Passed*	*Description*

75-87	11-10-1975	Grants to the Cincinnati Gas and Electric Company the right to transport gas for a period of 25 years.
75-88	11-10-1975	Grants to the Cincinnati Gas and Electric Company the right to transmit electricity for a period of 25 years.
79-O-20	7-9-1979	Grants to Warner Cable Corporation the right to construct, operate, and maintain a cable television system for a period of 15 years.

TABLE VII: CONTRACTS AND AGREEMENTS

Ord. No.	*Date Passed*	*Description*
Res. 81-R-30	5-11-1981	Contract with C & H Construction for replacement of sidewalk on Shepherd Lane.
Res. 81-R-31	5-11-1981	Contract with Brewer Company for resurfacing of Shepherd Lane.
Res. 81-R-46	6-22-1981	Agreement with Midwest Insurance Brokers to provide insurance coverage for village.
Res. 81-R-47	6-22-1981	Agreement with Foxx & Company to provide audit services for Community Development Block Grant and Small Cites Programs.
Res. 81-R-58(A)	9-28-1981	Agreement with Clarke Incinerator, Inc for refuse disposal.
81-O-24	10-13-1981	Adopting code of ordinances for the village.
Res. 81-R-61(A)	12-22-1981	Contract with William A. McClain as Director of Legal Services.
Res. 81-R-62	12-22-1981	Contract with William A. McClain as Attorney for Department of Community Development.
Res. 81-R-62(A)	10-21-1981	Agreement with a general contractor for renovation of high school building.
81-O-35	12-14-1981	Agreement of cooperation with Hamilton County pursuant to provision of Housing and Community Development Act of 1974.
Res. 81-R-64	12-14-1981	Agreement for demolition of 1400 Rose Street, 1325 Jackson Street, 1420 Rose Street and 96000 McIntyre Street.
		Contract with Claude H. Audley, Jr. as

Res. 81-R-67	12-22-1981	consultant to the Community Development Department in promotion and marketing of the Industrial Park.
83-O-23	10-25-1983	Village Manager to sell lot 3 of Lincoln Heights Industrial Park.
Res. 83-R-49	10-25-1983	Contract with Hamilton County Board of Health.
Res. 83-R-50	10-25-1983	Authorization of Village Manager to sign the Mutual assistance contract.
Res. 83-R-54	11-18-1983	Contact with Centennial Insurance Agency for village's complete insurance coverage.
Res. 83-R-55	12-12-1983	Contract with William A. McClain as Director of Legal Services.
Res. 84-R-7	3-12-1984	Agreement with Lincoln Heights Boxing Club.
Res. 84-R-8	2-27-1984	Agreement with Lincoln Heights Library to aide in continuation of its reading program.
84-O-11	5-29-1984	Installment agreement and a promissory note with the Cincinnati Gas & Electric Company for the payment of utility services for community center.
Res. 84-R-16	5-29-1984	Agreement with Seven Hills Neighborhood Services.
Res. 84-R-28	8-13-1984	Contract with Public Defender Commission.
Res. 84-R-29	8-13-1984	Agreement with District Advisory Council.
84-O-26	11-21-1984	Village Manager to sell lot 5-B.
Res. 84-R-37(A)	12-10-1984	Contract with William A. McClain as Director of Legal Services.
Res. 83-R-57	1-9-1984	Agreement with Ohio Department of Natural Resources to administer a Local Litter Control Grant Program.
Res. 84-R-38	12-10-1984	Contract with William A. McClain as Attorney for Community Development.
Res. 85-R-1	1-14-1985	Agreement with Ohio Department of Natural Resources to administer a Local Litter Control Grant Program.
Res. 85-R-18	5-13-1985	Contract with Hamilton County Board of Health for services to be provided to village.
Res. 85-R-22	6-10-1985	Contract with Young Mens Christian Association for recreational services.
Res. 85-R-45	12-8-1985	Contract with Inspection Bureau, Inc. for electrical inspections.
		Agreement between village and American

85-O-34	12-30-1985	Federation of State, County, Municipal Employees - AFSCME.
Res. 86-R-8	4-23-1986	Contract with Hamilton County Board of Health for services to be provided to village.
86-O-8	1-8-1986	Contract with William A. McClain to perform services as Law Director.
86-O-10(A)	1-22-1986	Employing Frost & Jacobs as special legal counsel for village.
86-O-14	2-12-1986	Agreement with Ohio Department of Litter Prevention and Recycling for the administration of Local Litter Control Program.
86-O-23	4-23-1986	Agreement between village and Young Men's Christian Association.
86-O-40	12-17-1986	Agreement with Ohio Department of Litter Prevention and Recycling for the administration of the Local Litter Control Program.
86-O-48	12-17-1986	Contract with City of Wyoming for paramedic services.
87-O-5	2-25-1987	Contract between village and Rumpke Waste, Inc. for collection and hauling of garbage and waste material of residents of village.
88-O-18	- -1988	Contract to provide supplementary police protection within neighboring communities.
89-O-13	9-27-1989	Contract with Cincinnati Gas & Electric Company to have and install lumen mercury vapor street lights.
90-O-2	3-14-1990	Agreement with Frost and Jacobs law firm.
90-O-23	5-9-1990	Agreement on behalf of the village with Wendy's Restaurant on Mangham Drive.
90-O-27	5-23-1990	Project agreement for Ohio Local Transportation Improvement Program.
90-O-34	6-13-1990	Contract with Broome Paving, Inc. for resurfacing of Marianna Terrace.
90-O-36	7-2-1990	Agreement with L.C.H. Group Company, Inc. for commercial development of property along Magham Drive.
90-O-38	7-11-1990	Agreement of cooperation with Hamilton County pursuant to provisions of the Housing and Community Development Act of 1974.
90-O-39	8-8-1990	Contract with C.D.S. Associates to provide engineering services to village.

90-O-41	9-26-1990	Agreement to employ Frost and Jacobs as special legal council for village.
90-O-47	9-26-1990	Contract with Hamilton County Public Defender Commission fixing the rate of compensation.
90-O-49	9-25-1990	Agreement with L.C.H. General Contractors, Inc.
90-O-58	11-14-1990	Contract with ATEC to remove and dispose of tanks and any contamination.
91-O-6	1-29-1991	Agreement for automatic aid with Villages of Woodlawn and Glendale.
91-O-14	5-15-1991	Agreement with Young Men's Christian Association devising a portion of the Flower Community Building.
91-O-31	12-11-1991	Agreement for distribution of forfeited monies, proceeds from sale of contraband, and mandatory drug fines with the Hamilton County Prosecutor.
96-O-2	2-26-1996	Reenacting Ordinance 96-O-1, adopting the recodification of the Code of Ordinances.
Res. 2008-R-6	1-1-2008	Authorizing an agreement with Annacille Watson as a contract employee in the Mayor's Court.
Res. 2008-R-7	1-1-2008	Authorizing an agreement with Carnell Mathews as a contract employee in the Finance Department.
Res. 2008-R-9	1-1-2008	Authorizing an agreement with John Andreyko as a contract employee in the Finance Department.
Res. 2008-R-10	1-1-2008	Authorizing an agreement with Donald R. Mercer to perform services of a Building Commissioner as an independent contractor.
Res. 2008-R-22	3-10-2008	Authorizing an agreement with the Hamilton County Regional Planning Commission for the purpose of assisting in the creation of a Comprehensive Development Plan.
Res. 2008-R-29	6-9-2008	Authorizing an agreement of cooperation with Hamilton County pursuant to provisions of the Housing and Community Development Act of 1974, as amended.
Res. 2008-R-30	5-27-2008	Authorizing an agreement with the Princeton School District whereby the Lincoln Heights Missionary Baptist Church is to serve as the

		2008 Summer day camp provider.
Res. 2008-R-33	6-23-2008	Authorizing an agreement with Pauline Latonya Key as a contract employee in the Mayor's Court.
Res. 2008-R-54	10-13-2008	Authorizing an agreement with Annacille Watson as a contract Employee in the Mayor's Court.
Res. 2008-R-66	12-22-2008	Authorizing an agreement with Donald R. Mercer to perform services of a Building Commissioner as an independent contractor.
Res. 2008-R-67	1-12-2009	Authorizing an agreement with John Andreyko as a contract employee in the Finance Department.
Res. 2008-R-68	12-22-2008	Authorizing an agreement with Annacille Watson as a contract employee in the Mayor's Court.
Res. 2008-R-70	12-22-2008	Authorizing an agreement with Carnell Mathews as a contract employee in the Finance Department as the Tax Administrator.
Res. 2008-R-71	12-22-2008	Authorizing an agreement with Pauline Latonya Key as a contract employee in the Mayor's Court.
Res. 2008-R-73	2-9-2009	Authorizing an agreement with the City of Wyoming for paramedic services.
Res. 2009-R-15	6-8-2009	Approving employment contract with Robert C. Bannister, Jr. as the Village Manager.
Res. 2009-R-16	6-22-2009	Executing an agreement with Santen & Hughes, LPA and Deepak K. Desai to provide legal services.
Res. 2009-R-36	12-28-2009	Executing an agreement with John Andreyko as a contract employee in the Finance Department.
Res. 2009-R-38	1-1-2010	Executing an agreement with Donald R. Mercer to perform services of a building inspector and Chief Building Official as an independent contractor.
Res. 2009-R-41	12-28-2009	Executing an agreement with Annacille Watson as a contract employee in the Mayor's Court.
Res. 2010-R-7	1-11-2010	Executing an agreement with Harold Stewart to perform services of a deputy inspector as an independent contractor.

Res. 2010-R-9	1-11-2010	Executing an agreement with Carnell Mathews as a contract employee in the Finance Department.

TABLE VIII: ZONING

Ord. No.	*Date Passed*	*Description*
Res. 84-R-36	11-26-1984	Authorizing a variance from an R-1 Zoning District.
87-O-45	11-25-1987	Ratifying the approval by Council of the report of the Planning and Zoning Commission.

TABLE IX: BONDS

Ord. No.	*Date Passed*	*Description*
81-O-28	10-13-1981	Authorizing a written request to be directed to the Ohio Development Financing Commission for the issuance of approximately $1,800,000 principal amount Industrial Development Revenue Bonds (KMP Partnership Project).
90-O-43	8-27-1990	Issuance of bonds for R/P International's Project.
90-O-59	11-28-1990	Providing for the issuance of not to exceed $70,000 of bond anticipation notes by the village in anticipation of the issuance bond, for the purpose of improving land owned by the village.

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

Section

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10.99 General penalty

§ 10.01 SHORT TITLES.

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

(ORC § 1.01)

(B) All references to codes, titles, chapters, and sections are to such components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the "traffic code." Sections may be referred to and cited by the designation "§" followed by the number, such as "§ 10.01." Headings and captions used in this code other than the title, chapter, and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.02 DEFINITIONS.

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

AND. May be read ***OR***, and ***OR*** may be read ***AND***, if the sense requires it.

(ORC § 1.02(F))

ANOTHER. When used to designate the owner of property which is the subject of an offense, includes not only natural persons but also every other owner of property.

(ORC § 1.02(B))

BUSINESS. Includes without limitation, any employment, occupation, profession or activity (both commercial and non-commercial) generating revenue or income, including without limitation those engaged in for profit, gain or livelihood.

(Ord. 2008-O-9, passed 6-9-2008)

COUNCIL. The legislative authority of the municipality.

COUNTY. The county or counties in which the municipality is located.

IMPRISONED. Includes the following:

(1) Imprisoned in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse if the offense is a misdemeanor.

(2) Imprisoned in a state correctional institution if the offense is an aggravated murder, murder, another offense punishable by life imprisonment, an aggravated felony of the first, second or third degree, or a felony of the first or second degree, or if imprisonment in a state correctional institution is ordered pursuant to Ohio R.C. § 2929.34.

(3) Imprisoned in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse if the offense is a felony of the third or fourth degree and is committed by a person who previously has not pleaded guilty to, pleaded no contest to and been found guilty of, or been convicted of a felony, if the offense is not an offense of violence, if the department of rehabilitation and correction and the local authority that operates the jail or workhouse has entered into an agreement pursuant to Ohio R.C. § 5120.161 for the housing of such persons in the jail or workhouse, and if the department designates, pursuant to that section, that the person is to be imprisoned in the jail or workhouse.

(4) Imprisoned in a state correctional institution if the offense is a third or fourth degree felony and the person is not imprisoned in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse as described in division (3) above.

(ORC § 1.05)

KEEPER or ***PROPRIETOR.*** Includes all persons, whether acting by themselves or as a servant, agent, or employee.

LAND or ***REAL ESTATE.*** Includes rights and easements of incorporeal nature.

(ORC § 701.01(F))

MAY. Is permissive.

OATH. Includes affirmation; and ***SWEAR*** includes affirm.

(ORC § 1.59(B), § 701.01(C))

OWNER. When applied to property, includes any part owner, joint owner, or tenant in common of the whole or part of such property.

PERSON. Includes an individual, corporation, business trust, estate, trust, partnership, and association.

(ORC § 1.59(C), § 701.01(A))

PERSONAL PROPERTY. Includes all property except real.

PLAN OF SEWERAGE, SYSTEM OF SEWERAGE, SEWER, and ***SEWERS.*** Includes sewers, sewage disposal works and treatment plants, and sewage pumping stations, together with facilities and appurtenances necessary and proper therefor.

(ORC § 701.01(G))

PREMISES. As applied to property, includes land and buildings.

PROPERTY. Includes real, personal, mixed estates, and interests.

(ORC § 701.01(E))

PUBLIC AUTHORITY. Includes boards of education; the municipal, county, state, or federal government, its officers, or an agency thereof; or any duly authorized public official.

PUBLIC PLACE. Includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance, or any other place for the sale of merchandise, public accommodation, or amusement.

R.C. or ***REVISED CODE.*** Refers to the Revised Code of Ohio.

REAL PROPERTY. Includes lands, tenements, and hereditaments.

REGISTERED MAIL. Includes certified mail; and ***CERTIFIED MAIL*** includes registered mail.

(ORC § 1.02(G))

SHALL. Is mandatory.

SIDEWALK. That portion of the street between the curb line and the adjacent property line intended for the use of pedestrians.

STATE. The State of Ohio.

STREET. Includes alleys, avenues, boulevards, lanes, roads, highways, viaducts, and all other public thoroughfares within the municipality.

TENANT or ***OCCUPANT.*** As applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises, alone or with others.

VILLAGE, MUNICIPAL CORPORATION, or ***MUNICIPALITY.*** When used in this code, shall denote the municipality irrespective of its population or legal classification.

WEEK. Seven consecutive days.

(ORC § 1.44(A))

WHOEVER. Includes all persons, natural and artificial; partners; principals, agents, and employees; and all officials, public or private.

(ORC § 1.02(A))

WRITTEN or ***IN WRITING.*** The terms include printing and any representation of words, letters, symbols, or figures; this provision does not affect any law relating to signatures; includes printing.

(ORC § 1.59(J), § 701.01(B))

YEAR. Twelve consecutive months.

(ORC § 1.44(B))

§ 10.03 RULES OF CONSTRUCTION.

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

(ORC § 1.42)

(B) *Number; gender; tense.* As used in the code, unless the context otherwise requires:

(1) The singular includes the plural, and the plural includes the singular.

(2) Words of one gender include the other genders.

(3) Words in the present tense include the future.

(ORC § 1.43)

(C) *Calendar; computation of time.*

(1) The time within which an act is required by law to be done shall be computed by excluding the first and including the last day; except that when the last day falls on Sunday or a legal holiday, then the act may be done on the next succeeding day which is not a Sunday or a legal holiday.

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

(ORC § 1.14)

(3) When an act is to take effect or become operative from and after a day named, no part of that day shall be included.

(ORC § 1.15)

(4) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

(ORC § 1.45)

(5) In all cases where the law shall require any act to be done in a reasonable time or reasonable notice to be given, reasonable time or notice shall mean such time only as may be necessary for the prompt performance of such duty or compliance with such notice.

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

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

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

§ 10.04 REVIVOR; EFFECT OF AMENDMENT OR REPEAL.

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

(ORC § 1.57)

(B) The reenactment, amendment, or repeal of a statute does not, except as provided in division (C) of this section:

(1) Affect the prior operation of the statute or any prior action taken thereunder;

(2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder;

(3) Affect any violation thereof or penalty, forfeiture, or punishment incurred in respect thereto, prior to the amendment or repeal;

(4) Affect any investigation, proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

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

(ORC § 1.58)

§ 10.05 CONSTRUCTION OF SECTION REFERENCES.

(A) Wherever in a penalty section reference is made to a violation of a section or an inclusive group of sections, such reference shall be construed to mean a violation of any provision of the section or sections included in the reference.

(B) References in the code to action taken or authorized under designated sections of the code include, in every case, action taken or authorized under the applicable legislative provision which is superseded by this code.

(ORC § 1.23)

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

§ 10.06 CONFLICTING PROVISIONS.

(A) If the provisions of different codes, chapters, or sections of the codified ordinances conflict with or contravene each other, the provisions bearing the latest passage date shall prevail.

(B) If the conflicting provisions bear the same passage date, the conflict shall be so construed as to be consistent with the meaning or legal effect of the questions of the subject matter taken as a whole.

§ 10.07 SEVERABILITY.

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

(ORC § 1.50)

§ 10.08 REFERENCE TO OFFICES.

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

§ 10.09 ERRORS AND OMISSIONS.

If a manifest error be discovered consisting of the misspelling of any word or words, the omission of any word or words necessary to express the intention of the provisions affected, the use of a word or words to which no meaning can be attached, or the use of a word or words when another word or words was clearly intended to express the intention, the spelling shall be corrected, and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provision shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

§ 10.10 ORDINANCES REPEALED.

With the exception of legislation covered in Chapter 11, this code, from and after its effective date, shall contain all of the provisions

of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code of ordinances.

§ 10.11 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature, and all other ordinances pertaining to subjects not enumerated and embraced in this code of ordinances, shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.12 ORDINANCES SAVED.

Whenever an ordinance by its nature either authorizes or enables the legislative body, or a certain municipal officer or employee, to make additional ordinances or regulations for the purpose of carrying out the intention of the ordinance, all ordinances and regulations of a similar nature serving the purpose, effected prior to the codification and not inconsistent thereto, shall remain in effect, and are saved.

§ 10.13 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and amending ordinances, if any, are listed following the text of the code section. Example: (Ord. 10, passed 5-13-1960; Am. Ord. 15, passed 1-1-1970; Am. Ord. 20, passed 1-1-1980; Am. Ord. 25, passed 1-1-1985)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute.

Example: (ORC § 149.43) (Ord. 10, passed 1-17-1980; Am. Ord. 20, passed 1-1-1985).

(2) If a statutory cite is set forth as a "statutory reference" following the text of the section, this indicates that the reader should refer to that statute for further information.

Example:

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

For provisions concerning the inspection of public records, see Ohio R.C. § 149.43

(C) If a section of this code is derived from the previous code of ordinances of the city published in 1995 and subsequently amended, the 1995 code section number shall be indicated in the history by "(1995 Code, §)."

§ 10.98 VIOLATIONS; ASSIGNMENT OF COUNSEL TO INDIGENTS.

(A) The Mayor is authorized to establish with the Mayor's Court administration the procedure for assignment of private counsel to represent defendants charged with violations of the Criminal Code (i.e., Title XIII, General Offenses) and serious traffic offenses set forth in Title VII of this code of ordinances whereby if convicted the penalty may be imprisonment.

(B) The standards of indigency are incorporated into this section by reference.

(C) The Mayor or his or her representative shall designate the assignment of attorney. There shall be a list of private counsels who are willing to serve as appointed counsel for a rate to be established by ordinance per individual and per assignment.

(Ord. 82-O-3, passed 3-8-1982)

Editor's Note: *The standards of indigency are available for public inspection at the office of the Village Clerk.*

§ 10.99 GENERAL PENALTY.

Whenever, in this municipal code or in any ordinance of the municipality, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided, whoever violates any provision shall be punished by a fine not exceeding $500, a term of imprisonment not exceeding six months, or both. A separate offense shall be deemed committed each day during or on which a violation continues or occurs.

(Ord. 2007-O-15, passed 1-22-2007; Am. Ord. 2007-O-20, passed 4-9-2007)

TITLE III: ADMINISTRATION

Chapter

Part One: Administrative Code

30. GENERAL PROVISIONS

31. VILLAGE MANAGER

32. DIRECTOR OF LEGAL SERVICES

33. POLICE DEPARTMENT

34. FIRE DEPARTMENT

35. BOARDS AND COMMISSIONS

36. OFFICERS AND EMPLOYEES

37. PERSONNEL POLICIES AND PROCEDURES

Part Two

38. VILLAGE COUNCIL

39. TAXATION AND FINANCE; FUNDS

40. VILLAGE POLICIES

41. DISASTER AND EMERGENCY PLANNING

42. CHARTER AMENDMENTS

Part One: Administrative Code

CHAPTER 30: GENERAL PROVISIONS

Section

30.01 Adoption

30.02 Principal appointive officers

30.03 Designation of officer to perform duties of abolished office

§ 30.01 ADOPTION.

Section 3.09 of the Charter provides that the Village Council, subject to the provisions of the Charter, and after consultation with the Village Manager, shall adopt an Administrative Code, which shall provide in detail the organization of the government, define the powers and duties of each municipal agency and determine the administrative procedures to be followed. Amendments to and revision of the Administrative Code, as set forth in Part One of Title III of this code of ordinances, shall be made by the Village Council only after consultation with the Village Manager. Provisions of the Administrative Code shall supersede those of the state law in case of conflict.

(1995 Code, § 30.01)

§ 30.02 PRINCIPAL APPOINTIVE OFFICERS.

The Mayor and Village Manager in accordance with the Charter shall be the principal appointive officers under this Administrative Code.

(1995 Code, § 30.02)

§ 30.03 DESIGNATION OF OFFICER TO PERFORM DUTIES OF ABOLISHED OFFICE.

Wherever in this code of ordinances or in any other ordinance of the village it is proposed that an action be taken by an officer therein designated by title which no longer exists, the duty or authority to perform such action shall rest upon such officer as may be designated by ordinance or by order of the Village Manager as the successor in such duty or authority of the officer originally referred to.

(1995 Code, § 30.03)

CHAPTER 31: VILLAGE MANAGER

Section

31.01 Annual report of Village Manager on state of village affairs

31.02 Budget duties

31.03 Appointment, dismissal and suspension of employees

31.04 Execution of contracts

31.05 Absence or disability

§ 31.01 ANNUAL REPORT OF VILLAGE MANAGER ON STATE OF VILLAGE AFFAIRS.

The Village Manager shall prepare and present to the Council an annual report concerning the state of village affairs and such other reports as Council may require or the Village Manager deems advisable.

(1995 Code, § 31.01)

§ 31.02 BUDGET DUTIES.

The Village Manager pursuant to the Charter shall submit to the Council a budget for the ensuing fiscal year together with an accompanying message.

(1995 Code, § 31.02)

§ 31.03 APPOINTMENT, DISMISSAL AND SUSPENSION OF EMPLOYEES.

The Village Manager, except as otherwise provided in the Charter, shall appoint and may dismiss, suspend, and discipline all officers and employees in the administrative service under the control of the Village Manager.

(1995 Code, § 31.03)

§ 31.04 EXECUTION OF CONTRACTS.

The Village Manager shall be responsible for the execution of all contracts relating to the business affairs of the village.

(1995 Code, § 31.04)

§ 31.05 ABSENCE OR DISABILITY.

The Village Manager pursuant to the Charter shall designate, subject to the approval of a majority of the Council, a qualified village administrative officer to exercise the powers and duties of Village Manager during the temporary absence or disability of the Village Manager.

(1995 Code, § 31.05)

CHAPTER 32: DIRECTOR OF LEGAL SERVICES

Section

32.01 Qualifications

32.02 Appointment of assistants

32.03 Designation of assistant to act as Prosecuting Attorney in Mayor's Court

§ 32.01 QUALIFICATIONS.

The Director of Legal Services shall be an attorney licensed to practice law in the State of Ohio and with special knowledge and experience in the field of municipal law.

(1995 Code, § 32.01)

§ 32.02 APPOINTMENT OF ASSISTANTS.

The Director of Legal Services with the approval of the Village Manager may appoint assistants to help him or her in the performance of his or her duties.

(1995 Code, § 32.02)

§ 32.03 DESIGNATION OF ASSISTANT TO ACT AS PROSECUTING ATTORNEY IN MAYOR'S COURT.

The Director of Legal Services, with the approval of the Village Manager, may designate an assistant to act as Prosecuting Attorney in Mayor's Court.

(1995 Code, § 32.03)

CHAPTER 33: POLICE DEPARTMENT

Section

General Provisions

33.01 Composition; salaries

33.02 Applicants; hours of work; bond

33.03 Fringe benefits

33.04 Rules of conduct for Police Department

Auxiliary Police

33.15 Organization

33.16 Membership

33.17 Uniforms and equipment

33.18 Auxiliary Police Fund

33.19 Off-duty rules

33.20 Disciplinary action

33.21 Meetings; training

33.22 Compensation when on duty

33.23 Officers

Private Police Officers

33.35 Commission; fee; bond

33.36 Requirements

33.37 Uniforms and equipment

33.38 Rules and regulations

School Crossing Guards

33.45 Appointment; duties and powers

Recovered Property

33.50 Property recovered by police

33.51 Inventory of property

33.52 Disposition to claimant

33.53 Sale of unclaimed property; proceeds

GENERAL PROVISIONS

§ 33.01 COMPOSITION; SALARIES.

(A) The Police Department of the village shall be composed of the following officers and other members:

(1) A Chief.

(2) Two Sergeants.

(3) Police officers, including part-time police officers, the number of which shall be determined by the Chief of the Police Department and subject to the approval of the Village Manager. Provided, however, that at no time may the number of Police Officers total more than the amount of funds budgeted and appropriated for police officer salaries, wages, and associated benefits for the then current fiscal year.

(1995 Code, § 33.01) (Ord. 71-14, passed 4-14-1971; Am. Ord. 92-O-41, passed 12-23-1992; Am. Res. 94-R-26, passed 9-26-1994;

Am. Ord. 2008-O-23, passed 6-9-2008)

Cross-reference:

School crossing guards, see § 33.45

§ 33.02 APPLICANTS; HOURS OF WORK; BOND.

(A) The Police Department as constituted herein, shall be classified by the Village Manager as required by law.

(B) Such officers and other members of the Police Department shall be able to work rotating shifts. Patrolmen shall not be permitted to engage in full-time employment or any other job and shall obtain special permission from the Village Manager in order to engage in part-time employment. ***FULL-TIME EMPLOYMENT*** shall be construed to mean employment of nine hours or more per day or 44 hours or more per week.

(C) Applicants for employment in the Police Department must meet qualifications determined by village and state laws.

(D) Each employee of the Police Department shall post bond in the in the amount of $1,000 at the cost of the village.

(E) Standard work week for patrolmen and officers shall consist of 44 hours.

(ORC § 737.07) (1995 Code, § 33.02) (Ord. 71-14, passed 4-14-1971)

§ 33.03 FRINGE BENEFITS.

All members of the Police Department and employees shall receive the following fringe benefits:

(A) All police officers who are regular employees shall be members of the State Police and Firemen's Disability and Pension Fund.

(B) A police officer who is a regular employee and works more than 30 hours per week averaged over a 52 week period shall receive hospitalization, medical and dental insurance coverage, disability and death benefits, and any other benefits in amounts established by the Village Manager in accordance with the limitations set forth in the annual budget approved by Council.

(1995 Code, § 33.03) (Am. Ord. 97-O-2, passed 2-10-1997)

§ 33.04 RULES OF CONDUCT FOR POLICE DEPARTMENT.

(A) No police officer while on active duty shall leave the village unless he or she is dispatched by the Hamilton County Dispatcher or the source of dispatch in use or in pursuit of an alleged offender.

(B) No police officer shall allow any civilian passenger in police cruiser unless such passenger is a prisoner or a village officer or employee authorized to ride in the police cruiser.

(C) No police officer shall use village equipment for personal or private use while on duty or off duty.

(D) Every police officer must pay for any equipment in his or her possession damaged, lost or misplaced by him or her whether on or off-duty. Such damaged, lost or misplaced equipment must be logged on the appropriate police records.

(E) The Chief of Police, in the event of a troubled area, will assign two police officers to the scene of such troubled area. For walking duty, the two assigned police officers can only leave when dispatched by the Hamilton County Dispatcher to another troubled area.

(F) When two police officers are on duty and two cars are in use in the troubled area, each must back up each other. No police officer shall go in the troubled area alone.

(G) Every police officer shall give the Chief of Police two hours notice if such officer will be absent from work. If the call is received by the Chief of Police the last minute or in an untimely manner for illness only, a doctor's certificate is required to verify such illness.

(H) All officers must log in the starting time for work. If late, such officer must log in the starting time.

(I) If two police cruisers are in use, the Village Manager shall instruct the Chief of Police that one police cruiser shall patrol the upper half of the village and the other police cruiser shall patrol the lower half of the village. All business establishments must be checked every hour.

(J) Every police officer without the approval of the Village Manager is prohibited from disclosing to any one official information or make any public statements detrimental to the peace, health and welfare of the village during his or her employment by the village.

(K) The Village Manager shall enforce the residence requirement.

(L) No police officer shall be on active duty while in the process of litigation against the village other than disciplinary proceedings.

(M) Any violation of division (A), (C), or (H) is cause for removal. Any violation of division (E), (F), (I) or (J) is a cause for two weeks lay off without pay. For the violations of any other section, the appointing authority may take the appropriate disciplinary actions.

(1995 Code, § 33.04) (Ord. 82-O-43, passed 12-27-1982)

AUXILIARY POLICE

§ 33.15 ORGANIZATION.

(A) A volunteer unit to be hereafter known as the Village Auxiliary Police Unit is established and organized pursuant to Ohio R.C. § 737.161. The primary purpose of this unit shall be to assist the Police Department in their regular and special duties.

(B) All members shall serve on a volunteer basis and the compensation for such service shall be as set by Council.

(1995 Code, § 33.15) (Ord. 80-O-32, passed 4-14-1980)

§ 33.16 MEMBERSHIP.

(A) The membership shall be limited to 25 regular members, and three of such members may be designated by the Chief of Police to serve as court service officers; provided however Council may, as the circumstances require, increase the number by making provisions therefor in the annual budget.

(B) The Village Manager shall make all appointments and removals of auxiliary officers.

(C) Auxiliary police, while serving on duty as police officers, are exempt employees and are not entitled to appeal rights for any employment personnel actions taken by the village administration. These actions include, but are not limited to, discharge, supervision, reprimand, retrenchment, demotions, grade and salary.

(D) Applicants shall complete the standard village employee application form.

(E) Applicants must pass a physical examination administered by a physician approved by the Village Manager.

(F) All new members shall be required to complete the state-approved police course after acceptance. Attendance at training courses sponsored by the Police Department is mandatory.

(G) Resignation of any member shall become effective on written notice to the Chief of Police and return of badges, patches, uniforms, and equipment that were issued to such member.

(H) Any auxiliary police officer may request being placed on temporary inactive status due to personal or business reasons. The request must be in writing and must be approved by the Chief of Police.

(1995 Code, § 33.16) (Ord. 80-O-32, passed 4-14-1980; Am. Ord. 96-O-22, passed 9-9-1996)

§ 33.17 UNIFORMS AND EQUIPMENT.

(A) Any uniforms and equipment purchased from the funds of the Auxiliary Police shall automatically become the property of the

Police Department.

(B) Uniforms and equipment will be prescribed, replaced, furnished by and remain the property of the Police Department.

(C) The dispatcher will be informed when an auxiliary police officer is driving a patrol unit.

(D) A member on scheduled duty will wear in a neat and orderly fashion the prescribed uniform of the day, including a hat, badge and any other equipment required by the police division.

(E) An auxiliary police officer assigned on sports, parade detail or other special duty will be under orders of the Chief of Police or the regular officer on duty.

(1995 Code, § 33.17) (Ord. 80-O-32, passed 4-14-1980; Am. Ord. 96-O-23, passed 9-9-1996)

§ 33.18 AUXILIARY POLICE FUND.

(A) An Auxiliary Police Fund may be maintained by the unit.

(B) The auxiliary police may accept donations to the aforementioned fund for services performed but may in no instance solicit for funds for the unit.

(1995 Code, § 33.18) (Ord. 80-O-32, passed 4-14-1980)

§ 33.19 OFF-DUTY RULES.

(A) An auxiliary police officer shall not use his or her badge, wear the uniform, wear a gun, or engage in auxiliary work when not on regular, special or emergency duty.

(B) When reporting for any type of duty, the member shall drive any personal or privately-owned vehicle in a normal and lawful manner, and not as an emergency vehicle.

(C) When reporting for any type of duty, the member shall report to the regular officer and sign the time card, and his or her presence for duty shall be noted.

(1995 Code, § 33.19) (Ord. 80-O-32, passed 4-14-1980)

§ 33.20 DISCIPLINARY ACTION.

An auxiliary police officer shall be governed by the same rules as a regular police officer, except that there will be no right to appeal.

(1995 Code, § 33.20) (Ord. 80-O-32, passed 4-14-1980)

§ 33.21 MEETINGS; TRAINING.

(A) The regular meetings or training of the unit shall be set by the Chief of Police.

(B) Any active member who shall be absent from three consecutive regular meetings or training without acceptable cause shall be discharged from the unit.

(1995 Code, § 33.21) (Ord. 80-O-32, passed 4-14-1980)

§ 33.22 COMPENSATION WHEN ON DUTY.

All members shall be compensated at an hourly rate as set by Council when on regular duty or emergency duty. No auxiliary police officer shall be entitled to share in the police relief and pension fund, and that such rules and regulations shall be made from time to time as prescribed by the Village Council for the unit, insofar as such rules and regulations are not in conflict with the Charter of the

village, and that such rules and regulations so promulgated shall be binding on such auxiliary police officers.

(1995 Code, § 32.22) (Ord. 80-O-32, passed 4-14-1980)

§ 33.23 OFFICERS.

(A) The officers of the auxiliary police unit shall be the President and secretary-treasurer.

(B) The President and secretary-treasurer shall be appointed by the Chief of Police.

(1995 Code, § 33.23) (Ord. 80-O-32, passed 4-14-1980)

PRIVATE POLICE OFFICERS

§ 33.35 COMMISSION; FEE; BOND.

(A) The Chief of Police with the approval of the Village Manager may commission private police officers to perform special police duties for the benefit and at the expense of private persons or corporations.

(B) Such private police officers must give bond in the amount of $ 1,000 and pay a fee of $20 for the commission. Such commission shall run for a period of one year unless sooner terminated as hereinafter mentioned. Such commissions must be renewed each year. A fee of $10 will be charged for renewal thereof.

(1995 Code, § 33.35) (Ord. 2-1959, passed 1-19-1959)

§ 33.36 REQUIREMENTS.

(A) Private police officers shall not be less than 21 years of age.

(B) Private police officers must be citizens of the United States.

(C) Private police officers in the judgment of the Village Manager must be persons of good moral character and pass a physical examination conducted by a physician selected by the Village Manager.

(D) No person who has been dismissed from the regular police force shall be commissioned as a private police officer after such dismissal.

(1995 Code, § 33.36) (Ord. 2-1959, passed 1-19-1959; Am. Ord. 69-33, passed 9-15-1969)

§ 33.37 UNIFORMS AND EQUIPMENT.

(A) Private police officers are required to wear a distinctive uniform, badge on breast or chest, night stick, whistle, note pad, and commission on his or her person at all times when on duty.

(B) Such uniform shall not be identical to the uniform worn by regular police officers for the village.

(C) Badges will be furnished by the village on the deposit of the required fee which is refundable on the return of the badge and commission.

(1995 Code, § 33.37) (Ord. 2-1959, passed 1-19-1959)

§ 33.38 RULES AND REGULATIONS.

(A) Private police officers must work as private police officers only for the persons or firms mentioned in the commission.

(B) Commissioned private police officers shall have the power to exercise duties of regular police only at the place designated in the commission and during their hours on duty or when called on by regular police.

(C) Private police officers are not to take part in any civil action, only criminal, prevention of the breach of peace, and suppression of disturbances on the premises designated in the commission.

(D) On changing from one employment to another, the private police officers must return the old commission to the Mayor and a new application must be made. The change must be recorded in the Mayor's office and in the Police Department, and the previous bond must be renewed or proper endorsement thereof made.

(E) All applications for commissions or renewals of commissions must contain the following:

(1) Name of applicant, address, age, telephone number, and next of kin; and

(2) Statement of the nature of the business, name of firm or persons to be protected, and the duties which the private police officer is to perform.

(F) The commission of a private police officer shall be subject to revocation by the Chief of Police at any time for the following violations:

(1) Conduct unbecoming to an officer;

(2) Violation of the public trust;

(3) Use of badges and commissions for admittance to public affairs; or

(4) Use of badges and commissions for personal gains contrary to the purposes and uses as stated in the commission or application therefor.

(1995 Code, § 33.38) (Ord. 2-1959, passed 1-19-1959)

SCHOOL CROSSING GUARDS

§ 33.45 APPOINTMENT; DUTIES AND POWERS.

(A) There is created and established in the village the position, which shall be known as school crossing guard, the number of which shall be set by Council.

(B) The duties of the school crossing guards shall be to assist school children in the crossing of streets going to and from the several schools in the village. The school crossing guard while on duty shall be conspicuously attired by the wearing on his or her person a distinctive object or raiment as prescribed by the Village Manager.

(C) Such school crossing guards shall be under the immediate supervision of the Chief of Police, subject to rules and regulations as prescribed by the Village Manager.

(D) While so engaged in the duties of school crossing guard, such guards shall be invested with authority to direct, route, and otherwise control traffic for purposes as herein mentioned.

(E) Such school crossing guards shall perform the duties as hereinbefore mentioned wherever assigned by the Chief of Police, not exceeding three hours per school day.

(F) Such school crossing guards shall be employed during the regular school season only and shall receive as compensation such as set from time to time by action of Council.

(1995 Code, § 33.45) (Ord. 7-1958, passed 6-2-1958; Am. Res. 94-R-24, passed 9-26-1994)

RECOVERED PROPERTY

§ 33.50 PROPERTY RECOVERED BY POLICE.

Stolen or other property recovered by members of the police force shall be deposited and kept in a place designated by the Mayor. Each article shall be entered in a book kept for that purpose, with the name of the owner, if ascertained, the person from whom taken, the place where found with general circumstances, the date of its receipt, and the name of the officer recovering it.

(ORC § 737.29) (1995 Code, § 33.50)

Cross-reference:

Law Enforcement Trust Fund; proceeds from forfeited property and the like, see § 39.46

§ 33.51 INVENTORY OF PROPERTY.

An inventory of all money or other property shall be given to the party from whom taken, and in case it is not claimed by some person within 30 days after such arrest and seizure it shall be delivered to the person from whom taken, and to no other person, either attorney, agent, actor, or clerk, except by special order of the Village Manager.

(ORC § 737.29) (1995 Code, § 33.51)

§ 33.52 DISPOSITION TO CLAIMANT.

If, within 30 days, the money or property recovered under § 33.50 is claimed by any person other than the person from whom the property was recovered from, it shall be retained by the custodian thereof until after the discharge or conviction of the person from whom it was taken, and so long as it may be required as evidence in any case in court. If the claimant establishes to the satisfaction of the court that he or she is the rightful owner, it shall be restored to him or her; otherwise, it shall be returned to the accused person, personally, and not to any attorney, agent, actor, or clerk of the accused person, except upon special order of the Mayor after all liens and claims in favor of the municipality have first been discharged and satisfied.

(ORC § 737.31) (1995 Code, § 33.52)

§ 33.53 SALE OF UNCLAIMED PROPERTY; PROCEEDS.

(A) Except as otherwise provided in this section and unless the property involved is required to be disposed of pursuant to another section of the Ohio Revised Code, property that is unclaimed for 90 days or more shall be sold by the Marshal, Police Chief or licensed auctioneer at public auction, after notice of the sale has been provided by publication once a week for three successive weeks in a newspaper of general circulation in the county. The proceeds of the sale shall be paid to the Director of Finance and shall be credited to the general fund of the municipality.

(B) If authorized to do so by an ordinance adopted by the Council of the municipality and if the property involved is not required to be disposed of pursuant to another section of the Ohio Revised Code, the Police Chief or Marshal may contribute property that is unclaimed for 90 days or more to one or more public agencies, to one or more nonprofit organizations no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation, or to one or more organizations satisfying IRC 501(c)(3) or (c)(19).

(ORC § 737.32) (1995 Code, § 33.53)

CHAPTER 34: FIRE DEPARTMENT

Section

34.01 Composition; vacancies

34.02 Rules and regulations

34.03 Schools of instruction

34.04 Purchase of engines and equipment

34.05 Buildings

34.06 Records

34.07 Practice drills

34.08 Assistant Chief

34.09 Firefighters

34.10 Attendance at officers' meetings; loss of membership

34.11 Emergency medical services

34.12 Burning buildings for fire fighting instruction or research

§ 34.01 COMPOSITION; VACANCIES.

(A) The Fire Department of the Village of Lincoln Heights shall consist of the following officers and members:

(1) Chief;

(2) First Assistant Chief;

(3) Second Assistant Chief;

(4) Captain;

(5) First Fire Lieutenant;

(6) Second Fire Lieutenant;

(7) Third Fire Lieutenant; and

(8) Sixteen firefighter members.

(B) Council, as the circumstances may require, shall establish the compensation and may change the number of officers and members of the Fire Department.

(C) Each officer and member of the Fire Department, except the Fire Chief, for response to each drill shall receive the sum of $1 or such amount as Council shall determine, in addition to compensation for the performance of other duties.

(D) The Village Manager shall fill all vacancies and make promotions in the Fire Department.

(1995 Code, § 34.01) (Ord. 68-11, passed 5-6-1968; Am. Ord. 96-O-24, passed 9-9-1996)

Cross-reference:

Fire Prevention Code, see Ch. 91

§ 34.02 RULES AND REGULATIONS.

The Village Manager shall prescribe the duties of the several officers and members of the Fire Department, and prepare rules and regulations for the same all in accordance with the state laws. A copy of the rules and regulations shall be filed with the Clerk of Council, the Mayor, and the Finance Director. Copies shall be made available for all employees of the Fire Department.

(1995 Code, § 34.02) (Ord. 68-11, passed 5-6-1968)

§ 34.03 SCHOOLS OF INSTRUCTION.

The Council may send any of the officers and firefighters of its Fire Department to schools of instruction designed to promote the efficiency of firefighters and, if authorized in advance, may pay their necessary expenses from the funds used for the maintenance and

operation of the Fire Department.

(ORC § 737.23) (1995 Code, § 34.03)

§ 34.04 PURCHASE OF ENGINES AND EQUIPMENT.

The Council may purchase the necessary fire engines and such other equipment as is necessary for the extinguishment of fires and the saving of lives, and may establish lines of fire alarm telegraph within the limits of the village.

(ORC § 737.24) (1995 Code, § 34.04)

§ 34.05 BUILDINGS.

The Council may provide or erect necessary and suitable buildings containing rooms for fire engines and other equipment, and provide for the meetings of the fire and hose companies.

(ORC § 737.25) (1995 Code, § 34.05)

§ 34.06 RECORDS.

The Fire Chief shall keep in convenient form a complete record of all fires. Such record shall include the time of the alarm, location of fire, cause of fire if known, type of building, name of owner and tenant, purpose for which occupied, value of building and contents, members of the Department responding to the alarm, and such other information as he or she may deem advisable or as may be required from time to time by the Village Council.

(1995 Code, § 34.06)

§ 34.07 PRACTICE DRILLS.

The Fire Chief shall hold drills on two scheduled dates and places each month. All officers and members of the Fire Department and the Emergency Medical Services are required to attend such drills.

(1995 Code, § 34.07) (Am. Ord. 96-O-25, passed 9-9-1996)

§ 34.08 ASSISTANT CHIEF.

The Assistant Chief shall, in the absence or disability of the Chief, perform all the functions and exercise all of the authority of the Chief.

(1995 Code, § 34.08)

§ 34.09 FIREFIGHTERS.

The Assistant Chief and firefighters shall not be less than 18 nor more than 55 years of age and must be able bodied. They shall pass a satisfactory mental and physical examination and shall become members of the Fire Department only after a six-month probationary period.

(1995 Code, § 34.09)

§ 34.10 ATTENDANCE AT OFFICERS' MEETINGS; LOSS OF MEMBERSHIP.

(A) There will be one officers' meeting which all officers of the Fire Department and Emergency Medical Services are required to

attend.

(B) Any officer of the Fire Department or Emergency Medical Services who is absent from three consecutive meetings shall forfeit his or her officer's position.

(1995 Code, § 34.10) (Am. Ord. 96-O-26, passed 9-9-1996)

§ 34.11 EMERGENCY MEDICAL SERVICES.

(A) The Chief of the Fire Department is designated as the administrative officer of the Emergency Medical Services.

(B) The Emergency Medical Services shall consist of the following officers and members:

(1) Captain;

(2) First Lieutenant;

(3) Second Lieutenant; and

(4) Twelve Emergency Medical Services members (non-members of the Fire Department).

(C) An Emergency Medical Services member shall successfully complete the training course given by an accrediting body pursuant to Ohio R.C. §§ 4765.15 through 4765.24, and shall have a valid certificate of practice. To sustain membership in the Emergency Medical Services a member must have a certificate of practice renewed every three years as prescribed by Ohio R.C. § 4765.30.

(1995 Code, § 34.11) (Ord. 82-O-2, passed 3-8-1982; Am. Ord. 87-O-14, passed 4-8-1987; Am. Ord. 96-O-27, passed 9-9-1996)

§ 34.12 BURNING BUILDINGS FOR FIRE FIGHTING INSTRUCTION OR RESEARCH.

No building that contains asbestos shall be burned for the purpose of instruction in the methods of fire fighting or research in the control of fires.

(ORC § 3737.14(B))

Statutory reference:

Notification requirements, Ohio R.C. §§ 3737.14(C) and (D)

CHAPTER 35: BOARDS AND COMMISSIONS

Section

35.01 Board of Control

35.02 Personnel Advisory and Appeals Board

35.03 Planning Commission

35.04 Recreation Commission

35.05 Zoning Board of Appeals

35.06 Housing Board of Appeals

35.07 Tax Board of Review

35.08 Public Improvements Commission (Repealed)

35.09 Education Commission

35.10 Records Commission

35.11 Appointment of Chairpersons for Boards and Commissions; term of office

35.12 Rule of attendance

§ 35.01 BOARD OF CONTROL.

(A) The Village Manager, Finance Director and the Chairman of the Law Committee shall constitute the Board of Control.

(B) The Mayor shall be ex officio president and the Board shall keep a record of its proceedings. All votes shall be by yeas and nays and entered on the record, and a majority vote of all the members of the Board shall be necessary to adopt any question, motion or order.

(Ord. 75-10, passed 3-3-1975)

(C) No contract in the excess of $5,000 shall be awarded except upon the approval of the Board of Control.

(1995 Code, § 35.01)

§ 35.02 PERSONNEL ADVISORY AND APPEALS BOARD.

For provisions effecting the Personnel and Advisory and Appeals Board, see Charter §§ 8.05 through 8.07.

(1995 Code, § 35.02)

Cross-reference:

Personnel policies and procedures, see Ch. 37

§ 35.03 PLANNING COMMISSION.

(A) The Planning Commission shall perform such duties as prescribed by the Charter, ordinances of Council and statute.

(B) The Planning Commission shall be the Platting Commission of the village and, as such, shall have the control of the platting of lands within the village.

(C) No amendment of the Zoning Code of the village set forth in Chapter 153 of this code of ordinances or the zone map shall be made or enacted by the Council until and unless such amendment shall be approved by the Planning Commission, provided that in case of its failure to approve, the Planning Commission shall communicate the reason of its disapproval to the Council, and the Council, by a vote of not less than five of its members, shall have the power to overrule such failure to approve and may enact the proposed amendment.

(1995 Code, § 35.03)

Cross-reference:

Planning Commission, see Charter § 11.02

§ 35.04 RECREATION COMMISSION.

(A) The Recreation Commission shall consist of five members appointed by Council. They shall be electors of the village and serve a term of four years.

(B) Members on the Recreation Commission shall serve staggered terms. At the time of the first appointments under the charter, three members shall be approved for four-year terms, and two shall be appointed for two-year terms. Thereafter, all appointed members shall serve four-year terms.

(C) The Recreation Commission shall act as an advisory body to the Village Manager and Council in areas involving recreational programs, maintenance and operation of playgrounds, as well as other recreational facilities.

(D) The Recreation Commission shall make an annual report to the Village Manager and Council regarding recreational programs and facilities in the village together with recommendations which it deems appropriate.

(1995 Code, § 35.04)

Cross-reference:

Recreation Commission, see Charter § 11.03

§ 35.05 ZONING BOARD OF APPEALS.

For provisions effecting the Zoning Board of Appeals, see §§ 153.225*et seq*. of this code of ordinances and Charter § 11.04.

(1995 Code, § 35.05)

§ 35.06 HOUSING BOARD OF APPEALS.

For provisions effecting the Housing Board of Appeals, see § 150.68 of this code of ordinances and Charter § 11.05.

(1995 Code, § 35.06)

§ 35.07 TAX BOARD OF REVIEW.

(A) The Tax Board of Review shall consist of five members appointed by the Mayor with the approval of Council. They shall be electors of the village and serve a term of four years.

(B) The Tax Board of Review shall adopt its own procedural rules and shall keep a record of its proceedings. A majority of the members shall constitute a quorum. Any hearing by the Board may be conducted privately and the confidential character of the tax information of the taxpayer shall be protected.

(C) The Tax Board of Review shall hear and act upon appeal from any ruling or decision of the Administrator.

(D) Any taxpayer dissatisfied with the ruling or decision of the Administrator may appeal therefrom to the Tax Board of Review within ten days from the announcement of the ruling or decision by the administration. The Tax Board of Review, after the hearing, shall have jurisdiction to affirm, reverse, or modify any ruling or decision or any part thereof.

(1995 Code, § 35.07)

Cross-reference:

Tax Board of Review, see Charter § 11.06

§ 35.08 PUBLIC IMPROVEMENTS COMMISSION (REPEALED).

(EDITOR'S NOTE: This section was repealed and the Public Improvements Commission abolished by Ordinance 98-O-62, passed September 1, 1998.)

§ 35.09 EDUCATION COMMISSION.

(A) The Education Commission shall consist of five members appointed by Council. They shall be citizens of the village and serve a term of four years. At the time of the first appointment under this charter, three members will be appointed for four year terms and two will be for two-year terms. Thereafter, all appointments will be for a four-year terms. Membership shall consist of two high school students and three adults.

(B) The Education Commission shall consider and study matters relating to pre-school training, truancy, drop-outs, juvenile delinquency, illiteracy, adult education, tutoring, scholarship awards, career counseling, and other related subjects which will improve

the quality of education for citizens in the village.

(C) The Education Commission shall act as an advisory body to the Council in all educational matters. It shall make an annual report to the Village Manager and Council regarding the quality of education in the village with recommendations which it deems appropriate.

(1995 Code, § 35.09)

Cross-reference:

Education Commission, see Charter § 11.08

§ 35.10 RECORDS COMMISSION.

(A) A Records Commission is hereby established consisting of the Village Manager or his or her appointed representative, as Chairperson, Finance Director, Director of Legal Services and a citizen appointed by the Village Manager.

(B) The Records Commission shall appoint a secretary, who may or may not be a member of the commission and who shall serve at the pleasure of the commission.

(C) The Records Commission may employ, with the approval of Council, an archivist to serve under its direction.

(D) The Records Commission shall meet at least once every six months and upon the call of the Chairperson.

(E) The Records Commission shall establish rules for the retention and disposal of municipal records for the village.

(F) When municipal records have been approved for disposal by the Commission, such disposition shall be in accordance with Ohio R.C. § 149.39.

(1995 Code, § 35.11) (Res. 95-R-52, passed 8-28-1995)

§ 35.11 APPOINTMENT OF CHAIRPERSONS FOR BOARDS AND COMMISSIONS; TERM OF OFFICE.

(A) The Mayor with the approval of Council is hereby authorized to appoint the chairpersons for the Boards and Commissions of Lincoln Heights.

(B) The term of office for a chairperson of a Board or Commission shall be for two years or shall terminate at the same time of the termination in office of the Mayor who appointed such chairperson.

(Ord. 2000-O-3, passed 2-14-2000)

§ 35.12 RULE OF ATTENDANCE.

All Board and Commission members are required to attend the scheduled meetings of the Boards and Commissions on which they sit, both regular and special members in attendance shall be noted in the minutes which the Chairman shall certify and forward to Council at the end of each month. Any member desiring to be excused from attendance at a Board or Commission meeting shall obtain such permission from the Village Council. If any Board or Commission member fails to attend three scheduled meetings, either regular or special, of the Board or Commission on which they sit in the same calendar year without the excuse of the Village Council, such individual's membership on said Board or Commission shall immediately terminate without notice and said vacancy shall be filled in accordance with the Charter and the Code of Ordinances for the Village of Lincoln Heights.

(Ord. 2009-O-9, passed 6-22-2009)

CHAPTER 36: OFFICERS AND EMPLOYEES

Section

36.01 Village Manager

36.02 Building Inspector

36.03 Finance Department; Director of Finance

36.04 Clerk of Mayor's Court

36.05 Tax Commissioner

36.06 Economic Development Coordinator

36.07 Housing and Zoning Inspector (Repealed)

36.08 Information Technology Administrator

§ 36.01 VILLAGE MANAGER.

For provisions effecting the Village Manager, see Charter §§ 3.01 through 3.09 and Chapter 31 of this code of ordinances.

(1995 Code, § 36.01)

Cross-reference:

Village Manager, see Ch. 31

§ 36.02 BUILDING INSPECTOR.

(A) The Division of Building Inspection and Zoning Administration shall be composed of a Building Inspector, appointed by the Village Manager, and such other number of deputy inspectors and employees as may be provided in the annual budget adopted by Council.

(B) The Building Inspector and deputy inspectors shall enforce the Building Code, the Housing Code, the Zoning Code and such other codes as may be assigned for enforcement to this Division by the Village Manager.

(1995 Code, § 36.02) (Ord. 75-3, passed 4-7-1975; Am. Ord. 97-O-5, passed 1-29-1997)

Cross-reference:

Building code adopted, see § 150.15

§ 36.03 FINANCE DEPARTMENT; DIRECTOR OF FINANCE.

(A) *Duties and responsibilities.* The Finance Department shall perform those functions customarily performed by the Village Auditor and treasurer under the general laws of Ohio. The head of the Finance Department shall be the Finance Director, appointed by the Village Manager and shall serve at the pleasure of the Village Manager. He or she shall have the knowledge of municipal accounting and taxation and shall have experience or training in budgeting and financial control. He or she shall be the fiscal officer of the village, and shall be responsible for the accounting, collection and custody of public funds and shall control all disbursements authorized from the village treasury. He or she shall countersign all bonds and notes issued by the village and perform such other functions as may be prescribed by Charter, by ordinance of Council or by order of the Village Manager.

(B) *Books and accounts.* The Director of Finance shall keep the books of the village and exhibit accurate statements of the moneys received and expended, of all property owned by the village and the income derived therefrom, and of all taxes and assessments.

(C) *Audit required.* At the end of each fiscal year, or more often, if required by the Council, the Director of Finance shall audit all accounts of officers and departments. Such Director shall prescribe the form of accounts and reports to be rendered to the Finance Department, and the form and method of repair, accounts by all other departments, and subject to the powers and duties of the Auditor of the State, shall have inspections and revision thereof. On the death, resignation, removal or expiration of the term of office of any

officer or employee, the Director of Finance shall examine the accounts of such officer or other person, and report his or her findings to the Village Manager and file a copy with Council.

(1995 Code, § 36.03)

Statutory reference:

Powers and duties of a municipal treasurer, see Ohio R.C. § 733.44

§ 36.04 CLERK OF MAYOR'S COURT.

(A) There is established the administrative position of Clerk of Mayor's Court.

(B) This position is to provide the Mayor with clerical assistance for Mayor's Court.

(1995 Code, § 36.04) (Ord. 76-O-3, passed 1-26-1976)

§ 36.05 TAX COMMISSIONER.

There is created the position of Tax Commissioner who shall be appointed by the Village Manager and serve at his or her pleasure. The duties of the Tax Commissioner are:

(A) Enforce the earnings tax ordinance;

(B) Mail correspondence for taxes due or delinquent;

(C) Keep records of moneys received and report such to the Finance Director;

(D) Maintain records of village residents and businesses; and

(E) Perform general clerical duties.

(1995 Code, § 36.05) (Ord. 75-39, passed 7-1-1975)

Editor's note: *This section has been amended for this codification. It is based on the 1981 code section that originally established the office and duties of the Deputy Tax Commissioner.*

§ 36.06 ECONOMIC DEVELOPMENT COORDINATOR.

There is created the position of Economic Development Coordinator who shall be appointed by the Village Manager and serve at his or her pleasure. The duties of the Economic Development Coordinator shall be as follows:

(A) Report directly to the Village Manager;

(B) Coordinate, oversee economic development activities, and conduct research, surveys and studies regard overall economic conditions in the village;

(C) Act as grantsperson (i.e., grant writer) for the village;

(D) Attend meetings and hearings;

(E) Review budgetary proposals and make recommendations; and

(F) Research federal programs and determine what assistance is available to the village.

(1995 Code, § 36.06) (Ord. 76-O-23, passed 7-12-1976)

Editor's note: *This section has been amended for this codification. It is based on the 1981 code section that originally established the office and duties of the Economic Development Coordinator.*

§ 36.07 HOUSING AND ZONING INSPECTOR (REPEALED).

(EDITOR'S NOTE: This section was repealed by Ordinance 97-O-5, passed January 29, 1997.)

§ 36.08 INFORMATION TECHNOLOGY ADMINISTRATOR.

(A) There is established the administrative position of Information Technology Administrator.

(B) This position is to oversee and support the information systems within the Village.

(Ord. 2010-O-4, passed 6-14-2010)

CHAPTER 37: PERSONNEL POLICIES AND PROCEDURES

Section

37.01 Definitions

37.02 Responsibility for administration

37.03 Maintenance of plan

37.04 Interpretation of class specifications

37.05 Amendments

37.06 Allocation of existing positions

37.07 New appointees

37.08 Promotions

37.09 Demotions

37.10 Personnel evaluation; pay adjustment procedures

37.11 Longevity (Repealed)

37.12 Allowances

37.13 Leaves of absence

37.14 Court duty

37.15 Holidays

37.16 Administration responsible for pay plan

37.17 Interpretation

37.18 Initial adjustment to pay plan

37.19 Review and amendment of pay plan

37.20 Pay plan

37.21 Employee benefit plans

37.22 (Reserved)

37.23 Prohibitions

37.24 Applications for positions

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37.33 Political activity; exemptions

37.34 Employment ineligibility

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37.36 Tenure

37.37 Working schedule

37.38 Salaries

37.39 Time card and time sheets

37.40 Overtime compensation and compensatory time off

37.41 Use of village vehicles

37.42 Alcohol and drug testing policy

37.43 Workers' Compensation

37.44 Advancement of regular wages

37.45 Employee handbook

37.46 Reporting an investigation

Cross-reference:

Personnel Advisory and Appeals Board, see Charter §§ 8.05 through 8.07

§ 37.01 DEFINITIONS.

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

ALLOCATION. The assignment of an individual position to an appropriate class on the basis of the kind, difficulty, and responsibility of the work actually performed in the position.

APPOINTING AUTHORITY. The official having power to make appointments.

CLASS. A group of positions, or one position, that has similar duties and responsibilities, requires like qualifications, and can be equitably compensated by the same salary range.

CLASS SPECIFICATION. The written description of a class containing such of the typical duties, of the class, and the qualifications that are necessary or desirable for the satisfactory performance of the duties of the class.

CLASS TITLE. The official designation or name of the class as stated in the class specification. It shall be used on all personnel

records and actions. Working or office titles may be used for purposes of internal administration.

DEMOTION. The change of an employee from a position in one class to a position in another class, having a lower maximum salary rate.

DISCHARGE. An involuntary permanent separation from employment for violation of specific provision of the personnel policies, or other departmental rules and regulations, or any other proper cause.

ELIGIBLE. A person whose name is on an employment list.

EMPLOYEE.

(1) ***FULL-TIME EMPLOYEE.*** A person engaged in employment for approximately 40 hours per week on a permanent or regular basis.

(2) ***PART-TIME EMPLOYEE.*** A person engaged in employment for substantially less than 40 hours per week on a permanent or regular basis. Fire Department personnel, among others, are ***PART- TIME EMPLOYEES.***

(3) ***REGULAR EMPLOYEE*** or ***PERMANENT EMPLOYEE.*** An employee who has been permanently appointed to a full-time or part-time position by the Village Manager. Seasonal employees are not included in this category.

(4) ***TEMPORARY EMPLOYEE.*** A person engaged in employment of a nonpermanent and nonrecurring nature, the duration of which does not exceed 90 calendar days in the calendar year. Temporary employment does not entitle one to vacation, holiday, pension, insurance (except workmen's compensation), or sick leave benefits.

IMMEDIATE FAMILY. Spouse or children, which includes a son or daughter who is the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stands in *loco parentis*.

LAYOFF. The separation of an employee for the purpose of reducing the work force due to reasons not related to fault, delinquency or misconduct on the part of the employee.

PERSONNEL DIRECTOR. The Village Manager or such person as the Village Manager may designate.

POSITION. A group of currently assigned duties and responsibilities requiring the full- or part-time employment of one person. A position may be occupied or vacant.

PROBATIONARY PERIOD. A working test period during which an employee is required to demonstrate his or her fitness for the duties of the position to which he or she is appointed by actual performance of the duties of the position.

PROMOTION. A change in the position of an employee from one class to a position in another class having a higher maximum salary rate.

REALLOCATION. The reassignment of an individual position to an appropriate class on the basis of the kind, difficulty and responsibility of the work actually performed in the position.

RESIGNATION. Voluntary separation from employment on written notification to the Village Manager specifying the date and reason for separation.

RESIDENT. A person who has resided in the village for at least one year immediately preceding the date of application.

SUSPENSION. An involuntary separation from employment for a specified temporary period of time, without pay, for violation of a specific provision of the personnel policies, other departmental rules and regulations, or any other proper cause.

TRANSFER. A change of an employee from one position to another position in the same class or another class having the same maximum salary rate.

(1995 Code, § 37.01) (Ord. 75-53, passed 6-9-1975; Am. Ord. 2003-O-11, passed 2-10-2003; Am. Ord. 2010-O-2, passed 4-26-2010)

§ 37.02 RESPONSIBILITY FOR ADMINISTRATION.

The Village Manager shall be responsible for administering the classification plan. The Village Manager may assign other officials or employees to assist him or her in this activity.

(1995 Code, § 37.02) (Ord. 75-53, passed 6-9-1975)

§ 37.03 MAINTENANCE OF PLAN.

(A) Each time a vacancy occurs in a department, a position description shall be completed by the director of the department and submitted to the Village Manager for a review of the allocation of the position. This requirement may be waived by the Village Manager in cases where changes in the duties and responsibilities of a position have been unlikely.

(B) Each time a department or division is reorganized, position descriptions of all affected employees should be submitted to the Village Manager for his or her review.

(C) The Village Manager may require departments or employees to submit position descriptions on a periodic basis, or any time he or she has reason to believe that there has been a change in the duties and responsibilities of one or more positions.

(D) Each time a new class is established, a class specification shall be written and incorporated in the existing plan. The class title shall be added to the schematic list of titles. Likewise, an abolished class shall be deleted from the classification plan by removing the class specification and eliminating the class title from the schematic list of titles.

(E) During the second year after the adoption of this chapter, the Village Manager shall conduct a general review of the classification plan to be followed by a minimum of at least one general review of the classification plan in each succeeding two-year period.

(1995 Code, § 37.03) (Ord. 75-53, passed 6-9-1975)

§ 37.04 INTERPRETATION OF CLASS SPECIFICATIONS.

The class specifications are descriptive and not restrictive. They are intended to indicate the kinds of positions which shall be allocated to the classes established. In a series of classes such as the police classes, the specifications for all classes should be reviewed as a unit.

(1995 Code, § 37.04) (Ord. 75-53, passed 6-9-1975)

§ 37.05 AMENDMENTS.

Each time a new class of positions should be established or a current class of positions abolished, the Village Manager shall submit his or her findings and recommendations to the Council. The Council shall determine whether the establishment or the abolition of a class is in order. All such changes shall be effected by ordinance.

(1995 Code, § 37.05) (Ord. 75-53, passed 6-9-1975)

§ 37.06 ALLOCATION OF EXISTING POSITIONS.

The positions covered by the position classification plan are allocated to appropriate classes. The Village Manager shall notify each employee of the allocation of his or her position in writing.

(1995 Code, § 37.06) (Ord. 75-53, passed 6-9-1975)

§ 37.07 NEW APPOINTEES.

(A) Generally a new employee shall be paid the minimum rate of pay for his or her class. Exceptions may be granted in the following cases on the written prior approval of the Village Manager.

(B) The minimum rate of pay for each class is based on the assumption that a new employee meets the minimum qualifications stated in the class specification. If it becomes necessary to appoint a new employee of lesser qualifications, he or she should be started at one step below the minimum rate of pay for the class.

(C) If a new employee has related work experience and more than the minimum qualifications for the classification to which his or her position is assigned, he or she may be hired above the minimum rate of pay and may be paid at an appropriate step within the range for the grade to which his or her position is assigned.

(D) Each new employee shall be required to serve a probationary period of six months, and the Village Manager may extend the probationary period for an additional six months or part thereof if after consulting the appropriate department head or supervisor it is determined that an extended period of observation and evaluation would be in the best interests of the municipal service. Unsatisfactory probationary employees shall be separated on or before the completion of their probationary period. On satisfactory completion of the probationary period, an employee shall be given permanent status and raised after two years to the next step in the pay range to which his or her class is assigned.

(1995 Code, § 37.07) (Ord. 75-53, passed 6-9-1975)

§ 37.08 PROMOTIONS.

When an employee is promoted to a position in a higher grade, his or her new salary shall be determined by the Village Manager, who shall consult with the department head prior to making any such determination. His or her new rate will depend on the qualifications that he or she brings to the new job, and it shall be at an established step within the grade.

(1995 Code, § 37.08) (Ord. 75-53, passed 6-9-1975)

§ 37.09 DEMOTIONS.

When an employee is demoted to a lower class position, he or she shall be paid at an established rate which is within the approved range for the lower class position. The rate of pay shall be determined by the Village Manager, who shall consult with the department head prior to making any such determination. In an emergency situation, the allowance or compensation therefor shall be subsequently approved and authorized by the Village Manager. Overtime for any reason other than an emergency must have prior authorization from the Village Manager.

(1995 Code, § 37.09) (Ord. 75-53, passed 6-9-1975)

§ 37.10 PERSONNEL EVALUATION; PAY ADJUSTMENT PROCEDURES.

(A) The Village Manager shall make an annual personnel evaluation of each regular or permanent employee, as defined by § 37.01, in such manner and form approved by Council.

(B) A pay grade shall be established in accordance with the classification plan pursuant to §§ 37.02 to 37.06, inclusive, for each employment position.

(C) Upon the recommendation of the Village Manager, Council may make annual pay adjustments in accordance with the budgetary limitations of the village.

(1995 Code, § 37.10) (Ord. 75-53, passed 6-9-1975; Am. Ord. 97-O-76, passed 11-24-1997)

§ 37.11 LONGEVITY (REPEALED).

(EDITOR'S NOTE: This section was repealed by Ordinance 2003-O-16, passed February 10, 2003.)

§ 37.12 ALLOWANCES.

(A) *Expenses.* Any legitimate expense allowance authorized by ordinance or established village policy shall be in addition to regular salary and shall not be deducted from money salary payable.

(B) *Mileage.* Employees required to use their own vehicles on official village business or for travel approved by the Village Manager as being in the best interest of the village shall be reimbursed at the rate per mile established by the Village Manager with the

approval of Council, plus any parking expenses for which receipts are presented to the Finance Director.

(C) *Travel.* Employees will travel economy class by rail or air on official village business for training or professional development purposes previously approved by the Village Manager as being in the best interest of the village and shall be reimbursed for reasonable travel expenses, including actual costs for hotel lodging and a per diem of $15 for meals and expenses of a non-overnight travel on village business and $40 for overnight travel on village business. Only days of actual activity are covered. Unless reimbursement is requested, there will be no need for receipts to accompany per diem costs. No reimbursement shall be made for purchase of alcoholic beverages for non-related social events for the entertainment of friends or professional associates while on village business.

(D) *Registration fees.* Registration fees for conferences, seminars, or other such events deemed to be in the best interests of the village, when approved by the Village Manager, shall be paid for the village, either by direct payment, in advance or by reimbursement to the employee. If approved by the Village Manager in advance, an employee may be reimbursed for tuition expense incurred in taking and successfully completing college course work or other advanced training to upgrade the employee, the performance of his or her job duties, and the image of the municipal service. The following table will be used for educational reimbursement. G.I. benefits and other grants-in-aid for tuition and will preclude village reimbursement:

Grade	***Tuition Reimbursement***
A	100%
B	75%
C	50%
D	0%
F	0%

(E) No monetary allowance shall be paid an employee in lieu of direct village payment of insurance expense, village employees may elect to enroll in the village's group plan for hospitalization and medical insurance but may not elect to receive monetary compensation in lieu of village payment of insurance expenses.

(1995 Code, § 37.12) (Ord. 75-53, passed 6-9-1975; Am. Ord. 96-O-30, passed 11-12-1996; Am. Ord. 98-O-28, passed 4-27-1998)

§ 37.13 LEAVES OF ABSENCE.

(A) *Illness or death.* Serious illness, disability, or death in the immediate family shall entitle an employee to receive pay for reasonable absence not to exceed three days and/or 12 weeks without pay upon approval of the Village Manager.

(B) *Jury duty.* Leave for jury duty and related public services where such are in the best interest of both the public and the employee may be approved by the Village Manager with full pay, less any compensation that the employee receives for performance of such duty or service, provided the employee promptly returns to work when excused temporarily or permanently from the jury duty or public service.

(C) *Vacation.* Each full-time employee, including full-time hourly rate employees, after service of one year with the village, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, 80 hours of vacation leave with full pay. One year of service shall be computed from start date to anniversary date which would be one calendar year.

(1) A full-time employee with eight or more years of service with the village shall have earned and is entitled to 120 hours of vacation leave with full pay. A full-time employee with 15 or more years of service with the village shall have earned and is entitled to 160 hours of vacation leave with full pay. A full-time employee with 22 years of service with the village shall have earned and is entitled to 200 hours of vacation leave with full pay.

(2) Such vacation leave shall accrue to the employee at the rate of three and one-tenth hours each bi-weekly period for those entitled to 80 hours per year; four and six tenths each bi-weekly period for those entitled to 120 hours per year; six and two-tenths hours each bi-weekly period for those entitled to 160 hours per year and seven and seven-tenths hours each bi-weekly period for those entitled to 200 hours per year.

(3) Vacation leave shall be taken in full shift or tour increments unless an increment of less than a full shift or tour is approved by the department head.

(a) An employee reaching his first anniversary date of employment with the Village shall be required to schedule and use the vacation leave earned at the first anniversary date within six months after the first anniversary date. The Village Manager, in the event of hardship, may extend this period for a time not to exceed six months.

(b) Vacation leave earned at each subsequent anniversary date shall be scheduled and used during the calendar year in which it is credited to the employee; it is not cumulative. The Village Manager, in the event of hardship, may approve vacation leave being carried into the next calendar year. An employee off on sick leave may use earned vacation time in lieu of earned sick leave. Otherwise, vacation time earned but not used in the calendar year earned shall be forfeited, unless the Village Manager has determined that due to hardship earned vacation may be carried over to the next year. An employee on leave status who is being paid 100% of base salary shall not earn or be paid for vacation for the period of leave. Vacation time earned prior to going on leave status shall be forfeited if not used by the end of the calendar year unless the Village Manager has granted him an extension pursuant to division (3)(a) or (b) above.

(c) Vacation leave must be scheduled with the approval of the employee's department head.

(d) An employee who resigns without giving at least 14 days prior written notice will forfeit on the date of resignation any earned and unused vacation leave, or pay in lieu thereof, at the discretion of the Village Manager.

(e) At the date of the separation from Village service, the Finance Director shall pro-rate the vacation earned to the date of termination. If the employee has earned and unused vacation leave, the hours of earned vacation leave not used times the employee's hourly rate shall be paid to the employee in the final paycheck. In case of death of an employee, such unused vacation leave shall be paid on the basis of his or her last base rate of pay at the rate of one hour for every four hours of accumulated sick leave in accordance with Ohio R.C. § 2113.04, or to his or her estate.

(f) Upon retirement, an employee shall be paid for any unused vacation pay at the next regular pay date following retirement.

(D) *Sick leave.*

(1) A full-time employee, except for full-time Police Officers, shall be credited with eight hours of sick leave on the first day of each month for a total of 96 hours of sick leave per calendar year. Full-time Police Officers shall be credited with eight and six-tenths hours of sick leave on the first day of each month for a total of 103.20 hours of sick leave per calendar year. Employees may use sick leave, upon approval of the department head or Village Manager, for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be transmitted to other employees, and for illness, injury, or death in the employee's immediate family.

(2) Unused sick leave shall accumulate without limit. When sick leave is used it shall be deducted from the employee's credit on the basis of one hour for every one hour of absence from previously scheduled work. The previously accumulated sick leave of an employee who has been separated from the public service shall be placed to his or her credit upon his or her re-employment in the public service, provided that such re-employment takes place within 10 years of the date on which the employee was last terminated from service. An employee who transfers from a public agency to employment in the village shall be credited with the unused balance of his or her accumulated sick leave up to the maximum of the sick leave permitted in the village.

(3) No sick leave is payable upon separation.

(4) Any sick leave accrued prior to the effective date of this section shall remain as a credit for an employee, and, upon separation from employment, the account balance shall be disbursed to the employee in the same manner prior to the effective date of this section. Provided, however, that an employee must use said accrued sick leave before using any sick leave accrued after the effective date of this section.

(E) *Reasonable leaves.* Reasonable leaves with pay may be authorized by the Village Manager for official meetings, training and professional development found to be in the best interest of the village.

(1995 Code, § 37.13) (Ord. 75-53, passed 6-9-1975; Am. Ord. 96-O-31, passed 10-15-1996; Am. Ord. 2003-O-14, passed 2-10-2003; Am. Ord. 2010-O-2, passed 4-26-2010)

§ 37.14 COURT DUTY.

All police officers who will testify in court as representatives of the village shall be paid for two hours plus parking and mileage for each appearance if the officer is not on duty at the time. The Village Manager may establish a maximum limit on the number of court

appearances per month for which compensation will be allowable.

(1995 Code, § 37.14) (Ord. 75-53, passed 6-9-1975)

§ 37.15 HOLIDAYS.

(A) Effective January 1, 1976, all village employees shall observe the following holidays and be granted a paid leave of absence therefor provided the employee works the immediately preceding work day and the immediately following work day unless otherwise excused from work on either of these days by the Village Manager.

(1) New Year's Day (January 1).

(2) Martin Luther King Day (third Monday in January).

(3) Lincoln Washington's Birthday (third Monday in February).

(4) Memorial Day (last Monday in May).

(5) Independence Day (July 4).

(6) Labor Day (first Monday in September).

(7) Columbus Day (second Monday in October).

(8) Veteran's Day (November 11).

(9) Thanksgiving Day (fourth Thursday in November).

(10) Christmas (December 25).

(11) Any other day designated by the governor of this state or the President of the United States, as a holiday, day of mourning, or the like.

(B) Police officers shall receive regular pay in the month of December in lieu of paid leaves of absences on holidays. However, police officer and other employees required to work on a holiday shall be paid a rate of one and a half times their regular rate of pay for all hours actually worked, and their pay shall be in addition to regular holiday compensation.

(C) When any holiday falls on a Sunday, the Monday immediately following shall be observed. When any holiday falls on a Saturday, the Friday immediately preceding shall be so observed.

(1995 Code, § 37.15) (Ord. 75-53, passed 6-9-1975)

§ 37.16 ADMINISTRATION RESPONSIBLE FOR PAY PLAN.

The Village Manager shall be responsible for administering the pay plan for all positions. He or she shall be responsible for working out arrangements which will assure the administration of the plan for all employees on an equitable basis.

(1995 Code, § 37.16) (Ord. 75-53, passed 6-9-1975)

§ 37.17 INTERPRETATION.

The Village Manager shall be responsible for interpreting the applications of the plan to pay problems which are not specifically covered by this chapter using the principles expressed herein as a policy guide.

(1995 Code, § 37.17) (Ord. 75-53, passed 6-9-1975)

§ 37.18 INITIAL ADJUSTMENT TO PAY PLAN.

The Village Manager is authorized by Council to place fairly and equitably the salary of each employee within the range of the grade

for the class to which the employee's position has been allocated.

(1995 Code, § 37.18) (Ord. 75-53, passed 6-9-1975)

§ 37.19 REVIEW AND AMENDMENT OF PAY PLAN.

(A) Prior to the annual submission of the budget to the Council, the Village Manager shall have completed a review of the pay plan and policies and shall submit to the Council his or her findings in the manager's budget message and in the annual tax budget in accordance with §§ 4.02 and 4.03 of the Charter.

(B) The rates of pay for each class of positions shall be stated in the annual appropriation ordinance in accordance with §§ 4.09 and 4.10 of the Charter.

(1995 Code, § 37.19) (Ord. 75-53, passed 6-9-1975)

Editor's note: *The annual appropriation ordinance is kept on file in the office of the Village Clerk.*

§ 37.20 PAY PLAN.

The pay plan establishing salary grades and salary schedule is on file in the office of the Clerk of Council and is incorporated herein by reference.

(1995 Code, § 37.20) (Ord. 75-53, passed 6-9-1975)

§ 37.21 EMPLOYEE BENEFIT PLANS.

Each employee who works more than 30 hours per week averaged over a 52 week period shall receive hospitalization, medical and dental insurance coverage, disability and death benefits, and any other benefits in amounts established by the Village Manager in accordance with the limitations set forth in the annual budget approved by Council. Forms necessary for coverage shall be completed at the time of employment.

(1995 Code, § 37.21) (Ord. 75-53, passed 6-9-1975; Am. Ord. 97-O-1, passed 2-10-1997)

§ 37.22 [RESERVED]

§ 37.23 PROHIBITIONS.

(A) No person in the employ of the village or seeking admission thereto shall be appointed, promoted, reduced, removed or in any way favored or discriminated against because of race, sex, political or religious opinions or affiliations, age or physical disability.

(B) No person shall willfully or corruptly make any false statement, certification or appointment held or made under the personnel procedure or in any manner commit or attempt to commit any fraud preventing the impartial execution of such personnel procedures.

(C) No person seeking appointment or promotion in the employment of the village shall either directly or indirectly give, render, or pay any money, service, or other valuable thing to any person for or on account of or in connection with his or her appointment, proposed appointment, or proposed promotion.

(D) An employee who receives three garnishments within a 12 month period may be reprimanded in the following, manner by the Village Manager:

(1) For the first garnishment, a written reprimand;

(2) For the second garnishment, a written reprimand and 3 days suspension without pay; or

(3) For the third garnishment, a dismissal.

(1995 Code, § 37.23) (Ord. 75-53, passed 6-9-1975; Am. Ord. 96-O-29, passed 11-12-1996)

§ 37.24 APPLICATIONS FOR POSITIONS.

(A) *Announcement.* Notice of all examinations for positions shall be published by posting announcements at the village office, on official bulletin boards, and in such other places, through such other media and for such period of time as the Village Manager deems appropriate.

(B) *Application forms.* Applications for positions shall be made on forms provided by the Village Manager. Such forms shall require information covering residence, training, experience, references, and other pertinent information, and may require certificates of one or more examining physicians, and fingerprinting. All applications must be signed by the person applying.

(C) *Disqualifications.* The Village Manager shall reject any application which indicates on its face that the applicant does not possess the minimum qualifications required for the position. Applications also may be rejected for other good and sufficient reasons such as the applicant:

(1) Is not a citizen or registered alien of the United States;

(2) Is physically unfit for the performance of duties of the position to which he or she seeks appointment;

(3) Is addicted to the habitual excessive use of drugs or intoxicating liquor;

(4) Has been convicted of a felony;

(5) Has made any false statement of any material fact in his or her application; or

(6) Practices, or attempts to practice any deception or fraud in his or her application.

(D) *Rejection of application.* Whenever an application is rejected, notice stating reasons of such rejection shall be mailed to the applicant and given to the Personnel Advisory Board by the Village Manager. A person submitting insufficient information on his or her application shall be notified to amend same by submitting supplementary information, providing the time limit for receiving the application has not expired. Applications whether accepted or rejected shall remain on file and shall not be returned.

(1995 Code, § 37.24) (Ord. 75-53, passed 6-9-1975)

§ 37.25 EXAMINATIONS FOR POSITIONS.

(A) *Competitive examination.*

(1) All appointments and promotions by the Village Manager to positions may be made according to merit and fitness to be ascertained so far as practicable by competitive examination. Examination shall be practical and shall relate to those matters which will test fairly the capability and fitness of the candidates to discharge efficiently the duties of the classes for which the examinations are held. Examinations may be assembled or unassembled and may include written, oral, physical, or performance tests or any combination of these. They shall take into consideration such factors as education, experience, aptitude, knowledge, character, physical fitness, and any other qualification which enters into the determination of the relative merit and fitness of applicants.

(2) The purpose of the oral test is to determine the applicant's special character traits, intelligence, mental aptitude, and general attitude. The test may be used to observe the applicant's demeanor and to determine his or her ability to meet the public.

(3) Applicants shall receive credit for seniority in the service of the village on the written examination if one is given which shall be determined as follows: 1% of the total grade attainable in such examination for each of the first four years of such service and 1/2% of such grade for each of the next ten years of such service. Applicants may receive credit for seniority in service other than in the village directly relevant to the position subject to examination as follows: 1/2% of the total grade attainable on the written examination for each year of service, with a maximum of ten years allowable for such computation.

(4) The identity of applicants shall be concealed in all written examinations. The Village Manager may require applicants to submit proof of their age and military service at the time of the examination or prior to appointment.

(5) Competitive examinations shall be open to all applicants who are citizens of the United States and who meet the standards or requirements fixed by the Village Manager with regard to experience, character, age, education, physical condition, and such other

factors as may be held to be related to the ability or the candidate to perform efficiently the duties of the position. No question in any test shall relate to race, political or religious opinion, affiliations, or service.

(B) *Special entrance examination procedure.* For positions such as skilled labor, the Village Manager may adopt or authorize the use of such procedure as he or she determines to be appropriate in order to meet the needs of the service, while assuring the selection of such employees on the basis of merit and fitness.

(1) Such procedures may include:

(a) The testing of applicants singly or in groups at periodic intervals at the place of employment or elsewhere, after such notice as the Village Manager considers adequate;

(b) The registration of applicants who pass a noncompetitive examination or submit satisfactory evidence of their qualification; or

(c) Any variation or combination of the foregoing or other suitable methods.

(2) Special examination procedures shall have the approval of the Village Manager.

(C) *Method of rating.* Sound measurement techniques and procedures shall be used in rating the results of tests and determining the relative ranking of the candidates. In all examinations the minimum rating by which eligibility may be achieved shall be established by the Village Manager. A minimum rating may also apply to the ratings of any part of the test. Candidates may be required to attain at least a minimum rating on each part of the test in order to receive a passing grade or to be rated on the remaining parts of the test. The final earned rating of the competitor shall be determined by averaging the earned rating on each part of the examination in accordance with the weights established for each part of the examination.

(D) *Rating of training and experience.* Where a rating of experience and training forms a part of the examination, the Village Manager shall develop such procedures for the evaluation of these factors as will serve to assist in the selection of the best qualified candidates. The Village Manager may verify statements contained in the applications of an applicant and secure further information concerning his or her character and fitness. If, after a list is established, information which materially affects the rating of experience and training, character, or fitness of the applicant, is discovered, the Village Manager shall make a new rating of the applicant's examination and make the necessary adjustments in the lists. The Village Manager shall promptly notify the applicant of any change made in his or her standing and the reasons therefor.

(E) *Notification of examination results.* Each person who takes an examination shall be given written notice as to whether he or she passed or failed in such examination and of his or her relative standing on the list or of his or her failure to attain a place on the list. Each person in an examination shall be entitled to inspect his or her rating and his or her own examination papers, but examination papers shall not be opened to the general public. Such inspection shall be permitted only during regular business hours and at the office of the Village Manager and within 30 days of the mailing of notice. The Personnel Advisory Board shall certify to the Village Manager the names of those attaining a passing grade.

(1995 Code, § 37.25) (Ord. 75-53, passed 6-9-1975)

§ 37.26 EMPLOYMENT LISTS.

(A) *Reemployment.* Regular employees separated from the service through no fault of their own shall be placed on a reemployment list in the order of ratings to be determined by their efficiency and their length of service with the village. The eligibility of all candidates on reemployment lists will expire one year from the date on which they became entitled to reemployment rights.

(B) *Eligible lists.* The Village Manager shall establish and maintain such eligible lists for the various classes of positions subject hereto as he or she deems necessary or desirable to meet the needs of the service. On each such list the eligibles shall be ranked in order of their ratings earned in a test given for the purpose of establishing such lists. The life of eligible lists shall be determined by the Village Manager but in no case shall be greater than two years.

(C) (1) *Residence.* Resident applicants for positions appointed by the Village Manager who qualify by examination for any vacancy may receive preferment over nonresidents who may also qualify if the appointing authority determines that such preferment is appropriate.

(2) *Order of names on lists.* Except as provided in division (1) above, names of eligibles shall be placed on the lists in the order of their final earned rating. In the case of ties in the final ratings, names shall be placed on the list in the order or ratings earned in the part of the examination given the greatest weight.

(D) *Availability of eligibles.* It shall be the responsibility of eligibles to notify the Village Manager in writing of any change of address or other change affecting availability for employment. However, the Manager may circulate lists or use other methods to determine at any time the availability of eligibles. Whenever an eligible submits a written statement restricting the conditions under which he or she will be available for employment, his or her name may be withheld from all certifications which do not meet the conditions which he or she has specified. An eligible may file a new written statement at any time within the duration of an appointment.

(E) *Provisional appointments.* When an appointing authority finds it essential to fill a vacancy and the Village Manager is unable to recommend an eligible for such vacancy because there is no existing appropriate list, or because there is not a sufficient number of persons on appropriate lists who are willing to accept appointment, the Village Manager may authorize the appointing authority to fill the vacancy by means of a provisional appointment. No provisional appointment shall be made without the prior approval of the Village Manager and no payment shall be made for services rendered by the appointee prior to such approval. A provisional appointment shall expire 30 days after a list has been prepared or shall expire automatically six months from the date of such appointment.

(F) *Temporary appointments.* Temporary appointments for short-term employment may be made from lists. Successive temporary appointments of the same person to the same position shall not total more than six months full-time in a 12-month period. The acceptance or refusal by an eligible of a temporary appointment shall not affect his or her standing on the list. Employment under a temporary appointment may or may not, in the discretion of the Village Manager, be counted as a part of the probationary service period in case of a subsequent appointment to a permanent position.

(G) *Removal from employment list.* The name of any person appearing on an employment list may be removed by the Village Manager if such person requests in writing that his or her name be removed, or if he or she cannot be located by postal authorities or other means of ordinary communication within five days following the date of eligibility. The name of any eligible may also be removed if the name has been certified for appointment three separate times and has not been appointed or if the eligible has waived appointment twice in the same class or position. Any cause specified in these rules for the rejection of applications may likewise be cause for the removal of the name of an eligible from the employment list on which it appears.

(1995 Code, § 37.26) (Ord. 75-53, passed 6-9-1975)

§ 37.27 METHOD OF FILLING VACANCIES.

(A) *Appointments not from eligible lists.*

(1) The Village Manager may fill any vacancy by transfer, reallocation, or demotion. When a reemployment list contains two or more names of persons who have been employed in the position to be filled than the number of vacancies to be filled, appointments shall be made from among the persons numbering three times the number of vacancies tube filled standing highest on the reemployment list if the vacancies are not filled by transfer, reallocation, or demotion.

(2) If the applicant accepts the appointment and presents himself or herself for duty within such period of time as the Village Manager shall prescribe, he or she shall be deemed to be appointed; otherwise, he or she shall be deemed to have declined the appointment.

(B) *Emergency appointments.* When an emergency makes it impossible to delay filling a position, the Village Manager may appoint any qualified person to such position in order to prevent stoppage of public business or loss or serious inconvenience to the public. Any such person shall be employed only during such emergency and for a period not exceeding 30 days in any 12-month period. A vacancy of which the department head has had a reasonable notice, or any employment condition of which he or she had, or might with due diligence have had, previous knowledge, shall not be considered an emergency under this section. Emergency appointments shall be reported immediately to the Village Manager.

(C) *Military replacement appointments.* In filling a position vacated as a result of the granting of a military leave of absence, the Village Manager may draw on reemployment lists or eligible lists for a person to be recommended to the appointing authority. If such appointment is effected, the appointee to the vacated position is to be informed by the Village Manager that his or her tenure of appointment may be limited to the length of military leave granted to the regular employee whose military leave of absence created the vacancy. On the return of the employee granted military leave the replacement employee shall be placed on the appropriate eligible list if qualified. If the Village Manager is unable to certify an eligible for such vacancy because of lack of appropriate lists, the Village Manager may authorize the appointing authority to fill the vacancy with any qualified person available and the conditions of employment of such a person shall be similar to those appointed from appropriate lists as hereinabove stated.

(1995 Code, § 37.27) (Ord. 75-53, passed 6-9-1975)

§ 37.28 PROBATIONARY PERIOD.

(A) *Objective.* The probationary period shall be regarded as an integral part of the examination process and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his or her position, and for rejecting any employee whose performance does not meet the required work standard. The probationary period shall not be less than 60 days nor more than six months in accordance with the discretion of the Village Manager.

(B) *Duration.* Every person appointed by the Village Manager to a regular position shall be required to complete successfully a probationary period as provided.

(C) *Dismissal.* At any time during the probationary period, the appointing authority with approval of the Village Manager may remove an employee if, in his or her opinion, observation, and evaluation of the employee during the probationary period, indicates that such employee is unable or unwilling to perform the duties of the position satisfactorily or that his or her habits and dependability do not merit his or her continuance in the service. On such removal, the appointing authority shall forthwith report in writing to the Village Manager and to the employee removed, his or her actions and reasons therefor. An employee who is found to have been appointed through fraud or error shall be removed.

(D) *Probationary period reports.* At least ten days prior to the expiration of an employee's probationary period, the appointing authority shall notify the Village Manager in writing whether the services of the employee have been satisfactory and whether he or she will continue the employee in his or her position. A copy of such notice shall be given to the employee.

(E) *Restoration of dismissed employee to appropriate list.* If an employee is removed from his or her position during, or the end of, his or her probationary period and the Village Manager determines that he or she is suitable for appointment to another position, his or her name may be restored to the list from which it was certified.

(F) *An employee promoted to fill a vacancy who does not successfully complete his or her probationary period.* An employee promoted to fill a vacancy who does not successfully complete his or her probationary period may, on recommendation of the appointing authority be reinstated in a position in the class occupied by the employee immediately prior to his or her promotion if a vacancy in that class exists at that time or shall be placed on a reemployment list awaiting appointment for a position for which he or she is eligible.

(1995 Code, § 37.28) (Ord. 75-53, passed 6-9-1975)

§ 37.29 DISCIPLINARY ACTION.

(A) Employees appointed by the Village Manager may be penalized for violation of personnel policies or departmental rules and regulations. Disciplinary action may take the form of an oral or written reprimand or a penalty. Oral reprimands should be verified with a written incident report and made a part of the employee's permanent personnel file. The Village Manager, or a department head or immediate supervisor with the approval of the Village Manager, may discipline an employee more severely than a reprimand. If an employee receives two written reprimands for the same or different offenses within a period of 12 consecutive months, he or she may, along with his or her second reprimand, receive a suspension without pay, for a period of time commensurate with the severity of the accumulated offenses. If an employee receives three written reprimands for the same or different offenses within a period of 12 consecutive months, he or she may at the time of issuance of the third reprimand, thereupon be demoted or discharged.

(B) Any action which reflects discredit on the municipal service or is a direct hindrance to the effective performance of the municipal government functions shall be considered just cause for disciplinary action against any employee. Violation of personnel policies constituting just cause for disciplinary action, whether reprimand, suspension, demotion, or discharge depending on the severity, are listed below, although charges may be based on causes or complaints other than those listed.

(1) Inattentiveness to work, failure to start work at the designated time, quitting work before the proper time, or leaving the employer's premises during working hours outside the line of duty without authorization from the director of the department or Village Manager.

(2) Gross neglect of duty or refusal to comply with lawful instructions of supervision or management, unless such instructions are injurious to the employee's or general public's health or safety or contrary to the employee's professional ethics.

(3) Horseplay or deliberate or careless conduct endangering the safety of oneself or other employees, including the provoking of

or instigating of a fight during working hours or on village premises.

(4) Insubordination.

(5) Incompetency and inefficiency in performance of job duties.

(6) Carelessness or negligence with the moneys or the property of the village, including the use of village equipment.

(7) Theft or intentional destruction of the village's property or another employee's property.

(8) Discussion with unauthorized persons of any confidential information gained through employment with the village.

(9) Using, or threatening to use, or attempting to use personal or political influence in an effort to secure some special considerations as a village employee.

(10) Inducing or attempting to induce any employee in the service of the village to commit an unlawful act, or to act in violation of any lawful departmental or official regulations, orders, or professional ethics.

(11) Solicitation or acceptance from any person, or participation in any fee, gift or other valuable thing in the hope or expectation of receiving a more preferential treatment than that accorded other persons.

(12) Commission of acts unbecoming an incumbent of the particular municipal office or position held which render disciplinary action necessary or desirable for the economical or efficient conduct of the business of the village or the best interest of the municipal government.

(13) Offensive conduct or language toward the public or toward village officers or employees.

(14) Use of abusive or improper treatment to a person in custody, provided the act committed was not necessarily or lawfully done in self defense or to protect the lives of others, or to prevent the escape of a person lawfully in custody.

(15) Immoral or indecent conduct or conviction of a felony or misdemeanor involving moral turpitude while an employee of the village.

(16) The taking of intoxicating beverages or drugs while on duty, being under the influence of intoxicants or narcotics while on duty or the habitual use of alcoholic beverages or narcotics to excess.

(17) Abuse of appeal rights by filing a totally unjustified or unreasonable appeal with the Personnel Advisory Board.

(18) Intentional falsification, destruction or removal of personnel records, work records, time reports, or other village records.

(19) Failure to report to work without giving the department head, immediate supervisor, Village Manager or other authorized village staff member notice of absence within two hours after the beginning of an employee's scheduled work day, unless it is impossible to give such notice.

(20) Excessive absenteeism or tardiness, including abuse of sick leave privileges.

(21) Absence from duty without leave contrary to these policies, or failure to report after leave of absence has expired, or after such leave of absence has been disapproved or revoked or canceled by the proper authority.

(22) Sleeping on duty.

(23) Any other action that reflects discredit on the municipal service or is a direct hindrance to the effective performance of the municipal government function.

(24) After receipt of one garnishment, an employee is given a written reprimand. After two garnishments or more, the employee may be suspended up to four days to cover financial costs and administrative costs to the village.

(1995 Code, § 37.29) (Ord. 75-53, passed 6-9-1975)

§ 37.30 PENALTIES AND SEPARATIONS.

Penalties comprise three groups: suspension, demotion, and discharge. Separations without fault embrace two types: layoff and resignation.

(A) *Suspension*. A department head, with the consent of the Village Manager, may for disciplinary purposes suspend without pay any employee in his or her department for such length of time as he or she considers appropriate. The Village Manager shall be furnished with a written statement specifically setting forth reasons for such action and a copy shall be furnished to the affected employee upon his or her written request.

(B) *Demotion*. A department head, with the consent of the Village Manager, may demote an employee for just cause. No demotion shall be made as a disciplinary action unless the employee to be demoted is eligible for employment in a lower class and shall not be made if any regular employee in the lower class would be laid off by reason of this action. The Village Manager shall be furnished with a written statement specifically setting forth reasons for such action and a copy shall be furnished to the employee upon his or her written request.

(C) *Layoffs*. A department head, with the consent of the Village Manager, may lay off an employee when he or she deems it necessary due to the abolition of the position, a material change in duties or organization, or other reasons which do not reflect discredit on the service of the employee. The duties performed by an employee laid off may be reassigned to other employees already working who hold positions in appropriate classes. No regular employee shall be laid off while another person is employed on a probationary, provisional, or temporary basis in the same class in the department. No regular employee who is on probation shall be laid off while another person is employed on a temporary or provisional basis in the same class in the department.

(D) *Order of layoff*. Layoff of employees shall be made in inverse order of a current rating of employees determined on the basis of service reports or other pertinent data and length of service in the class in the department or other organizational unit involved in the layoff. If it is found that two or more persons in the organizational unit in which layoffs are to be made have equal ratings determined on the basis of seniority and service reports or other pertinent data, the order of layoff in all such cases of the tie shall be in the inverse order of the date when an employee first entered the service.

(E) *Notice of layoff*. A department head shall give written notice to the Village Manager and to the employee of any proposed layoff and reasons therefor. Such notice must be given a reasonable time before the effective date thereof. In the case of temporary, part-time or other occasional employment of regular employees, the department head may notify in writing such employees and the Village Manager at the time of appointment the date such employment will terminate. Such notice shall be deemed to meet notification requirements. Written notices of layoff indicating reasons for such action may be given temporary or emergency employees at any time prior to the effective date of layoff.

(F) *Resignations*. To resign in good standing, an employee must give the appointing authority at least 14 calendar days prior notice unless the appointing authority, because of extenuating circumstances, agrees to permit a shorter period of notice. A written resignation shall be supplied by the employee to the appointing authority giving reasons for leaving. The resignation shall be forwarded to the Village Manager with a statement by the appointing authority as to the resigned employee's service performance and other pertinent information concerning the cause of resignation. Failure to comply with this rule shall be entered on the service record of the employee, may be cause for loss of payment for accumulated annual vacation leave, and may be cause for denying future employment by the village. The resignation of an employee who fails to give notice shall be reported by the department head immediately. The Village Manager may take steps to verify reasons for any resignations.

(G) *Department heads*. If a proposed action contemplated above would affect a department head, the action shall be taken by the Village Manager in lieu of the department head.

(1995 Code, § 37.30) (Ord. 75-53, passed 6-9-1975)

§ 37.31 COMPLAINTS AND GRIEVANCES.

(A) Employee complaints shall first be discussed with employee's immediate supervisor. If the matter is not resolved, the employee shall present the complaint to his or her department head.

(B) After discussing his or her complaint with his or her supervisor and department head, if the employee's complaint is still not resolved, he or she shall register his or her complaint the Village Manager either in writing or by appearing in person, stating the reason for his or her complaint or grievance, including all pertinent facts of the case.

(C) Within five days after registering of a complaint, the Village Manager may call a meeting which will include the department head, the complainant, and any other person or persons involved in the complaint. The Village Manager will preside at the meeting and hear the entire case and obtain all the facts.

(D) The Village Manager shall make a written report of his or her findings and make a decision within three days.

(E) If the aggrieved employee feels that he or she has not received a fair hearing or that the problem has not been satisfactorily and justly resolved he or she may appeal to the Personnel Advisory Board by filing a written notice of appeal with the Board, via the Village Manager, within 20 days of the rendering of the decision by the Village Manager.

(1995 Code, § 37.31) (Ord. 75-53, passed 6-9-1975)

§ 37.32 DAMAGE TO VILLAGE PROPERTY.

(A) No person who is in the employ of the village shall willfully, wrongfully, wantonly, recklessly, carelessly, or negligently damage or cause to be damaged any property of the village.

(B) An employee is expected to exercise due care in his or her use of village property, and to utilize such property only for authorized purposes. Negligence in the care and use of village property will be considered cause for suspension or dismissal.

(C) Unauthorized removal of village property from the premises, or its conversion to personal use, will be considered cause for suspension or dismissal.

(D) Village property issued to an employee must be returned to the village at the time he or she terminates employment or when it is requested by his or her department head or his designated representative. The value of any property issued and not returned will be deducted from an employee's paycheck.

(1995 Code, § 37.32) (Ord. 75-53, passed 6-9-1975; Am. Ord. 79-O-4, passed 4-9-1979)

§ 37.33 POLITICAL ACTIVITY; EXEMPTIONS.

(A) *Prohibitions.* The following restrictions are applicable to all employees of the village as well as to trainees, students and members of governing or administering boards and advisory committees. The restrictions prohibit:

(1) Serving on or for any political committee, party or similar organization or serving as a delegate or alternate to a caucus or party convention;

(2) Soliciting or handling political contributions, distributing campaign literature, or initiating or circulating political petitions;

(3) Addressing, organizing, or serving as an officer of a political party;

(4) Addressing or taking an active part in preparing, organizing, or conducting a political meeting or rally;

(5) Canvassing a district or soliciting votes or helping to get out voters on election day;

(6) Acting as an election officer in a capacity which may involve partisanship or partisan political management;

(7) Publishing or being connected editorially or managerially with any newspaper generally known as partisan from a political standpoint;

(8) Becoming a candidate for nomination or election to any public office, which is to be filled in an election in which party candidates are involved. Becoming prominently identified with any political movement, party, or faction, or with the success or failure of any candidate for election to public office; and

(9) Writing for publication or publishing any letter or article, signed or unsigned, in favor of or against any political party or candidate.

(B) *Exemptions.*

(1) The following persons are exempt from the provisions of division (A) above that deal with taking active part in political management or political campaigns:

(a) The Mayor;

(b) Elected heads of executive departments of any municipality who are not classified under a state or municipal merit or Civil Service Commission; and

(c) Officers holding elective offices.

(2) An employee or trainee of the village may:

(a) Register to vote as he or she chooses;

(b) Express his or her opinion on political subjects and candidates;

(c) Be a member of a party or political club;

(d) Make voluntary contributions of money to a political campaign or party;

(e) Participate in educational efforts related to issues and to the political process so long as this is done in a politically neutral manner;

(f) Attend political meetings and rallies;

(g) Display a political sticker on his or her private automobile; and

(h) Village employees may be prohibited from engaging in outside employment during the working day. This prohibition is to be interpreted broadly to include the use of the village's funds, employees, equipment, or any other resources for the personal gain of any individual. Outside employment is permitted provided:

1. It does not interfere with the efficient performance of the employee's duties in his or her village job, does not involve a conflict of interest or conflict with the employee's duties in his or her village job; or

2. It does not occur during the employee's regular or assigned working hours for the village, unless the employee, during the entire day on which such employment occurs has received approval to either on vacation or compensatory leave, or leave without pay.

(3) Employees are encouraged to attend functions given by the village; however, it is not mandatory that they attend. If an employee does not desire to attend any function given by the village, it shall in no way hinder his or her employment or increment status. Employees are not required to inform their employers as to their whereabouts on nonworking days and are allowed to attend whatever they choose so long as it does not conflict with the laws under division (A) above.

(1995 Code, § 37.33) (Ord. 75-53, passed 6-9-1975)

§ 37.34 EMPLOYMENT INELIGIBILITY.

(A) No person shall be employed by the village while he or she or a member of his or her immediate family serves on a board, committee, or other major policy advisory body which either by rule or practice, regularly nominates, recommends, or screens applicants for the department in which he or she is employed.

(B) No person shall be employed by the village while he or she or a member of his or her immediate family serves on a board or committee which has the authority to order personnel actions affecting his or her job.

(C) Neither the village nor any of its departments shall employ a person in a position over which a member of his or her immediate family exercises supervisory authority.

(1995 Code, § 37.34) (Ord. 75-53, passed 6-9-1975)

§ 37.35 RESIDENCY REQUIREMENT.

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

ALL PERSONS. Everyone now employed or hereafter employed by the village, including those defined by Charter §§ 8.01 and 8.02. Exempt and nonexempt employee exceptions shall be those temporary employees of exceptional professional or scientific qualifications engaged as consultants for limited periods of time.

RESIDE. To live, dwell, abide, stay, remain, lodge in the village.

(B) *Bona fide residents.* All persons now employed in or hereafter appointed to a permanent position in the village service shall be bona fide residents of the village, six months from the time of appointment, or in the case of positions having a probationary period,

six months after the completion thereof, except as hereinafter provided.

(1) All present employees of the village who at the time of the effective date of this section may reside outside the limits of the village, so long as they remain at their presently indicated residences;

(2) Employees in classifications in which there are shortages of qualified applicants as determined by the Village Manager with the approval of Council;

(3) The department heads appointed by the Village Manager shall be required to reside within the corporate limits of the village, provided however, such officers may reside outside of the village with the authorization of Council; or

(4) The Village Manager appointed by Village Council shall be required to reside within the corporate limits of the village unless Council authorizes otherwise.

(C) *Appeal.* Any employee who believes to be aggrieved by the terms of this section shall have the right to appeal to the Village Manager requesting permission to live outside the village. The Village Manager may grant permission to live outside the corporate limits of the village with the approval of Council.

(1995 Code, § 37.35) (Ord. 75-53, passed 6-9-1975; Am. Ord. 77-O-18, passed 4-25-1977)

Cross-reference:

Qualifications, see Charter § 3.02

§ 37.36 TENURE.

The village's employees are assured tenure only to the extent of the availability of funds for the financing of the program in which they work unless vacancies are open.

(1995 Code, § 37.36) (Ord. 75-53, passed 6-9-1975)

§ 37.37 WORKING SCHEDULE.

(A) The basic work week consists of 40 hour, from Monday through Friday. Office hours are from 8:00 a.m. to 5:00 p.m. daily for staff. Hours for police officers and maintenance crews are from 7:00 a.m. to 3:00 p.m. Monday through Friday, except for police officers who work in shifts, their work schedule will be posted monthly by the department head. However, whenever necessary, the Police and Maintenance Departments will work or be available for work 24 hours per day in cases of emergencies.

(B) One hour shall be set aside for lunch for every full-time employee, in accordance with a suitable work schedule to be determined by his or her supervisor. All lunch hours shall begin at 12:00 noon and end not later than 1:30 p.m. In the absence of a receptionist, lunch may be rotated among the office staff for adequate coverage of office and telephone.

(C) A 15-minute rest period, twice a day (morning and afternoon) may be taken at a scheduled or nonscheduled time, provided that adequate coverage of telephones is arranged.

(D) Part-time employees shall work in accordance with prearranged schedules.

(E) An employee who is absent from work and whose absence is not chargeable to vacation, sick leave, or optional leave, may at the discretion of his or her supervisor, make up the time lost by working at times other than regular working hours, unless a temporary employee has been hired or funds spent to replace the absentee.

(F) The hours and working conditions for auxiliary police members will be as follows.

(1) All auxiliary police members shall work no less than 40 hours per month to maintain their status as active members.

(2) All auxiliary police members shall submit to the senior administrative auxiliary police officer on or before the twenty-sixth day of each month, a schedule of their availability for work. Upon receipt of this information, the senior administrative auxiliary police officer will schedule such auxiliary police officer for 20 hours of duty, and such officer will be permitted to sign for 20 hours for a total of 40 minimum hours of duty. Such officer may arrange with the senior administrative auxiliary police officer to sign for additional hours of duty.

(3) Changes in the work schedule of an auxiliary police officer can only be made by the supervisory auxiliary police officer.

(4) Auxiliary police officers are required to complete a time sheet for all hours worked and submit it to the senior administrative auxiliary police officer on the regularly scheduled village payroll periods.

(1995 Code, § 37.37) (Ord. 75-53, passed 6-9-1975; Am. Ord. 96-O-28, passed 9-9-1996)

§ 37.38 SALARIES.

(A) Each employee is paid on a two-week basis. The village pay period commences on Saturday and ends on Friday, with the pay day occurring biweekly. Employees are paid not later than 12:00 noon.

(B) Should a payday coincide with a nonscheduled working day, paychecks will be distributed on the preceding working day not later than 12:00 noon.

(C) The village's policy is that there will be no advances made on payroll except in case of emergency, with the exception of vacation pay which will be paid the Friday preceding the vacation period.

(D) All payroll checks that remain undistributed, due to an employee's absence at the end of the various pay periods, should be returned to the finance office for safekeeping.

(1995 Code, § 37.38) (Ord. 75-53, passed 6-9-1975)

§ 37.39 TIME CARD AND TIME SHEETS.

The following village employees will use time cards or time sheets to be filled in by pen or by use of the time clock:

(A) Police Department, except the Chief of Police; and

(B) Any other employee as designated by the Village Manager.

(1995 Code, § 37.39) (Ord. 75-53, passed 6-9-1975; Am. Ord. 99-O-31, passed 7-12-1999)

§ 37.40 OVERTIME COMPENSATION AND COMPENSATORY TIME OFF.

(A) All employees in nonexempt service as defined in Article VIII, Lincoln Heights Charter are entitled to overtime compensation when earned.

(B) Overtime commences after regular employees have worked 40 hours per week and after police officers have worked 43 hours per week.

(C) Nonexempt employees are entitled to one and one half hours of overtime compensation time for each hour worked over the number of hours set forth in division (B) above.

(D) Instead of overtime compensation, an employee may choose to take compensatory time off.

(E) Compensatory time is based upon actual time worked and does not include personal leave, sick leave, vacation leave or any other leave of absence.

(F) For all staff except police, compensatory time must be used within 60 days of being earned. A maximum of 25 compensatory time hours or 25 overtime hours may be accrued before the employee must take compensatory time off or be paid overtime compensation. Any decision by the manager to approve hours above the 25 hours or carried over beyond 60 days should be brought before Council.

(G) Unused compensatory time shall be payable to the employee upon separation from village service.

(1995 Code, § 37.40) (Ord. 75-53, passed 6-9-1975; Am. Ord. 99-O-31, passed 7-12-1999; Am. Ord. 2003-O-01, passed 2-10-2003)

§ 37.41 USE OF VILLAGE VEHICLES.

(A) No vehicle belonging to the village may be used by any person without permission from the Village Manager.

(B) No vehicle belonging to the village may leave the legal boundaries of the village unless:

(1) A trip ticket has been secured from the Village Manager's office date stamped noting destination, nature of business, and mileage on odometer;

(2) For clarification, no person may use any village-owned vehicles for personal uses such as going to the store or picking anyone up for work; and

(3) The only exception to this rule shall be for the Police Department. They may leave the village for official business and must notify the dispatcher before leaving and on return. Also the police may leave the village to purchase carry-out lunch. However, they may not stay away from the village for more than ½ hour and must log in and out with the dispatcher, local or county.

(C) The Fire Chief's car is a business vehicle and shall be used only for business and by the Fire Chief. The Fire Chief may designate some other firefighter to operate the vehicle for business purposes only.

(D) Immediate disciplinary action shall be administered by the Village Manager toward any and all violators of this section.

(1995 Code, § 37.41) (Ord. 80-O-28, passed 5-12-1980; Am. Ord. 80-O-35, passed 6-23-1980)

§ 37.42 ALCOHOL AND DRUG TESTING POLICY.

(A) *Purpose.* The Village Manager will enforce a drug and alcohol abuse/testing policy for all employees of the village. It is the intent of this policy to provide an alcohol-free, drug-free, safe working environment for all village employees. Employees of the village are expected to be in suitable mental and physical condition at work, to perform their jobs satisfactorily and to behave appropriately. The use of drugs, other than for medicinal purposes interferes with such expectations and will not be tolerated. The purpose of this policy is to provide consistent and relevant guidelines for all employees regarding alcohol and other drug-use situations.

(B) *Policy.*

(1) The possession, transfer, sale, use of or impairment caused by alcohol and drugs, legal or illegal, during work hours or meal breaks, whether on or off municipal property, will be controlled by the procedures specified in this policy. Violations of this policy will result in discipline, including termination of employment or pursuing legal prosecution. Substances included are all forms of alcohol, narcotics, depressants, stimulants, hallucinogens and marijuana, and any other substance that affects behavior.

(2) Excluded from this prohibition is the use of drugs for medical purposes. When prescribed or over-the-counter drugs may affect behavior and performance, employees are encouraged to advise their supervisor that they are taking such drugs for medical reasons, and medical evaluation may be required. An employee is obligated to advise his or her immediate supervisor of any job restrictions or limitations known by the employee to be associated with the use of the medication involved. Where such use of drugs adversely affects job performance, it is in the best interest of the employee, co-workers and municipality that the employee be relieved of his or her duties and placed on sick leave.

(C) *Procedures.*

(1) Prospective employees may be required to submit to drug and alcohol screening tests.

(2) Use of village property, including but not limited to lockers, vehicles, desks and any other property by an employee is conditioned upon the right of the Village Manager or his or her designated representative to search such village property for drugs, alcohol, firearms, or other improper materials.

(3) When the Village Manager has a reasonable suspicion that there is a violation by an employee of the drug and alcohol policy, the Village Manager or his or her designated representative may search the village property or personal property in the possession of such employee.

(4) Among the circumstances that may provide "reasonable" suspicion are:

(a) The inability of an employee to perform his or her assigned duties;

(b) Reduced productivity in work by a village employee;

(c) An accident resulting in on-duty injury to the employee or a co-worker;

(d) A high or unusual pattern of absenteeism;

(e) Other behavior patterns inconsistent with previous work performance;

(f) Any other conduct or circumstances giving rise to a suspicion that an employee is in violation of the drug and alcohol policy of the village;

(g) As a condition of employment, all village employees consent to random drug testing in accordance with the conditions contained in the contract between the Village of Lincoln Heights and the Drake Center under the rules of the Bureau of Workers' Compensation; and

(h) It is mandatory that any employee involved in any of the situations described below when driving a village vehicle at any time must submit to a test as soon as possible during two hours after "a reportable" accident or for a breathalyser test, and/or during the eight hours after a "reportable" accident for a drug test, if such employee is believed to have contributed to the accident or his or her performance cannot be discounted as a contributing factor. Testing shall be mandatory when:

1. There is an injury and medical treatment is provided away from the scene of the accident;
2. The vehicle which the employee was driving is towed away from the scene of the accident;
3. There is a moving traffic violation in connection with the accident; or
4. There is a fatality.

(1995 Code, § 37.42) (Ord. 90-O-10, passed 3-14-1990; Am. Ord. 97-O-56, passed 8-25-1997)

§ 37.43 WORKERS' COMPENSATION.

(A) When an employee sustains a work-related injury or contracts an occupational disease, the village shall allow him or her the first week of regular wages which is disallowed him or her by Ohio R.C. § 4123.55, under workers' compensation.

(B) Commencing with the second week of a work-related injury or occupational disease of an employee, the village may advance such employee regular compensation for a reasonable period of time until the commencement of payments under the Workers' Compensation Act, provided, however, that such employee shall sign an agreement made part, hereby adopted by reference, authorizing the Bureau of Workers' Compensation to mail his or her warrants for compensation in care of the village and provided further that such employee agrees to endorse such warrants received from the Workers' Compensation Bureau in favor of the village, in order that the village may be reimbursed to the extent of the advancements made to such employee.

(Ord. 94-O-29, passed 9-12-1994)

§ 37.44 ADVANCEMENT OF REGULAR WAGES.

When an employee sustains a non-work-related illness, the village shall allow him or her the first week of regular wages prior to the commencement of short-term disability benefits under Community National Insurance Policy.

(Ord. 94-O-28, passed 6-27-1994)

§ 37.45 EMPLOYEE HANDBOOK.

(A) Council hereby approves and adopts the Village of Lincoln Heights Employee Handbook.

(B) The Village of Lincoln Heights Employee Handbook is hereby adopted by reference and incorporated herein as if set out in full.

(C) An official copy of the Village of Lincoln Heights Employee Handbook will be kept on file in the office of the Clerk of Council.

(Ord. 98-O-17, passed 5-11-1998; Am. Ord. 2008-O-12, passed 4-28-2008)

§ 37.46 REPORTING AN INVESTIGATION.

(A) Whenever a department head investigates, receives information of an investigation, or causes an investigation to be conducted into the actions or conduct of a village employee under his or her supervision, that are related to the performance of the employee's duties as a village employee, the department head shall so notify the Village Manager immediately and make a written report in 24 hours.

(B) Failure to report such an investigation shall constitute insubordination.

(Ord. 2003-O-33, passed 6-23-2003)

Part Two

CHAPTER 38: VILLAGE COUNCIL

Section

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Cross-reference:

Council, see Charter Article II

Council procedures, see Charter § 2.11

General powers and duties of Council, see Charter § 2.05

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RULES OF COUNCIL
Part 1. GENERAL PROVISIONS

§ 38.001 EFFECTIVE DATE.

The following rules shall be in effect upon adoption by the Village Council and until such time as amended, rescinded or new rules adopted in the manner provided by these rules.

(1995 Code, § 38.001)

§ 38.002 AMENDMENT AND SUSPENSION OF THE VILLAGE COUNCIL RULES.

Rules may be amended, rescinded or adopted by the five votes of the members elected to the Village Council. The amendment, recision or new rule shall go into effect immediately unless a different effective date is specified. Except where the Charter otherwise provides, any rule may be suspended at a meeting by a majority of the Village Council without debate.

(1995 Code, § 38.002)

§ 38.003 PROCEDURE IN ABSENCE OF RULE.

In the absence of a rule, the Chair shall declare the procedure to be followed subject to appeal. Upon appeal, the Chair shall be sustained unless a majority of the Village Council objects to the procedure declared by the Chair, in which case the current edition of *Robert's Rules of Order* shall govern.

(1995 Code, § 38.003)

Part 2. PUBLIC ACCESS

§ 38.015 MEETINGS OPEN TO THE PUBLIC.

All meetings of the Village Council and standing committees shall be open to the public; however, the Village Council and its committees may at any meeting hold an executive session closed to the public pursuant to the law of Ohio and as provided in these rules. Except during executive sessions, all meetings of the village the Village Council and its standing committees shall be open to the news media and shall be subject to recording by radio, television and photographic services at any time provided that such arrangements do not interfere with the orderly conduct of the meeting.

(1995 Code, § 38.015)

§ 38.016 NOTICE OF MEETING.

(A) Notice of the time and place of regularly scheduled meetings of the Village Council and the Village Council committees shall be posted in the office of the Clerk of the Village Council, Village Hall, 1201 Steffen Avenue, Lincoln Heights, Ohio. If the Village Council or a committee adopt a different day or hour for its regularly scheduled meetings than that provided in these rules, notice shall be posted in the office of the Clerk of the Village Council and in places designated by ordinance of the Village Council.

(B) Notice of special meetings of the Village Council shall be communicated to the Village Council members, whenever practicable, at least 12 hours before such meeting. Such notice shall be in writing and delivered to their place of residence or to any location designated by a the Village Council member in writing and filed with the Clerk of the Village Council.

(1995 Code, § 38.016)

§ 38.017 JOURNAL OF PROCEEDINGS.

The journal of proceedings of the Village Council shall be kept by the Clerk of the Village Council and shall be open to public inspection at all reasonable times. At the desire of any member, the "yeas" and "nays" shall be entered upon the journal.

(1995 Code, § 38.017)

§ 38.018 COPIES OF DOCUMENTS.

The Clerk of the Village Council shall make available to the public all records under the Clerk's control required to be made available under the Ohio Public Records Law. The Clerk may charge a reasonable fee fixed by the Village Council to cover the administrative costs, including personnel costs, of providing such records. Fees for copies shall be posted in the office of the Clerk of the Village Council.

(1995 Code, § 38.018)

§ 38.019 PERMISSION REQUIRED TO ADDRESS THE VILLAGE COUNCIL.

(A) Persons other than members of the Village Council, village officials and representatives from news media shall not be permitted upon the floor of the Village Council, or to address the Village Council, except that a person may be granted the privilege of the floor by majority vote of the Village Council.

(B) Any person desiring to make a public comment during the regular or special meeting of the Village Council may be granted the privilege of the floor for such purpose for three (3) minutes with the consent of the Village Council by providing a written request to do so to the Clerk of the Village Council not later than 6:00 p.m. on the evening of such meeting.

(C) Persons addressing the Village Council shall state their name, address and person or organization they represent.

(D) If anyone other than a village official desires to speak to a member of the Village Council or have a member of the Village Council respond to a public comment while the Village Council is in session, the member, if agreeable to the request, shall retire to the rear of the Village Council chamber or leave the chamber during the conversation.

(1995 Code, § 38.019) (Am. Ord. 2008-O-24.1, passed 6-9-2008)

§ 38.020 SERVICE COSTS FOR APPLICANTS.

Whenever application is made for the grant of a franchise right, change of street name, amendment of building zone map, street vacation, or for any other grant, right, franchise or privilege, resulting in special benefit to the applicant, the Clerk shall require the agent of such applicant to deposit with the Village Director of Finance an amount estimated to be sufficient to pay the costs of any advertising, recording, printing, reproduction or other special services arising by reason of such application. Any unused balance of such deposit shall be refunded to the agent of the petitioners on voucher of the Clerk of the Village Council.

(1995 Code, § 38.020)

§ 38.021 EXECUTIVE SESSION.

The Village Council or a committee of the Village Council may hold an executive session at any regular or special meeting only after a majority determines by roll call vote to hold the session for the sole purpose of considering one of the following topics. The motion and vote to hold the executive session shall state which one or more of the approved listed matters are to be considered at the executive session.

(A) When otherwise permitted by law, to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee or regulated individual requests a public hearing.

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

(C) Conferences with an attorney for the Village Council concerning disputes involving it that are the subject of pending or imminent court action.

(D) Preparing for, conducting, or reviewing negotiations or bargaining session with public employees concerning their compensation or other terms and conditions of their employment.

(E) Matters required to be kept confidential by federal law or rules of state statutes.

(F) Specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.

(1995 Code, § 38.021)

Cross-reference:

Council meetings, see Charter § 2.11

§ 38.022 DISRUPTION OF COUNCIL MEETINGS.

(A) Any person who, by their actions, prevents the conduct of, or disrupts a Council meeting, committee or commission meeting, shall be removed by request of the Chair. The person shall, thereafter, be prohibited from addressing Council at any subsequent Council meeting, Committee meeting, or Commission meeting for the following 30 days.

(B) Refusal to abide by the prohibition may result in criminal charges.

(Ord. 2005-O-14, passed 4-11-2005)

Part 3. VILLAGE COUNCIL CHAMBER

§ 38.030 VILLAGE COUNCIL CHAMBER.

The Village Council chamber shall be under the supervision and control of the Clerk of the Village Council when the Village Council is not in session. Except as herein provided it shall be used solely by the Village Council and its committees for the transaction of public business of the village. If not required for such use, the Clerk may permit their use for the transaction of other public business. Application for such use must be made to the Clerk of the Village Council. Any permission granted may be canceled or revoked by the Clerk forthwith where necessary for the protection of village property, the preservation of order, the transaction of public business of the village, or other sufficient reason.

(1995 Code, § 38.030)

§ 38.031 OFFICERS OF THE VILLAGE COUNCIL.

The Village Council shall elect one of its members to serve as Mayor and another as Vice-Mayor.

(1995 Code, § 38.031)

Cross-reference:

Mayor, see Charter § 2.06

Vice-Mayor, see Charter § 2.07

§ 38.032 CLERK OF THE VILLAGE COUNCIL.

The Village Council shall appoint a Clerk who shall perform such duties as prescribed by the charter or by general law in ordinance. He or she shall serve at the pleasure of the Village Council and as secretary to the Mayor.

(1995 Code, § 38.032)

Cross-reference:

Clerk of Council, see Charter § 2.04

Part 4. MEETINGS

§ 38.040 REGULAR MEETINGS.

Regular meetings of the Village Council shall be held in the Village Council chamber commencing at 7:30 p.m. on the second and fourth Monday of each month. However, if a legal holiday occurs on a day of a regularly scheduled meeting, then the Village Council shall meet the succeeding Tuesday at 7:30 p.m. The date and time of regular meetings may be changed by a motion passed by a majority vote.

(1995 Code, § 38.040)

§ 38.041 SPECIAL MEETINGS.

(A) Special meetings may be called by the Mayor or a majority of the Village Council members.

(B) Whenever practicable, every member shall be given 12 hours notice of such special meeting.

(C) The call for meeting shall state the time, date, location and subjects to be considered at such special meeting.

(D) No other subjects shall be discussed except upon the approval of a majority of the Village Council.

(E) Notice of such special meeting shall be given to the media and to the public pursuant to § 38.016.

(1995 Code, § 38.041)

§ 38.042 ADJOURNED MEETINGS.

Any meeting of the Village Council may be adjourned until a later time, date or location provided that no adjournment shall be for a longer period until the next regular meeting.

(1995 Code, § 38.042)

Part 5. CHAIR

§ 38.050 CHAIR.

The Mayor or, in the Mayor's absence, the Vice-Mayor, shall preside at the Village Council meetings.

(1995 Code, § 38.050)

§ 38.051 TEMPORARY CHAIR.

In case of the absence of the Mayor and Vice-Mayor, the Clerk shall call the Village Council to order and call the roll of the members. If a quorum is present, the Village Council shall select, by a majority vote, a Chair of the meeting to act until the Mayor or Vice-Mayor appears.

(1995 Code, § 38.051)

§ 38.052 PRESERVATION OF ORDER.

The Chair shall preserve order and decorum, prevent attacks on personalities or impugning of member's motives and confine members in debate to the question under discussion.

(1995 Code, § 38.052)

§ 38.053 APPEALS FROM DECISIONS OF CHAIR.

The Chair shall decide all questions of order subject to appeal. Upon appeal, the Chair shall be sustained unless overruled by a majority vote of the Village Council.

(1995 Code, § 38.053)

§ 38.054 QUESTIONS STATED.

All questions shall be stated by the Chair with clarity.

(1995 Code, § 38.054)

§ 38.055 PRESIDING OFFICER LEAVING CHAIR.

The presiding officer at a meeting may call any other member to take the presiding officer's place in the chair but the substitution shall not extend beyond adjournment.

(1995 Code, § 38.055)

§ 38.056 CLERK.

The Clerk and other officers and employees of the Clerk of the Village Council's office shall be under the control and direction of the Chair during the Village Council and committee meetings.

(1995 Code, § 38.056)

§ 38.057 ADDRESSING CHAIR.

Every member speaking to a question or making a motion shall address the Chair as "Mr. President" or "Madam President." The Chair shall thereupon state the name of the member entitled to the floor. Members addressing the Village Council shall confine themselves to the question under debate.

(1995 Code, § 38.057)

Part 6. MEMBERS

§ 38.065 DUTY TO VOTE.

Every member present shall vote on all questions unless excused by a majority vote of the Village Council; except that no member shall vote on any question in which he or she is financially interested or which in any way directly involves the Village Council member's personal or private rights. The refusal of a member to vote without an excuse from the Village Council is deemed an acquiescence in the action taken by the majority voting. Provided, however, that any member may affirmatively state when called upon to vote that he or she "abstains" and the abstention shall not be deemed an acquiescence in the action taken by the majority voting. Any member exercising the foregoing right to abstain shall not be required to state the reason therefore; however, he or she

may state the reason for their abstention in which case the reason shall be duly recorded in the minutes of the meeting.

(1995 Code, § 38.065; Am. Ord. 2008-O-15, passed 6-9-2008.)

§ 38.066 RIGHT TO FLOOR.

(A) When any member addresses the Village Council, he or she shall respectfully address the presiding officer and, when recognized by the Chair, shall confine discussion to the question under debate, avoid personalities and refrain from impugning the motives of any other member's argument or vote.

(B) When two or more members ask recognition at the same time, the presiding officer shall name the member who is first to speak. The exercise of such discretion by the presiding officer is not subject to appeal.

(1995 Code, § 38.066)

§ 38.067 LIMITATION OF DEBATE.

No member shall be allowed to speak more than once upon any one subject until every other member choosing to speak thereon shall have spoken.

(1995 Code, § 38.067)

§ 38.068 SEPARATION OF QUESTION.

Where a question under consideration covers two or more points which are separable, the question shall be separated upon the demand of any member.

(1995 Code, § 38.068)

§ 38.069 ROLL CALL VOTE.

(A) When a roll call vote is required, the Clerk shall call the roll and each member as his or her name is called shall answer in the affirmative or negative unless excused or excepted from voting. Silence, when the member is present and entitled to vote, will be recorded as a "yea" vote.

(B) It shall not be in order for members to explain their votes during the call of the roll.

(1995 Code, § 38.069)

§ 38.070 TIE VOTE.

On a tie vote, the matter is lost.

(1995 Code, § 38.070)

§ 38.071 CHANGE OF VOTE.

A member has the right to change his or her vote up to the time the next item of business is commenced. After such time, no member of the Village Council shall be permitted to change his or her vote as recorded without permission of the Village Council. Permission may be given by general consent if no member objects when the Chair inquires. If a member objects, the motion may be made to grant permission, which motion is undebatable and shall carry by a majority vote.

(1995 Code, § 38.071)

§ 38.072 PERSONAL PRIVILEGE.

(A) Any member may address the Village Council on a question of personal privilege. It shall be limited to cases in which the member's integrity, character or motives are assailed, questioned or impugned.

(B) The member shall not use such privilege to discuss a question or issue and it shall not consume more than five minutes of time unless extended by consent of the Village Council.

(1995 Code, § 38.072)

§ 38.073 DISSENTS AND PROTESTS.

Any member shall have the right to express dissent from or protest against any ordinance or resolution of the Village Council and have the reason therefor entered upon the journal. Such dissent or protest must be filed in writing and presented to the Village Council not later than the end of the next regular meeting following the date of passage of the ordinance or resolution.

(1995 Code, § 38.073)

§ 38.074 EXCUSAL FROM ATTENDANCE.

Any member desiring to be excused from attendance at a Village Council meeting shall obtain such permission from a majority of the Village Council. Such permission may be obtained at the meeting from which the member desires to be excused or the immediately following Village Council meeting. Provided, however, that the member desiring to be excused shall not vote on the matter. If any member fails to attend three meetings of the Village Council without the excuse of the Village Council, such member is subject to removal pursuant to Charter § 2.10.

(1995 Code, § 38.074) (Am. Ord. 2008-O-31, passed 10-27-2008)

§ 38.075 EXCUSAL DURING MEETING.

Any member desiring to be excused while the Village Council is in session shall obtain such permission from the presiding officer.

(1995 Code, § 38.075)

§ 38.076 NON-DISCLOSURE OF CONFIDENTIAL INFORMATION.

Members of Council shall not disclose confidential information concerning the Village to the public or others, and shall only use confidential information concerning the Village in a manner consistent with their elected office.

(Ord. 2008-O-13, passed 4-28-2008)

Part 7. CONDUCT OF BUSINESS

§ 38.085 ORDER OF BUSINESS.

(A) The Village Council shall transact business in the following order at all regular meetings. The order may be altered at special meetings and at any other meetings by consent of a majority of the Village Council.

(1) Roll call.

(2) Prayer and Pledge of Allegiance.

(3) Filing of journal.

(4) Announcements.

(5) Special orders.

(6) Presentations by members of the Village Council.

(7) Regular agenda.

(8) Supplemental agenda.

(9) Adjournment.

(B) After the presentations by members of the Village Council, the business of all regular meetings shall commence at the point where the order of business at the preceding meeting was interrupted by adjournment. At special meetings called for purposes specifically named, the purpose named in the call shall have precedence.

(1995 Code, § 38.085)

§ 38.086 CALL TO ORDER.

At the time appointed for the Village Council to meet the presiding officer shall take the chair and immediately call the meeting to order.

(1995 Code, § 38.086)

§ 38.087 ROLL CALL.

(A) Before proceeding with the business of the Village Council, the Clerk shall call the roll, determine the presence of a quorum and enter in the minutes the members present, absent and excused.

(B) To be recorded as present, a member of the Village Council shall be in the Village Council chamber at the time of roll call.

(1995 Code, § 38.087)

§ 38.088 QUORUM.

Five members elected to the Village Council shall constitute a quorum and a majority of the elected members shall be necessary for the transaction of business. If a quorum is not present those in attendance may adjourn by a majority vote until a later time or date or may recess and direct the Clerk to procure the attendance of absent members. When a quorum is present, a majority vote of those members shall be sufficient to transact all business except the enactment of ordinances and as a larger number is required by law or the rules of the Village Council.

(1995 Code, § 38.088)

§ 38.089 FILING OF THE JOURNAL.

At each meeting the journal of the preceding meeting shall be filed as prepared by the Clerk if there is no objection.

(1995 Code, § 38.089)

§ 38.090 PRESENTATIONS BY MEMBER; BY LEAVES.

(A) Members may present items not appearing on the calendar (also known as the Agenda) by leave of the Village Council with a majority voting in favor of the presentation. Any member seeking to present items not appearing on the calendar must submit a written request to present items not appearing on the calendar to the Clerk of Council on or before 12:00 p.m. of the business day immediately preceding the Council meeting.

(B) The written request shall be contained on a form prescribed by the Clerk of Council and shall clearly state the following:

(1) The subject matter of the presentation;

(2) The purpose of the presentation;

(3) The particular points that will be made during the presentation; and

(4) The goal(s) of the presentation.

(C) The Clerk of Council shall include a copy of the written request in the packet of information distributed to Council members in advance of the Council meeting. Any written request that is not timely submitted to the Clerk's office shall be held by the Clerk of Council until the next Council meeting and distributed to Council members in advance of the next Council meeting.

(D) Any presentation granted by leave of Council that engages in personal attacks on other Council members or Village officials, employees or staff members is strictly prohibited. Each Council member will be allowed to respond to the presentation in alphabetical order.

(1995 Code, § 38.090) (Am. Ord. 2008-O-28, passed 10-27-2008; Am. Ord. 2009-O-19, passed 12-28-2009)

§ 38.091 SPECIAL ORDERS.

(A) A special order is a question which is set for a certain time and may interrupt any pending question except one relating to adjournment or recess, a question of privilege or an earlier set special order. To make any subject a special order shall require the consent of a majority of the Village Council.

(B) Special orders may be taken up to any time after the roll call and presentation by members of the Village Council. Special orders for a particular day shall hold good for succeeding days until disposed of.

(1995 Code, § 38.091)

§ 38.092 PRINTED CALENDAR.

(A) The Clerk shall prepare a printed calendar for each regular meeting. The Clerk shall deliver or cause to be delivered to each the Village Council member not later than 6:00 p.m. on the Wednesday preceding the regular meeting of the Village Council, a packet containing the calendar and all materials relevant thereto. Copies of the printed calendar shall be available to the public in the office of the Clerk at 3:00 p.m. on Wednesday preceding the regular meeting of the Village Council. The deadline for items appearing on the printed calendar shall be 11:00 a.m. on the Wednesday preceding the regular meeting of the Village Council. Items referred from committee meetings held after such deadline shall be included on a supplemental calendar.

(B) Items shall appear on the printed calendar in substantially the following order:

(1) Reports and communications from the Mayor, members of the Village Council, Village Manager, village boards and commissions and village officers.

(2) Reports of standing committees in the following order:

(a) Finance Committee;

(b) Law Committee;

(c) Public Safety Committee;

(d) Economic Development Committee;

(e) Recreation Committee; and

(f) Public Service Committee.

(3) Second reading of ordinances held from previous meeting.

(4) Third reading of ordinances held from previous meeting.

(5) Other matters received by the Clerk.

(6) Anonymous communications shall not be placed on the agenda or introduced into the Village Council.

(1995 Code, § 38.092)

§ 38.093 SUPPLEMENTAL CALENDAR.

The supplemental calendar shall contain items and reports from the administration and standing committees received by the Clerk on Thursday after the printed calendar deadline on Wednesday. It shall be ready for distribution at 12:00 noon on Friday preceding the regular meeting of the Council.

(1995 Code, § 38.093) (Am. Ord. 96-O-6, passed 4-8-1996)

§ 38.094 COUNCIL REFERRALS.

Items on the printed and supplemental calendars which have not been previously referred to committee shall be referred to the committee indicated on the calendar or by the Mayor and, as required by the Charter or law, to the Planning Commission. The Village Council may by motion direct the referral to a different or additional standing committee. An item may be considered immediately without referral upon an affirmative vote of a majority of the Village Council.

(1995 Code, § 38.094)

§ 38.095 REFERRALS OF STATE AND FEDERAL JOINT PROPOSALS.

(A) All proposals for projects which contemplate cooperation with, or financial participation by, the state or federal government shall be transmitted to the Village Council by the Village Manager. If a village board or commission desires to propose such a project, the proposal shall be filed with the Village Manager.

(B) All proposals shall be in approved form and accompanied by plans and specifications conforming to the requirements of the respective state or federal government.

(C) The Village Council shall refer all proposals to the Finance Committee and to any other appropriate committee. The committees shall report their recommendations to the Village Council. If the Village Council approves the proposal, it shall authorize the Village Manager to make application to the proper governmental authority.

(1995 Code, § 38.095)

Part 8. MOTIONS

§ 38.105 MOTIONS; GENERAL.

All motions shall require a majority vote of the Village Council for adoption except as otherwise provided in these rules. When a motion is made, it shall be stated by the Chair before debate. A member may withdraw a motion at any time before passage.

(1995 Code, § 38.105)

§ 38.106 MOTIONS; NEW SUBJECT.

All motions which bring a new subject before the Village Council shall be in writing and shall be referred to committee for report prior to adoption. Such motions may be presented either in the form of a motion or a resolution.

(1995 Code, § 38.106)

§ 38.107 PROCEDURAL MOTION PRIOR TO DEBATE; TO DEFER CONSIDERATION.

A member may move for deferral of consideration of action on any subject prior to debate on the subject.

(1995 Code, § 38.107)

§ 38.108 PROCEDURAL MOTION DURING DEBATE.

When a motion is before the Village Council, only the following procedural motions shall be entertained with precedence in the order listed:

(A) *Motion to lay question on table.* Approval of a motion to lay the question on the table temporarily lays the question aside so that it may be taken up when it is in order or when no other question is before the Village Council. No amendments or debate of the subject may be considered. If the motion prevails, all amendments and documents accompanying the question shall adhere to the item. The consideration of the question may be resumed only upon motion of a member voting with the prevailing and with the consent of a majority of the Village Council.

(B) *Motion for the previous question.* Approval of a motion for the previous question to close debate shall be by at least five votes of the members. Adoption of a motion for the previous question shall close debate and the Village Council shall immediately proceed to a vote on the pending question.

(C) *Motion to postpone to a time certain or make special order.* Approval of a motion to postpone to a time certain defers consideration of a question to another day or to a certain hour when, after pending business is disposed of, it will have the right of consideration over all questions except a specific order or reconsideration. It may be amended as to time by a vote of a majority of the Village Council. Approval of a motion to make an item a special order defers consideration to a certain hour and will allow the matter to interrupt pending business. It may be adopted or be amended as to time by a majority of the Village Council.

(D) *Motion to refer.* Approval of a motion to refer may commit or recommit any pending question to a specific standing committee or may refer the matter to a special committee, the Village Manager, a board or commission or a department director for investigation, report or action. The response to such referral shall be made to the Village Council or as the Village Council otherwise directs.

(E) *Motion to amend or fill blank.* A motion to amend may only be amended once. An amendment once rejected may not be moved again substantially in the same form. A motion to fill a blank shall be made prior to voting on a resolution or ordinance.

(F) *Motion to postpone indefinitely.* Approval of a motion to postpone indefinitely rejects the question without a direct vote. If it is carried, the principal question shall be declared last. An affirmative vote may be reconsidered, a negative vote may not. If the motion to postpone indefinitely carries and is not reconsidered, the question cannot be brought up again during that the Village Council meeting.

(1995 Code, § 38.108)

§ 38.109 MOTION TO RECONSIDER.

A motion to reconsider a proposal that has been acted upon favorably must be made before adjournment of the meeting of the Village Council at which the vote was taken. A motion to reconsider any other action taken by the Village Council may be made at any time at any meeting held within ten days after the vote of the Village Council thereon. A motion to reconsider may be made only by a member who voted with the prevailing side. A majority of the Village Council shall be sufficient for reconsideration of a vote. If a motion to reconsider is lost, it shall not again be entertained.

(1995 Code, § 38.109)

§ 38.110 MOTION TO TAKE RECESS.

The Village Council may move to take a recess to a specified time. The motion is debatable and amendable. At the appointed time the meeting shall be called to order and business will proceed the same as if no recess had been taken.

(1995 Code, § 38.110)

§ 38.111 MOTION TO ADJOURN.

(A) A motion to adjourn shall be in order at any time, except as follows:

(1) When repeated without intervening business or discussion;

(2) When made as an interruption of a member while speaking;

(3) When the previous question has been ordered; or

(4) While a vote is being taken.

(B) A motion to adjourn is debatable only as to the time to which the meeting is adjourned.

(1995 Code, § 38.111)

Part 9. ORDINANCES AND RESOLUTIONS

§ 38.120 ORDINANCES DRAFTED.

(A) Ordinances shall be drawn by the Village Solicitor at the request of any member of the Village Council, a the Village Council committee, the Village Manager, a board, commission or village officer.

(B) All legislative matters shall be drafted as ordinances except when required by state law to be in the form of a resolution in which case all formalities of an ordinance shall be followed in the passage of the resolution. No ordinance shall contain more than one subject which shall be clearly expressed in its title, and no ordinance shall be revived or amended unless the new ordinance contains the entire ordinance revived, or the section or sections amended and the section or sections so amended shall be repealed.

(1995 Code, § 38.120)

§ 38.121 READING OF ORDINANCES.

Ordinances must be fully and distinctly read on three different days unless five members of the Village Council dispense with the rule. First reading of an ordinance shall be in its entirety unless the Village Council by a majority vote deems otherwise. Second and third readings of an ordinance shall be by title. If the rule has not been suspended, the first reading of the ordinance shall be for information. After the second reading, the question shall be engrossed and not subject to further amendment, except that the order of engrossment may be reconsidered by a majority vote of the Village Council. The third reading shall be for adoption of the ordinance by a roll call vote.

(1995 Code, § 38.121)

§ 38.122 SUSPENSION OF THREE READINGS.

(A) Upon motion affirmatively passed by five members of the Village Council, the rule that an ordinance must be fully and distinctly read on three different days may be suspended at any time after the first reading of the ordinance.

(B) The title of the ordinance shall be read once for information, the motion for suspension of the rule shall be made and, if the motion is acted upon favorably, the ordinance shall be subject immediately to amendment and passage. If the motion does not carry, the ordinance shall be held for the next meeting for the second reading. A motion to suspend the rule may be made after the second reading and, if acted upon favorably the ordinance shall be subject immediately to passage.

(1995 Code, § 38.122)

§ 38.123 AMENDMENTS.

(A) Amendments to ordinances made on the floor of the Village Council after the first reading shall be indicated by the Clerk on

the original ordinance.

(B) When a resolution or ordinance is referred to a committee, it may be reported back with a recommended substitute for the legislation. The Chair shall state the question on the substitute recommended by the committee. The Clerk shall note on the document that it is substitute legislation. The original legislation may be placed on the calendar for indefinite postponement.

(1995 Code, § 38.123)

§ 38.124 IMPROPER AMENDMENTS.

An amendment is not in order which is not germane to the question to be amended or is identical to a question previously decided during that the Village Council meeting. No independent new question may be introduced under cover of an amendment. An amendment may, however, conflict with the spirit of the original legislation and still be in order.

(1995 Code, § 38.124)

§ 38.125 ADOPTION OF ORDINANCES.

(A) All ordinances shall require for passage the concurrence of no fewer than a majority of the members of the Village Council.

(B) A vote of five members of the Village Council is necessary:

(1) To appropriate property when notice to the owner is only by publication because the owner cannot be found;

(2) To pass an emergency measure;

(3) To submit to the electorate a proposal to amend the Charter; or

(4) To overrule the failure of the Planning Commission to approve an amendment of the Zoning Code or of the zoning map set forth in Chapter 153 of this code of ordinances or location of a public improvement.

(1995 Code, § 38.125)

Cross-reference:

Ordinances, see Charter § 2.11(d)

Statutory reference:

Proceedings on passage of appropriation resolution, see Ohio R.C. § 719.05

Amending charter, Ohio Constitution, Art. XVIII, Sec. 9

§ 38.126 EMERGENCY ORDINANCES.

In order to take immediate effect an emergency ordinance must receive an affirmative vote of five members of the Village Council on the ordinance as well as five affirmative votes on the emergency clause of such ordinance.

(1995 Code, § 38.126)

§ 38.127 PUBLICATION OF ORDINANCES.

Every ordinance shall be published once within 15 days after its passage in a newspaper of general circulation in the village. In the publication of every ordinance or resolution relating to improvements, the advertisement shall contain simply a statement of the title, number and the date of the ordinance or resolution, and a reference to a copy of the ordinance or solution, which shall be on file in the office of the Clerk of the Village Council. All legislation must be posted for at least 14 days in five conspicuous places in the municipality fixed by ordinance of the Village Council and shall be available for public inspection in the office of Clerk of the Village Council.

(1995 Code, § 38.127)

§ 38.128 LEGISLATIVE RESOLUTIONS.

Legislative matters that are required by the Constitution or state law to be in resolution form shall be adopted and published in the same manner as ordinances.

(1995 Code, § 38.128)

§ 38.129 RESOLUTIONS.

Resolutions shall be drawn by the Director of Legal Services at the request of any member of the Village Council, a the Village Council committee, the Village Manager, a board or commission, or village officer.

(1995 Code, § 38.129)

§ 38.130 ADOPTION OF RESOLUTIONS.

All resolutions except legislative resolutions shall be adopted by an affirmative vote of a majority of the Village Council.

(1995 Code, § 38.130)

Part 10. COMMITTEES

§ 38.140 APPOINTMENT OF COMMITTEES.

The standing committee and their Chairs and Vice-Chairs shall be appointed by a vote of a majority of the members elected to the Village Council. All other committees shall be appointed by the Mayor, unless the Village Council otherwise directed.

(1995 Code, § 38.140)

§ 38.141 STANDING COMMITTEES.

(A) The standing committees of the Village Council shall be:

(1) Economic Development Committee;

(2) Finance Committee;

(3) Law;

(4) Safety Services; and

(5) Recreation.

(B) The standing committees shall be appointed for a term of two years and composed of three or five members. All matters pending in the committees at the end of the two-year term shall be turned over to the successor committee.

(C) Any member desiring to be excused from attendance at a Standing Committee meeting shall obtain such permission from the Village Council. If any member fails to attend three regularly scheduled meetings of the Standing Committee without the excuse of the Village Council, such member is subject to removal from the Standing Committee upon the affirmative vote of five members of Council.

(1995 Code, § 38.141) (Am. Ord. 2009-O-8, passed 4-27-2009; Am. Ord. 2010-O-1, passed 1-1-2010)

§ 38.142 SPECIAL COMMITTEE.

(A) A special committee of the Village Council may be appointed by the Mayor, or a subcommittee of the Village Council may be appointed by a committee Chair, for any special purpose and shall cease to exist upon final report to the Village Council or the committee on the duty assigned.

(B) It may be discharged by a vote of a majority of the Village Council or the committee appointing it.

(1995 Code, § 38.142)

§ 38.143 COMMITTEE MEETINGS.

(A) Each committee shall meet regularly at the time and day specified by the Chair of the committee. Special meetings shall be called by the Chair or any two members of the committee upon 72 hours prior notice of the time and place of the special meeting which shall be posted in the office of the Clerk of the Village Council and in 5 conspicuous places in the village fixed by ordinance of the Village Council. Meetings may be canceled by the Chair without objection from a majority of the committee.

(B) A committee may set its own agenda. It shall consider all matters referred to it by the Village Council and may, of its own initiative, consider any matter concerning the village which falls within the area of responsibility of the committee. A committee may initiate legislation within its area of responsibility for submission to the Village Council and such legislation when accompanied by a committee report, may be acted upon immediately and need not be referred to another committee unless so directed by the Village Council.

(1995 Code, § 38.143) (Ord. 2008-O-27, passed 9-22-2008)

§ 38.144 SECRETARY TO COMMITTEES.

The Clerk or a Deputy Clerk shall act as secretary to each committee and keep a record of attendance and business transacted at committee meetings.

(1995 Code, § 38.144)

§ 38.145 COMMITTEE QUORUM.

(A) The presence of two members of a committee shall constitute a quorum.

(B) If a quorum is not present at a special or regularly scheduled meeting, the Chair of the committee shall report to Council that there was no quorum at its regularly scheduled meeting or that a scheduled meeting was not held. If legislative action be required on any matter referred to the Committee before the Committee's next scheduled meeting, Council may relieve the Committee from further consideration of the matter.

(1995 Code, § 38.145) (Am. Res. 95-R-77, passed 12-11-1995)

§ 38.146 REFERENCE TO COMMITTEE.

Each committee shall investigate and report on all items on the printed and supplemented calendars and "by-leaves" referred to it and may refer such items to the Village Manager, village board or commission or department director for report to the committee.

(1995 Code, § 38.146)

§ 38.147 COMMITTEE REPORTS.

(A) In the event a committee to which a matter has been referred with instructions to report at a specific time is not read to report at such time, the matter shall be considered as though reported back without recommendation.

(B) Other than reports of the committee of the whole, the Clerk shall transmit to the Village Council in writing the reports of committees containing the recommended disposition of matters referred to them. Written indication in the printed and supplemented calendars as to a committee recommendation shall satisfy the requirement that reports of committees be transmitted in writing to the Village Council.

(C) All committee reports to the Village Council shall be in writing and signed by the members of the committee.

(1995 Code, § 38.147)

§ 38.148 RELIEVING COMMITTEE FROM FURTHER CONSIDERATION.

Upon motion the Village Council may by a majority vote relieve a committee of further consideration of a matter referred to it and order the matter placed on the calendar for immediate consideration.

(1995 Code, § 38.148)

§ 38.149 COMMITTEE OF THE WHOLE.

When the Village Council resolves itself into the Committee of the Whole, the Mayor or such other member of the Village Council as Council may appoint shall preside. The rules of the Village Council shall govern the Committee of the Whole except for the following.

(A) The previous question may not be moved.

(B) The "yeas" and "nays" shall not be recorded.

(1995 Code, § 38.149)

§ 38.150 PUBLIC HEARINGS.

The Village Council or any committee may hold a public hearing on any matter pending before the committee or on any matter of importance to the village within the area of responsibility of the committee.

(1995 Code, § 38.150)

CHAPTER 39: TAXATION AND FINANCE; FUNDS

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ADMISSIONS TAX

§ 39.01 DEFINITION.

For the purpose of this subchapter the following definition shall apply unless the context clearly indicates or requires a different meaning.

ADMISSION. Seats, chairs, tables, and benches, reserved or otherwise, and other similar accommodations, and charges made therefor. Amounts received for admission shall be deemed to exclude any federal taxes paid or received in respect of the admission.

(1995 Code, § 39.01) (Ord. 4-1948, passed 1-19-1948)

§ 39.02 ADMISSION TAX LEVIED.

(A) For the purpose of providing revenue to defray a portion of current expenses and other expenditures of the village, there is levied:

(1) A tax of 3% on the amounts received for admission to any place, including admission by season ticket or subscription;

(2) A tax of 3% on the excess of amounts received for tickets or cards of admission to theaters, operas, and other places of amusement, sold at news stands, hotels, and places other than the ticket offices of the theaters, operas, or other places of amusement, over and above the amounts representing the established price therefor at the ticket offices; such tax to be returned and paid in the manner and subject to the interest provided in § 39.03, by the person selling tickets;

(3) A tax of 3% on the amount received for admission to any public performance for profit at any roof garden, cabaret, or other similar entertainment in case the charge for admission is in the form of a service charge, or cover charge, or a similar charge in whatsoever form, provided that if the charge is in the form of a fixed minimum service charge to the admittee, the tax shall be computed on 1/3 of the fixed minimum service charge; and

(4) A tax of 3% on the amount received as annual membership dues by every club or organization maintaining a golf course, and a tax of 3% on green fees collected by golf courses, either under club or private ownership.

(B) In the case of persons (except bona fide employees, municipal officers on official business, and children under the age for which a charge is regularly made) admitted free or at reduced rates to any place at a time when and under circumstances under which an admission charge is made to other persons, an equivalent tax shall be collected based on the price so charged to the other persons for the same or similar accommodations, to be paid by the person so admitted.

(1995 Code, § 39.02) (Ord. 4-1948, passed 1-19-1948)

§ 39.03 ADMISSIONS EXEMPT FROM TAX.

(A) *Exemptions.* No tax shall be levied under this subchapter with respect to:

(1) Any admissions, all the proceeds of which inure:

(a) Exclusively to the benefit of religious, educational, or charitable institutions, societies or organizations for the prevention of cruelty to children or animals or societies or organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual;

(b) Exclusively to the benefit of persons in the military or naval forces of the United States, or of national guard organizations, reserve officers associations or organizations, posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized in the State of Ohio, and if no part of their net earnings inure to the benefit of any private stockholder or individual; or

(c) Exclusively to the benefit of members of the Police or Fire Department of any Hamilton County municipal corporation, or the dependents or heirs of the members.

(2) The exemption from tax provided by this section shall not be allowed in case of admissions to wrestling matches, prize fights or boxing, sparring, or other pugilistic matches or exhibitions nor in the case of admissions to any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any high school, academy, preparatory, or other school, wherein the admission price is $0.76 or more, or wholly or partly to the benefit of any college or university.

(B) *Price to be marked on ticket.* The price, exclusive of any federal tax to be paid by the person paying for admission, at which every admission ticket or card is sold shall be conspicuously and indelibly printed, stamped, or written on the face or back of that part of the ticket which is to be taken up by the management of the theater, opera, or other place of amusement, together with the name of the vendor if sold other than at a ticket office of the place of amusement. Whoever sells an admission ticket or card on which the name of the vendor and price is not so printed, stamped, or written thereon, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not more than $100.

(C) *Monthly reports, contents, and payment of tax.* Every person receiving any payments for admission, dues or fees, taxable under this chapter, shall on or before day 20 of each calendar month make a return in duplicate under oath to the Village Clerk in such form as the Village Clerk may prescribe, showing the number of taxable admissions issued or disposed of or the amount of taxable dues or fees collected during the preceding calendar month, the amount of tax imposed on the same, and other facts and information as the Village Clerk may require in the form of returns prescribed by him or her; one copy of the return shall be for the use of the Village Clerk and the other shall be filed by the Village Clerk in his or her office in the village.

(D) *Confidentiality of returns.* All such returns shall be held confidential by the Village Clerk and shall not be available for inspection unless ordered by a court of competent jurisdiction save that the Village Clerk may furnish a copy to the Internal Revenue Department.

(E) *Payment.* Each person making a return shall at the time of making the same pay the amount of taxes shown thereby to the Village Clerk. The payments shall be paid into the village treasury. The Village Clerk may adopt uniform rules and regulations not inconsistent with this section governing the method of making returns and payments.

(F) *Interest.* If the tax imposed by this subchapter is not paid when due, there shall be added as a part of the tax interest at the rate of 1% a month from the time when the tax became due until paid.

(1995 Code, § 39.03) (Ord. 4-1948, passed 1-19-1948)

§ 39.04 ADMINISTRATION.

(A) The Village Clerk shall have power to adopt and promulgate such rules and regulations as the Village Clerk may deem necessary to carry out the provisions of this subchapter.

(B) Each person required by this subchapter to collect and pay, or to pay the taxes imposed shall keep records of receipts, issuance of complimentary tickets, and otherwise, together with ticket stubs, and other pertinent documents, in the form as the Village Clerk may by regulation require. The records and other documents shall be open at any time during business hours to the inspection of the Village Clerk, and shall be preserved for a period of three years, unless the Village Clerk shall in writing consent to their destruction within that period, or in writing require that they be kept longer. The Village Clerk may require any person required by this chapter to collect and pay or to pay the tax imposed, to file with him or her a bond, subject to the approval of the Law Director, with security to the approval of the Village Clerk, and in the amount as the Village Clerk may fix, conditioned for the collection and payment, or the payment of any taxes due or which may become due from that person. Bond, when approved by the Village Clerk shall be deposited in his or her office, in lieu of the bond, securities approved by the Village Clerk may be deposited with him or her and shall be kept by him or her as security for the payment of the tax, interest, or penalty, or both. The Village Clerk may sell any securities so deposited with him or her at public or private sale without notice to the depositor thereof, if it becomes necessary so to do in order to recover the amount of the tax, interest, or penalty, or both due or unpaid. On any such sale, the surplus, if any, above the amounts so due and unpaid, shall be returned to the depositor of the securities.

(C) The Village Clerk may by regulations permit any person making a refund of any payment on which a tax is collected under this subchapter to repay therewith the amount of the tax collected on the payment, and provide for the crediting of the amount so repaid against amounts included in any subsequent return.

(1995 Code, § 39.04) (Ord. 4-1948, passed 1-19-1948)

§ 39.05 LICENSE; APPLICATION.

(A) It shall be unlawful for any person to continue to conduct or thereafter to begin to conduct any form of amusement at any permanent or temporary place of amusement within the village without a license therefor, as hereinafter provided.

(B) Every person desiring to continue to conduct or hereafter to begin to conduct any such amusement at any permanent or

temporary place of amusement or any itinerant form of amusement within this village, shall file an application for a permanent, temporary, or itinerant form of amusement license or licenses, as the case may be, with the Village Clerk. Every application for license shall be made on a form prescribed, prepared, and furnished by the Village Clerk, and shall set forth the name under which the applicant conducts or intends to conduct an amusement whether the applicant conducts or intends to conduct a permanent or temporary form of amusement, the location of the permanent or temporary place of amusement, and such other information as the Village Clerk may require. If the applicant has or intends to have more than one place of amusement within the village, the application shall state the location of each place of amusement, and in the case of itinerant form of amusement, the date and length of time such amusement is to be conducted at each place. In the case of an application for a license for a temporary place of amusement, the application shall state the name and address of the owner, or lessee, or custodian of the premises on which such amusement is to be conducted, and any other information prescribed by the Village Clerk for purposes of identification. The application shall be signed and verified by oath or affirmation by the person conducting the amusement if a natural person, or in the case of an association, by a member or partner thereof or in case of a corporation by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his or her authority. At the time of making an application the applicant shall pay the Village Clerk a fee of $1 for each license.

(C) On approval of the application and the payment of any license fee or fees herein required, the Village Clerk shall grant and issue to each applicant, unless withheld for a cause, a permanent, temporary, or itinerant amusement license for each place of amusement within this village set forth in his or her application. An amusement license shall be valid only for the person in whose name it is issued and for the conduct of amusements at the place designated therein; it shall not be assignable; it shall be conspicuously displayed at the place for which issued during the period of ticket sale and conduct of amusements. All licenses for permanent places of amusement shall be for a period of one year following the date on which they are issued, unless sooner surrendered by the licensee, or suspended or revoked for cause by the Village Clerk. Licenses for temporary places of amusement or for forms of itinerant amusement shall expire at the time specified therein. The holder of an itinerant amusement license shall notify the Village Clerk promptly of any change in the original contemplated itinerary, either as to date or time of the conduct of the amusement at each place.

(D) Licenses issued for permanent places of amusement under the provisions of this subchapter may be renewed annually on application made to the Village Clerk and the payment of a renewal fee of $1.

(E) The Village Clerk may suspend or after hearing revoke an amusement license whenever he or she finds that the holder thereof has failed to comply with any of the provisions of this chapter or any rules or regulations of the Village Clerk prescribed, adopted, and promulgated under this subchapter. On suspending or revoking any amusement license, the Village Clerk shall require the holder thereof to surrender to him or her immediately all licenses or duplicates thereof issued to the holder and the holder shall surrender promptly all licenses to the Village Clerk as required. Whenever the Village Clerk suspends an amusement license, he or she shall notify the holder immediately and afford him or her a hearing, if no hearing has already been afforded and one is desired. After the hearing the Village Clerk shall either rescind his or her order of suspension or on good cause appearing therefor shall continue the suspension or revoke the license.

(F) It shall be unlawful for the owner, lessee, or custodian of the premises on which an amusement is to be conducted, to lease or permit the same to be used by any person who is not the owner of a license duly issued by the Village Clerk hereunder. Any owner, lessee, or custodian who leases to or permits the premises to be used for that purpose, to a person who is not the owner of a license duly issued hereunder, shall be liable for the amount of taxes levied under the provisions of this subchapter in connection with any amusement so conducted on the premises, and the taxes shall be a lien on the premises.

(G) When an exemption from the payment of the admission tax is granted by the Village Clerk for a given amusement or series of amusements in accordance with the provisions of § 39.03, the exemption shall be considered as the equivalent of the license herein provided for. The exemption form as executed on behalf of the Village Clerk shall be displayed in the same manner as is provided for the license.

(1995 Code, § 39.05) (Ord. 4-1948, passed 1-19-1948) Penalty, see § 39.99

§ 39.06 REFUNDS; ADMISSIONS TAX ROTARY FUND.

The Village Clerk shall refund any tax or license fee erroneously paid or to the extent overpaid on license application or tax return or on assessment or other demand of the Village Clerk. The Village Clerk on application of the taxpayer or otherwise may determine the amount of any erroneous or overpayment and certify that amount to the Director of Finance. The Director of Finance shall thereupon draw his or her warrant for the certified amount on the Village Clerk to the person entitled to the refund. For the purpose of paying refunds the Village Clerk shall place $1,000 from taxes collected under this chapter in a special fund which the Director of Finance is authorized and directed to establish, numbered 7191, and to be known as the Admissions Tax Rotary Fund, and thereafter as required

by the depletion thereof he or she shall place to the credit of the Rotary Fund a sum sufficient to make the total of the fund at the time of each credit amount to $1,000.

(1995 Code, § 39.06) (Ord. 4-1948, passed 1-19-1948)

§ 39.07 LIEN FOR UNPAID TAXES.

(A) The taxes imposed by this subchapter shall be a lien on all of the property of any person required to collect and pay or to pay the same. If he or she shall sell out his or her business or shall quit business, that person shall be required to make out the return provided for under this subchapter within 30 days after the date of sale of the business, or retirement therefrom, and his or her successor in business shall be required to withhold a sufficient amount of the purchase money to cover the amount of the taxes so collected and unpaid, together with interest, if any, until the time as the former owner shall produce a receipt from the Village Clerk showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business shall fail to withhold purchase money as above provided, and the taxes so collected shall be due and unpaid after the 30 days period allowed, he or she shall be liable for the payment of the taxes collected and unpaid on account of the operation of the business by the former owner, together with interest, as provided by this chapter.

(B) The lien for unpaid taxes herein imposed shall not become effective until the time as the Village Clerk shall certify to the Auditor of Hamilton County the amount of taxes delinquent and the certification is placed on record by the County Recorder in a book maintained for that purpose.

(1995 Code, § 39.07) (Ord. 4-1948, passed 1-19-1948)

§ 39.08 ADDITIONAL ASSESSMENT.

If the Village Clerk is not satisfied with the return and payment of taxes made by any person under the provisions of this chapter, he or she is authorized and empowered to make an additional assessment of the tax due by the taxpayer, based on the facts contained in the return or otherwise acquired. Promptly after the date of additional assessment, the Village Clerk shall give or send by mail a notice thereof to the person, together with written notice of the time, when, and the place where, that person may be heard on a petition for reassessment as hereinafter provided.

(1995 Code, § 39.08) (Ord. 4-1948, passed 1-19-1948)

§ 39.09 ESTIMATED ASSESSMENT.

If a person whose duty it is to collect and pay or to pay the taxes imposed by this chapter shall neglect or refuse to file any return required by this chapter, or having tendered a return shall neglect or refuse to pay the amount of taxes imposed by this subchapter as shown by the return, the Village Clerk shall make an estimated assessment of the probable amount of the taxes payable by the delinquent, to which shall be added a penalty of 10% of the amount assessed. The Village Clerk shall promptly thereafter give or send by mail notice of the estimated assessment and penalty to the person against whom the same shall have been made.

(1995 Code, § 39.09) (Ord. 4-1948, passed 1-19-1948)

§ 39.10 ESTIMATED ADDITIONAL ASSESSMENT.

The Village Clerk shall have the power to make an estimated additional assessment, to which shall be added a penalty of 10% of the assessment, against any person who has filed any return as required by this subchapter but who refuses to permit the Village Clerk or a duly authorized deputy, to examine his or her books of account and papers pertaining to the business for which the return was made. The Village Clerk shall promptly thereafter give or send by mail notice of the estimated additional assessment and penalty to that person, together with written notice of the time when and the place where the person may be heard on a petition for reassessment, as hereinafter provided.

(1995 Code, § 39.10) (Ord. 4-1948, passed 1-19-1948)

§ 39.11 WHEN TAXES ARE DUE AND PAYABLE.

(A) *Generally.* All taxes and penalties resulting from any assessment made by the Village Clerk shall be due and payable ten days after notice thereof is given or sent by mail to the person against whom the assessment shall have been made.

(B) *Application for reassessment.* Any person against whom an additional assessment, estimated assessment, or estimated additional assessment shall be made by the Village Clerk may file an application for reassessment with the Village Clerk. The application shall be filed within 30 days after receipt of notice of estimated assessment and penalty from the Village Clerk, and shall contain all the arguments and reasons why the assessment and penalty should be reversed, vacated, or modified. Within 20 days of the filing of the application for reassessment, the Village Clerk shall redetermine his or her former assessment, estimated assessment, or estimated additional assessment and shall either affirm, reverse, vacate, or modify the same.

(C) *Determination and assessment.* Such determination shall be final, and the assessment, estimated assessment, or estimated additional assessment shall become payable ten days after notice thereof is given or sent by mail to the person filing the application.

(1995 Code, § 39.11) (Ord. 4-1948, passed 1-19-1948)

§ 39.12 NOTICES AUTHORIZED.

Any notice authorized or required under the provisions of this subchapter may be given by mailing the same to the person for whom it is intended, in a postpaid envelope addressed to the person at the address given in the last return filed by him or her pursuant to the provisions of this subchapter, or to the address as may be obtainable. The mailing of the notice shall be prima facie evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this subchapter by the giving of notice shall commence to run from the date of mailing such notice.

(1995 Code, § 39.12) (Ord. 4-1948, passed 1-19-1948)

§ 39.13 REFUNDS; APPLICATION.

If within one year from the payment of any tax or penalty the payer thereof or his or her executors, administrators, successors, or assigns shall make application for a refund thereof, for the benefit of the person from whom the same was collected, and the Village Clerk shall determine that the tax or penalty, or any portion thereof, was erroneously or illegally collected, and that the same can and will be duly refunded to the persons from whom the same was collected, the Village Clerk shall issue his or her certificate showing the amount so erroneously or illegally collected, and thereupon draw his or her warrant for the certified amount on the treasurer to the person entitled to the refund, out of the Admissions Tax Rotary Fund. For like cause and within the same period, a refund may be so made on the initiative of the Village Clerk, but no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Clerk as provided for in this section, unless the Village Clerk, after a hearing as in the section provided, or on his or her own motion, shall have reduced the tax or penalty or a court of competent jurisdiction shall have ruled that the determination was erroneous or illegal, in which event a refund shall be made as herein provided, on the termination of the appeal. An application for a refund made as herein provided shall be deemed a petition for reassessment within the meaning of this section and the Village Clerk may receive additional evidence with respect thereto. After making his or her determination, the Village Clerk shall give notice thereof to the applicant.

(1995 Code, § 39.13) (Ord. 4-1948, passed 1-19-1948)

§ 39.14 MONEYS CREDITED TO GENERAL FUND.

The moneys received under the provisions of this subchapter shall be credited to the general fund of the village.

(1995 Code, § 39.14) (Ord. 4-1948, passed 1-19-1948)

INCOME TAX

§ 39.20 PURPOSE.

The purpose of this subchapter is to provide funds for municipal purposes there shall be and is hereby levied a tax on qualifying wages, commissions and other compensation, and on net profits and other taxable income as hereinafter provided.

(1995 Code, § 39.20) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2001-O-53, passed 12-22-2003)

§ 39.21 DEFINITIONS.

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

ADJUSTED FEDERAL TAXABLE INCOME.

(a) A C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

1. Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income;

2. Add an amount equal to 5% of intangible income deducted under division (a)1. above of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in § 1221 of the Internal Revenue Code;

3. Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in §§ 1221 or 1231 of the Internal Revenue Code;

4. a. Except as provided in division 4. b. below of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in §§ 1221 or 1231 of the Internal Revenue Code; and

b. Division 4. a. above of this section does not apply to the extent the income or gain is income or gain described in §§ 1245 or 1250 of the Internal Revenue Code;

5. Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

6. In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

7. If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except;

a. Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member shall not be allowed as a deductible expense; and

b. Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

(b) Nothing in division (a) above of this section shall be construed as allowing the taxpayer to add or deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(c) Nothing in this subchapter shall be construed as limiting or removing the ability of any municipal corporation to administer, audit, and enforce the provisions of its municipal income tax.

ASSOCIATION. A partnership, limited partnership, S corporation or any other form of unincorporated enterprise, owned by one or more persons.

BOARD OF REVIEW (BOARD OF APPEALS, BOARD OF ADJUDICATION AND THE LIKE). The Board created by and constituted by the Lincoln Heights Village Council.

BUSINESS. An enterprise, activity, profession or undertaking of any nature conducted for profit or ordinarily conducted for

profit, whether by an individual, partnership, association, corporation or any other entity, including but not limited to the renting or leasing of property, real, personal or mixed.

CORPORATION. A corporation or joint stock association organized under the laws of the United States, the State of Ohio, or any other state, territory, or foreign country or dependency.

DOMICILE. A principal residence that the taxpayer intends to use for an indefinite time and to which whenever he or she is absent he or she intends to return. A taxpayer has only one domicile even though he or she may have more than one residence.

EMPLOYEE. One who works for wages, salary, commission or other types of compensation in the services of an employer.

EMPLOYER. An individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profits, who or that employs one or more persons on a salary, wage, commission or other compensation basis.

FISCAL YEAR. An accounting period of 12 months or less ending on any day other than December 31.

FORM 2106. Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

GENERIC FORM. An electronic or paper form designed for reporting estimated municipal income taxes and annual municipal income tax liability or for filing a refund claim that is not prescribed by a particular municipal corporation for the reporting of that municipal corporation's tax on income. Any municipality that requires taxpayers to file income tax returns, reports, or other documents shall accept for filing a generic form of such a return, report, or document if the generic form, once completed and filed, contains all of the information required to be submitted with the municipality's prescribed returns, reports, or documents.

GROSS RECEIPTS. Total income of taxpayers from whatever source derived.

INCOME FROM A PASS-THROUGH ENTITY. Partnership income of partners, membership interests of members of a limited liability company, distributive shares of shareholders of an S corporation, or other distributive or proportionate ownership shares of income from other pass-through entities.

INTANGIBLE INCOME. Income of any of the following types: income yield; interest; capital gains; dividends; or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Ohio R. C. Chapter 5701, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. ***INTANGIBLE INCOME*** does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

INTERNAL REVENUE CODE. The Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended.

INTERNET. The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

JOINT ECONOMIC DEVELOPMENT DISTRICT. Districts created under the Ohio R.C. §§ 715.70 through 715.83, as amended from time to time.

LIMITED LIABILITY COMPANY. A limited liability company formed under Ohio R.C. Chapter 1705 or under the laws of another state.

MUNICIPALITY. The Village of Lincoln Heights.

NET PROFIT.

(a) For a taxpayer other than an individual, ***NET PROFIT*** means adjusted federal taxable income; and

(b) For a taxpayer who is an individual, ***NET PROFIT*** means the individual's profit, other than amounts described in § 39.22(F), required to be reported on schedule C, schedule E, or schedule F.

NONQUALIFIED DEFERRED COMPENSATION PLAN. A compensation plan described in § 3121(v)(2)(C) of the Internal Revenue Code.

NONRESIDENT INCORPORATED BUSINESS ENTITY. An incorporated business entity not having an office or place of business within the municipality.

NONRESIDENT UNINCORPORATED BUSINESS ENTITY. An unincorporated business entity not having an office or place of business within the municipality.

OTHER PAYER. Any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual.

OWNER. A partner of a partnership, a member of a limited liability company, a shareholder of an S corporation, or other person with an ownership interest in a pass-through entity.

OWNER'S PROPORTIONATE SHARE. With respect to each owner of a pass-through entity, means the ratio of:

(a) The owner's income from the pass-through entity that is subject to taxation by the municipal corporation, to

(b) The total income from that entity of all owners whose income from the entity is subject to taxation by that municipal corporation.

PASS-THROUGH ENTITY. A partnership, limited liability company, S corporation, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code.

PERSON. Includes individuals, firms, companies, business trusts, estates, trusts, partnerships, limited liability companies, associations, corporations, governmental entities, and any other entity.

PLACE OF BUSINESS. Any bona fide office, other than a mere statutory office, factory, warehouse, or other space which is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his or her regular employees regularly in attendance.

PRINCIPAL PLACE OF BUSINESS.

(a) In the case of an employer having headquarters' activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated.

(b) In the case of any employer not having its headquarters' activities at a place of business within a taxing municipality, the term means the largest place of business located in a taxing municipality.

QUALIFIED PLAN. A retirement plan satisfying the requirements under § 401 of the Internal Revenue Code as amended.

QUALIFYING WAGES. Wages, as defined in § 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted in accordance with Ohio R.C. § 718.03(A).

RESIDENT. Domiciled in the municipality.

RESIDENT INCORPORATED BUSINESS ENTITY. An incorporated business entity whose office, place or operations or business situs is within the municipality.

RESIDENT UNINCORPORATED BUSINESS ENTITY. An unincorporated business entity having an office or place of business within the municipality.

RETURN PREPARER. Any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

RULES AND REGULATIONS. The rules and regulations as set forth in this subchapter.

SCHEDULE C. Internal Revenue Service schedule C filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE E. Internal Revenue Service schedule E filed by a taxpayer pursuant to the Internal Revenue Code.

SCHEDULE F. Internal Revenue Service schedule F filed by a taxpayer pursuant to the Internal Revenue Code.

S CORPORATION. A corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

TAX ADMINISTRATOR. The person appointed to administer the municipality's Income Tax Subchapter and to direct the operation of the Municipal Income Tax Department or the person executing the duties of the Tax Administrator.

TAXABLE INCOME. Qualifying wages paid by an employer or employers, compensation for personal services, other income defined by statute as taxable, and/or adjusted federal taxable income from the operation of a business, profession, or other enterprise or activity adjusted in accordance with the provisions of this subchapter.

TAXABLE YEAR. The corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

TAXING MUNICIPALITY. A municipality levying a tax on income earned by nonresidents working within such municipality or on income earned by its residents.

TAXPAYER. A person subject to a tax on income levied by a municipal corporation. ***TAXPAYER*** does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but ***TAXPAYER*** includes any other person who owns the disregarded entity or qualifying subchapter S subsidiary.

(B) The singular shall include the plural, the masculine shall include the feminine and the neuter, and all periods set forth shall be inclusive of the first and last mentioned dates.

(1995 Code, § 39.21) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2001-O-3, passed 2-26-2001; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.22 IMPOSITION OF TAX.

(A) *Basis of imposition.* Subject to provisions of § 39.20, an annual tax shall be, and is hereby, levied on and after January 1, 1994, at the rate of 2% per annum upon the following.

(1) *Resident individuals.* On all qualifying wages, commissions, other compensation, and other taxable income earned or received by residents of the municipality.

(2) *Nonresident individuals.* On all qualifying wages, commissions, and other compensation, and other taxable income earned or received by nonresidents for work done, or services performed or rendered, in the municipality.

(3) *Resident unincorporated businesses.*

(a) On the portion attributable to the municipality of the net profits earned by all resident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered, and business or other activities conducted in the municipality; or

(b) On the portion of the distributive share of the net profits earned by a resident owner of a resident unincorporated business entity or pass-through entity not attributable to the municipality and not levied against such unincorporated business entity or pass-through entity.

(4) *Nonresident unincorporated businesses.*

(a) On the portion attributable to the municipality on the net profits by all nonresident unincorporated businesses, pass-through entities, professions or other activities, derived from work done or services performed or rendered and business or other activities conducted in the municipality, whether or not such unincorporated business entity has an office or place of business in the municipality; or

(b) On the portion of the distributive share of the net profits earned by a resident owner of a nonresident unincorporated business entity or pass-through entity not attributable to the municipality and not levied against such unincorporated business entity or pass-through entity.

(5) *Corporations.* On the portion attributable to the municipality of the net profits earned by all corporations that are not pass-through entities from work done or services performed or rendered and business or other activities conducted in the municipality, whether or not such corporations have an office or place of business in the municipality.

(6) *Gambling winnings.* On all income received as gambling winnings as reported on IRS Form W-2G, Form 5754 and or any other form required by the Internal Revenue Service that reports winnings from gambling, prizes and lottery winnings.

(B) *Businesses both in and outside the municipal boundaries.* This section does not apply to taxpayers that are subject to and required to file reports under Ohio R.C. Chapter 5745. Except as otherwise provided in division (D) of this section, net profit from a business or profession conducted both within and without the boundaries of a municipal corporation shall be considered as having a taxable situs in such municipal corporation for purposes of municipal income taxation in the same proportion as the average ratio of the

following: multiply the entire net profits of the business by a business allocation apportionment percentage formula to be determined by:

(1) (a) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in such municipal corporation during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated;

(b) As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to persons employed in the business or profession for services performed in such municipal corporation to wages, salaries, and other compensation paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the municipal corporation under Ohio R.C. § 718.011;

(3) Gross receipts of the business or profession from sales made and services performed during the taxable period in such municipal corporation to gross receipts of the business or profession during the same period from sales and services, wherever made or performed; and

(4) Adding together the percentages determined in accordance with divisions (B)(1), (2) and (3) hereof, or such of the aforesaid percentages as are applicable to the particular taxpayer and dividing the total so obtained by the number of percentages used in deriving such total.

(a) A factor is applicable even though it may be apportioned entirely in or outside the municipality.

(b) Provided however, that in the event a just and equitable result cannot be obtained under the business apportionment percentage formula provided for herein, the Tax Administrator, upon application of the taxpayer, shall have the authority to substitute other factors or methods calculated to effect a fair and proper apportionment.

(C) *Definition*. As used in division (B) above of this section, ***SALES MADE IN A MUNICIPAL CORPORATION*** mean:

(1) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes if shipped or delivered from a stock of goods within such municipal corporation;

(2) All sales of tangible personal property delivered within such municipal corporation regardless of where title passes even though transported from a point outside such municipal corporation if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within such municipal corporation and the sales result from such solicitation or promotion; and

(3) All sales of tangible personal property shipped from a place within such municipal corporation to purchasers outside such municipal corporation regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(D) *Net profit from rental activity*. Except as otherwise provided in division (E) of this section, net profit from rental activity not constituting a business or profession shall be subject to tax only by the municipal corporation in which the property generating the net profit is located.

(E) *Applicability*. This section does not apply to individuals who are residents of the municipality and, except as otherwise provided in Ohio R.C. § 718.01, the municipality may impose a tax on all income earned by residents of the municipality to the extent allowed by the United States Constitution.

(F) *Net operating loss (NOL).*

(1) The portion of a net operating loss sustained in any taxable year, beginning with the year 1973, apportioned to the municipality may be applied against the portion of the profit of succeeding tax years apportioned to the municipality, until exhausted, but in no event for more than the three taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year.

(2) The portion of a net operating loss sustained shall be apportioned to the municipality in the same manner as provided herein for apportioning net profits to the municipality.

(3) The Tax Administrator shall provide by rules and regulations the manner in which such net operating loss carryforward shall be determined.

(4) The net operating loss of a taxpayer that loses its legal identity, by any means such as merger or consolidation, shall not be allowed as a carryforward loss deduction to the surviving or new taxpayer.

(5) The net operating loss sustained by a business or profession is not deductible from employee earnings, but may be carried forward as provided in division (1) above. However, if a taxpayer is engaged in two or more taxable business activities to be included in the same return, the net loss of one unincorporated business activity (except any portion of a loss reportable for municipal income tax purposes to another municipality) may be used to offset the profits of another for purposes of arriving at overall net profits.

(G) *Consolidated returns.*

(1) A consolidated return may be filed by a group of corporations who are affiliated through stock ownership if that affiliated group filed for the same tax period a consolidated return for federal income tax purposes pursuant to § 1501 of the Internal Revenue Code. A consolidated return must include all companies that are so affiliated.

(2) Once a consolidated return has been filed for any taxable year, consolidated returns shall continue to be filed in subsequent years unless the applicable requirements of the rules and regulations for discontinuing the filing of consolidated returns have been met.

(H) *Exemptions.* The provisions of this subchapter shall not be construed as levying a tax upon the following:

(1) Proceeds from welfare benefits, unemployment insurance benefits, pensions, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service;

(2) Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages;

(3) Compensation attributable to a plan or program described in § 125 of the Internal Revenue Code;

(4) Dues, contributions and similar payments received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations;

(5) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business);

(6) Alimony;

(7) Compensation for damage to property by way of insurance or otherwise;

(8) Interest and dividends from intangible property;

(9) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard (ORC 718.01);

(10) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio R.C. 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities;

(11) Any association or organization falling in the category listed in the preceding division receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded hereunder;

(12) In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or income producing business located both within and without the corporate limits of the municipality, it shall calculate its income apportioned to the municipality under the method or methods provided above;

(13) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from municipal income tax;

(14) The rental value of a home furnished to a minister of the gospel as part of his or her compensation, or the rental allowance paid to a minister of the gospel as part of his or her compensation, to the extent used by him or her to rent or provide a home pursuant to § 107 of the Internal Revenue Code;

(15) Compensation paid under Ohio R.C. §§ 3501.28 or 3501.36 to a person serving as a precinct official, to the extent that such compensation does not exceed $1,000 annually. Such compensation in excess of $1,000 may be subjected to taxation. The payer of such compensation is not required to withhold municipal tax from that compensation;

(16) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created

under Ohio R.C. Chapter 306 for operating a transit bus or other motor vehicle for the authority or commission in or through the municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the municipality, or the headquarters of the authority or commission is located within the municipality;

(17) The municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the municipality on 12 or fewer days in a calendar year unless one of the following applies:

(a) The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services paid on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services; or

(b) The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such promoter, all as may be reasonably defined by the municipality;

(18) (a) The income of a public utility, when that public utility is subject to the tax levied under Ohio R.C. §§ 5727.24 or 5727.30, except a municipal corporation may tax the following, subject to Ohio R. C. Chapter 5745:

1. The income of an electric company or combined company; and

2. The income of a telephone company.

(b) As used in this section, ***COMBINED COMPANY***, ***ELECTRIC COMPANY***, and ***TELEPHONE COMPANY*** have the same meanings as in Ohio R.C. § 5727.01.

(19) An S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in § 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in § 1402(a) of the Internal Revenue Code, to the extent such distributive share would not be allocated or apportioned to this state under Ohio R.C. § 5733.05 (B)(1) and (2) if the S corporation were a corporation subject to the taxes imposed under Ohio R.C. Chapter 5733;

(20) An S corporation shareholder's distributive share of net profits or losses of the S corporation; or

(21) Generally the above noted items in this section are the only forms of income not subject to the tax. Any other income, benefits, or other forms of compensation shall be taxable.

(1995 Code, § 39.22) (Ord. 73-11, passed 2-19-1973; Am. Ord. 93-O-23, passed 12-15-1993; Am. Ord. 2001-O-3, passed 2-26-2001; Am. Ord. 2003-O-53, passed 12-22-2003)

Statutory reference:

Municipal income tax, see Ohio R.C. §§ 718.01 through 718.07

§ 39.23 EFFECTIVE PERIOD.

The tax shall be levied, collected and paid with respect to the salaries, wages, commissions and other compensation earned and shall be levied with respect to the net profits of the businesses, professional or other activities earned from and after the effective date of this Tax Code.

(1995 Code, § 39.23) (Ord. 73-11, passed 2-19-1973; Am. Ord. 93-O-23, passed 12-15-1993; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.24 RETURN AND PAYMENT.

(A) *Generally*. Each person who engages in business or other activity or whose, qualifying wage, commissions, other compensation, and other taxable income is subject to the tax imposed by this Tax Code, shall, whether or not a tax be due thereon, make and file a return on or before April 15 of the year following the effective date of this Tax Code, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth day of the fourth month following the end of such fiscal year or period. The Tax Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of municipal tax deducted by the employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him, her or

them to the Tax Administrator may be accepted as the return required of any employee whose sole income, subject to tax under this Tax Code, is such qualifying wage, commissions, other compensation, and other taxable income.

(B) *Mandatory filing*. On or before April fifteenth of each year, every resident subject to the provisions of § 39.35, inclusive, of the subchapter shall, except hereinafter provided, make and file with the Tax Administrator a municipal tax return on a form prescribed by and acceptable to the Tax Administrator, whether or not a tax is due. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth day of the fourth month following the end of such fiscal year or period. The Tax Administrator is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of municipal tax deducted by the employer or employers from the qualifying wages, commissions, or other compensation, and other taxable income of a nonresident employee, and paid by him, her or them to the Tax Administrator may be accepted as the return required of a nonresident employee whose sole income, subject to tax under this Tax Code, is such qualifying wages, commissions, or other compensation, and other taxable income.

(C) *Married couple*. A husband and wife may file either separate returns or a joint return for municipal purposes, even though one of the spouses has neither taxable income nor deductions included on the municipal return regardless of whether their federal and state returns were filed separately or jointly. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(D) *Filing of return*. The return shall be filed with the Tax Administrator on a form or forms furnished by or obtainable upon request from the Tax Administrator; or on a generic form, if the generic form, when completed and filed, contains all of the information required to be submitted with the municipality's prescribed return and, if the taxpayer or return preparer filing the generic form otherwise complies with the Tax Code governing the filing of returns.

(E) *Contents of return*. The return shall set forth:

(1) The aggregate amounts of qualifying wages, commissions, other compensation received, allocated, apportioned or set aside, other income defined by statute as taxable, and gross income from any business, profession or other activity, less allowable expenses incurred in the acquisition of such gross income earned during the preceding year and subject to the tax;

(2) The amount of the tax imposed by this Tax Code on such earnings and profits; and

(3) Such other pertinent statements, information returns, copies of federal or state tax returns and/or schedules, or other information as the Tax Administrator may require, including a statement that the figures used in the return are the figures used for federal income tax adjusted to set forth only such income as is taxable under the provisions of this subchapter.

(F) *Extensions*.

(1) Any taxpayer that has requested an extension for filing a federal income tax return may request an extension for the filing of a municipal income tax return by filing a copy of the taxpayer's federal extension request with the Municipal Tax Division. Any taxpayer not required to file a federal income tax return may request an extension for filing a municipal income tax return in writing. The request for extension must be filed on or before the original due date for the annual return. If the request is granted, the extended due date of the municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended.

(2) The Tax Administrator may deny a taxpayer's request for extension if the taxpayer:

(a) Fails to timely file the request;

(b) Fails to file a copy of the federal extension request, (if applicable);

(c) Owes the municipality any delinquent income tax, penalty, interest or other charge for the late payment or nonpayment of income tax; or

(d) Has failed to file any required income tax return, report, or other related document for a prior tax period.

(3) The granting of an extension for filing a municipal tax return does not extend the due date as provided in this section for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out by § 39.29. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the Tax Code have been met. Any extension by the Tax Administrator shall be granted upon the condition that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

(G) *Payments with returns.*

(1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Tax Administrator the amount of taxes shown as due. However, credit shall be allowed for:

(a) Any portion of the tax which shall have been paid by the taxpayer pursuant to the provisions of § 39.26; and

(b) Credit to the extent allowed by § 39.33 for tax paid to another municipality.

(2) Subject to the limitations contained in § 39.30 of this Tax Code, any taxpayer who has overpaid the amount of tax to which the municipality is entitled under the provisions of this Tax Code may have such overpayment applied against any subsequent liability hereunder or, at his or her election indicated on the return, such overpayment (or part thereof) shall be refunded, provided that no additional taxes or refunds of less than $5 shall be collected or refunded.

(H) *Amended returns.*

(1) Where necessary, an amended return shall be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in §§ 39.28 and 39.33. The Tax Administrator shall provide by regulation the format in which such amended return shall be filed. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(2) Within three months from the final determination of any federal tax liability affecting the taxpayer's municipal tax liability, such taxpayer shall make and file an amended municipal return showing income subject to the municipal tax based upon such final determination of federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment.

(I) *Information returns, schedules and statements required to support tax returns.* Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be a violation of this Tax Code. Provided, however, that the taxpayer shall have ten days after notification by the Tax Administrator, or his or her authorized representative, to file the items required by this division.

(1995 Code, § 39.24) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.25 COLLECTION AT SOURCE.

(A) Each employer within, or doing business within the municipality who employs one or more persons on a salary, wage, commission or other compensation basis shall deduct, when such salary, wage, commission or other compensation is paid, allocated, or set aside, the tax at the rate provided in § 39.22 hereof on the qualifying wages due by such employer to each such employee and shall, on or before the fifteenth day of the month following such withholding, make a return and payment to the Tax Administrator the amount of taxes so deducted. The return shall be on a form or forms prescribed by or acceptable to the Tax Administrator and shall be subject to the rules and regulations prescribed by the Tax Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. Nothing in this section prohibits an employer from withholding tax on a basis greater than qualifying wages.

(B) An employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation with respect to whose stock the option has been issued.

(C) (1) An employee is not relieved from liability for a tax by the failure of the employer to withhold the tax as required by a municipal corporation or by the employer's exemption from the requirement to withhold the tax.

(2) The failure of an employer to remit to the municipal corporation the tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.

(D) Compensation deferred before the effective date of this amendment is not subject to any municipal corporation income tax or municipal income tax withholding requirement to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed.

(E) So long as the taxes withheld by an employer for the municipality during the measurement period are less than $300 per month, payments may be made quarterly on or before the last day of the month following the end of each quarter, subject to the approval of the Tax Administrator. The Tax Administrator may revoke the approval of quarterly filing and payments whenever the Tax

Administrator has reason to believe that the conditions for granting such authorization have changed, were judged incorrectly, were not met, or when it is in the best interest of the municipality to do so. Notice of withdrawal shall be made in writing and, in such case, the employer must begin to file in accordance with this section.

(F) Each employer in collecting such tax shall be deemed to hold the same, until payment is made by such employer to the municipality, as a trustee for the benefit of the municipality, and any such tax collected by such employer from his or her employees shall, until the same is paid to the municipality, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

(G) Any person who is required to withhold tax from qualifying wages shall pay all such tax to the municipality in accordance with the provisions of this section. In the event taxes withheld from the qualifying wages of employees are not paid to the municipality in accordance with the provisions of this section, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of filing the return and making payment are jointly and severally personally liable for the tax not returned or paid to the municipality as well as any related interest and penalties, and are also liable under the provisions of § 39.99 hereof. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge an officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay taxes.

(H) Each employer shall file a withholding tax reconciliation showing the sum total of all compensation paid all employees, the portion of which, (if any) was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom the municipal tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of compensation paid during the year and the amount of municipal tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to the municipality concerning each employee. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of such calendar year.

(I) In addition to the wage reporting requirements of this section, any person required by the Internal Revenue Service to report on Form 1099-Misc. payments to individuals not treated as employees for services performed shall also report such payments to the municipality when the services were performed in the municipality. The information may be submitted on a listing, and shall include the name, address and social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of such calendar year.

(J) No person shall be required to withhold the tax on the qualifying wages, commissions, or other compensation, and other taxable income paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing and paying their own returns and taxes.

(1995 Code, § 39.25) (Ord. 73-11, passed 2-19-1973; Am. Ord. 93-O-23, passed 12-15-1993; Am. Ord. 2001-O-3, passed 2-26-2001; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.26 DECLARATION.

(A) *Requirement for filing.*

(1) Every person who anticipates any taxable income which is not subject to § 39.27 or who engages in any business, profession, enterprise or activity subject to the tax imposed by § 39.22, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated tax due thereon, if any.

(2) Provided, however, if a person's income is wholly from qualifying wages from which the tax will be withheld and remitted to this municipality in accordance with § 39.27, such person need not file a declaration.

(B) *Dates for filing.*

(1) *Calendar dates for filing.* Such declaration shall be filed on or before April 15 of each year during the life of this subchapter, or on or before the fifteenth day of the fourth month following the date the taxpayer becomes subject to tax for the first time.

(2) *Fiscal dates for filing.* Those taxpayers having a fiscal year or period differing from the calendar year shall file a declaration on or before the fifteenth day of the fourth month following the start of each fiscal year or period.

(C) *Forms; credit for tax withheld or paid another community.*

(1) Such declaration shall be filed upon a form furnished by or obtainable from the Tax Administrator or an acceptable generic form, and credit shall be taken for the municipal tax to be withheld from any portion of such income. In accordance with the provisions of § 39.33, credit may be taken for tax to be withheld and remitted to another taxing municipality.

(2) The original declaration (or any subsequent amendment thereof) may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

(3) For taxpayers who are individuals, such declaration of estimated tax to be paid the municipality shall be accompanied by a payment of at least 22.5% of the estimated annual tax and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year.

(4) For taxpayers that are not individuals, such declaration of estimated tax to be paid the municipality shall be accompanied by a payment of at least 22.5% of the estimated annual tax and at least a similar amount shall be paid on or before the fifteenth day of the sixth, ninth and twelfth months after the beginning of the taxable year.

(5) The mere submission of a declaration estimating a tax liability shall not constitute filing unless accompanied by the required payment.

(D) *Amended declaration.*

(1) A declaration may be amended at any time.

(2) In the event that an amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.

(E) *Annual return required.* On or before the fifteenth day of the fourth month following the end of the calendar or fiscal year, an annual return shall be filed and any balance which may be due the municipality shall be paid therewith in accordance with the provisions of § 39.24.

(1995 Code, § 39.26) (Ord. 73-11, passed 2-19-1973; Am. Ord. 93-O-23, passed 12-15-1993; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.27 APPOINTMENT AND DUTIES OF TAX ADMINISTRATOR.

(A) *Collection; records.*

(1) *Collection of responsibility.* It shall be the duty of the Tax Administrator to collect and receive the tax imposed by this subchapter in the manner prescribed therein, to keep an accurate record thereof, and to report all monies so received.

(2) *Responsibility for maintenance of records.* It shall be the duty of the Tax Administrator to enforce payment of all income taxes owing the municipality, to keep accurate records for a minimum of six years, showing the amount due from each taxpayer required to file a declaration or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof.

(B) *Enforcement authority.* The Tax Administrator is hereby charged with the enforcement of the provisions of this subchapter, and is hereby empowered, subject to the approval of the Board of Review, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this subchapter, including provisions for the re-examination and correction of returns.

(C) *Determination of taxes.* In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Tax Administrator may determine the amount of tax appearing to be due the municipality from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

(D) *Compromise authority.* Subject to the consent of a majority of the Board of Review/Adjudication, the Tax Administrator shall have the power to compromise any liability imposed by this Tax Code.

(E) *Compromise authority for penalty and interest liabilities.* Upon the demonstration and documentation of good cause, the Tax Administrator shall have the power to compromise penalty and interest liabilities imposed by this subchapter, consistent with this subchapter and the Rules and Regulations.

(1995 Code, § 39.27) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.28 INVESTIGATIVE POWER OF ADMINISTRATOR.

(A) *Examination of taxpayer's records.* The Tax Administrator, or any of his or her authorized agents, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer, taxpayer, or any person subject to, or whom the Tax Administrator believes is subject to, the provisions of this subchapter for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholdings due under this subchapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request of the Tax Administrator, or his or her duly authorized agent or employee, the means, facilities and opportunities for making such examinations and investigations as are hereby authorized.

(B) *Appearance orders to taxpayers.* The Tax Administrator is hereby authorized to order any person, presumed to have knowledge of the facts, to appear at the office of the Tax Administrator and to examine such person, under oath, concerning any income which was or should have been reported for taxation, or withheld, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns, and the attendance of all persons before him or her, whether as parties or witnesses, whenever he or she believes such persons have knowledge of such income or information pertinent to such inquiry.

(C) *Result of refusal to submit information.* The refusal to produce books, papers, records or federal income tax returns, or the refusal to submit to such examination by any employer or person subject, or presumed to be subject, to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax, or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Tax Administrator authorized hereby, shall be deemed a violation of this subchapter punishable as provided in § 39.99.

(D) *Retention of records.* Every taxpayer shall retain all records necessary to compute his or her tax liability for a period of six years from the date his or her return is filed or the taxes required to be withheld are paid.

(E) *Confidential nature of information.* Any information gained as a result of returns, investigations, hearings, or verifications required or authorized by this subchapter shall be confidential and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the municipal corporation as authorized by this subchapter. The Tax Administrator of the municipal corporation may furnish copies of returns filed under this subchapter to the Internal Revenue Service and to the State Tax Commissioner.

(F) *Penalty for divulging information.* Any person divulging such information shall be guilty of a misdemeanor punishable by a maximum fine of $500 or imprisonment for not more than six months, or both.

(G) *Punishment of immediate dismissal.* In addition to the above penalty, any employee of the municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(1995 Code, § 39.28) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2003-O-53, passed 12-22-2003) Penalty, see § 39.99

§ 39.29 INTEREST AND PENALTIES.

(A) *Interest.* All taxes imposed and monies withheld or required to be withheld by employers under the provisions of this Tax Code and remaining unpaid five days after they become due shall bear interest at the same rate which Ohio R.C. § 718.12 requires be paid by municipalities on their income tax refunds, i.e., the federal short-term rate as defined in Ohio R.C. § 5703.47, plus 3% per year.

(B) *Penalties.* In addition to interest as provided in division (A) hereof, penalties are hereby imposed as follows based on the tax remaining unpaid after it becomes due:

(1) For failure to pay taxes due, other than taxes withheld, 1-1/2% per month or fraction thereof, or $25, whichever is greater;

(2) For failure to remit taxes withheld or required to be withheld from employees, 3% per month or fraction thereof, or $25, whichever is greater;

(3) Where the taxpayer has failed to file a return by the due date or by the date resulting from extension, $25;

(4) Where the taxpayer has failed to file a declaration on which he or she has estimated and paid a tax equal to or greater than the tax paid for the previous year, or where he or she has filed a previous return and has failed to file a declaration on which he or she has estimated and paid a tax equal to or greater than 90% of the actual tax for the year, or has failed to file a return and paid the total tax on or before the end of the month following the end of the taxable year; 10% of the difference between 90% of the actual tax for the year and the amount paid through withholding and declaration;

(5) No penalty or interest shall be charged against a taxpayer for the late payment or nonpayment of estimated tax liability if the taxpayer is an individual who resides in the municipal corporation but was not domiciled there on the first day of January of the current calendar year; or

(6) Except in the case of fraud, the penalty shall not exceed 50% of the unpaid tax.

(C) *Exceptions.* A penalty shall not be assessed on an additional tax assessment made by the Tax Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed, by the Tax Administrator; and provided further that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit, providing an amended return is filed and the additional tax is paid within three months after the final determination of the federal tax liability.

(D) *Minimum penalty.* Computed penalties of less than $5 for a first violation shall not be assessed. However, notification to the taxpayer of a first time violation will be made.

(E) *Abatement by Board of Review.* Upon recommendation of the Tax Administrator, the Board of Review may abate penalty or interest, or both, or upon an appeal from the refusal of the Tax Administrator to recommend abatement of penalty and interest concerning an item of income or expense, the Board may nevertheless abate penalty, interest, or both.

(1995 Code, § 39.29) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2001-O-3, passed 2-26-2001; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.30 COLLECTION AND REFUND.

(A) *Time limitation on suits.* All taxes imposed by this subchapter shall be collectible, together with any interest and penalties thereon, by suit as other debts of like amount are recoverable. No additional assessment shall be made after three years from the time the tax was due or the return was filed, whichever is later; provided however, there shall be no period of limitation on an additional assessment in a case of a return that omits gross income in excess of 25% of that required to be reported or in the case of filing a false or fraudulent return with intent to evade the tax, or in the case of failure to file a return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations the period within which an additional assessment may be made by the Tax Administrator shall be extended one year from the time of the final determination of the federal tax liability.

(B) *Time limitation on refunds.* Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date on which such payment was made or the return was due, or within three months after final determination of the federal tax liability, whichever is later.

(C) *Interest.* Interest shall be allowed and paid on any overpayment by a taxpayer of any municipal income tax obligation from the date of the overpayment, with the following exception. No interest shall be allowed on any overpayment that is refunded within 90 days after the final filing date of the annual return or 90 days after the complete return is filed, whichever is later. For purposes of computing the payment of interest on overpayments, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing that return. The interest shall be paid at the rate of interest prescribed by Ohio R.C. 5703.47.

(D) *Minimum amounts.* Amounts of less than $5 shall not be collected or refunded.

(1995 Code, § 39.30) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.31 BOARD OF REVIEW.

(A) *Composition and procedures.* A Board of Review, consisting of three members, residents of the municipality, to be appointed by the Mayor and approved by Council, is hereby created and shall be maintained to hear appeals. The members of the Board of Review shall be appointed for a term of three years; however, the members of the first Board of Review shall be appointed

for (one, two and three years respectively). A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board shall be conducted privately and the provisions of § 39.28 with reference to the confidential character of information required to be disclosed by the subchapter shall apply to such matters as may be heard before the Board on appeal.

(B) *Appeal, an alternative method of allocation.* All rules and regulations and amendments or changes thereto which are adopted by the Tax Administrator under the authority conferred by this subchapter, must be approved by the Board of Review before the same become effective. After such approval, such rules, regulations, amendments and changes shall be filed with the Clerk of Council and shall be open to public inspection. The Board shall hear and pass on appeals from any ruling or decision of the Tax Administrator, and, at the request of the taxpayer or Tax Administrator, is empowered to substitute alternate methods of apportionment.

(C) *Tax Administrator's decision.* Whenever the Tax Administrator issues a decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the municipality, the Tax Administrator shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(D) *Appeal by aggrieved person.* Any person who is aggrieved by a decision by the Tax Administrator and who has filed with the municipality the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board of Review by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within 30 days after the Tax Administrator has issued the decision.

(E) *Penalty and interest not sole basis for appeal.* The imposition of penalty and interest as prescribed in the codified ordinance of the municipality is not a sole basis for an appeal.

(F) *Hearing.* The Board of Review shall schedule a hearing within 45 days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.

(G) *Board action.* The Board may affirm, reverse, or modify the Tax Administrator's decision or any part of that decision. The Board shall issue a decision on the appeal within 90 days after the Board's final hearing on the appeal, and send notice of its final decision by ordinary mail to all of the parties to the appeal within 15 days after issuing the decision. The taxpayer or the Tax Administrator may appeal the Board's decision as provided in Ohio R.C. § 5717.011.

(H) *Board procedures and records.* Each Board of Review created pursuant to this section shall adopt rules governing its procedures and shall keep a record of its transactions. Such records are not public records available for inspection under Ohio R.C. § 149.43. Hearings requested by a taxpayer before a Board of Review created pursuant to this section are not meetings of a public body subject to Ohio R.C. § 121.22.

(1995 Code, § 39.31) (Ord. 73-11, passed 2-19-1973; Am. Ord. 2003-O-53, passed 12-22-2003)

§ 39.32 ALLOCATION OF FUNDS.

The allocation of the funds to be collected under this subchapter shall be determined by the Village Council.

(1995 Code, § 39.32) (Ord. 73-11, passed 2-19-1973)

§ 39.33 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY.

(A) Every individual taxpayer who resides in the village who receives net profits, salaries, wages, commissions, or other personal service compensation for work done or services performed or rendered outside of the village, shall be made to appear that he or she has paid a municipal income tax on the same income taxable under this section to another municipality. The individual taxpayer shall receive a credit not to exceed 1% of the tax assessed by this section on such income earned in another municipality where the tax is paid.

(B) For purpose of clarification, if the taxpayer works in another municipality, however that municipality's tax structure shall be, the taxpayer residing in the Village of Lincoln Heights must, by intent and interpretation of the amendment, pay to this municipality of which he or she is domiciled, 1% on all moneys earned, net profits, salaries, wages, commissions, or other personal service

compensation for work done or service performed or rendered outside the village.

(C) Employees of a village-based employer shall be eligible for a tax credit for work performed in the jurisdiction of other municipal tax districts. This provided such employee shall furnish satisfactory documentary evidence as proof of payment of taxes to such other municipality.

(1) The Tax Administrator, in the absence of such records, shall regard the taxpayer as having a taxable status in the village, regardless of where the services are performed.

(2) The Tax Administrator, for apportioning purposes, will recognize the employer's properly prepared W-2 statement allocating the respective employee's earnings in other taxing districts.

(D) A claim for refund or credit under this section shall be made in such manner as the Administrator may by regulation provide.

(1995 Code, § 39.33) (Ord. 73-11, passed 2-19-1973; Am. Ord. 78-O-26, passed 10-24-1978; Am. Ord. 93-O-23, passed 12-15-1993)

§ 39.34 INCOME TAX CREDIT.

Resident taxpayers who are 65 years of age or older during the taxable year shall receive a tax credit of $50, or such amount as shall be allowed in the computation of state tax liability.

(Ord. 86-O-19, passed 2-12-1986)

§ 39.35 INFORMATION REQUIRED OF LANDLORD.

(A) Within 30 days after a new tenant occupies rental property of any kind within the municipality, all owners of rental property who rent to tenants of apartments, rooms and other rental accommodations shall file with the Tax Administrator a report showing the name, address and telephone number, if available, of each such tenant who occupies an apartment, room or other rental property within the municipality.

(B) Within 30 days after a tenant vacates an apartment, room or other rental property located within the municipality, the owner of such vacated rental property shall file with the Tax Administrator a report showing the date of vacation from the rental property and a forwarding address.

(Ord. 2001-O-5, passed 5-14-2001; Am. Ord. 2003-O-5, passed 12-22-2003)

§ 39.36 EXCLUSIONS OR EXEMPTIONS TO THE PAYMENT OF INCOME TAX.

(A) *Precinct official (not considered taxable).* Compensation paid under Ohio R.C. §§ 3501.28 and 3501.36 to a person serving as a precinct official, to the extent that such compensation does not exceed $1,000 annually. Such compensation in excess of $1,000 may be subjected to taxation. The payer of such compensation is not required to withhold village tax from that compensation.

(B) *Transit authority (not considered taxable).* Compensation paid to any employee of a transit authority, regional transit authority or regional transit commission created under Ohio R.C. Chapter 306 for operating a transit bus or other motor vehicle for the authority or commission in or through the village unless the bus or vehicle is operated in a regularly scheduled route, the operator is subject to such tax by reason of residence or domicile in the village or the headquarters of the authority or commission is located within the village.

(C) *Public utility (not considered taxable).* The income of public utility when that utility is subject to tax levied under Ohio R.C. §§ 5727.24 or 5727.30 is not considered taxable, except starting January 1, 2002, the income of an electric company or combined company, as defined in Ohio R.C. § 5727.01, may be taxed in the village subject to Ohio R.C. Chapter 5745.

(D) *Pensions (not considered taxable).* Proceeds from welfare benefits, unemployment insurance benefits, social security benefits and qualified retirement plans as defined by IRS are not considered taxable.

(Ord. 2001-O-4, passed 2-12-2001)

§ 39.45 MAYOR'S DISCRETIONARY FUND.

(A) A Mayor's Discretionary Fund in the amount of $5,000 per year is created. The annual appropriation ordinance shall reflect this fund each ensuing year until provided otherwise by Council

(B) The Mayor shall be empowered to draw against the fund in order to finance bona fide village goals and objectives. The Mayor may draw against the fund either in advance of the activity contemplated, with any overage to be returned to the fund, or the fund may be used to reimburse the Mayor for expenditures made within the calendar year. Expenditures made from the fund shall be ordinary and necessary in relation to the needs of or business of the village, as set forth in I.R.C. Rule 162(a).

(Ord. 90-O-5, passed 2-14-1990)

§ 39.46 LAW ENFORCEMENT TRUST FUND.

(A) The Village Council establishes a Law Enforcement Trust Fund. This fund shall be in the form of a checking account maintained at a chartered and insured banking institution. The Village Council further authorizes the acceptance of the proceeds of drug forfeitures as ordered by any court of competent jurisdiction, or as occurs under federal law and regulation, whether in the form of monies, personal property, or real property.

(B) Any monies forfeited to the village under Ohio R.C. § 2933.43 are to be placed in a the Law Enforcement Trust Fund, and the fund is to administered by the Village Auditor's office in accordance with the criteria set forth herein as well as those set forth in the applicable sections of the Ohio Revised Code. The Village Auditor shall promptly notify the Safety-Service Director of receipts destined for this fund, and shall provide the Safety-Service Director with written reports of the fund balance on no less than a monthly basis. Property that is required by law to be titled or registered shall be titled or registered to the village, and shall be retained for the exclusive use of the Police Department, unless sold by the terms set forth in division (D) below. The Village Council further directs that the use of the funds is to be subject to all requisition auditing procedures as required by the Ohio Revised Code, directive of the Hamilton County Prosecuting Attorney, directive of the Ohio Attorney General, or directive of the Ohio State Auditor. The Village Council designates the Safety-Service Director as the recipient of all notices of pending forfeiture and other notices required to be given the village as they may pertain to the Law Enforcement Trust Fund.

(C) The persons authorized to requisition from the Special Fund shall be the Safety-Service Director and the Chief of Police, acting jointly. Any requisition not bearing both of these signatures shall not be honored.

(D) The Safety-Service Director is specifically empowered hereunder to dispose of any property, either by sale, abandonment or destruction, when the property has a fair market value at the date of its disposition equal to or less than $1,000. The Safety-Service Director shall apply to Council for permission to sell any property obtained by the Police Department under Ohio R.C. § 2933.43, should he or she determine such disposition to be preferable to destruction or retention and if the fair market value at the time of the disposition exceeds $1,000. The Village Council may require satisfactory showing that the monies to be obtained from the proposed sale will be of greater expedient to law enforcement than the property will be if retained. No weapon, dangerous ordnance, drug paraphernalia, or property that has been illegally modified shall be sold to the public hereunder. Such articles may be conveyed to other political subdivisions upon a showing that so doing will further law enforcement in this or any other jurisdiction. Notice of sale shall be given by two weeks newspaper ad, without appraisal, to highest bidder for cash, money order or certified check payable to the "Village of Lincoln Heights" only. Council may also direct that the notice and bid requirements be waived and the property be conveyed to another political subdivision, should that be recommended by the Safety-Service Director, or determined by the Village Council to be in the greatest public interest. The proceeds of any sale shall be administered as provided in division (E) below.

(E) Any cash ordered forfeited to the village, together with the proceeds of any sale hereunder are to be applied on a per case basis as follows:

(1) Payment of costs incurred in exacting the forfeiture;

(2) Payment toward the satisfaction of a valid lien held on the property by any person holding a valid and enforceable security interest, provided the lienholder was not on actual or constructive notice that the property was being used in violation of state, federal or local laws;

(3) Payment of seizing agency's costs in storage, maintenance, security and forfeiture of the property; and

(4) Deposit to the law enforcement trust fund.

(F) The fund shall be expended only to pay the costs of protracted or complex investigations or prosecutions, to provide matching funds to obtain federal grants to aid law enforcement, or for such other law enforcement purposes that the Village Council determines to be appropriate. The fund shall not be used to meet the operating costs of the village that are unrelated to law enforcement. In short, the, funds are to be disbursed only for the direct benefit of the Police Department.

(Ord. 91-O-4, passed 1-9-1991)

§ 39.47 MANDATORY DRUG FINE TRUST FUND.

(A) The Village Council establishes a Mandatory Drug Fine Trust Fund. This fund shall be in the form of a checking account maintained at a chartered and insured banking institution. The Village Council further authorizes the acceptance of the proceeds of mandatory drug fines as ordered by any court of competent jurisdiction.

(B) Any monies payable to the village for the benefit of the Police Department under Ohio R.C. §§ 2925.01 *et seq.* are to be placed in the Mandatory Drug Fine Trust Fund, and the fund is to administered by the Village Clerk's office in accordance with the criteria set forth herein as well as those set forth in the applicable sections of the Ohio Revised Code. The Village Clerk shall promptly notify the Safety-Service Director of receipts destined for this fund, and shall provide the Safety-Service Director with written reports of the fund balance on no less than a monthly basis. The Village Council further directs that the use of the funds is to be subject to all requisition auditing procedures as required by the Ohio Revised Code, directive of the Hamilton County Prosecuting Attorney, directive of the Ohio Attorney General, or directive of the Ohio State Auditor. The Village Council hereby designates the Safety-Service Director as the recipient of all notices of pending forfeiture and other notices required to be given the village as they may pertain to the Law Enforcement Trust Fund set forth in § 39.46 of this code of ordinances.

(C) The fund shall be expended only to advance the investigation and prosecution of drug-related offenses, or to purchase equipment to be used exclusively in the investigation of drug-related offenses.

(Ord. 91-O-32, passed 12-11-1991)

§ 39.48 SPECIAL ACCOUNT FOR FUNDS RECEIVED FROM LEASE OF VILLAGE PROPERTY.

(A) Any funds due to, and received by the village as payment for the purchase or leasing of village-owned property shall be deposited into a special separate account of the village.

(B) Funds accumulating in the special separate account shall be used solely for expenditures related to the commercial, industrial or residential development of the village.

(C) No expenditures shall be made from this special account without the Village Council's approval.

(D) A full report shall be prepared by the Auditor and submitted to the Mayor and Village Council on the last day of the February, April, June, August, October and December and shall include the balance of funds in the special account, funds deposited in and funds expended from the account since January 1 of each year.

(Ord. 90-O-24, passed 5-9-1990)

§ 39.49 DEBT SERVICE FUND.

The Special Assessment Fund and the Debt Service Fund are consolidated into one fund and shall be known as the Debt Service Fund.

(Ord. 85-O-8, passed 3-11-1985)

VILLAGE MOTOR VEHICLE LICENSE TAX

§ 39.60 MOTOR VEHICLE LICENSE TAX.

(A) The village establishes and levies an annual license tax in the amount of $5 per year per vehicle pursuant to Ohio R.C. § 4504.172.

(B) The license tax described in division (A) above shall be levied on all motor vehicles the district registration of which, as defined in Ohio R.C. § 4503.10, is the Village of Lincoln Heights, Ohio.

(Ord. 91-O-20, passed 7-10-1991; Am. Ord. 93-O-1, passed 1-27-1993)

Cross-reference:

Traffic code; licensing provisions, see Ch. 71

§ 39.99 PENALTY.

(A) *Generally*. Any person who shall:

(1) Fail, neglect or refuse to make any return or declaration required by this chapter;

(2) Knowingly make an incomplete, false or fraudulent return;

(3) Willfully fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;

(4) Fail, neglect or refuse to withhold the tax from his or her employees and remit such withholding tax to the Tax Administrator;

(5) Refuse to permit the Tax Administrator or any duly authorized agent or employee to examine his or her or his or her employer's books, records, papers or federal income tax returns;

(6) Fail to appear before the Tax Administrator and to produce his or her or his or her employer's books, records, papers or federal income tax returns upon order or subpoena of the Tax Administrator;

(7) Refuse to disclose to the Tax Administrator any information with respect to such person's or such person's employer's income or net profits;

(8) Willfully give to an employer by an employee false information as to his or her true name, correct social security number and residence address, or the failure of such employee to promptly notify an employer of any change in residence address and date thereof;

(9) Failure on the part of any employer to maintain proper records of employees' residence addresses, total wages paid and municipal tax withheld, or to knowingly give the Tax Administrator false information;

(10) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator;

(11) Willfully fail or willfully refuse to make any payment of the estimated tax for any year or part of any tax year as required by § 39.26;

(12) Fail to cause the tax withheld from the qualifying wages of the employees pursuant to this chapter to be paid to the municipality in accordance with the provisions of § 39.22; or

(13) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter for which violation no penalty is otherwise provided, is guilty of a minor misdemeanor on a first offense and shall be fined not more than $100; on a second offense within two years after the first offense, such person is guilty of a misdemeanor of the third degree and shall be fined not more than $500 or imprisoned not more than 60 days, or both, for each offense; on each subsequent tax code violation within two years after the first offense such person is guilty of a misdemeanor of the third degree, and punished as provided for herein.

(B) *Time limits*. All prosecutions under this section must be commenced within the time specified in Ohio R.C. § 718.12.

(C) *Failure to receive or procure a return*. The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return, return or declaration, from filing such form or from paying the tax.

(D) *Statute of limitations.*

(1) Civil actions to recover municipal income taxes and penalties and interest on municipal income taxes shall be brought within three years after the tax was due or the return was filed, whichever is later.

(2) Prosecutions for an offense made punishable under this chapter shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of 25% or more of income required to be reported, prosecutions may be commenced within six years after the commission of the offense. See Ohio R.C. § 718.12.

(E) *Failure to file.* The failure of any employer, taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him or her from making any information return, return or declaration, from filing such form, or from paying the tax.

(F) *Person defined.* The term ***PERSON*** as used in this section shall, in addition to the meaning prescribed in § 39.21, include in the case of an association or corporation not having any partner, member or officer within the municipality, any employee or agent of such association or corporation who can be found within the corporate limits of the municipality.

(1995 Code, § 39.99) (Ord 4-1948, passed 1-19-1948; Am. Ord. 73-11, passed 2-19-1973; Am. Ord. 2003-O-53, passed 12-22-2003)

CHAPTER 40: VILLAGE POLICIES

Section

40.01 Public hearing; deposit required

40.02 Development proposal review process

40.03 Administrative Enforcement System

40.04 Return of village property

40.05 Identity Theft Policy

§ 40.01 PUBLIC HEARING; DEPOSIT REQUIRED.

(A) *Amount of deposit.* Any person who initiates procedures requiring a public hearing before the Planning Commission, Village Council, Committee of Village Council or an administrative appeal before the Personnel Advisory and Appeal Board, Zoning Board of Appeals, Housing Board of Appeals, Tax Board of Review, or any other authorized municipal body, shall deposit in advance the sum of $200 to defray the expenses thereof.

(B) *Refunds and deficiencies.* If the costs of the proceedings are less than the deposit, the village shall refund the difference to the person depositing the same. If the costs of the proceedings are in excess of the deposit, then the person initiating the proceedings shall pay the village the amount of the deficiency. Upon refusal or failure of such person to pay the deficiency, the village shall take the necessary legal action to collect the same.

(C) *Employee appeals.* If an employee files and appeal to the Personnel Advisory and Appeal Board from an administrative action of the appointing authority and prevails before such Board, then the deposit shall be refunded to such prevailing employee.

(D) *Indigency; waiver.* Upon proof of indigency on the part of any person the village shall waive the required deposit and grant such person the right to such public hearing or appeal, as the case may be, under the following conditions.

(1) The determination of indigency shall be made by the Mayor subject to review by Council. The Mayor shall investigate the financial status of each person claiming indigency and may require the person to disclose the records of public or private income sources and property, otherwise confidential.

(2) If the determination of indigency cannot be made by the Mayor within the time limits required by the appropriate code section for such public hearing or appeal, the municipal body shall proceed with the public hearing or appeal. If it is subsequently determined that the person was not indigent, then such person shall pay the costs of such proceedings.

(3) An ***INDIGENT PERSON*** is defined as one who is a pauper or destitute of means except such as derived from public

charity.

(Ord. 85-O-2, passed 1-14-1985)

§ 40.02 DEVELOPMENT PROPOSAL REVIEW PROCESS.

The review of development proposals will take place in accordance with the steps outlined in this section throughout the duration of the Economic Development Coordinator's tenure with the village, unless otherwise amended by Village Council.

(A) *Development review process - flow chart.*

Step 1: All proposals submitted to Mayor.

Step 2: Mayor submits proposals to Economic Development Coordinator (EDC).

Step 3: EDC presents proposals to Village Council in Executive Session. *Note: At this point, Council reserves right to reject any or all proposals.*

Step 4: Mayor will introduce live proposals to the Council and Planning and Development Committee will refer item to Planning Commission.

Step 5: Review by Planning Commission with subsequent recommendation to Council.

Step 6: Planning Commission sends item to appropriate Council Committee(s) for their review and recommendation.

Step 7: Items return with recommendations to Village Council for vote.

(B) *Development review process.*

Step 1. All proposals for development, or proposals which may affect development, must be submitted to the Mayor in writing.

Step 2. The Mayor will send all such proposals identified in Step 1, to the Economic Development Coordinator (EDC). EDC will review the proposal(s) and work with developer to compile information sufficient to make a meaningful presentation to Village Council and the Planning Commission, and to make a recommendation to Council as to what appropriate future actions should be taken regarding the proposal. Members of Village Council will be kept informed of all proposals received; however, proposals will not be forwarded to Council until sufficient details have been received from developer. ***SUFFICIENT DETAILS*** is defined as the following:

(a) A description of the proposed project, including uses, required parking and access, and an indication of how the proposed use does or does not conform to applicable Building and Zoning Code provisions;

(b) A listing of the individuals/entities making up a project team;

(c) Estimated costs and the identification of potential sources and uses of funds;

(d) A time frame for the project;

(e) A general site plan; or

(f) Any marketing data which provides support and justification for the project.

Step 3.

(a) The EDC will compile the information, present all proposals to members of the Village Council in an executive session, and make a recommendation of further action on each proposal. Council members reserve the right at this point to reject any or all proposals.

(b) In the event that multiple proposals are submitted for a site, the EDC will review each proposal with Council members in an executive session of Council. The best proposal(s) will be selected for further consideration and will proceed to Council.

(c) 1. Council members should consider proposals on the basis of the following criteria:

a. The financial ability of the developer to carry out the project;

b. Developer's experience in similar projects;

c. The feasibility, appropriateness and/or marketability of the proposed use;

d. The proposal's ability to increase the village's tax base; and

e. Project's time schedule.

2. These items are not listed in any priority, and the list is not meant to be all-inclusive.

Note: *The time frame for proposal review during these first three steps is contingent upon the ability of developer to provide sufficient details.*

Step 4. Following a decision by Council in executive session, the Mayor will introduce live proposals to the Council Review Process. Village Council will refer the item to the Planning Commission or to the appropriate Council Committee.

Step 5.

(a) The Planning Commission, as an advisory body to Council, shall preview the proposal(s) presented and make a recommendation to Village Council. The Planning Commission must commence review of the proposal within seven days of its referral from Village Council. Development projects which are consistent with current zoning will be deemed as being consistent with the overall plan of the village, and therefore, will not require a public hearing. When zone changes or variances are not required, Planning Commission must produce a recommendation for Council within 21 days of the initial presentation of the project to the Planning Commission or the proposal shall be presumed to have been approved by the Planning Commission.

(b) When projects do require zone changes or variances, the developer may have to submit additional information for the zoning matter to be considered. If a public hearing is necessary, current zoning legislation requires notification 20 days in advance of a public hearing. Therefore, the overall time frame for Planning Commission's recommendation concerning the proposal shall not exceed 45 days or the proposal shall be presumed to have been approved by the Planning Commission.

Step 6. Within the time frame(s) specified in Step 5, the Planning Commission shall forward a recommendation to the appropriate Council Committee(s). The Council Committee(s) shall consider the proposal and make a recommendation to full Council within 21 days of receiving the referral from the Planning Commission or the proposal shall be presumed to have been approved by the Council Committee(s).

Step 7. From Committee, the item will return, with recommendations, for a vote by the full Council.

(Ord. 90-O-21, passed 5-23-1990)

§ 40.03 ADMINISTRATIVE ENFORCEMENT SYSTEM.

(A) Criminal prosecution has been the traditional method for adjudication and enforcement of the Lincoln Heights Code of Ordinances.

(B) Criminal prosecution is often ineffective in deterring Lincoln Heights Code of Ordinances violations or securing timely correction of the violations; and criminal prosecution for Lincoln Heights Code of Ordinances violations is time-consuming, resource draining and frequently fails to address community concerns.

(C) A system of administratively assessed civil fines offers a more effective way to obtain compliance, can be more responsive to citizen complaints and reduce the Lincoln Heights Mayor's Court caseload, while not imposing additional costs on the taxpayers.

(D) An administrative enforcement system for hearing cases and assessing civil fines will provide a more effective and efficient method for the village to respond to Lincoln Heights Code violations and is established.

(E) Neither the Village of Lincoln Heights, the federal government, the State of Ohio, nor any village, federal or state agency or political subdivision is liable for a civil fine imposed.

(Ord. 97-O-17, passed 4-17-1997)

§ 40.04 RETURN OF VILLAGE PROPERTY.

(A) Council members, officials, administrators and contractors are responsible for all of the property issued to them or in their possession and control.

(B) Council members, officials, administrators, and contractors must return all property immediately upon request, termination of employment, or expiration of term of office.

(C) The Village may withhold from the paycheck(s) of the Council members, officials, administrators, and contractors the cost of any items that are not immediately returned, and may also take all appropriate action to recover or obtain reimbursement for the property.

(Ord. 2008-O-11, passed 4-28-2008)

§ 40.05 IDENTITY THEFT POLICY.

The Village Council has determined that it is in the best interests of the residents of the Village to establish an identity theft policy to ensure the Village is operating in compliance with the federal "Red Flag Rule" that goes into effect on August 1, 2009.

(Res. 2009-R-22, passed 7-27-2009)

CHAPTER 41: DISASTER AND EMERGENCY PLANNING

Section

41.01 Purpose and declaration of policy

41.02 Mayor's power during emergency

41.03 Effective date and termination of emergency powers

41.04 Selection of Director of Disaster Services

41.05 General duties of Director of Disaster Services

41.06 Emergency operations plan

41.07 Other specific powers and duties of the Director

41.08 Operational organization

41.09 Emergency procurements

41.10 Severability

41.99 Penalty

§ 41.01 PURPOSE AND DECLARATION OF POLICY.

This chapter is enacted to set out and clarify the authority of the village, its officers and employees with regard to emergency and disaster situations. It is intended to grant as broad a power as permitted by statutory and constitutional authority.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.02 MAYOR'S POWER DURING EMERGENCY.

Notwithstanding any provision of this code to the contrary, when the Mayor determines in the Mayor's sole discretion that a state of public emergency exists within the village, the Mayor may by proclamation declare a state of emergency, govern the village by

proclamation and exercise through the assistance of the Director of Disaster Services and in consultation with the Village Attorney, all emergency powers including, but not limited to, all of the following:

(A) The power to direct emergency response activities by village departments including, but not limited to, the Police and Fire Departments, and by such emergency services personnel as the Mayor may designate or appoint;

(B) The power to execute contracts for the emergency construction or repair of public improvements, when the delay of advertising and public bidding might cause serious loss or injury to the village, upon following the procedures of § 41.09;

(C) The power to purchase or lease goods and services that the Mayor deems necessary to the emergency response or for the repair of village facilities or both upon following the procedures of § 41.09;

(D) The power to lease real property, or structures, or both, that the Mayor deems necessary for the continued operation of village government;

(E) The power to promulgate rules and orders to implement and clarify the Mayoral proclamation exercising emergency power; and

(F) The power to delegate any or all of these duties to the Director of Disaster Services as defined in § 41.04.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.03 EFFECTIVE DATE AND TERMINATION OF EMERGENCY POWERS.

Proclamations, rules, and orders issued pursuant to § 41.02 shall be effective upon issuance and shall remain in effect until withdrawn by the Mayor or issuing authority. However, those proclamations, rules, and orders shall be withdrawn by the Mayor or issuing authority, and those persons acting pursuant to § 41.02 shall cease to exercise emergency powers at such time as the conditions giving rise to the emergency cease.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.04 SELECTION OF DIRECTOR OF DISASTER SERVICES.

The Village Manager or the Village Manager's designee shall serve as the Village Director of Disaster Services.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.05 GENERAL DUTIES OF DIRECTOR OF DISASTER SERVICES.

(A) The Director of Disaster Services shall be responsible for the performance and supervision of performance of all duties in connection with coordinating and carrying out the village's role in furnishing services in the event of major natural or manmade disaster, including but not limited to floods, fire, earthquakes, hurricanes, tornadoes, windstorms, tidal waves, epidemics, hazardous substance or nuclear power plant accidents or incidents, insurrections, riots, looting, and persistent violent civil disobedience, which threaten the public peace, health, and safety or which damage and destroy public or private property of the village.

(B) The Director of Disaster Services shall assist the Mayor or the Mayor's designee in the exercise of emergency powers under § 41.02.

(C) The Director of Disaster Services shall act in coordination with the state and other governmental agencies as may be necessary to plan and implement a joint jurisdiction emergency planning and disaster services plan and mutual aid arrangements.

(D) The Director of Disaster Services shall consult with the Village Attorney in the planning and exercise of emergency powers.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.06 EMERGENCY OPERATIONS PLAN.

The Director of Disaster Services shall recommend for adoption by the Village Council, upon approval by the State Office of Disaster Services, an emergency operations plan for the village and recommend for adoption by the Village Council mutual aid plans and agreements which are deemed essential for the plan. Such mutual aid plans may authorize the employment by the county and other cities within the county of the Village Director of Disaster Services as area coordinator for mutual aid. The Director of Disaster Services shall make continuing studies of the need for amendments and improvements in such plans.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.07 OTHER SPECIFIC POWERS AND DUTIES OF THE DIRECTOR.

The Director of Disaster Services shall:

(A) Request the Mayor when appropriate to declare a state of emergency as provided in § 41.02;

(B) Control and direct emergency training activities;

(C) Maintain a liaison with other municipal, state, regional and federal disaster services agencies;

(D) Marshal, after the declaration of a state of emergency, all necessary personnel, equipment and supplies from any department of the village to aid in carrying out the emergency operations plan;

(E) Prepare under the direction of the Mayor and in consultation with the Village Attorney, all necessary emergency proclamations, rules, and orders, pursuant to § 41.02 and implementing the emergency operations plan;

(F) Coordinate the drafting of proposed mutual aid agreements;

(G) Serve as an operations officer for any joint or mutual emergency operation administration; and

(H) Assume other emergency responsibilities as assigned by the Mayor of Village Council.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.08 OPERATIONAL ORGANIZATION.

(A) The operational disaster services organization of the village shall consist of municipal officers and employees who may be designated by the Village Manager and all volunteer workers.

(B) Plans of organization shall substantially conform to recommendations of the federal government and the State Office of Disaster Services.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.09 EMERGENCY PROCUREMENTS.

(A) Notwithstanding any provision of the code to the contrary, the Mayor, upon declaration of a state of emergency by proclamation as provided in § 41.02, may authorize the Village Manager or the Village Manager's designees to procure by purchase or lease, such goods and services as are deemed necessary for the village emergency response effort.

(B) This emergency procurement of goods or services may be made in the open market without filing a requisition or estimate and without advertisement for immediate delivery or furnishing.

(C) A full written account of all emergency procurement made during this emergency, together with a requisition for the required materials, supplies, equipment, or services, shall be submitted to or provided by the Village Manager within 30 days after their procurement, and shall be open to public inspection for a period of at least one year subsequent to the date of the emergency purchases.

(D) The Village Manager shall, within three months of the conclusion of the emergency, formally communicate these emergency expenditures in a full written account to the Village Council.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.10 SEVERABILITY.

The provisions of this chapter are declared to be severable, and if any section, sentence, clause or phrase of the chapter shall for any reason be held invalid or unconstitutional or if the application of this chapter to any person or circumstances is held invalid or unconstitutional, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this chapter.

(Ord. 2001-O-50, passed 11-13-2001)

§ 41.99 PENALTY.

The violation of a proclamation of an emergency, a subsequent proclamation exercising emergency powers, a rule, or order, which proclamation, rule or order is issued pursuant to § 41.02, or the violation of any order or directive given by a peace officer or designated emergency services personnel pursuant to authority resulting from § 41.02 is a first degree misdemeanor and punishable accordingly.

(Ord. 2001-O-50, passed 11-13-2001)

CHAPTER 42: CHARTER AMENDMENTS

Section

42.01 Qualifications

42.02 Terms of office

42.03 Organization of Council

42.04 Stipends, expenses

42.05 Council procedures, meetings

42.06 Council procedures, ordinances

42.07 Chief of Police

42.08 Appropriation ordinance

42.09 Recall

42.10 Charter Revision Committee

42.11 Zoning Board of Appeals

42.12 Public Improvement Commission

§ 42.01 QUALIFICATIONS.

(A) Any qualified resident elector who has been a resident of the municipality for a continuous period of time not less than one year preceding the election shall be eligible to serve as a member of Council. An elector who is delinquent on taxes due the village or who has been convicted of a felony, treason, or who has been imprisoned for a felony shall not be qualified to serve as a member of Council. Council members shall not hold any other public office, or any other employment with the Municipality of Lincoln Heights except that of a notary public, or a member of the National Guard or a Reserve in the Armed Forces. All members of Council must be willing to accept and receive ongoing training in laws or other regulations pertaining to local, county, state, national or federal affairs.

(B) A member shall remain a qualified domicile resident elector of the municipality during a member's term of office. A member who ceases to be a qualified domicile resident elector shall automatically have his or her seat declared vacant.

(Ord. 98-O-8, passed 2-23-1998)

Cross-reference:

Qualifications, see Charter § 2.02

§ 42.02 TERMS OF OFFICE.

Members of Council shall be elected for four-year overlapping terms. At the first municipal election after the adoption of this Charter, November 2, 1993, each of the four candidates receiving the largest number of votes shall be elected to four-year terms of office, and each of the three candidates receiving the next highest number of votes shall be elected to a two-year term of office. Thereafter, beginning November, 1995, all members of Council shall be elected to a four-year term of office. All Council terms shall begin on the first day of January after the municipal election and Council shall meet on the same date for the purpose of organizing.

(Ord. 97-O-37, passed 7-30-1997; Am. Ord. 99-O-84, passed 12-27-1999)

Cross-reference:

Terms of office, see Charter § 2.03

§ 42.03 ORGANIZATION OF COUNCIL.

On the first day of January after the municipal election, Council shall meet for purpose of organizing. At this meeting, the elected members shall subscribe to the oath of office set forth in Article IX of this Charter, and shall proceed by majority vote to elect one of its members to serve as Mayor and another as Vice Mayor. Each shall serve a term of two years. This Council shall appoint a Clerk who shall perform duties as prescribed in this Charter or by general law or in ordinance. The Clerk shall serve at the pleasure of Council and as secretary to the Mayor.

(Ord. 97-O-37, passed 7-30-1997; Am. Ord. 99-O-85, passed 12-27-1999)

Cross-reference:

Organization of Council, see § 2.04

§ 42.04 STIPENDS, EXPENSES.

(A) The stipend of members of Council shall be per annum, payable monthly regardless of the number of Council meetings held during each month. Council by ordinance shall establish the stipend for the Mayor, Vice Mayor, and members of Council.

(B) The stipend of members of Council, including the Mayor and Vice Mayor, shall not exceed the following amounts without the approval of the voters:

(1) Mayor - $5,500;

(2) Vice Mayor - $4,500; and

(3) Council Members - $3,500.

(C) Attendance at regularly scheduled Council meetings, unless excused in accordance with the Rules of Council, is mandatory for payment of the monthly stipend. Minutes of Council will verify attendance.

(D) Upon prior approval of Council, members shall be reimbursed for expenses incurred in accordance with the Rules of Council, while on municipal business.

(Ord. 98-O-7, passed 2-23-1998; Am. Ord. 98-O-66, passed 9-1-1998; Am. Ord. 98-O-81, passed 11-9-1998, Am. Ord. 99-O-33, passed 5-20-1999)

Cross-reference:

Stipends, expenses, see Charter § 2.08

§ 42.05 COUNCIL PROCEDURES, MEETINGS.

Council shall meet regularly at least twice in every month except the month of August. Standing Committees of Council shall meet regularly at least once in every month except the month of August. Special meetings may be called by the Mayor or a majority of Council members. Whenever practicable, every member shall be given at least 12 hours notice of the special meeting. All meetings shall be public, except that Council may recess to a closed session for the purpose of discussing any matter which would tend to defame or prejudice the reputation of any person provided that the subject to be discussed is expressed in the motion calling for such session, and the final action on the subject shall not be taken by Council until the matter is placed on the regular agenda.

(Ord. 97-O-49, passed 7-30-1997; Am. Ord. 98-O-63, passed 9-1-1998)

Cross-reference:

Council procedures, meetings, see Charter § 2.11(a)

§ 42.06 COUNCIL PROCEDURES, ORDINANCES.

(A) Action of Council shall be by ordinance, resolution or motion. Every action of a general and permanent nature or granting a franchise, or levying a tax, or appropriating money, or contracting a debt, or for the purchase, lease or transfer of public property, or establishing an offense and fixing a penalty therefor shall betaken by ordinance or resolution. All other action may be by motion. Any member of Council may, at a regular or special meeting, introduce any ordinance, resolution or motion.

(B) Except on procedural motions, voting shall be by roll call and the ayes and nays shall be recorded in the journal. The affirmative votes of at least a majority of the membership shall be required for every action.

(C) Every ordinance shall be fully and distinctly read on three different days, unless each member has previously been furnished a copy thereof, in which case it can be read by title only. By a vote of five members, Council can suspend the rule requiring the reading of an ordinance on three different days.

(D) Except as otherwise provided in the Charter, each ordinance approved by the Council will be effective at the end of 30 days following passage, or such longer period as is determined by the Council. If the Council determines that an ordinance should be passed on an emergency basis, the reasons for declaring such ordinances to be an emergency measure shall be set forth in one section of the ordinance which section shall be passed only upon an aye and nay vote upon a separate roll call with at least five of the members voting affirmatively. No ordinance prescribing rates and charges by a public utility, or granting a franchise, or levying a tax, shall be passed as an emergency measure. An emergency ordinance shall become effective immediately upon passage, or at such later time as it may specify.

(E) Every proposed ordinance shall be introduced in writing. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The opening clause of the ordinance shall be "Be it ordained by the Council of Lincoln Heights, Ohio . . ." Any ordinance which repeals or amends an existing ordinance or part of the Municipal Administrative Code shall set out in full the ordinance, sections or subsections to be repealed or amended.

(Ord. 97-O-48, passed 7-30-1997)

Cross-reference:

Council procedures, ordinances, see Charter § 2.11(d)

§ 42.07 CHIEF OF POLICE.

The Chief of Police shall be appointed by the Manager with the approval of Council. The Chief of Police shall be a member of the administrative service under the supervision and control of the Village Manager pursuant to § 3.03 of the Charter.

(Ord. 98-O-6, passed 2-9-1998)

Cross-reference:

Chief of Police, see Charter § 3.11

§ 42.08 APPROPRIATION ORDINANCE.

If Council fails to adopt a temporary appropriation ordinance by December 31 of the current year, the amounts appropriated for current operation for the current fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis, with all items in it prorated accordingly. But no later than the first day of April of the current year, a permanent appropriation ordinance shall be adopted. Council shall provide for a public hearing upon such permanent appropriation ordinance, and may amend such ordinance at any time. Adoption of an appropriation ordinance shall constitute appropriations of the amount specified therein as expenditures from the funds indicated.

(Ord. 97-O-40, passed 7-30-1997)

Cross-reference:

Appropriation ordinance, see Charter § 4.09(b)

§ 42.09 RECALL.

The voters of Lincoln Heights shall have the power to recall and remove from office any member of Council before the expiration of his/her office. A recall may be started by the filing with the Clerk of Council a petition signed by qualified voters equal in number to 25 percent of those who cast ballots in the preceding municipal election, requesting that a Councilmember, named in the petition, be removed from office. Such petition shall contain a specific statement of not less than twenty-five words and not more than two hundred words of the particular grounds upon which the removal of such person is sought. Provided, however, that the question of the removal of any Councilmember from office shall not be submitted to the voters until such Councilmember has served for at least one year of the term during which he/she is sought to be recalled. If the Clerk finds the petition sufficient, he or she shall certify it to the Board of Elections of Hamilton County, to be placed on the ballot at the next succeeding municipal or general election occurring not less than 90 days thereafter, the question: "Shall (name of Councilperson) be recalled from office in the Municipality of Lincoln Heights? Yes___ No___." If, at the election, a majority of the votes cast on the question shall be in favor of recall, the official shall forthwith retire from office, and the resulting vacancy filled in a manner prescribed in this Charter; provided however, no member of Council who has been recalled pursuant to Article VI of this Charter shall be eligible for reappointment to any seat in Council during the same term of the Councilmanic office from which he or she has been recalled.

(Ord. 97-O-41, passed 7-30-1997; Am. Ord. 2008-O-24, passed 7-7-2008)

Cross-reference:

Recall, see Charter § 6.01

§ 42.10 CHARTER REVISION COMMITTEE.

There shall be a Charter Revision Committee which shall consist of three members who are electors of the municipality, appointed by the Mayor with the concurrence of Council for staggered five-year terms. At the time of the first appointment under this Charter, two members shall be appointed for five-year terms and one member shall be appointed for a three-year term. Thereafter, all appointments shall be for five years. Members shall serve without compensation. The Committee shall adopt such rules as it deems necessary for the performance of its function. The Committee shall periodically review the Charter and make written reports to Council recommending amendments to the Charter to be submitted to the voters.

(Ord. 97-O-12, passed 4-17-1997; Am. Ord. 98-O-64, passed 9-1-1998)

Cross-reference:

Charter revisions Committee, see Charter § 9.04

§ 42.11 ZONING BOARD OF APPEALS.

There is hereby established a Zoning Board of Appeals, consisting of five electors of the village appointed by the Council. One of the members shall be a member of the Planning Commission, whose term shall coincide with such member's Planning Commission term; one of the members shall be appointed for a two-year term; two of the members shall be appointed for a one-year term and one

member shall be appointed for a four-year term. Thereafter, each member shall be appointed for a four-year term. All rules, regulations, procedures, requirements necessary for the operations of the Board shall be established by ordinance. The Zoning Board of Appeals shall hear appeals of persons or companies affected by the decision of the Building Inspector and/or zoning regulations.

(Ord. 98-O-65, passed 9-1-1998; Am. Ord. 2001-O-36, passed 7-23-2001)

Cross-reference:

Zoning Board of Appeals, see Charter § 11.04

§ 42.12 PUBLIC IMPROVEMENT COMMISSION.

Section 11.07 is hereby repealed and the Public Improvements Commission abolished.

(Ord. 98-O-62, passed 9-1-1998)

Cross-reference:

Public Improvements Commission, see Charter § 11.07

TITLE IX: GENERAL REGULATIONS

Chapter

90. ANIMALS

91. FIREWORKS AND EXPLOSIVES; FIRE PREVENTION

92. INTOXICATING LIQUORS

93. NUISANCES; JUNKED VEHICLES

94. SANITATION AND HEALTH

95. STREETS AND SIDEWALKS

96. SPOT BLIGHT

97. PARADES, MARCHES OR PROCESSIONS

CHAPTER 90: ANIMALS

Section

General Provisions

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90.02 Liability insurance required

90.03 Registration of dogs

90.04 Rules, regulations and fees

90.05 Seizure and impoundment of dog

90.06 Seeing eye dogs

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90.20 Leash required

90.21 Dangerous dog to be properly confined or leashed

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90.24 Animals running at large

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90.26 Unavoidable escapes

90.27 Fees

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90.30 Reporting escape of certain animals required

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90.52 Pit bull terriers

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GENERAL PROVISIONS

§ 90.01 DEFINITIONS.

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

COMPETENT ADULT. An individual over 18 years of age with both the mental and physical ability to control the dog that he or she is harboring.

DANGEROUS DOG. A dog which has:

(1) Without provocation while off its owner's or harborer's premises causes an individual to reasonably believe that the dog will cause physical harm to a person; or

(2) A propensity or disposition to unprovokedly attack or cause injury to humans or domestic animals off its owner's or harborer's premises.

HARBOR. Control, possess or oversee.

HARMLESS DOG. A dog which is neither dangerous nor vicious.

INJURY. Any injury less than a severe injury.

LEASH. A rope, leather strap, chain or other type of tether with sufficient strength to bind a dog to the person harboring the dog.

OWNER. Any individual, person, partnership, firm, joint stock company, corporation, associations, trust, estate, or other legal entity. The knowledge and actions of the person employed by or agents acting on behalf of corporations or principals shall be imputed to be the knowledge and acts of both the individuals, corporations and principals. If the ***OWNER*** of a dog is a minor, then the minor's parent or legal guardian is deemed the owner for the purposes of this chapter.

PREMISES. The structure and the real property which is immediately surrounding the structure titled to or controlled by the owner or harborer of a dog. This shall include any place of residence, business or other property.

SEVERE INJURY. A physical injury to a human being that results in a broken bone or muscle tear requiring corrective or cosmetic surgery or resulting in hospitalization, any physical injury to a child under the age of six years requiring the treatment of a licensed physician.

VICIOUS DOG. Any dog which:

(1) Without provocation, has inflicted severe injury on a person;

(2) Has been trained for dog fighting or is kept primarily or in part for the purpose of dog fighting;

(3) Is a dog commonly defined as a pit bull; or

(4) Has been used in the commission of a crime.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.02 LIABILITY INSURANCE REQUIRED.

The owner or harborer of a vicious dog, or in the event the owner is a minor, the owner's parent or guardian shall obtain and keep in force liability insurance in an amount of not less than $50,000 protecting against injury or death caused by such vicious dog. The owner or harborer, or in the event the owner or harborer is a minor, the owner's or harborer's parent or guardian, shall provide the Lincoln Heights Police Department with proof of the insurance required herein.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.03 REGISTRATION OF DOGS.

(A) The registration of dogs shall be with the Hamilton County Auditor in accordance with Ohio R.C. § 955.01, and its amendments, which are adopted and incorporated herein.

(B) The owner or harborer of a dangerous and/or vicious dog shall within seven days of possession comply with divisions of (1) through (8) of this section; and with all other divisions indicated herein:

(1) Have the dangerous dog identified using a micro chip inserted between the top of the dog's shoulder blades at the withers by an individual licensed to practice veterinary medicine in the State of Ohio;

(2) Have the vicious dog tattooed on the inside thigh and have an identifying micro chip inserted between the top of the dog's shoulder blades and the withers by an individual licensed to practice veterinary medicine in the State of Ohio. The tattoo shall be a number provided by the Lincoln Heights Police Department;

(3) Provide the Lincoln Heights Police Department with:

(a) Documentation from the veterinarian describing the tattoo and micro chip number;

(b) Current color photographs of the dog showing the front face, side head, and whole body of the dog, and any identifying characteristic such as color marking or scars; and

(c) Name, address and phone number of the owner or harborer.

(4) If the owner or harborer has registered a dangerous or vicious dog he or she shall notify within 24 hours, the Lincoln Heights Police Department of a change of his or her address and/or phone number;

(5) If the owner or harborer of a dangerous or vicious dog has sold, given away or if control of the dog has in any other manner been transferred for more than 48 consecutive hours, he or she shall notify the Lincoln Heights Police Department within 24 hours of the name and address of the individual harboring the dog;

(6) Within 75 hours of taking possession of a dog registered under this chapter, register the dog with the Lincoln Heights Police Department, if the dog is harbored in the Village of Lincoln Heights;

(7) The owner or harborer of a dangerous or vicious dog shall re-register the dog with the Lincoln Heights Police Department; and

(8) The owner or harborer of a vicious dog shall immediately notify the Lincoln Heights Police Department when the dog is loose or has attacked a person.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.04 RULES, REGULATIONS AND FEES.

(A) The Village Manager is authorized to establish rules, regulations and fees with the approval of Council for the enforcement of the provisions of this chapter, including the removal of the dangerous dog designation.

(B) The Village Manager is authorized to charge an annual fee, not to exceed $50, for the registration of a dangerous or vicious dog.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.05 SEIZURE AND IMPOUNDMENT OF DOG.

(A) A police officer or dog warden shall remove from the premises any vicious dog not properly confined, if the owner or harborer of the dog has been previously convicted of violating § 90.22.

(B) A police officer or dog warden shall remove from the premises any dog that has attached or severely injured a human.

(C) The police officer or dog warden who removes a dog pursuant to this section shall file the appropriate complaint in Mayor's Court and hold the dog until final adjudication of the charge.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.06 SEEING EYE DOGS.

(A) When a blind person is accompanied by a dog which serves as a guide or leader for him or her, and he or she can show proof by certificate or other means that the dog leading him or her has been trained for that purpose by a special agency engaged in that work, the person is entitled to the full and equal accommodations, advantages, facilities and privileges of all public conveyances, hotels and lodging places, all place of public accommodation, amusement or resort, and other places to which the general public is invited, and may take the dog into these conveyance and places, subject only to the conditions and limitation applicable to all persons not so accompanied, except that:

(1) The dog shall not occupy a seat in any public conveyance; or

(2) The dog shall be on a leash while using the facilities of a common carrier.

(B) No person shall deprive a blind person of any of the advantages, facilities or privileges provided in division (A) hereof, nor charge the blind person a fee or charge for the dog.

(C) Whoever violates any provision of this section shall be guilty of a misdemeanor of the fourth degree.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

ANIMALS RUNNING AT LARGE

§ 90.20 LEASH REQUIRED.

(A) The owner or harborer of a harmless dog, not on the premises or in a motor vehicle, shall keep the dog on a leash of such length to keep the dog from annoying others.

(B) A harmless dog may be unleashed if either of the following is applicable:

(1) The dog is in training, competition or show; or

(2) The dog is on property with the permission of the property owner.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.21 DANGEROUS DOG TO BE PROPERLY CONFINED OR LEASHED.

The owner or harborer of a dangerous dog shall keep the dog:

(A) When outdoors and on the premises in a securely fenced area or on a leash controlled by a competent adult; and

(B) When not on the premises, securely restrained with a leash, not exceeding six feet in length and under the control of a competent adult.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.22 VICIOUS DOG TO BE PROPERLY CONFINED OR LEASHED.

The owner or harborer of a vicious dog shall:

(A) When the dog is indoors secure all means of egress so that the dog may not exit;

(B) (1) When the dog is outside and on the premises of the owner or harborer be confined at all times in a roofed, securely fenced and locked barricade designed so that the dog may not dig his or her way out.

(2) The barricade must be at least six feet in length measuring from the ground with an attached top and posted with a sign stating vicious dog in symbols and words, and constructed so that a child cannot penetrate the barricade with his or her hand; and

(C) (1) When the dog is off the premises of the owner or harborer, muzzled and securely restrained with a leash not exceeding three feet in length and under the control of a competent adult.

(2) In the alternative a vicious dog may be confined in a locked crate which is constructed of material of sufficient strength to prevent escape and posted with a sign stating vicious dog by both symbol and words, and constructed so that a child cannot penetrate the barricade with his or her hand.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.23 POSSESSION OF DANGEROUS OR VICIOUS DOG PROHIBITED.

(A) It shall be unlawful for any person to own or harbor more than three dangerous dogs.

(B) It shall be unlawful for any person to own or harbor more than one vicious dog which is over the age of six months, at one time.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.24 ANIMALS RUNNING AT LARGE.

(A) A person, firm or corporation which is the owner or has charge of any animals or fowls shall not permit them to run at large in the public road, highway, street, lane or alley or upon unenclosed land, or permit them to go upon any private yard, lot or enclosure without the consent of the owner of the yard, lot or enclosure.

(B) No person, firm, or corporation shall cause animals to be herded, kept or detained for the purpose of grazing on premises other than that owned or occupied by the owner or keeper thereof.

(C) The running at large of such animal on or upon any of the places mentioned in divisions (A) and (B) above is prima facie evidence that it is running at large in violation of this section.

(D) Whoever violates the provisions of this section for which another penalty is not provided, is guilty of a misdemeanor of the fourth degree.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.25 STRAYS.

A person finding an animal at large in violation of this chapter may and a law enforcement officer of the village, on view or information, shall take and confine such animal, forthwith giving notice thereof to the owner or keeper, if known, and if not known, by publishing a notice describing the animal at least once in a newspaper of general circulation in the county or village wherein the animal was found. If the owner or keeper does not appear and claim the animal and pay the compensation authorized under this chapter for so taking, advertising, and keeping it within ten days from the date of such notice, such person of the village shall have a lien therefore and the animal may be sold at public auction as provided in Ohio R.C. § 1311.49, and the residue of the proceeds of sale shall be paid and deposited by the treasurer in the general fund of the village.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.26 UNAVOIDABLE ESCAPES.

If it is proven that an animal at large in violation of the chapter escaped from its owner or keeper without his or her knowledge or fault, the animal shall be returned to its owner or keeper upon payment of a reasonable compensation for its taking and keeping.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.27 FEES.

The person or municipality whose law enforcement officer takes an animal running at large in violation of this chapter is entitled to receive from the owner or harborer thereof, the following compensation:

(A) For taking and advertising each animal, $5;

(B) Reasonable expenses actually incurred for keeping each such animal; and

(C) Compensation for taking, advertising and keeping a single herd or flock not to exceed $50 when such flock or herd belongs to one person.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.28 QUARANTINE.

(A) *Orders of Mayor.*

(1) Whenever the Mayor shall deem it necessary or for the protection of the public, he or she shall issue an order prohibiting for a certain time, any dog from being at large in any public street or place unless muzzled and on a leash, so as to effectually prevent it from biting any person or animal.

(2) This order shall be posted in three conspicuous places in the municipality, for such time as the Mayor deems necessary, and any dog found at large during the existence of this quarantine order shall be impounded and may be destroyed by municipal authority without notice to the owner.

(2) *Ohio Revised Code.* Rabies Quarantine, Ohio R.C. § 955.26, relating to quarantine of rabies and all amendments and penalties thereto, are adopted and incorporated in this chapter.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.29 INTERFERENCE WITH QUARANTINE ORDERS.

No person shall molest or interfere with any officer while engaged in the enforcement of the quarantine order issued herein.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.30 REPORTING ESCAPE OF CERTAIN ANIMALS REQUIRED.

(A) The owner or keeper of any member of a species of the animal kingdom that escapes from his or her custody or control and that is not indigenous to this state or presents a rick of serious physical harm to persons or property, or both, shall, within one hour after he or she discovers or reasonably should have discovered the escape, report it to:

(1) A law enforcement officer of the municipal corporation or township and the sheriff of the county where the escape occurred; and

(2) The Village Clerk of the village or the Township Clerk of the township where the escape occurred.

(B) If the office of the Village Clerk of the village or Township Clerk is closed to the public at the time a report is required by division (A) of this section, then it is sufficient compliance with division (A)(2) of this section if the owner or keeper makes the report within one hour after the office is next open to the public.

(Ord. 00-O-14, passed 6-19-2000)

OFFENSES RELATING TO DOMESTIC ANIMALS

§ 90.45 ABANDONING ANIMALS.

No owner or keeper of a dog, cat, or other domestic animal, shall abandon the animal.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.46 INJURING ANIMALS.

No person shall maliciously, or willfully and without the consent of the owner, kill or injure a horse, mare, foal, filly, jack, mule, sheep, goat, cow, steer, bull, heifer, ass, ox, swine, dog, cat or other domestic animal that is the property of another. This section does not apply to a licensed veterinarian acting in an official capacity.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.47 POISONING ANIMALS.

No person shall maliciously, or willfully and without the consent of the owner, administer poison, except a licensed veterinarian acting in such capacity, to a horse, mare, foal, filly, jack, mule, sheep, goat, cow, steer, bull, heifer, ass, ox, swine, dog, cat, poultry, or any other domestic animal that is the property of another; and no person shall, willfully and without the consent of the owner, place any poisoned food where it may be easily found and eaten by any of these animals, either upon his or her own lands or the lands of another.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.48 CRUELTY TO ANIMALS.

(A) No person shall:

(1) Torture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate, kill, or impound or confine any animal without supplying it during the confinement with a sufficient quantity of good wholesome food and water;

(2) Impound or confine an animal without affording it, during the confinement, access to shelter from wind, rain, snow, or excessive direct sunlight, if it can reasonably be expected that the animal would otherwise become sick or in some other way suffer. This division does not apply to animals impounded or confined prior to slaughter. For the purpose of this section, ***SHELTER*** means a manmade enclosure, windbreak, sunshade, or natural windbreak or sunshade that is developed from the earth's contour, tree development or vegetation;

(3) Carry or convey an animal in a cruel or inhuman manner;

(4) Keep animals other than cattle, poultry or fowl, swine, sheep, or goats in an enclosure without wholesome exercise and change of air, nor feed cows on food that produces impure or unwholesome milk; or

(5) Detain livestock in railroad cars or compartments longer than 28 hours after they are so placed without supplying them with necessary food, water, and attention, nor permit the stock to be so crowded as to overlie, crush, wound, or kill each other.

(B) Upon the written request of the owner or person in custody of any particular shipment of livestock, which written request shall be separate and apart from any printed bill of lading or other railroad form, the length of time in which the livestock may be detained in any cars or compartment without food, water, and attention may be extended to 36 hours without penalty therefore. This section does not prevent the dehorning of cattle.

(C) All fines collected for violations of this section shall be paid to the society or association for the prevention of cruelty to animals, if there is one in the municipality; otherwise, all fines shall be paid to the general fund.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.49 ANIMAL FIGHTS.

No person shall knowingly engage in or be employed at cockfighting, bear baiting or pitting an animal against another; no person shall receive money for the admission of another to a place kept for this purpose; no person shall use, train, or possess any animal for seizing, detaining, or maltreating a domestic animal. Any person who knowingly purchases a ticket of admission to such place, or is present thereat, or witnesses such spectacle, is an aider and abettor.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.50 TRAPSHOOTING.

Live birds for fowl shall not be used as targets in trapshooting.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.51 LOUD DOG.

No owner, keeper, or harborer of a dog shall permit or allow such dog to annoy or disturb one or more of the inhabitants of two or more separate residences of this municipality by the frequent or habitual howling, yelping, barking or making of any other such noises by such dog within the corporate limits.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.52 PIT BULL TERRIERS.

(A) *Finding*. The Village Council makes a legislative finding that the owning or harboring of pit bull terriers within the village limits is detrimental to the health, welfare and safety of the citizens of the village.

(B) *Prohibition*. No person shall own, keep or harbor a pit bull terrier as defined herein within the municipal limits of the village.

(C) *Definition*. For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

PIT BULL TERRIER. Any Staffordshire bull terrier or American Staffordshire bull terrier or any mixed breed of dog that contains, as an element of its breeding, the breed of Staffordshire bull terrier as to be identifiable as partially of the breed of Staffordshire bull terrier or American bull terrier by a qualified veterinarian duly licensed as such by the State of Ohio.

(D) *Lack of knowledge not a defense*. The lack of knowledge or intent is not a defense to any violation of this section.

(E) *Violation*. Whoever violates the provisions of this section shall be guilty of a misdemeanor of the first degree. In addition to the foregoing penalties any person found guilty of violating this section shall pay all expenses, including shelter, food, veterinarian expenses for identification or certification of the breed of the animal, or boarding and veterinarian expenses necessitated by the seizure of any dog or the expenses that may be required for the elimination of any such dog.

(Ord. 00-O-14, passed 6-19-2000) Penalty, see § 90.99

§ 90.53 PIT BULL IDENTIFICATION.

Pit bull may be identified by a veterinarian licensed by the State of Ohio, the Hamilton County dog warden or a Deputy Hamilton County dog warden.

(Ord. 00-O-14, passed 6-19-2000)

§ 90.99 PENALTY.

(A) Whoever violates any provision of this chapter for which another penalty is not specifically provided shall be guilty of a minor misdemeanor.

(B) Whoever violates §§ 90.02, 90.03, 90.21, 90.23 shall be guilty of a second degree misdemeanor.

(C) Whoever violates § 90.22 shall be guilty of a first degree misdemeanor.

(D) In addition to divisions (A) and (B), any vicious dog which attacks a human being or domestic animal may be ordered destroyed, when in the court's judgment such vicious dog represents a continuing threat of serving harm to human beings or domestic animals.

(E) In addition, any person found guilty of violating § 90.22 shall pay all expenses inducing shelter, food and transportation of the dog, expenses for identification of the breed of animal and veterinary expenses necessitated by the seizure of any dog for the protection of the public.

(F) Whoever violates § 90.47, if the value of the animal killed or the injury done amounts to less than $300, is guilty of a misdemeanor of the second degree; if the value of the animal killed or the injury done amounts to $300 or more, is guilty of a misdemeanor of the first degree.

(G) Whoever violates §§ 90.48, 90.50, or 90.51 is guilty of a misdemeanor of the fourth degree.

(H) Whoever violates § 90.49 is guilty of a misdemeanor of the second degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition including, but not limited to, the sale of the animal or livestock. If the animal or livestock is forfeited and sold pursuant to this division, the proceeds from the sale first shall be applied to pay the expenses incurred with regard to the care of the animal from the time it was taken from the custody of the former owner. The balance of the proceeds shall be paid to the former owner of the animal.

(I) Whoever violates § 90.30 is guilty of a misdemeanor of the first degree.

(Ord. 00-O-14, passed 6-19-2000; Am. Ord. 2009-O-13, passed 10-26-2009)

CHAPTER 91: FIREWORKS AND EXPLOSIVES; FIRE PREVENTION

Section

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Cross-reference:

Fire Department, see Chapter 34

Statutory reference:

Fire Marshal, fire safety, see Ohio R.C. Chapter 3737

Fireworks, state law provisions, see Ohio R.C. Chapter 3743

Ohio Fire Code, see O.A.C. Chapter 1301:7-7

Open burning, see O.A.C. Chapter 3745-19

Power to regulate explosives, see Ohio R.C. § 715.60

GENERAL PROVISIONS

§ 91.01 DEFINITIONS.

For purposes of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

1.3G FIREWORKS. Display fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.3" in Title 49 of the Code of Federal Regulations.

1.4G FIREWORKS. Consumer fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.4" in Title 49 of the Code of Federal Regulations.

BEER and ***INTOXICATING LIQUOR.*** Have the same meaning as in Ohio R.C. § 4301.01.

BOOBY TRAP. A small tube that has a string protruding from both ends that has a friction-sensitive composition and that is ignited by pulling the ends of the string.

CIGARETTE LOAD. A small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.

CONTROLLED SUBSTANCE. Has the same meaning as in Ohio R.C. § 3719.01.

DISCHARGE SITE. An area immediately surrounding the mortars used to fire aerial shells.

EXPLOSIVE. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. ***EXPLOSIVE*** includes all materials that have been classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. ***EXPLOSIVES*** does not include "fireworks" as defined below, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored, or used in any activity described in R.C. § 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including, but not limited to, the provisions of R.C. § 3743.80 and the rules of the State Fire Marshal adopted pursuant to Ohio R.C. § 3737.82.

(ORC § 2923.11)

FIREWORKS. Any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, except ordinary matches and except as provided in Ohio R.C. § 3743.80.

FIREWORKS INCIDENT. Any action or omission that occurs at a fireworks exhibition that results in injury or death, or a substantial risk of injury or death, to any person, and that involves either of the following:

(1) The handling or other use, or the results of the handling or other use, of fireworks or associated equipment or other materials;

(2) The failure of any person to comply with any applicable requirement imposed by this chapter or Ohio R.C. Chapter 3743, or any applicable rule adopted under this chapter or Ohio R.C. Chapter 3743.

FIREWORKS INCIDENT SITE. A discharge site or other location at a fireworks exhibition where a fireworks incident occurs, a location where an injury or death associated with a fireworks incident occurs, or a location where evidence of a fireworks incident or an injury or death associated with a fireworks incident is found

FIREWORKS PLANT. All buildings and other structures in which the manufacturing of fireworks, or the storage or sale of manufactured fireworks by a manufacturer, takes place.

HIGHWAY. Any public street, road, alley, way, lane or other public thoroughfare.

LICENSED BUILDING. A building on the licensed premises of a licensed manufacturer or wholesaler of fireworks that is approved for occupancy by the building official having jurisdiction.

LICENSED EXHIBITOR OF FIREWORKS or ***LICENSED EXHIBITOR.*** A person licensed pursuant to Ohio R.C. §§ 3743.50 through 3743.55.

LICENSED MANUFACTURER OF FIREWORKS or ***LICENSED MANUFACTURER.*** A person licensed pursuant to Ohio R.C. §§ 3743.02 through 3743.08.

LICENSED PREMISES. The real estate upon which a licensed manufacturer or wholesaler of fireworks conducts business.

LICENSED WHOLESALER OF FIREWORKS or ***LICENSED WHOLESALER.*** A person licensed pursuant to Ohio R.C. §§ 3743.15 through 3743.21.

MANUFACTURING OF FIREWORKS. The making of fireworks from raw materials, none of which in and of themselves constitute fireworks, or the processing of fireworks.

NOVELTIES and ***TRICK NOISEMAKERS.***

(1) Devices that produce a small report intended to surprise the user, including but not limited to booby traps, cigarette loads, party poppers, and snappers;

(2) Snakes or glow worms;

(3) Smoke devices; or

(4) Trick matches.

PARTY POPPER. A small plastic or paper item that contains not more than 16 milligrams of friction-sensitive explosive composition that is ignited by pulling a string protruding from the item, and from which paper streamers are expelled when the item is ignited.

PROCESSING OF FIREWORKS. The making of fireworks from materials all or part of which in and of themselves constitute fireworks, but does not include the mere packaging or repackaging of fireworks.

RAILROAD. Any railway or railroad that carries freight or passengers for hire, but does not include auxiliary tracks, spurs, and sidings installed and primarily used in serving a mine, quarry or plant.

RETAIL SALE or ***SELL AT RETAIL.*** A sale of fireworks to a purchaser who intends to use the fireworks and not to resell them.

SMOKE DEVICE. A tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

SNAKE or ***GLOW WORM.*** A device that consists of a pressed pellet of pyrotechnic composition that produces a large snake-like ash upon burning, which ash expands in length as the pellet burns.

SNAPPER. A small paper-wrapped item that contains a minute quantity of explosive composition coated on small bits of sand and that, when dropped, implodes.

STORAGE LOCATION. A single parcel or contiguous parcels of real estate approved by the Fire Chief pursuant to Ohio R.C. § 3743.04(I) or Ohio R.C. § 3743.17(G) that are separate from a licensed premises containing a retail showroom, and which parcel or parcels a licensed manufacturer or wholesaler of fireworks may use only for the distribution, possession, and storage of fireworks in accordance with this chapter.

TRICK MATCH. A kitchen or book match that is coated with a small quantity of explosive composition and that, upon ignition, produces a small report or a shower of sparks.

WHOLESALE SALE or ***SELL AT WHOLESALE.*** A sale of fireworks to a purchaser who intends to resell the fireworks so purchased.

WIRE SPARKLER. A sparkler consisting of a wire or stick coated with a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than 100 grams of this mixture.

(ORC § 3743.01) (1995 Code, § 91.01)

§ 91.02 POSSESSION, SALE, AND USE OF FIREWORKS.

(A) No person shall possess fireworks in this municipality or shall possess for sale or sell fireworks in this municipality, except a licensed manufacturer of fireworks as authorized by Ohio R.C. §§ 3743.02 through 3743.08, a licensed wholesaler of fireworks as authorized by Ohio R.C. §§ 3743.15 through 3743.21, a shipping permit holder as authorized by Ohio R.C. § 3743.40, an out-of-state resident as authorized by Ohio R.C. § 3743.44, a resident of this state as authorized by Ohio R.C. § 3743.45, or a licensed exhibitor of fireworks as authorized by Ohio R.C. §§ 3743.50 through 3743.55, or as authorized by any municipal ordinance that is substantially equivalent to any of these statutes, and except as provided in Ohio R.C. § 3743.80 or a substantially equivalent municipal ordinance.

(B) Except as provided in Ohio R.C. § 3743.80 or a substantially equivalent municipal ordinance, and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to Ohio R.C. §§ 3743.50 through 3743.55 or a substantially equivalent municipal ordinance, no person shall discharge, ignite, or explode any fireworks in this municipality.

(C) No person shall use in a theater or public hall what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(D) No person shall sell fireworks of any kind to a person under 18 years of age. No person under 18 years of age shall enter a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. No person under 18 years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(E) No person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder shall possess 1.3G fireworks in this municipality.

(ORC § 3743.65(A) - (F)) (1995 Code, § 91.02) Penalty, see § 91.99

Statutory reference:

Felony offense for disabling a fire suppression system, see Ohio R.C. § 3743.65(G)

§ 91.03 PERMIT TO USE FIREWORKS.

(A) An exhibitor of fireworks licensed under Ohio R.C. §§ 3743.50 through 3743.55 who wishes to conduct a public fireworks exhibition shall apply for approval to conduct the exhibition to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, having jurisdiction over the premises.

(B) The approval required by division (A) of this section shall be evidenced by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or similar chief law enforcement officer, signing a permit for the exhibition. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the State Fire Marshal or, if available, from the Fire Chief, a fire prevention officer, the Police Chief or other similar chief law enforcement officer, or a designee of the Police Chief or other similar chief law enforcement officer.

(C) Before a permit is signed and issued to a licensed exhibitor of fireworks, the Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show his or her license as an exhibitor of fireworks to the Fire Chief or fire prevention officer.

(D) The Fire Chief or fire prevention officer and the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall give approval to conduct a public fireworks exhibition only if satisfied, based on the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the State Fire Marshal pursuant to Ohio R.C. § 3743.53(B) and (E) and that the applicant is, in fact, a licensed exhibitor of fireworks. The Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer or with the designee of the Police Chief or other similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke a permit for noncompliance with the rules.

(E) If the Village Council has prescribed a fee for the issuance of a permit for a public fireworks exhibition, the Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the

exhibitor pays the requisite fee.

(F) Each exhibitor shall provide an indemnity bond in the amount of at least $1,000,000 with surety satisfactory to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death, or loss to person or property emanating from the fireworks exhibitor, or proof of insurance coverage of at least $1,000,000 for liability arising from injury, death, or loss of persons or property emanating from the fireworks exhibition. The Council may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this division. The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this division or by the Council.

(G) Each permit for a fireworks exhibition issued by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall contain a distinct number, designate the municipality, and identify the certified fire safety inspector, Fire Chief, or fire prevention officer who will be present before, during and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, issuing it to the State Fire Marshal. A permit is not transferable or assignable.

(H) The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, fire prevention officer, Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall list the name of the exhibitor, his or her license number, the premises on which the exhibition will be conducted, the date and time of the exhibition, and the number and political subdivision designation of the permit issued to the exhibitor for the exhibition.

(I) The Council shall require that a certified fire safety inspector, Fire Chief or fire prevention officer be present before, during and after the exhibition, and shall require the certified fire safety inspector, Fire Chief or fire prevention officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this chapter and Ohio R.C. Chapter 3743.

(ORC § 3743.54) (1995 Code, § 91.03) Penalty, see § 91.99

Statutory reference:

Notice of fireworks incident, see Ohio R.C. § 3743.541

§ 91.04 MANUFACTURING OR WHOLESALE SALE WITHOUT A LICENSE; PROHIBITIONS.

(A) No licensed manufacturer or licensed wholesaler of fireworks shall knowingly fail to comply with the rules adopted by the State Fire Marshal pursuant to Ohio R.C. §§ 3743.05 and 3743.18 or the requirements of Ohio R.C. §§ 3743.06 and 3743.19.

(B) No licensed manufacturer or licensed wholesaler of fireworks shall fail to maintain complete inventory, wholesale sale and retail records as required by Ohio R.C. §§ 3743.07 and 3743.20, or to permit an inspection of these records or the premises of a fireworks plant or the wholesaler pursuant to Ohio R.C. §§ 3743.08 and 3743.21.

(C) No licensed manufacturer or licensed wholesaler of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to Ohio R.C. §§ 3743.01(B)(1) and 3743.21(B)(1) within the specified period of time.

(D) No licensed manufacturer or licensed wholesaler of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to Ohio R.C. §§ 3743.08(B)(2) and 3743.21(B)(2) until the nonconformities are eliminated, corrected or otherwise remedied or the 72 hour period specified in those divisions has expired, whichever occurs first.

(E) No person shall smoke or shall carry a pipe, cigarette, or cigar, or a match, lighter, other flame-producing item, or open flame on, or shall carry a concealed source of ignition into, the premises of a fireworks plant or on the premises of a wholesaler of fireworks, except as smoking is authorized in specified lunchrooms or restrooms by a manufacturer or wholesaler pursuant to Ohio R.C. § 3743.06(C) or Ohio R.C. § 3743.19(D).

(F) No person shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises of the fireworks plant or on the premises of a wholesaler of fireworks.

(ORC §§ 3743.60(E) - (J), 3743.61(E) - (J)) Penalty, see § 91.99

Statutory reference:

Felony provisions, see Ohio R.C. §§ 3743.60(A) through (D) and 3743.61(A) through (D)

§ 91.05 PURCHASERS TO COMPLY WITH LAW; UNAUTHORIZED PURCHASES.

(A) No person who resides in another state and purchases fireworks in this municipality shall obtain possession of the fireworks in this municipality unless the person complies with Ohio R.C. § 3743.44, provided that knowingly making a false statement on the fireworks purchasers form is not a violation of this section but is a violation of Ohio R.C. § 2921.13 (Falsification) or a substantially equivalent municipal ordinance.

(B) No person who resides in another state and who purchases fireworks in this municipality shall obtain possession of fireworks in this municipality other than from a licensed manufacturer or wholesaler, or fail, when transporting the fireworks, to transport them directly out of the state within 72 hours after the time of their purchase. No such person shall give or sell to any other person in this municipality fireworks that the person has acquired in this state.

(C) No person who resides in this state and purchases fireworks in this municipality shall obtain possession of the fireworks in this municipality unless the person complies with Ohio R.C. § 3743.45, provided that knowingly making a false statement on the fireworks purchasers form is not a violation of this section but is a violation of Ohio R.C. § 2921.13 (Falsification) or a substantially equivalent municipal ordinance.

(D) No person who resides in this state and who purchases fireworks in this municipality under Ohio R.C. § 3743.45 shall obtain possession of the fireworks in this municipality other than from a licensed manufacturer or licensed wholesaler, or fail, when transporting the fireworks, to transport them directly out of the state within 48 hours after the time of their purchase. No such person shall give or sell to any other person in this municipality fireworks that the person has acquired in this state.

(ORC § 3743.63) Penalty, see § 91.99

§ 91.06 EXHIBITION WITHOUT A LICENSE; PROHIBITIONS FOR EXHIBITIONS.

(A) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the State Fire Marshal pursuant to Ohio R.C. § 3743.53(B) and (E) or to comply with Ohio R.C. § 3743.53(C) and (D).

(B) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to Ohio R.C. § 3743.54 or a substantially equivalent municipal ordinance, or if a permit so secured is revoked by a Fire Chief or fire prevention officer, in consultation with a Police Chief or other similar chief law enforcement officer, or with a designee of a Police Chief or other similar chief law enforcement officer, pursuant to those sections.

(C) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance with Ohio R.C. §§ 3743.54 and 3743.55, or a substantially equivalent municipal ordinance.

(D) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises on which the exhibition is being conducted.

(E) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the State Fire Marshal under Ohio R.C. § 3743.56.

(ORC § 3743.64(C) - (G)) Penalty, see § 91.99

Statutory reference:

Felony provisions, see Ohio R.C. § 3743.64(A), (B), and (H)

Notice of fireworks incident, see Ohio R.C. § 3743.541

§ 91.07 UNAUTHORIZED TRANSPORTATION OR SHIPPING.

(A) No person shall transport fireworks in this municipality except in accordance with the rules adopted by the State Fire Marshal pursuant to Ohio R.C. § 3743.58.

(B) As used in this division, ***FIREWORKS*** includes only 1.3G and 1.4G fireworks. No person shall ship fireworks into this municipality by mail, parcel post, or common carrier unless the person possesses a valid shipping permit issued under Ohio R.C. § 3743.40, and the fireworks are shipped directly to the holder of a license issued under Ohio R.C. § 3743.03, 3743.16 or 3743.51.

(C) No person shall ship fireworks within this municipality by mail, parcel post, or common carrier unless the fireworks are shipped directly to the holder of a license issued under Ohio R.C. § 3743.01, 3743.16 or 3743.51.

(ORC § 3743.66) Penalty, see § 91.99

§ 91.08 APPLICATION OF SUBCHAPTER.

This subchapter does not apply to the following:

(A) The manufacture, sale, possession, transportation, storage, or use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, or highway use;

(B) The manufacture, sale, possession, transportation, storage or use of fusees, torpedoes, or other signals necessary for the safe operation of railroads;

(C) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals for ceremonial purposes;

(D) The manufacture for, the transportation, storage, possession or use by, or the sale to the armed forces of the United States and the militia of this state of pyrotechnic devices;

(E) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing 0.25 grains or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;

(F) The manufacture, sale, possession, transportation, storage or use of novelties and trick noisemakers, auto burglar alarms, or model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;

(G) The manufacture, sale, possession, transportation, storage or use of wire sparklers; or

(H) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges; provided, that the exhibition complies with all of the following:

(1) No explosive aerial display is conducted in the exhibition;

(2) The exhibition is separated from spectators by not less than 200 feet;

(3) The person conducting the exhibition complies with regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury and the United States Department of Transportation with respect to the storage and transport of the explosive black powder used in the exhibition.

(ORC § 3743.80)

§ 91.09 ARREST OF OFFENDER; SEIZURE AND FORFEITURE OF FIREWORKS; DISTRIBUTION OF FINES.

(A) The Fire Marshal, an assistant fire marshal, or a certified fire safety inspector may arrest, or may cause the arrest of, any person whom he or she finds in the act of violating, or who he or she has reasonable cause to believe has violated, any provision of this subchapter. Any arrest shall be made in accordance with statutory and constitutional provisions governing arrests by law enforcement officers.

(B) If the Fire Marshal, an assistant fire marshal, or certified fire safety inspector has probable cause to believe that fireworks are being manufactured, sold, possessed, transported, or used in violation of this subchapter, he or she may seize the fireworks. Any

seizure of fireworks shall be made in accordance with statutory and constitutional provisions governing searches and seizures by law enforcement officers. The Fire Marshal's office or certified fire safety inspector's office shall impound at the site or safely keep seized fireworks pending the time they are no longer needed as evidence. A sample of the seized fireworks is sufficient for evidentiary purposes. The remainder of the seized fireworks may be disposed of pursuant to an order from a court of competent jurisdiction after notice and a hearing.

(C) Fireworks manufactured, sold, possessed, transported, or used in violation of this subchapter shall be forfeited by the offender. The Fire Marshal's office or certified fire safety inspector's office shall dispose of seized fireworks pursuant to the procedures specified in Ohio R.C. §§ 2981.11 to 2981.13 for the disposal of forfeited property by law enforcement agencies, and the Fire Marshal or that office is not liable for claims for the loss of or damages to the seized fireworks.

(D) This section does not affect the authority of peace officers, as defined in Ohio R.C. § 2935.01, to make arrests for violations of this subchapter or to seize fireworks manufactured, sold, possessed, transported, or used in violation of this subchapter.

(E) Any fines imposed for a violation of this subchapter relating to the sale, purchase, possession, or discharge of fireworks shall be distributed as set forth in Ohio R.C. § 3743.68(D).

(ORC § 3743.68)

§ 91.10 SAFETY REQUIREMENTS FOR FIREWORKS SHOWROOM STRUCTURES.

(A) (1) Except as described in division (A)(2) of this section, all retail sales of 1.4G fireworks by a licensed manufacturer or wholesaler shall only occur from an approved retail sales showroom on a licensed premises or from a representative sample showroom as described in this section on a licensed premises. For the purposes of this section, a retail sale includes the transfer of the possession of the 1.4G fireworks from the licensed manufacturer or wholesaler to the purchaser of the fireworks.

(2) Sales of 1.4G fireworks to a licensed exhibitor for a properly permitted exhibition shall occur in accordance with the provisions of the Ohio Revised Code and rules adopted by the State Fire Marshal under R.C. Chapter 119. Such rules shall specify, at a minimum, that the licensed exhibitor holds a license under R.C. § 3743.51, that the exhibitor possesses a valid exhibition permit issued in accordance with R.C. § 3743.54, and that the fireworks shipped are to be used at the specifically permitted exhibition.

(B) All wholesale sales of fireworks by a licensed manufacturer or wholesaler shall only occur from a licensed premises to persons who intend to resell the fireworks purchased at wholesale. A wholesale sale by a licensed manufacturer or wholesaler may occur as follows:

(1) The direct sale and shipment of fireworks to a person outside of this state;

(2) From an approved retail sales showroom as described in this section;

(3) From a representative sample showroom as described in this section;

(4) By delivery of wholesale fireworks to a purchaser at a licensed premises outside of a structure or building on that premises. All other portions of the wholesale sales transaction may occur at any location on a licensed premises.

(5) Any other method as described in rules adopted by the Fire Marshal under R.C. Chapter 119.

(C) (1) A licensed manufacturer or wholesaler shall only sell 1.4G fireworks from a representative sample showroom or a retail sales showroom. Each licensed premises shall only contain one sales structure.

(2) A representative sample showroom shall consist of a structure constructed and maintained in accordance with the Nonresidential Building Code adopted under R.C. Chapter 3781 and the Fire Code adopted under R.C. § 3737.82 for a use and occupancy group that permits mercantile sales. A representative sample showroom shall not contain any pyrotechnics, pyrotechnic materials, fireworks, explosives, explosive materials, or any similar hazardous materials or substances. A representative sample showroom shall be used only for the public viewing of fireworks product representations, including paper materials, packaging materials, catalogs, photographs, or other similar product depictions. The delivery of product to a purchaser of fireworks at a licensed premises that has a representative sample structure shall not occur inside any structure on a licensed premises. Such product delivery shall occur on the licensed premises in a manner prescribed by rules adopted by the State Fire Marshal pursuant to R.C. Chapter 119.

(3) If a manufacturer or wholesaler elects to conduct sales from a retail sales showroom, the showroom structures, to which the public may have any access and in which employees are required to work, on all licensed premises, shall comply with the following safety requirements:

(a) A fireworks showroom that is constructed or upon which expansion is undertaken on and after June 30, 1997, shall be equipped with interlinked fire detection, fire suppression, smoke exhaust, and smoke evacuation systems that are approved by the Superintendent of Labor in the Department of Commerce.

(b) A fireworks showroom that first begins to operate on or after June 30, 1997, and to which the public has access for retail purposes shall not exceed 5,000 square feet in floor area.

(c) A newly constructed or an existing fireworks showroom structure that exists on September 23, 2008, but that, on or after September 23, 2008, is altered or added to in a manner requiring the submission of plans, drawings, specifications, or data pursuant to R.C. § 3791.04, shall comply with a graphic floor plan layout that is approved by the State Fire Marshal and Superintendent of Labor showing width of aisles, parallel arrangement of aisles to exits, number of exits per wall, maximum occupancy load, evacuation plan for occupants, height of storage or display of merchandise, and other information as may be required by the State Fire Marshal and Superintendent of Labor.

(d) A fireworks showroom structure that exists on June 30, 1997, shall be in compliance on or after June 30, 1997, with floor plans showing occupancy load limits and internal circulation and egress patterns that are approved by the State Fire Marshal and Superintendent of Labor, and that are submitted under seal as required by R.C. § 3791.04.

(D) The safety requirements established in division (C) of this section are not subject to any variance, waiver, or exclusion pursuant to this chapter or any applicable building code.

(ORC § 3743.25) Penalty, see § 91.99

EXPLOSIVES

§ 91.20 STORAGE OF EXPLOSIVES.

It shall be unlawful to store at any time within the municipality a quantity of gunpowder or other similar explosive weighing in excess of 100 pounds.

(1995 Code, § 91.04) Penalty, see § 91.99

Statutory reference:

Illegal manufacture or processing of explosives, felony provisions, see Ohio R.C. § 2923.17

§ 91.21 BLASTING PERMIT.

No person shall cause a blast to occur within the municipality without making application in writing beforehand, setting forth the exact nature of the intended operation, and receiving a permit to blast from the Mayor or other proper municipal officer. The Mayor or other proper municipal officer before granting such permit may require the applicant to provide a bond to indemnify the municipality and all other persons against injury or damages which might result from the proposed blasting.

(1995 Code, § 91.05) Penalty, see § 91.99

FIRE PREVENTION

§ 91.30 REMOVAL OF FLAMMABLE MATERIALS OR OBSTRUCTIONS.

Any flammable or combustible materials not arranged or stored in such a manner as to afford reasonable safety against the danger of fire, or any matter stored or arranged in such a manner as to impede or prevent access to, or exit from, any premises in case of fire, shall be ordered by the Fire Chief to be removed or rearranged in such manner as to eliminate any fire hazard. The order shall be in writing and delivered to the owner, lessee, or occupant of the premises.

(1995 Code, § 91.06) Penalty, see § 91.99

§ 91.31 PROTECTIVE APPLIANCES.

If the Fire Chief finds upon inspection that the appliances for protection against fire are wholly wanting or are inadequate in number, condition, size, arrangement, or efficiency for the reasonable protection of the premises against fire, he or she shall cause an order in writing to be delivered to the owner, lessee, or occupant requiring the installation, replacement, or repair of appliances adequate for the reasonable protection of the premises in case of fire.

(1995 Code, § 91.07) Penalty, see § 91.99

§ 91.32 COMPLIANCE WITH ORDER.

An order to correct the hazardous conditions specified in either § 91.30 or 91.31 shall be directed to the owner, lessee, or occupant of the premises, building, or structure, or to the person in control of the articles, material, goods, wares, or merchandise, or to the owner thereof, as the circumstances may require. It is made the duty of the owner, lessee, or occupant of the premises, building, or structure, and of the person in control of such articles, materials, goods, wares, and merchandise, or the owner thereof, to comply with the order with all reasonable dispatch and diligence.

(1995 Code, § 91.08) Penalty, see § 91.99

§ 91.33 WASTE RECEPTACLES.

Waste paper, ashes, oil rags, waste rags, excelsior, or any material of a similar hazardous nature shall not be accumulated in any cellar or any other portion of any building of any kind. Proper fireproof receptacles shall be provided for such hazardous materials.

(1995 Code, § 91.09) Penalty, see § 91.99

§ 91.34 HOTEL TO HAVE FIRE WARNING DEVICE PRODUCING VISIBLE SIGNAL.

(A) Every hotel shall have available at least one operational single station automatic fire warning device approved by the Fire Chief that produces a visible warning signal when activated by every product of combustion. The device, at the discretion of the owner, may also be activated by an early warning fire protection system. Hotels having fewer than 75 rooms shall have at least one warning device available for its guests. Hotels having more than 75 rooms shall have available for its guests one device for every group of 75 rooms. Upon the request of a guest, such a device, if available, shall be installed in the guest's room.

(B) As used in this section, ***HOTEL*** means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests in which five or more rooms are used for accommodation of such guests, whether the rooms are in one or several structures, except as otherwise provided in Ohio R.C. § 5739.09(G).

(ORC §§ 3781.107, 5739.01(M))

(C) Whoever violates the provisions of this section shall be fined not more than $1,000.

(ORC §§ 3791.02, 3791.03)

§ 91.35 FIRE SUPPRESSION SYSTEMS.

(A) Every building constructed in this municipality with floors used for human occupancy located more than 75 feet in height above the lower level of fire department vehicle access shall have a fire suppression system installed and in operation in conformity with the rules of the State Board of Building Standards adopted pursuant to Ohio R.C. § 3781.10.

(B) As used in this section:

FIRE SUPPRESSION SYSTEM. A system that includes devices and equipment to detect a fire, actuate an alarm, and suppress or control a fire.

HUMAN OCCUPANCY. Does not include floors of buildings where occupancy by humans is limited to ingress, egress, and

limited access for maintenance and repair.

(ORC § 3781.108(A), (B))

(C) Whoever violates the provisions of this section shall be fined not more than $1,000.

(ORC §§ 3791.02, 3791.03)

§ 91.36 VIOLATIONS OF STATE FIRE CODE PROHIBITED.

(A) No person shall knowingly violate any provision of the State Fire Code or any order made pursuant to it.

(ORC § 3737.51(A))

(B) Except as a violation of Ohio R.C. § 2923.17, regarding the felonies of unlawful possession of a dangerous ordnance and illegal manufacture or processing of explosives, involves subject matter covered by the State Fire Code, whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.

(ORC § 3737.99(B))

Statutory reference:

Fire Code violations, see Ohio R.C. §§ 3737.41 et seq.

Ohio Fire Code, see O.A.C. Chapter 1301:7-7

§ 91.37 POSTING ARSON NOTICES IN HOTELS, MOTELS AND OTHER PLACES.

(A) The owner, operator or lessee of any hotel, motel or transient residential building shall post the provisions of Ohio R.C. §§ 2909.02 and 2909.03, regarding aggravated arson and arson, in a conspicuous place in each room occupied by guests in such building. The owner, operator or lessee of any nontransient residential building, institution, school or place of assembly shall post the provisions of such sections in conspicuous places upon such premises. No person shall fail to comply with this section.

(ORC § 3737.61)

(B) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

(ORC § 3737.99(C))

§ 91.38 NEGLIGENT BURNING.

(A) No person shall set, kindle, or cause to be set or kindled any fire which, through his or her negligence, spreads beyond its immediate confines to any structure, field or wooded lot.

(ORC § 3737.62)

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree.

(ORC § 3737.99(D))

§ 91.39 SPREADING ALARM OF UNFRIENDLY FIRE.

(A) The owner, operator or lessee, an employee of any owner, operator or lessee, an occupant, and any person in direct control of any building regulated under the State Building Code, upon the discovery of an unfriendly fire, or upon receiving information that there is an unfriendly fire upon the premises, shall immediately, and with all reasonable dispatch and diligence, call or otherwise notify the fire department concerning the fire, and shall spread an alarm immediately to all occupants of the building.

(B) As used in this section, ***UNFRIENDLY FIRE*** means a fire of a destructive nature as distinguished from a controlled fire

intended for a beneficial purpose.

(ORC § 3737.63)

(C) Whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 3737.99(E))

§ 91.40 UNVENTED HEATERS.

(A) The use of a brazier, salamander, space heater, room heater, furnace, water heater, or other burner or heater using wood, coal, coke, fuel oil, kerosene, gasoline, natural gas, liquid petroleum gas or similar fuel, and tending to give off carbon monoxide or other harmful gases must comply with the following provisions.

(1) When used in living quarters, or in any enclosed building or space in which persons are usually present, shall be used with a flue or vent so designed, installed, and maintained as to vent the products of combustion outdoors; except in storage, factory, or industrial buildings which are provided with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(2) When used as a portable or temporary burner or heater at a construction site, or in a warehouse, shed, or structure in which persons are temporarily present, shall be vented as provided in division (A)(1) or used with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(B) This section does not apply to domestic ranges, laundry stoves, gas logs installed in a fireplace with an adequate flue, or hot plates, unless the same are used as space or room heaters.

(C) No person shall negligently use, or, being the owner, person in charge, or occupant of premises, negligently permit the use of a burner or heater in violation of the standards for venting and ventilation provided in this section.

(D) Division (A) above does not apply to any kerosene-fired space or room heater that is equipped with an automatic extinguishing tip-over device, or to any natural gas-fired or liquid petroleum gas-fired space or room heater that is equipped with an oxygen depletion safety shut-off system, and that has its fuel piped from a source outside the building in which it is located, that are approved by an authoritative source recognized by the State Fire Marshal in the State Fire Code adopted by him or her under Ohio R.C. § 3737.82.

(E) The State Fire Marshal may make rules to ensure the safe use of unvented kerosene, natural gas, or liquid petroleum gas heaters exempted from division (A) above when used in assembly buildings, business buildings, high hazard buildings, institutional buildings, mercantile buildings, and Type R-1 and R-2 residential buildings, as these groups of buildings are defined in rules adopted by the Board of Building Standards under Ohio R.C. § 3781.10. No person shall negligently use, or, being the owner, person in charge or occupant of premises, negligently permit the use of a heater in violation of any rules adopted under this division.

(F) The State Fire Marshal may make rules prescribing standards for written instructions containing ventilation requirements and warning of any potential fire hazards that may occur in using a kerosene, natural gas, or liquid petroleum gas heater. No person shall sell or offer for sale any kerosene, natural gas, or liquid petroleum gas heater unless the manufacturer provides with the heater written instructions that comply with any rules adopted under this division.

(G) No product labeled as a fuel additive for kerosene heaters and having a flash point below 100°F or 37.8°C shall be sold, offered for sale, or used in any kerosene space heater.

(H) No device that prohibits any safety feature on a kerosene, natural gas, or liquid petroleum gas space heater from operating shall be sold, offered for sale, or used in connection with any kerosene, natural gas, or liquid petroleum gas space heater.

(I) No person shall sell or offer for sale any kerosene-fired, natural gas, or liquid petroleum gas-fired heater that is not exempt from division (A) above, unless it is marked conspicuously by the manufacturer on the container with the phrase "Not Approved For Home Use."

(J) No person shall use a cabinet-type, liquid petroleum gas-fired heater having a fuel source within the heater, inside any building, except as permitted by the State Fire Marshal in the State Fire Code adopted by him or her under Ohio R.C. § 3737.82.

(ORC § 3701.82)

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

(ORC § 3701.99(B)) (1995 Code, § 139.03)

§ 91.55 DEFINITIONS.

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

AGRICULTURAL WASTE means any waste material generated by crop, horticultural, or livestock production practices, and includes such items as woody debris and plant matter from stream flooding, bags, cartons, structural materials, and landscape wastes that are generated in agricultural activities, but does not include land clearing waste; buildings; garbage; dead animals; animal waste; motor vehicles and parts thereof; nor economic poisons and containers thereof, unless the manufacturer has identified open burning as a safe disposal procedure.

ECONOMIC POISONS include but are not restricted to pesticides such as insecticides, fungicides, rodenticides, miticides, nematocides and fumigants; herbicides; seed disinfectants; and defoliants.

EMERGENCY BURNING means the burning of clean wood waste or deceased animals caused by a natural disaster or an uncontrolled event such as the following:

(a) A tornado.

(b) High winds.

(c) An earthquake.

(d) An explosion.

(e) A flood.

(f) A hail storm, a rain storm, or an ice storm.

GARBAGE means any waste material resulting from the handling, processing, preparation, cooking and consumption of food or food products.

LAND CLEARING WASTE means plant waste material which is removed from land, including plant waste material removed from stream banks during projects involving more than one property owner, for the purpose of rendering the land useful for residential, commercial, or industrial development. Land clearing waste also includes the plant waste material generated during the clearing of land for new agricultural development.

LANDSCAPE WASTE means any plant waste material, except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings, and crop residues.

OHIO EPA means the Ohio Environmental Protection Agency Director or agencies delegated authority by the Director of the Ohio Environmental Protection Agency pursuant to Ohio R.C. § 3704.03 or the Chief of any Ohio Environmental Protection Agency District Office.

OPEN BURNING means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. ***OPEN BURNING*** includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of O.A.C. 3745-17-09 or 3745-17-10.

RESIDENTIAL WASTE means any waste material, including landscape wastes, generated on a one-, two- or three-family residence as a result of residential activities, but not including garbage.

RESTRICTED AREA means the following:

(a) Except as provided in division (b) of this definition, the area within the boundary of any municipal corporation established in accordance with the provisions of Ohio R.C. Title 7, plus a zone extending 1,000 feet beyond the boundaries of any such municipal corporation having a population of 1,000 to 10,000 persons and a zone extending one mile beyond any such municipal corporation having a population of 10,000 persons or more according to the latest Federal Census.

(b) ***RESTRICTED AREA*** shall not include any municipal corporation the territory of which is located on an island in Lake Erie except that, during the yearly period between Memorial Day and Labor Day, any such municipal corporation shall be required to

comply with the requirements of § 91.57.

UNRESTRICTED AREA means all areas outside the boundaries of a "restricted area" as defined above.

(B) *Incorporation by reference.* This subchapter includes references to certain matter or materials. The text of the incorporated materials is not included in the regulations contained in this subchapter. The materials are hereby made a part of the regulations in this subchapter. For materials subject to change, only the specific version specified in the regulation are incorporated. Material is incorporated as it exists on the effective date of this subchapter. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not incorporated unless and until this rule has been amended to specify the new dates.

(1) *Availability.* The materials incorporated by reference are available as follows: National Fire Protection Association - Information on the National Protection Association codes may be obtained by contacting association at 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, 617-770-3000. Codes may be ordered online at: www.nfpa.org/catalog/home/index.asp. Copies of the code are available at most public libraries and at the State Library of Ohio.

(2) *Incorporated materials.* The following material is incorporated: NFPA publication 1403, *Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures*, November 2001 Edition.

(O.A.C. § 3745-19-01)

§ 91.56 RELATIONS TO OTHER PROHIBITIONS.

(A) Notwithstanding any provision in O.A.C. Chapter 3745-19, no open burning shall be conducted in an area where an air alert, warning or emergency under O.A.C. Chapter 3745-25 is in effect.

(B) No provisions of O.A.C. Chapter 3745-19 permitting open burning, and no permission to open burn granted by the Ohio EPA, shall exempt any person from compliance with any section of the Ohio Revised Code, or any regulation of any state department, or any local ordinance or regulation dealing with open burning.

(O.A.C. § 3745-19-02) Penalty, see § 91.99

§ 91.57 OPEN BURNING IN RESTRICTED AREAS.

(A) No person or property owner shall cause or allow open burning in a restricted area except as provided in divisions (B) to (D) of this section or in Ohio R.C. § 3704.11.

(B) Open burning shall be allowed for the following purposes without notification to or permission from the Ohio EPA:

(1) Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs.

(2) Bonfires, campfires and outdoor fireplace equipment, whether for cooking food for human consumption, pleasure, religious, ceremonial, warmth, recreational, or similar purposes, if the following conditions are met:

(a) They are fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood;

(b) They are not used for waste disposal purposes; and

(c) They shall have a total fuel area of three feet or less in diameter and two feet or less in height.

(3) Disposal of hazardous explosive materials, military munitions or explosive devices that require immediate action to prevent endangerment of human health, public safety, property or the environment and that are excluded from the requirement to obtain a hazardous waste permit pursuant to O.A.C. 3745-50-45(D)(1)(d).

(4) Recognized training in the use of fire extinguishers for commercial or industrial fire prevention.

(5) Fires allowed by divisions (B)(1), (B)(2), and (B)(4) of this section shall not be used for waste disposal purposes and shall be of minimum size sufficient for their intended purpose; the fuel shall be chosen to minimize the generation and emission of air contaminants.

(C) Open burning shall be allowed for the following purposes with prior notification to the Ohio EPA in accordance with § 91.58(B):

(1) Prevention or control of disease or pests, with written or verbal verification to the Ohio EPA from the local health department, cooperative extension service, Ohio Department of Agriculture, or U.S. Department of Agriculture, that open burning is the only appropriate disposal method.

(2) Bonfires or campfires used for ceremonial purposes that do not meet the requirements of division (B)(2) of this section, provided the following conditions are met:

(a) They have a total fuel area no greater than five feet in diameter by five feet in height and burn no longer than three hours;

(b) They are not used for waste disposal purposes; and

(c) They are fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood.

(3) Disposal of agricultural waste generated on the premises if the following conditions are observed:

(a) The fire is set only when atmospheric conditions will readily dissipate contaminants;

(b) The fire does not create a visibility hazard on the roadways, railroad tracks, or air fields;

(c) The fire is located at a point on the premises no less than 1,000 feet from any inhabited building not located on said premises;

(d) The wastes are stacked and dried to provide the best practicable condition for efficient burning; and

(e) No materials are burned which contain rubber, grease, asphalt or liquid petroleum products.

(D) Open burning shall be allowed for the following purposes upon receipt of written permission from the Ohio EPA, in accordance with § 91.58(A), provided that any conditions specified in the permission are followed:

(1) Disposal of ignitable or explosive materials where the Ohio EPA determines that there is no practical alternate method of disposal, excluding those materials identified in division (B)(3) of this section;

(2) Instruction in methods of fire fighting or for research in the control of fires as recognized by the State Fire Marshal Division of the Ohio Department of Commerce and the guidelines set forth in the National Fire Protection Association's (NFPA) publication 1403, *Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures*, provided that the application required in § 91.58 (A)(1) is submitted by the commercial or public entity responsible for the instruction;

(3) In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Director and performed as identified in the appendix to O.A.C. 3745-19-03. If deemed necessary, the open burning may be authorized with prior oral approval by the Director followed by the issuance of a written permission to open burn within seven working days of the oral approval;

(4) Recognized horticultural, silvicultural, range, or wildlife management practices; and

(5) Fires and/or pyrotechnic effects, for purposes other than waste disposal, set as part of commercial film-making or video production activities for motion pictures and television.

(O.A.C. § 3745-19-03) Penalty, see § 91.99

§ 91.58 PERMISSION AND NOTICE TO OPEN BURN.

(A) *Permission.*

(1) An application for permission to open burn shall be submitted in writing at least 10 working days before the fire is to be set. Saturday, Sunday, and legal holidays shall not be considered a working day. It shall be in such form and contain such information as required by the Ohio EPA.

(2) Except as provided in divisions (A)(6) and (A)(7) of this section, such applications shall contain, as a minimum, information regarding:

(a) The purpose of the proposed burning;

(b) The nature of quantities of material to be burned;

(c) The date or dates when such burning will take place;

(d) The location of the burning site, including a map showing distances to residences, populated areas, roadways, air fields, and other pertinent landmarks; and

(e) The methods or actions which will be taken to reduce the emissions of air contaminants.

(3) Permission to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the Ohio EPA that open burning is necessary to the public interest; will be conducted in a time, place, and manner as to minimize the emission of air contaminants; and will have no serious detrimental effect upon adjacent properties or the occupants thereof. The Ohio EPA may impose such conditions as may be necessary to accomplish the purpose of O.A.C. Chapter 3745-19.

(4) Except as provided in division (A)(6) of this section, permission to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while written permission is sought, the fire may be set with oral permission of the Ohio EPA.

(5) Violations of any of the conditions set forth by the Ohio EPA in granting permission to open burn shall be grounds for revocation of such permission and refusal to grant future permission, as well as for the imposition of other sanctions provided by law.

(6) The Ohio Department of Commerce, Division of State Fire Marshal, may request permission to open burn on an annual basis for the purpose of training firefighters on pre-flashover conditions using the Ohio Fire Academy's mobile training laboratory at either the academy or at other training sites in Ohio. The annual application required pursuant to division (A)(1) of this section shall contain information as required in division (A)(2) of this section, except the information required in divisions (A)(2)(c) and (A)(2)(d) of this section need not be provided unless it is available at the time of submittal of the application. The Academy shall contact the appropriate Ohio EPA District Office or local air agency at least five working days before each training session of the date or dates when the training session will take place and its location. Saturday, Sunday, and legal holidays shall not be considered a working day.

(7) For open burning defined under paragraph § 91.57(D)(2) and O.A.C. 3745-19-04(C)(2), permission to open burn shall not be granted unless the applicant provides proof of written notice of intent to demolish received by the appropriate Ohio EPA field office in accordance with O.A.C. 3745-20-03.

(B) *Notification.*

(1) Notification shall be submitted in writing at least 10 working days before the fire is to be set. Saturday, Sunday, and legal holidays shall not be considered a working day. It shall be in such form and contain such information as shall be required by the Ohio EPA.

(2) Such notification shall inform the Ohio EPA regarding:

(a) The purpose of the proposed burning;

(b) The nature and quantities of materials to be burned;

(c) The date or dates when such burning will take place; and

(d) The location of the burning site.

(3) The Ohio EPA, after receiving notification, may determine that the open burning is not allowed under O.A.C. Chapter 3745-19 and the Ohio EPA shall notify the applicant to this effect.

(O.A.C. § 3745-19-05) Penalty, see § 91.99

§ 91.99 PENALTY.

(A) Whoever violates any provision of this chapter for which another penalty is not specifically provided shall be subject to the penalty as provided in § 10.99.

(B) (1) Except as otherwise provided in division (B)(2) or (B)(3) of this section, whoever violates any provisions of §§ 91.01 through 91.08 is guilty of a misdemeanor of the first degree.

(2) If the offender previously has been convicted of or pleaded guilty to a violation of Ohio R.C. § 3743.60(I) or Ohio R.C. § 3743.61(I), or a substantially equivalent municipal ordinance, a violation of § 91.04(E) is a felony to be prosecuted under appropriate state law.

(3) Whoever violates § 91.06(A) is guilty of a misdemeanor of the first degree. In addition to any other penalties that may be imposed on a licensed exhibitor of fireworks under this division and unless the third sentence of this division applies, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be suspended, and the person is ineligible to apply for either type of licence, for a period of five years. If the violation of § 91.06(A) results in serious physical harm to persons or serious physical harm to property, the person's license as an exhibitor of fireworks or as an assistant exhibitor of fireworks shall be revoked, and that person is ineligible to apply for a license as or to be licensed as an exhibitor of fireworks or as an assistant exhibitor of fireworks in this state.

(ORC § 3743.99(C), (D))

Statutory reference:

Civil penalties for violations of State Fire Code, see Ohio R.C. § 3737.51(B) through (H)

CHAPTER 92: INTOXICATING LIQUORS

Section

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Liquor permits, see Ohio R.C. Chapter 4303

Local option elections, see Ohio R.C. §§ 4301.32 et seq.

Use of license to violate liquor laws; suspension; procedures, see Ohio R.C. § 4510.33

§ 92.01 DEFINITIONS.

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

ALCOHOL. Ethyl alcohol, whether rectified or diluted with water or not, whatever its origin may be, and includes synthetic ethyl alcohol. The term does not include denatured alcohol and wood alcohol.

AT RETAIL. For use or consumption by the purchaser and not for resale.

BEER. Includes all beverages brewed or fermented wholly or in part from malt products and containing 0.5% or more, but not more than 12%, of alcohol by volume.

CIDER. All liquids that are fit to use for beverage purposes that contain 0.5% of alcohol by volume, but not more than 6% of alcohol by weight that are made through the normal alcoholic fermentation of the juice of sound, ripe apples, including, without limitation, flavored, sparkling, or carbonated cider and cider made from pure condensed apple must.

CLUB. A corporation or association of individuals organized in good faith for social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purposes, which is the owner, lessor, or occupant of a permanent building or part of a permanent building operated solely for such purposes, membership in which entails the prepayment of regular dues, and includes the place so operated.

COMMUNITY FACILITY. Means either of the following:

(1) Any convention, sports or entertainment facility or complex, or any combination of these, that is used by or accessible to the general public and that is owned or operated in whole or in part by the state, a state agency, or a political subdivision of the state or that is leased from, or located on property owned by or leased from, the state, a state agency, a political subdivision of the state, or a convention facilities authority created pursuant to Ohio R.C. § 351.02; or

(2) An area designated as a community entertainment district pursuant to Ohio R.C. § 4301.80.

CONTROLLED ACCESS ALCOHOL AND BEVERAGE CABINET. A closed container, either refrigerated, in whole or in part, or nonrefrigerated, access to the interior of which is restricted by means of a device that requires the use of a key, magnetic card,

or similar device and from which beer, intoxicating liquor, other beverages, or food may be sold.

HOTEL. The same meaning as in Ohio R.C. § 3731.01, subject to the exceptions mentioned in Ohio R.C. § 3731.03.

INTOXICATING LIQUOR and ***LIQUOR.*** All liquids and compounds, other than beer, containing 0.5% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented. ***INTOXICATING LIQUOR*** and ***LIQUOR*** include wine even if it contains less than 4% of alcohol by volume, mixed beverages even if they contain less than 4% of alcohol by volume, cider, alcohol, and all solids and confections which contain any alcohol.

LOW-ALCOHOL BEVERAGE. Any brewed or fermented malt product or any product made from the fermented juices of grapes, fruits, or other agricultural products that contains either no alcohol or less than 0.5% of alcohol by volume. The beverages described in this definition do not include a soft drink such as root beer, birch beer, or ginger beer.

MANUFACTURE. All processes by which beer or intoxicating liquor is produced, whether by distillation, rectifying, fortifying, blending, fermentation, brewing, or in any other manner.

MANUFACTURER. Any person engaged in the business of manufacturing beer or intoxicating liquor.

MIXED BEVERAGES. Bottled and prepared cordials, cocktails, and highballs, produced by mixing any type of whiskey, neutral spirits, brandy, gin or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product shall contain not less than 0.5% of alcohol by volume and not more than 21% of alcohol by volume.

NIGHTCLUB. A place habitually operated for profit, where food is served for consumption on the premises, and one or more forms of amusement are provided or permitted for a consideration that may be in the form of a cover charge or may be included in the price of the food and beverages, or both, purchased by patrons.

PERSON. Includes firms and corporations.

PHARMACY. An establishment as defined in Ohio R.C. § 4729.01, that is under the management or control of a licensed pharmacist in accordance with Ohio R.C. § 4729.27.

RESTAURANT. A place located in a permanent building provided with space and accommodations wherein, in consideration of the payment of money, hot meals are habitually prepared, sold, and served at noon and evening, as the principal business of the place. The term does not include pharmacies, confectionery stores, lunch stands, nightclubs, and filling stations.

SALE and ***SELL.*** The exchange, barter, gift, offer for sale, sale, distribution, and delivery of any kind, and the transfer of title or possession of beer and intoxicating liquor either by constructive or actual delivery by any means or devices whatever, including the sale of beer or intoxicating liquor by means of a controlled access alcohol and beverage cabinet pursuant to Ohio R.C. § 4301.21. Such terms do not include the mere solicitation of orders for beer or intoxicating liquor from the holders of permits issued by the Division of Liquor Control authorizing the sale of the beer or intoxicating liquor, but no solicitor shall solicit any orders until the solicitor has been registered with the Division pursuant to Ohio R.C. § 4303.25.

SALES AREA OR TERRITORY. An exclusive geographic area or territory that is assigned to a particular A or B permit holder and that either has one or more political subdivisions as its boundaries or consists of an area of land with readily identifiable geographic boundaries. ***SALES AREA OR TERRITORY*** does not include, however, any particular retail location in an exclusive geographic area or territory that had been assigned to another A or B permit holder before April 9, 2001.

SEALED CONTAINER. Any container having a capacity of not more than 128 fluid ounces, the opening of which is closed to prevent the entrance of air.

SPIRITUOUS LIQUOR. All intoxicating liquors containing more than 21% of alcohol by volume.

VEHICLE. All means of transportation by land, by water, or by air, and everything made use of in any way for such transportation.

WHOLESALE DISTRIBUTOR and ***DISTRIBUTOR.*** A person engaged in the business of selling to retail dealers for purposes of resale.

WINE. All liquids fit to use for beverage purposes containing not less than 0.5% of alcohol by volume and not more than 21% of alcohol by volume, which is made from the fermented juices of grapes, fruits, or other agricultural products. Except as provided in Ohio R.C. § 4301.01(B)(3), the term does not include cider.

(ORC § 4301.01) (1995 Code, § 92.01)

§ 92.02 EXEMPTIONS FROM CHAPTER.

The provisions of this chapter do not prevent the following.

(A) The storage of intoxicating liquor in bonded warehouses, established in accordance with the Acts of Congress and under the regulation of the United States, located in the municipality, or the transportation of intoxicating liquor to or from bonded warehouses of the United States wherever located.

(B) A bona fide resident of this state who is the owner of a warehouse receipt from obtaining or transporting to the resident's residence for the resident's own consumption and not for resale spirituous liquor stored in a government bonded warehouse in this state or in another state prior to December 1933, subject to such terms as are prescribed by the Division of Liquor Control.

(C) The manufacture of cider from fruit for the purpose of making vinegar, and nonintoxicating cider and fruit juices for use and sale.

(D) A licensed physician or dentist from administering or dispensing intoxicating liquor or alcohol to a patient in good faith in the actual course of the practice of the physician's or dentist's profession.

(E) The sale of alcohol to physicians, dentists, druggists, veterinary surgeons, manufacturers, hospitals, infirmaries, or medical or educational institutions using the alcohol for medicinal, mechanical, chemical or scientific purposes.

(F) The sale, gift, or keeping for sale by druggists and others of any of the medicinal preparations manufactured in accordance with the formulas prescribed by the United States Pharmacopoeia and National Formulary, patent or proprietary preparations, and other bona fide medicinal and technical preparations, which contain no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, which are manufactured and sold as medicines and not as beverages, are unfit for use for beverage purposes, and the sale of which does not require the payment of a United States liquor dealer's tax.

(G) The manufacture and sale of tinctures or of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages, and which are unfit for beverage purposes, if upon the outside of each bottle, box, or package of which there is printed in English, conspicuously and legibly, the quantity by volume of alcohol in the preparation or solution.

(H) The manufacture and keeping for sale of the food products known as flavoring extracts when manufactured and sold for cooking, culinary or flavoring purposes, and which are unfit for use for beverage purposes.

(I) The lawful sale of wood alcohol or of ethyl alcohol for external use when combined with other substances as to make it unfit for internal use.

(J) The manufacture, sale, and transport of ethanol or ethyl alcohol for use as fuel. As used in this division, ***ETHANOL*** has the same meaning as in Ohio R.C. § 5733.46.

(K) The purchase and importation into the municipality of intoxicating liquor for use in manufacturing processes of nonbeverage food products under terms prescribed by the Division, provided that the terms prescribed by the Division shall not increase the cost of the intoxicating liquor to any person, firm or corporation purchasing and importing it into this municipality for that use.

(L) Any resident of this state or any member of the armed forces of the United States who has attained the age of 21 years from bringing into this municipality for personal use and not for resale not more than one liter of spirituous liquor, 4.5 liters of wine, or 288 ounces of beer in any 30 day period, and the same is free of any tax consent fee when the resident or member of the armed forces physically possesses and accompanies the spirituous liquor, wine or beer on returning from a foreign country, another state, or an insular possession of the United States.

(M) Persons at least 21 years of age who collect ceramic commemorative bottles containing spirituous liquor which have unbroken federal tax stamps on them from selling or trading the bottles to other collectors. The bottles must originally have been purchased at retail from the Division, legally imported under division (L) of this section, or legally imported pursuant to a supplier registration issued by the Division. The sales shall be for the purpose of exchanging a ceramic commemorative bottle between private collectors and shall not be for the purpose of selling the spirituous liquor for personal consumption. The sale or exchange authorized by this division shall not occur on the premises of any permit holder, shall not be made in connection with the business of any permit holder, and shall not be made in connection with any mercantile business.

(N) The sale of beer or intoxicating liquor without a liquor permit at a private residence, not more than five times per calendar year

at a residence address, at an event that has the following characteristics:

(1) The event is for a charitable, benevolent, or political purpose, but shall not include any event the proceeds of which are for the profit or gain of any individual;

(2) The event has in attendance not more than 50 people;

(3) The event shall be for a period not to exceed 12 hours;

(4) The sale of beer and intoxicating liquor at the event shall not take place between 2:30 a.m. and 5:30 a.m.;

(5) No person under 21 years of age shall purchase or consume beer or intoxicating liquor at the event and no beer or intoxicating liquor shall be sold to any person under 21 years of age at the event; and

(6) No person at the event shall sell or furnish beer or intoxicating liquor to an intoxicated person.

(ORC § 4301.20)

§ 92.03 RESTRICTIONS APPLICABLE TO SALE OF BEER AND INTOXICATING LIQUOR FOR CONSUMPTION ON THE PREMISES.

(A) The sale of beer or intoxicating liquor for consumption on the premises is subject to the following restrictions, in addition to those imposed by the rules and orders of the Division of Liquor Control.

(1) Except as otherwise provided in this chapter or in Ohio R.C. Chapter 4301, beer or intoxicating liquor may be served to a person not seated at a table unless there is reason to believe that the beer or intoxicating liquor so served will be consumed by a person under 21 years of age.

(2) Beer or intoxicating liquor may be served by a hotel in the room of a bona fide guest, and may be sold by a hotel holding a D-5a permit, or a hotel holding a D-3 or D-5 permit that otherwise meets all of the requirements for holding a D-5a permit, by means of a controlled access alcohol and beverage cabinet that shall be located only in the hotel room of a registered guest. A hotel may sell beer or intoxicating liquor as authorized by its permit to a registered guest by means of a controlled access alcohol and beverage cabinet in accordance with the following requirements.

(a) Only a person 21 years of age or older who is a guest registered to stay in a guestroom shall be provided a key, magnetic card, or other similar device necessary to obtain access to the contents of a controlled access alcohol and beverage cabinet in that guestroom.

(b) The hotel shall comply with Ohio R.C. § 4301.22, or a substantially equivalent municipal ordinance, in connection with the handling, restocking, and replenishing of the beer and intoxicating liquor in the controlled access alcohol and beverage cabinet.

(c) The hotel shall replenish or restock beer and intoxicating liquor in any controlled access alcohol and beverage cabinet only during the hours during which the hotel may serve or sell beer and intoxicating liquor.

(d) The registered guest shall verify in writing that the guest has read and understands the language that shall be posted on the controlled access alcohol and beverage cabinet as required by division (A)(2)(e) of this section.

(e) A hotel authorized to sell beer and intoxicating liquor pursuant to division (A)(2) of this section shall post on the controlled access alcohol and beverage cabinet, in conspicuous language, the following notice:

"The alcoholic beverages contained in this cabinet shall not be removed from the premises."

(f) The hotel shall maintain a record of each sale of beer or intoxicating liquor made by the hotel by means of a controlled access alcohol and beverage cabinet for any period in which the permit holder is authorized to hold the permit pursuant to Ohio R.C. §§ 4303.26 and 4303.27 and any additional period during which an applicant exercises its right to appeal a rejection by the Division of Liquor Control to renew a permit pursuant to Ohio R.C. § 4303.271. The records maintained by the hotel shall comply with both of the following:

1. Include the name, address, age, and signature of each hotel guest who is provided access by the hotel to a controlled access alcohol and beverage cabinet pursuant to division (A)(2)(a) of this section; and

2. Be made available during business hours to authorized agents of the Division of Liquor Control pursuant to Ohio R.C. §

4301.10(A)(6) or to enforcement agents of the Department of Public Safety pursuant to Ohio R.C. §§ 5502.13 through 5502.19.

(g) The hotel shall observe all other applicable rules adopted by the Division of Liquor Control and the Liquor Control Commission.

(3) The seller shall not require the purchase of food with the purchase of beer or intoxicating liquor; nor shall the seller of beer or intoxicating liquor give away food of any kind in connection with the sale of beer or intoxicating liquor, except as authorized by rule of the state Liquor Control Commission.

(4) The seller shall not permit the purchaser to remove beer or intoxicating liquor so sold from the premises.

(5) A hotel authorized to sell beer and intoxicating liquor pursuant to division (A)(2) of this section shall provide a registered guest with the opportunity to refuse to accept a key, magnetic card, or other similar device necessary to obtain access to the contents of a controlled access alcohol and beverage cabinet in that guest room. If a registered guest refuses to accept such key, magnetic card, or other similar device, the hotel shall not assess any charges on the registered guest for use of the controlled access alcohol and beverage cabinet in that guest room.

(ORC § 4301.21)

(B) Whoever violates division (A)(4) of this section is guilty of a misdemeanor of the first degree.

(ORC § 4301.99(C)) (1995 Code, § 92.02)

§ 92.04 RESTRICTIONS ON SALE OF BEER AND LIQUOR.

(A) *Restrictions on sales.* Sales of beer and intoxicating liquor under all classes of permits and from liquor stores are subject to the following restrictions, in addition to those imposed by the rules or orders of the State Division of Liquor Control.

(1) (a) Except as otherwise provided in this chapter or in Ohio R.C. Chapter 4301, no beer or intoxicating liquor shall be sold to any person under 21 years of age.

(b) No low-alcohol beverage shall be sold to any person under 18 years of age. No permit issued by the Division shall be suspended, revoked, or cancelled because of a violation of this division (A)(1)(b).

(c) No intoxicating liquor shall be handled by any person under 21 years of age, except that a person 18 years of age or older employed by a permit holder may handle or sell beer or intoxicating liquor in sealed containers in connection with wholesale or retail sales, and any person 19 years of age or older employed by a permit holder may handle intoxicating liquor in open containers when acting in the capacity of a server in a hotel, restaurant, club, or night club, as defined in Ohio R.C. § 4301.01, or in the premises of a D-7 permit holder. This section does not authorize persons under 21 years of age to sell intoxicating liquor across a bar. Any person employed by a permit holder may handle beer or intoxicating liquor in sealed containers in connection with manufacturing, storage, warehousing, placement, stocking, bagging, loading, or unloading, and may handle beer or intoxicating liquor in open containers in connection with cleaning tables or handling empty bottles or glasses.

(2) No permit holder and no agent or employee of a permit holder shall sell or furnish beer or intoxicating liquor to an intoxicated person.

(3) (a) No sales of intoxicating liquor shall be made after 2:30 a.m. on Sunday, except under either of the following circumstances:

1. Intoxicating liquor may be sold on Sunday under authority of a permit that authorizes Sunday sale.

2. Spiritous liquor may be sold on Sunday by any person awarded an agency contract under Ohio R.C. § 4301.17 if the sale of spiritous liquor is authorized in the applicable precinct as the result of an election on question (B)(1) or (B)(2) of Ohio R.C. § 4301.351 and if the agency contract authorizes the sale of spiritous liquor on Sunday.

(b) This section does not prevent the municipality from adopting a closing hour for the sale of intoxicating liquor earlier than 2:30 a.m. on Sunday or to provide that no intoxicating liquor may be sold prior to that hour on Sunday.

(4) No holder of a permit shall give away any beer or intoxicating liquor of any kind at any time in connection with the permit holder's business.

(5) Except as otherwise provided in this division, no retail permit holder shall display or permit the display on the outside of any

licensed retail premises, on any lot of ground on which the licensed premises are situated, or on the exterior of any building of which the licensed premises are a part, any sign, illustration, or advertisement bearing the name, brand name, trade name, trademark, designation, or other emblem of, or indicating the manufacturer, producer, distributor, place of manufacture, production, or distribution of, any beer or intoxicating liquor. Signs, illustrations, or advertisements bearing the name, brand name, trade name, trademark, designation, or other emblem of or indicating the manufacturer, producer, distributor, place of manufacture, production, or distribution of beer or intoxicating liquor may be displayed and permitted to be displayed on the interior or in the show windows of any licensed premises, if the particular brand or type of product so advertised is actually available for sale on the premises at the time of that display. The Liquor Control Commission shall determine by rule the size and character of those signs, illustrations, or advertisements.

(6) No retail permit holder shall possess on the licensed premises any barrel or other container from which beer is drawn, unless there is attached to the spigot or other dispensing apparatus the name of the manufacturer of the product contained in the barrel or other container, provided that, if the beer is served at a bar, the manufacturer's name or brand shall appear in full view of the purchaser. The Commission shall regulate the size and character of the devices provided for in this section.

(7) Except as otherwise provided in this division, no sale of any gift certificate shall be permitted whereby beer or intoxicating liquor of any kind is to be exchanged for the certificate, unless the gift certificate can be exchanged only for food, and beer or intoxicating liquor, for on-premises consumption and the value of the beer or intoxicating liquor does not exceed more than 30% of the total value of the gift certificate. The sale of gift certificates for the purchase of beer, wine, or mixed beverages shall be permitted for the purchase of beer, wine, or mixed beverages for off-premises consumption. Limitations on the use of a gift certificate for the purchase of beer, wine, or mixed beverages for off-premises consumption may be expressed by clearly stamping or typing on the face of the certificate that the certificate may not be used for the purchase of beer, wine, or mixed beverages for on-premises consumption.

(ORC § 4301.22)

(B) *Division (A)(1) not modified or affected.* The provisions of Ohio R.C. §§ 4301.633 through 4301.637, or substantially equivalent municipal ordinances, shall not be deemed to modify or affect division (A)(1) of this section or Ohio R.C. § 4301.22(A).

(ORC § 4301.638)

(C) *Penalties.*

(1) Whoever violates divisions (A)(1)(b) or (A)(3) of this section is guilty of a misdemeanor of the fourth degree.

(ORC § 4301.99(B))

(2) Whoever violates divisions (A)(1)(a), (A)(1)(c) or (A)(2) of this section is guilty of a misdemeanor of the third degree.

(ORC § 4301.99(D), (H)) (1995 Code, § 92.04)

Statutory reference:

Suspension of beer and liquor sales during emergency, see Ohio R.C. § 4301.251

§ 92.05 PERMIT REQUIRED; ACTIVITIES PROHIBITED WITHOUT PERMIT.

(A) *Permit required.*

(1) No person personally or by the person's clerk, agent, or employee, shall manufacture, manufacture for sale, offer, keep, or possess for sale, furnish or sell, or solicit the purchase or sale of any beer or intoxicating liquor in this state, or transport, import, or cause to be transported or imported any beer, intoxicating liquor, or alcohol in or into this municipality for delivery, use or sale, unless the person has fully complied with Ohio R.C. Chapters 4301 and 4303 or is the holder of a permit issued by the Division of Liquor Control and in force at the time.

(2) No manufacturer, supplier, wholesale distributor, broker, or retailer of beer or intoxicating liquor, or other person shall employ, retain, or otherwise utilize any person in this state to act as an employee, agent, solicitor, or salesperson, or act in any other representative capacity to sell, solicit, take orders, or receive offers to purchase or expressions of interest to purchase beer or intoxicating liquor from any person, at any location other than a liquor permit premises, except as specifically authorized by R.C. Chapter 4301 or R.C. Chapter 4303 or rules adopted thereunder. No function, event, or party shall take place at any location other than a liquor permit premises where any person acts in any manner to sell, solicit, take orders, or receive offers to purchase or expressions of intent to purchase beer or intoxicating liquor to or from any person, except as specifically authorized by R.C. Chapter 4301 or R.C. Chapter 4303 Code or rules adopted thereunder.

(ORC § 4303.25)

(B) *Activities prohibited without permit.*

(1) No person, personally or by the person's clerk, agent, or employee, who is not the holder of an A permit issued by the Division of Liquor Control, in force at the time, and authorizing the manufacture of beer or intoxicating liquor, or who is not an agent or employee of the Department authorized to manufacture beer or intoxicating liquor, shall manufacture any beer or intoxicating liquor for sale, or shall manufacture spirituous liquor.

(2) No person, personally or by the person's clerk, agent, or employee, who is not the holder of a A, B, C, D, E, F, G, I, or S permit issued by the Department, in force at the time, and authorizing the sale of beer, intoxicating liquor, or alcohol, or who is not an agent or employee of the Department or the Tax Commissioner authorized to sell beer, intoxicating liquor, or alcohol, shall sell, keep, or possess beer, intoxicating liquor, or alcohol for sale to any persons other than those authorized by this chapter and Ohio R.C. Chapters 4301 and 4303 to purchase any beer or intoxicating liquor, or sell any alcohol at retail. This division does not apply to or affect the sale or possession for sale of any low-alcohol beverage.

(3) No person, personally or by the person's clerk, agent, or employee, who is the holder of a permit issued by the Department, shall sell, keep, or possess for sale any intoxicating liquor not purchased from the Department or from the holder of a permit issued by the Department authorizing the sale of intoxicating liquor, unless the same has been purchased with the special consent of the Department. The Department shall revoke the permit of any person convicted of a violation of this division.

(ORC § 4301.58)

(C) *Penalty.* Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree.

(ORC § 4301.99(C)) (1995 Code, § 92.05)

§ 92.06 ILLEGAL TRANSPORTATION PROHIBITED.

(A) No person, who is not the holder of an H permit shall transport beer, intoxicating liquor, or alcohol in this municipality. This section does not apply to the transportation and delivery of beer, alcohol, or intoxicating liquor purchased or to be purchased from the holder of a permit issued by the Division of Liquor Control, in force at the time, and authorizing the sale and delivery of the beer, alcohol, or intoxicating liquor so transported, or to the transportation and delivery of beer, intoxicating liquor, or alcohol purchased from the Department or the Tax Commissioner, or purchased by the holder of an A or B permit outside this state, and transported within this municipality by them in their own trucks for the purpose of sale under their permits.

(ORC § 4301.60)

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

(ORC § 4301.99(C)) (1995 Code, § 92.06)

§ 92.07 OPEN CONTAINER PROHIBITED; EXCEPTION.

(A) As used in this section:

CHAUFFEURED LIMOUSINE means a vehicle registered under Ohio R.C. § 4503.24.

STREET, HIGHWAY, and ***MOTOR VEHICLE*** have the same meanings as in Ohio R.C. § 4511.01.

(B) No person shall have in his or her possession an opened container of beer or intoxicating liquor in any of the following circumstances:

(1) In a liquor store;

(2) Except as provided in division (C) of this section, on the premises of the holder of any permit issued by the Division of Liquor Control;

(3) In any other public place;

(4) Except as provided in division (D) of this section while operating or being a passenger in or on a motor vehicle on any street,

highway, or other public or private property open to the public for purposes of vehicular travel or parking; and

(5) Except as provided in division (D) of this section while being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(C) (1) A person may have in the person's possession an opened container of any of the following:

(a) Beer or intoxicating liquor that has been lawfully purchased for consumption on the premises where bought from the holder of an A-1-A, A-2, A-3a, D-1, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, D-5k, D-5l, D-5m, D-5n, D-5o, D-7, D-8, E, F, F-2, F-5, F-7, or F-8 permit;

(b) Beer, wine, or mixed beverages served for consumption on the premises by the holder of an F-3 permit or wine served for consumption on the premises by the holder of an F-4 or F-6 permit;

(c) Beer or intoxicating liquor consumed on the premises of a convention facility as provided in Ohio R.C. § 4303.201; or

(d) Beer or intoxicating liquor to be consumed during tastings and samplings approved by rule of the Liquor Control Commission.

(2) A person may have in the person's possession on an F liquor permit premises an opened container of beer or intoxicating liquor that was not purchased from the holder of the F permit if the premises for which the F permit is issued is a music festival and the holder of the F permit grants permission for that possession on the premises during the period for which the F permit is issued. As used in this division (C)(2), ***MUSIC FESTIVAL*** means a series of outdoor live musical performances extending for a period of at least three consecutive days and located on an area of land of at least 40 acres.

(3) (a) A person may have in the person's possession on a D-2 liquor permit premises an opened or unopened container of wine that was not purchased from the holder of the D-2 permit if the premises for which the D-2 permit is issued is an outdoor performing arts center, the person is attending an orchestral performance, and the holder of the D-2 permit grants permission for the possession and consumption of wine in certain predesignated areas of the premises during the period for which the D-2 permit is issued.

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

ORCHESTRAL PERFORMANCE means a concert comprised of a group of not fewer than 40 musicians playing various musical instruments.

OUTDOOR PERFORMING ARTS CENTER means an outdoor performing arts center that is located on not less than 150 acres of land and that is open for performances from the first day of April to the last day of October of each year.

(4) A person may have in the person's possession an opened or unopened container of beer or intoxicating liquor at an outdoor location at which the person is attending an orchestral performance as defined in division (C)(3)(b) of this section if the person with supervision and control over the performance grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of that outdoor location.

(D) This section does not apply to a person who pays all or a portion of the fee imposed for use of a chauffeured limousine pursuant to a prearranged contract or the guest of the person, when all of the following apply:

(1) The person or guest is a passenger in the limousine;

(2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located; and

(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.

(ORC § 4301.62)

(F) Whoever violates this section is guilty of a minor misdemeanor.

(ORC § 4301.99(A)) (1995 Code, § 92.07)

§ 92.08 UNDERAGE PERSON SHALL NOT PURCHASE INTOXICATING LIQUOR OR BEER.

(A) Except as otherwise provided in this chapter or in Ohio R.C. Chapter 4301, no person under the age of 21 years shall purchase beer or intoxicating liquor.

(ORC § 4301.63)

(B) Whoever violates this section shall be fined not less than $25 nor more than $100. The court imposing a fine for a violation of this section may order that the fine be paid by the performance of public work at a reasonable hour rate established by the court. The court shall designate the time within which the public work shall be completed.

(ORC § 4301.99(E)) (1995 Code, § 92.08)

§ 92.09 PROHIBITIONS; MINORS UNDER 18 YEARS; LOW-ALCOHOL BEVERAGES.

(A) As used in this section, ***UNDERAGE PERSON*** means a person under 18 years of age.

(B) No underage person shall purchase any low-alcohol beverage.

(C) No underage person shall order, pay for, share the cost of, or attempt to purchase any low-alcohol beverage.

(D) No person shall knowingly furnish any false information as to the name, age, or other identification of any underage person for the purpose of obtaining or with the intent to obtain any low-alcohol beverage for an underage person, by purchase or as a gift.

(E) No underage person shall knowingly show or give false information concerning his or her name, age, or other identification for the purpose of purchasing or otherwise obtaining any low-alcohol beverage in any place in this municipality.

(F) No person shall sell or furnish any low-alcohol beverage to, or buy any low-alcohol beverage for, an underage person, unless given by a physician in the regular line of his or her practice or given for established religious purposes, or unless the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian.

(G) (1) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming any low-alcohol beverage, unless the low-alcohol beverage is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian, and the parent, spouse who is not an underage person, or legal guardian is present when the person possesses or consumes the low- alcohol beverage.

(2) An owner of a public or private place is not liable for acts or omissions in violation of division (G)(1) that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(H) No permit issued by the Division of Liquor Control shall be suspended, revoked, or cancelled because of a violation of either division (F) or (G).

(I) No underage person shall knowingly possess or consume any low-alcohol beverage in any public or private place, unless he or she is accompanied by a parent, spouse who is not an underage person, or legal guardian, or unless the low-alcohol beverage is given by a physician in the regular line of his or her practice or given for established religious purposes.

(J) No parent, spouse who is not an underage person, or legal guardian of an underage person shall knowingly permit the underage person to violate this section.

(ORC § 4301.631)

(K) (1) Whoever violates any provision of this section for which no other penalty is provided is guilty of a misdemeanor of the fourth degree.

(ORC § 4301.99(B))

(2) Whoever violates division (B) of this section shall be fined not less than $25 nor more than $100. The court imposing a fine for a violation of division (B) of this section may order that the fine be paid by the performance of public work at a reasonable hour rate established by the court. The court shall designate the time within which the public work shall be completed.

(ORC § 4301.99(E)) (1995 Code, § 92.09)

§ 92.10 ALCOHOL VAPORIZING DEVICES PROHIBITED.

(A) As used in this section, ***ALCOHOL VAPORIZING DEVICE*** means a machine or other device that mixes beer or intoxicating liquor with pure oxygen or any other gas to produce a vaporized product for the purpose of consumption by inhalation.

(B) No person shall sell or offer for sale an alcohol vaporizing device.

(C) No person shall purchase or use an alcohol vaporizing device.

(ORC § 4301.65)

(D) (1) Whoever violates division (B) of this section is guilty of misdemeanor of the third degree. For a second or subsequent violation occurring within a period of five consecutive years after the first violation, a person is guilty of a misdemeanor of the first degree.

(ORC § 4301.99(J))

(2) Whoever violates division (C) of this section is guilty of a minor misdemeanor.

(ORC § 4301.99(A))

§ 92.11 MISREPRESENTATION TO OBTAIN ALCOHOLIC BEVERAGE FOR A MINOR PROHIBITED.

(A) Except as otherwise provided in this chapter or in Ohio R.C. Chapter 4301, no person shall knowingly furnish any false information as to the name, age, or other identification of any person under 21 years of age, for the purpose of obtaining, or with the intent to obtain, beer or intoxicating liquor for a person under 21 years of age, by purchase, or as a gift.

(ORC § 4301.633)

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

(ORC § 4301.99(C)) (1995 Code, § 92.11)

§ 92.12 MISREPRESENTATION BY A MINOR UNDER 21 YEARS.

(A) Except as otherwise provided in this chapter or in Ohio R.C. Chapter 4301, no person under the age of 21 years shall knowingly show or give false information concerning his or her name, age, or other identification for the purpose of purchasing or otherwise obtaining beer or intoxicating liquor in any place in this municipality where beer or intoxicating liquor is sold under a permit issued by the Division of Liquor Control, or sold by the Division of Liquor Control.

(ORC § 4301.634)

(B) (1) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree. If, in committing a first violation of division (A), the offender presented to the permit holder or his or her employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than $250 and not more than $1,000, and may be sentenced to a term of imprisonment of not more than six months.

(2) On a second violation in which, for the second time, the offender presented to the permit holder or his or her employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than $500 nor more than $1,000, and may be sentenced to a term of imprisonment of not more than six months. The court also may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operation privilege

from the range specified in Ohio R.C. § 4510.02(A)(7).

(3) On a third or subsequent violation in which, for the third or subsequent time, the offender presented to the permit holder or his or her employee or agent a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than $500 nor more than $1,000, and may be sentenced to a term of imprisonment of not more than six months. The court also shall 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 Ohio R.C. § 4510.02(A)(6), and the court may order that the suspension or denial remain in effect until the offender attains the age of 21 years. The court also 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.

(ORC § 4301.99(F)) (1995 Code, § 92.12)

§ 92.13 SALE TO UNDERAGE PERSONS PROHIBITED.

(A) Except as otherwise provided in this chapter or in Ohio R.C. Chapter 4301, no person shall sell beer or intoxicating liquor to an underage person, shall buy beer or intoxicating liquor for an underage person, or shall furnish it to an underage person unless given by a physician in the regular line of the physician's practice or given for established religious purposes or unless the underage person is supervised by a parent, spouse 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 Ohio R.C. § 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 public 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 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 Ohio R.C. § 2151.27, the

court may order the child into a diversion program specified by the court and hold the complaint in abeyance pending successful completion of the diversion program. A child is ineligible to enter into a diversion program under this division if the child previously has been diverted pursuant to this division. If the child completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the child's record in the case sealed under Ohio R.C. §§ 2151.356 through 2151.358. If the child fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

(b) If a person is charged in a criminal complaint with violating division (E)(1) of this section, Ohio R.C. § 2935.36 shall apply to the offense, except that a person is ineligible for diversion under that section if the person previously has been diverted pursuant to divisions (E)(2)(a) or (E)(2)(b) of this section. If the person completes the diversion program to the satisfaction of the court, the court shall dismiss the complaint and order the record in the case sealed under Ohio R.C. § 2953.52. If the person fails to satisfactorily complete the diversion program, the court shall proceed with the complaint.

(F) No parent, spouse who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or Ohio R.C. § 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.

DRUG OF ABUSE. Has the same meaning as in Ohio R.C. § 3719.011.

HOTEL. Has the same meaning as in Ohio R.C. § 3731.01.

LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS and ***PRESCRIPTION.*** Have the same meanings as in Ohio R.C. § 4729.01.

MINOR. A person under the age of 18 years.

UNDERAGE PERSON. A person under the age of 21 years.

(ORC § 4301.69)

(I) The provisions of Ohio R.C. §§ 4301.633 through 4301.637, or substantially equivalent municipal ordinances, shall not be deemed to modify or affect divisions (A) through (H) of this section or Ohio R.C. § 4301.69.

(ORC § 4301.638)

(J) (1) Except as provided in division (J)(2) of this section, whoever violates this section is guilty of a misdemeanor of the first degree. If an offender who violates division (E)(1) of this section was under the age of 18 years at the time of the offense and the offense occurred while the offender was the operator of or a passenger in a motor vehicle, the court, in addition to any other penalties it imposes upon the offender, shall suspend the offender's temporary instruction permit or probationary driver's license for a period of six months. If the offender is 15 years and 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 months. If the offender has not attained the age of 15 years and 6 months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of 16 years.

(ORC § 4301.99(C))

(2) Whoever violates division (A) of this section is guilty of a misdemeanor, shall be fined not less than $500 nor more than $1,000, and in addition to the fine, may be imprisoned for a definite term of not more than six months.

(ORC § 4301.99(I)) (1995 Code, § 92.21)

Statutory reference:

Changes to law if federal uniform drinking age repealed or declared unconstitutional, see Ohio R.C. § 4301.691

§ 92.14 POSTING OF CARD.

(A) (1) Except as otherwise provided in Ohio R.C. § 4301.691, every place in this municipality where beer, intoxicating liquor, or

any low-alcohol beverage is sold for beverage purposes shall display at all times, in a prominent place on the premises thereof, a printed card, which shall be furnished by the Division of Liquor Control and which shall read substantially as follows:

WARNING TO PERSONS UNDER AGE

If you are under the age of 21

Under the statutes of the State of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or possess or consume beer or intoxicating liquor in any public place, or furnish false information as to name, age, or other identification, you are subject to a fine of up to $1,000, or imprisonment up to 6 months, or both.

If you are under the age of 18

Under the statutes of the State of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or posses or consume, any type of beer or wine that contains either no alcohol or less than one-half of one per cent of alcohol by volume in any public place, or furnish false information as to the name, age, or other identification, you are subject to a fine of up to $250 or to imprisonment up to 30 days, or both.

(2) No person shall be subject to any criminal prosecution or any proceedings before the Department or the Liquor Control Commission for failing to display this card. No permit issued by the Department shall be suspended, revoked, or canceled because of the failure of the permit holder to display this card.

(B) (1) Every place in this municipality for which a D permit has been issued under Ohio R.C. Chapter 4303 shall be issued a printed card by the Division of Liquor Control that shall read substantially as follows:

WARNING

If you are carrying a firearm

Under the statutes of Ohio, if you possess a firearm in any room in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303 of the Revised Code, you may be guilty of a felony and may be subjected to a prison term of up to one year.

(2) No person shall be subject to any criminal prosecution or any proceedings before the Division of Liquor Control or the Liquor Control Commission for failing to display this card. No permit issued by the Department shall be suspended, revoked, or canceled because of the failure of the permit holder to display this card.

(ORC § 4301.637) (1995 Code, § 92.14) Penalty, see § 92.99

Statutory reference:

Carrying concealed weapon, felony, see Ohio R.C. § 2923.12

Possessing firearm in liquor permit premises, exceptions, defenses, see Ohio R.C. § 2923.121

§ 92.15 GOOD FAITH ACCEPTANCES OF SPURIOUS IDENTIFICATION.

(A) No permit holder, agent or employee of a permit holder, or any other person may be found guilty of a violation of any section of this chapter in which age is any element of the offense, if any court of record finds all of the following:

(1) That the person buying, at the time of so doing, exhibited to the permit holder, the agent or employee of the permit holder, or the other person a driver's or commercial driver's license or an identification card issued under Ohio R.C. §§ 4507.50 through 4507.52, or a military identification card issued by the United States Department of Defense, that displays a picture of the individual for whom the license or card was issued and shows that the person buying was then at least 21 years of age if the person was buying beer as defined in Ohio R.C. § 4301.01 or intoxicating liquor, or that the person was then at least 18 years of age if the person was buying any low-alcohol beverage;

(2) That the permit holder, the agent or employee of the permit holder, or the other person made a bona fide effort to ascertain the true age of the person buying by checking the identification presented at the time of the purchase to ascertain that the description on the identification compared with the appearance of the buyer and that the identification presented had not been altered in any way;

(3) That the permit holder, the agent or employee of the permit holder, or the other person had reason to believe that the person

buying was of legal age;

(B) The defense provided by division (A) of this section is in addition to the affirmative defense provided by § 92.29.

(ORC § 4301.639(A), (C)) (1995 Code, § 92.15)

§ 92.16 CONSUMPTION IN MOTOR VEHICLE PROHIBITED.

(A) No person shall consume any beer or intoxicating liquor in a motor vehicle. This section does not apply to persons described in Ohio R.C. § 4301.62(D) or a substantially equivalent municipal ordinance.

(ORC § 4301.64) (1995 Code, § 92.16)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. If an offender who violates this section was under the age of 18 years at the time of the offense, the court, in addition to any other penalties it imposes upon the offender, shall suspend the offender's temporary instruction permit, probationary driver's license or driver's license for a period of not less than 6 months and not more than one year. If the offender is 15 years and 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 6 months. If the offender has not attained the age of 15 years and 6 months, the offender shall not be eligible to be issued a temporary instruction permit until the offender attains the age of 16 years.

(ORC § 4301.99(B))

§ 92.17 HOURS OF SALE OR CONSUMPTION.

(A) This section shall apply to the retail sale of beer, wine, mixed beverages, or spirituous liquor.

(B) No beer, wine, mixed beverages, or spirituous liquor shall be sold or delivered by an A-1, A-2, B-1, B-2, B-4, B-5, C-1, C-2, C-2X, D-1, D-2, D-2X, D-3 when issued without a D-3A, D-3X, D-4, D-5G, D-5H, D-5K, D-8, F, F-1, F-2, F-3, F-4, F-5, F-6, G, or I permit holder:

(1) From Monday to Saturday between the hours of 1:00 a.m. and 5:30 a.m.

(2) On Sunday between the hours of 1:00 a.m. and Sunday midnight, unless statutorily authorized otherwise.

(3) Consumption of beer, wine, mixed beverages, or spirituous liquor is also prohibited during the above hours upon the premises of the above permit holders who are authorized by their permit to sell beer, wine, mixed beverages, or spirituous liquor for on-premises consumption.

(C) No beer, wine, mixed beverages, or spirituous liquor shall be sold or delivered by an A-1A, D-3 when issued with a D-3A, D-4A, D-5, D-5A, D-5B, D-5C, D-5D, D-5E, D-5F, D-5I, D-5J, or D-7 permit holder:

(1) From Monday to Saturday between the hours of 2:30 a.m. and 5:30 a.m.

(2) On Sunday between the hours of 2:30 a.m. and Sunday midnight, unless statutorily authorized otherwise.

(3) Consumption of beer, wine, mixed beverages, or spirituous liquor is also prohibited during the above hours upon the premises of the above permit holders who are authorized by their permit to sell beer, wine, mixed beverages, or spirituous liquor for on-premises consumption.

(D) Permit holders authorized to sell beer, wine, mixed beverages, or spirituous liquor at retail who are not specifically identified in divisions (B) or (C) above shall be subject to the provisions of division (B), unless statutorily authorized otherwise.

(E) The hours on Sunday during which sales, delivery, or consumption of alcoholic beverages may take place are established by statute, but in no event shall they begin prior to 5:30 a.m.

(O.A.C. § 4301:1-1-49)

(F) No association, corporation, local unit of an association or corporation, or D permit holder who holds an F-2 permit shall sell beer or intoxicating liquor beyond the hours of sale allowed by the permit. This division imposes strict liability on the holder of such permit and on any officer, agent or employee of such permit holder.

(ORC § 4303.202(B))

(G) No F-8 permit holder shall sell beer or intoxicating liquor beyond the hours of sale allowed by the permit. This division imposes strict liability on the holder of an F-8 permit and on any officer, agent or employee of that permit holder.

(ORC § 4303.208(C))

(H) Whoever violates division (F) of this section is guilty of a misdemeanor of the fourth degree.

(ORC § 4303.99(D)) Penalty, see § 92.99

§ 92.18 OBSTRUCTING SEARCH OF PREMISES PROHIBITED.

(A) No person shall hinder or obstruct any agent or employee of the Division of Liquor Control, any enforcement agent of the Department of Public Safety or any officer of the law from making an inspection or search of any place, other than a bona fide private residence, where beer or intoxicating liquor is possessed, kept, sold, or given away.

(ORC § 4301.66)

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

(ORC § 4301.99(C))

(C) It is a defense to prosecution under this section that the hindrance, obstruction, resistance, or interference alleged consisted of constitutionally protected speech only.

(1995 Code, § 92.18)

§ 92.19 ILLEGAL POSSESSION OF INTOXICATING LIQUOR PROHIBITED.

(A) No person shall have possession of any spirituous liquor, in excess of one liter, in one or more containers, which was not purchased at wholesale or retail from the Division of Liquor Control or otherwise lawfully acquired pursuant to this chapter, Ohio R.C. Chapters 4301 and 4303, or any other intoxicating liquor or beer, in one or more containers, which was not lawfully acquired pursuant to those chapters.

(ORC § 4301.67)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

(ORC § 4301.99(B)) (1995 Code, § 92.19)

§ 92.20 SALE OR POSSESSION OF DILUTED LIQUOR AND REFILLED CONTAINERS PROHIBITED.

(A) No person shall sell, offer for sale, or possess with the intent to sell intoxicating liquor in any original container which has been diluted, refilled, or partly refilled.

(ORC § 4301.68)

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

(ORC § 4301.99(C)) (1995 Code, § 92.20)

§ 92.21 KEEPING PLACE WHERE BEER OR INTOXICATING LIQUORS ARE SOLD IN VIOLATION OF LAW.

(A) No person shall keep a place where beer or intoxicating liquors are sold, furnished, or given away in violation of law. The court, on conviction for a subsequent violation of this section, shall order the place where the beer or intoxicating liquor is sold, furnished, or given away to be abated as a nuisance or shall order the person so convicted to give bond payable to the state in the sum of $1,000, with sureties to the acceptance of the court, that the person will not sell, furnish, or give away beer or intoxicating liquor in

violation of law and will pay all fines, costs, and damages assessed against the person for that subsequent violation of this section. The giving away of beer or intoxicating liquors, or any other device to evade this section, constitutes unlawful selling.

(B) As used in this section, ***BEER*** has the same meaning as in Ohio R.C. § 4301.01.

(C) Division (A) of this section does not apply to any premises for which a permit has been issued under Ohio R.C. Chapter 4303 while that permit is in effect.

(ORC § 4399.09)

(D) Whoever violates this section shall be fined not less than $100 nor more than $500 on a first offense and shall be fined not less than $200 nor more than $500 on each subsequent offense.

(ORC § 4399.99(B)) (1995 Code, § 92.22)

§ 92.22 INTOXICATING LIQUORS SHALL NOT BE SOLD IN BROTHELS.

(A) No person shall sell, exchange, or give away intoxicating liquor in a brothel.

(ORC § 4399.10)

(B) Whoever violates this section shall be fined not less than $100 nor more than $500 and imprisoned not less than one nor more than six months.

(ORC § 4399.99(C)) (1995 Code, § 92.23)

§ 92.23 USE OF INTOXICATING LIQUOR IN A PUBLIC DANCE HALL PROHIBITED; EXCEPTIONS.

(A) (1) Except as otherwise provided in division (A)(2) of this section, no person who is the proprietor of, or who conducts, manages, or is in charge of any public dance hall shall allow the use of any intoxicating liquor or the presence of intoxicated persons in the public dance hall or on the premises on which it is located.

(2) The prohibition against the use of any intoxicating liquor contained in division (A)(1) of this section does not apply to establishments that are holders of a D-1, D-2, D-3, D-4, or D-5 permit whose principal business consists of conducting a hotel, a restaurant, a club, or a nightclub, all as defined in Ohio R.C. § 4301.01.

(ORC § 4399.14)

(B) Whoever violates this section shall be fined not less than $25 nor more than $500, imprisoned not more than six months, or both.

(ORC § 4399.99(D)) (1995 Code, § 92.24)

§ 92.24 POISONOUSLY ADULTERATED LIQUORS.

(A) No person, for the purpose of sale, shall adulterate spirituous liquor, alcoholic liquor, or beer used or intended for drink or medicinal or mechanical purposes, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazilwood, cochineal, sugar of lead, aloes, glucose, tannic acid, or any other substance that is poisonous or injurious to health, or with a substance not a necessary ingredient in the manufacture of the spiritous liquor, alcoholic liquor, or beer, or sell, offer, or keep for sale spiritous liquor, alcoholic liquor, or beer that is so adulterated.

(B) In addition to the penalties provided in division (C) of this section, a person convicted of violating this section shall pay all necessary costs and expenses incurred in inspecting and analyzing spiritous liquor, alcoholic liquor, or beer that is so adulterated, sold, kept, or offered for sale.

(ORC § 4399.15)

(C) Whoever violates this section shall be fined not less than $20 nor more than $100, imprisoned not less than 20 nor more than 60 days, or both.

(ORC § 4399.99(E)) (1995 Code, § 92.25)

§ 92.25 TAVERN KEEPER PERMITTING RIOTING OR DRUNKENNESS.

(A) No tavern keeper shall permit rioting, intoxication, or drunkenness in or on his or her premises.

(ORC § 4399.16)

(B) Whoever violates this section shall be fined not less than $5 nor more than $100.

(ORC § 4399.99(A)) (1995 Code, § 92.26)

§ 92.26 NOTICE OF ACTION TO PROHIBIT LIQUOR BUSINESS.

Any party bringing an action to prohibit the operation of a business under a liquor permit issued pursuant to Ohio R.C. Chapter 4303 shall, upon filing the complaint in the action, notify the Division of Liquor Control of the filing of the complaint.

(ORC § 4303.40)

§ 92.27 PROCEDURE WHEN INJUNCTION VIOLATED.

(A) Any person subject to an injunction, temporary or permanent, granted pursuant to Ohio R.C. § 3767.05(D) or (E) involving a condition described in division (3) of the definition of "nuisance" in Ohio R.C. § 3767.01, or a substantially equivalent municipal ordinance, shall obey the injunction. If the person violates the injunction, the court, or in vacation a judge thereof, may summarily try and punish the violator. The proceedings for punishment for contempt shall be commenced by filing with the Clerk of the Court from which the injunction issued, information under oath setting out the alleged facts constituting the violation, whereupon the court shall cause a warrant to issue under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of the witnesses.

(ORC § 4301.74)

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

(ORC § 4301.99(C)) (1995 Code, § 92.29)

§ 92.28 LIQUOR TRANSACTION SCANS.

(A) As used in this section and § 92.29:

CARD HOLDER means any person who presents a driver's or commercial driver's license or an identification card to a permit holder, or an agent or employee of a permit holder, for either of the purposes listed in under divisions (a) or (b) of the definition for "transaction scan" in this section.

IDENTIFICATION CARD means an identification card issued under Ohio R.C. §§ 4507.50 through 4507.52.

PERMIT HOLDER means the holder of a permit issued under Ohio R.C. Chapter 4303.

TRANSACTION SCAN means the process by which a permit holder or an agent or employee of a permit holder 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 doing either of the following:

(a) Purchasing any beer, intoxicating liquor, or low-alcohol beverage; or

(b) Gaining admission to a premises that has been issued a liquor permit authorizing the sale of beer or intoxicating liquor for consumption on the premises where sold, and where admission is restricted to persons 21 years of age or older.

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.

(B) (1) A permit holder or an agent or employee of a permit holder 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 for either of the purposes listed in divisions (1) or (2) of the definition for "transaction scan" in this section.

(2) If the information deciphered by the transaction scan performed under division (B)(1) 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 permit holder nor any agent or employee of the permit holder shall sell any beer, intoxicating liquor, or low-alcohol beverage to the card holder.

(3) Division (B)(1) of this section does not preclude a permit holder or an agent or employee of a permit holder 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 of a sale beer, intoxicating liquor, or a low-alcohol beverage or of granting admission to a premises described in the definition for "transaction scan" in this section.

(C) The Registrar of Motor Vehicles, with the approval of the Liquor Control Commission, shall adopt, and may amend or rescind, rules in accordance with Ohio R.C. Chapter 119 that do both of the following:

(1) Govern the recording and maintenance of information described in Ohio R.C. § 4301.61(D)(1)(a) and (D)(1)(b) and Ohio R.C. § 2927.021(D)(1)(a) and (D)(1)(b); and

(2) Ensure quality control in the use of transaction scan devices under Ohio R.C. §§ 2927.021, 2927.022, 4301.61, and 4301.611.

(D) (1) No permit holder or agent or employee of a permit holder shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

(a) 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; or

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

(2) No permit holder or agent or employee of a permit holder shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (D)(1) of this section, except for purposes of Ohio R.C. § 4301.611, or a substantially equivalent municipal ordinance.

(3) No permit holder or agent or employee of a permit holder shall use a transaction scan device for a purpose other than a purpose listed in divisions (1) or (2) of the definition for "transaction scan" in this section.

(4) No permit holder or agent or employee of a permit holder 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 Ohio R.C. § 4301.611, or a substantially equivalent municipal ordinance, or another section of this code or the Ohio Revised Code.

(E) Nothing in this section or Ohio R.C. § 4301.611, or a substantially equivalent municipal ordinance, relieves a permit holder or an agent or employee of a permit holder of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale of beer, intoxicating liquor, or low-alcohol beverages.

(F) Whoever violates division (B)(2) or (D) of this section is guilty of an illegal liquor transaction scan, and the court may impose upon the offender a civil penalty of up to $1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the county treasury.

(ORC § 4301.61)

§ 92.29 AFFIRMATIVE DEFENSES.

(A) A permit holder or an agent or employee of a permit holder may not be found guilty of a charge of a violation of this chapter or any rule of the Liquor Control Commission in which the age of the purchaser of any beer, intoxicating liquor, or low-alcohol beverage is an element of the alleged violation, if the permit holder, agent, or employee raises and proves as an affirmative defense that all of the

following occurred:

(1) A card holder attempting to purchase any beer, intoxicating liquor, or low-alcohol beverage presented a driver's or commercial driver's license or an identification card;

(2) 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; and

(3) The beer, intoxicating liquor, or low-alcohol beverage was sold to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(B) In determining whether a permit holder or an agent or employee of a permit holder has proven the affirmative defense provided by division (A) of this section, the Liquor Control Commission or the trier of fact in a court of record shall consider any written policy that the permit holder has adopted and implemented and that is intended to prevent violations of Ohio R.C. §§ 4301.22(A)(1) or (A)(2), 4301.63 through 4301.636, 4301.69, and 4301.691, or any substantially equivalent municipal ordinances. For purposes of division (A)(3) of this section, the Commission or trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a permit holder or an agent or employee of a permit holder to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a permit holder or an agent or employee of a permit holder from exercising reasonable diligence to determine, the following:

(1) Whether a person to whom the permit holder or agent or employee of a permit holder sells any beer or intoxicating liquor is 21 years of age or older or sells low-alcohol beverage is 18 years of age or older; and

(2) 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.

(C) The affirmative defense provided by division (A) of this section is in addition to the defense provided by Ohio R.C. § 4301.639, or any substantially equivalent municipal ordinance.

(D) In any hearing before the Liquor Control Commission and in any criminal action in which the affirmative defense provided by division (A) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under Ohio R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the hearing or action.

(ORC § 4301.611)

§ 92.99 PENALTY.

Whoever violates any provision of this chapter for which no other penalty has been provided is guilty of a minor misdemeanor.

(ORC §§ 4301.70, 4301.99(A))

Statutory reference:

Liquor Director to be notified of court decision regarding permit holder, employee or agent, see Ohio R.C. § 4301.991

CHAPTER 93: NUISANCES; JUNK VEHICLES

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GENERAL PROVISIONS

§ 93.01 APPLICATION OF THE CHAPTER.

The provisions of this chapter shall be enforceable within this municipality concurrently with the state and federal laws relative to sanitation and health and the ordinances or orders of the local health district relative thereto, and shall not be construed as modifying, repealing, limiting, or affecting in any manner such laws, ordinances, or orders.

(1995 Code, § 93.01)

§ 93.02 DEFINITIONS.

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

NUISANCE. Means any of the following:

(1) That which is defined and declared by statutes or ordinances to be a nuisance;

(2) Any place in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued, or exists, or any place in or upon which lewd, indecent, lascivious or obscene films or plate negatives, film or plate positives, films designed to be projected on a screen for exhibition films, or glass slides either in negative or positive form designed for exhibition by projection on a screen, are photographed, manufactured, developed, screened, exhibited, or otherwise prepared or shown, and the personal property and contents

used in conducting and maintaining any such place for any such purpose. This chapter shall not affect any newspaper, magazine, or other publication entered as second class matter by the post office department;

(3) Any room, house, building, boat, vehicle, structure, or place where beer or intoxicating liquor is manufactured, sold, bartered, possessed, or kept in violation of law and all property kept and used in maintaining the same, and all property designed for the unlawful manufacture or beer, or intoxicating liquor and beer, or intoxicating liquor contained in the room, house, building, boat, structure, or place described in this division (3) where the operation of that place substantially interferes with public decency, sobriety, peace, and good order. "Violation of Law" includes but is not limited to sales to any person under the legal drinking age prohibited in Ohio R.C. § 4301.22(A) or Ohio R.C. § 4301.69(A), and any violation of Ohio R.C. § 2913.46 or Ohio R.C. § 2925.03.

PERSON. Includes any individual, corporation, association, partnership, trustee, lessee, agent or assignee.

PLACE. Includes any building, erection, or place or any separate part or portion thereof or the ground itself.

(ORC § 3767.01)

Cross-reference:

Penalty and procedure when injunction issued pursuant to division (3) of the definition of nuisance is violated, see § 92.27

§ 93.03 NUISANCES GENERALLY; INJUNCTIONS; VIOLATION; CONTEMPT.

(A) (1) Any person who uses, occupies, establishes, or conducts a nuisance, or aids and abets in the use, occupancy, establishment, or conduct of a nuisance; the owner, agent, or lessee of an interest in any such nuisance; any person who is employed in that nuisance by that owner, agent, or lessee; and any person who is in control of that nuisance is guilty of maintaining a nuisance and shall be enjoined as provided in Ohio R.C. §§ 3767.03 through 3767.11.

(2) A criminal gang that uses or occupies any building, premises, or real estate, including vacant land, on more than two occasions within a one-year period to engage in a pattern of criminal gang activity is guilty of maintaining a nuisance and shall be enjoined as provided in Ohio R.C. §§ 3767.03 through 3767.11. As used in this division (A)(2), ***CRIMINAL GANG*** and ***PATTERN OF CRIMINAL GANG ACTIVITY*** have the same meanings as in Ohio R.C. § 2923.41.

(ORC § 3767.02)

(3) Any building, premises, or real estate, including vacant land, that is used or occupied by a criminal gang on more than two occasions within a one-year period to engage in a pattern of criminal gang activity constitutes a nuisance subject to abatement pursuant to Ohio R.C. §§ 3767.01 through 3767.11

(ORC § 2923.43)

(B) In case of the violation of any injunction or closing order granted under Ohio R.C. §§ 3767.01 through 3767.11, or of a restraining order or the commission of any contempt of court in proceedings under such sections, the court or, in vacation, a judge thereof, may summarily try and punish the offender. The trial may be had upon affidavits or either party may demand the production and oral examination or witnesses.

(ORC § 3767.07)

(C) Whoever is guilty of contempt under this section is guilty of a misdemeanor of the first degree.

(ORC § 3767.99(A))

Statutory reference:

Abatement of nuisance, bond and notice, see Ohio R.C. § 3767.03

Content of judgment and order, disposition of property seized, see Ohio R.C. § 3767.06

Criminal gang activity, see Ohio R.C. §§ 2923.41 et seq.

Priority of actions, evidence, costs; nuisances relating to liquor permit premises, see Ohio R.C. § 3767.05

Procedure in injunction action, see Ohio R.C. § 3767.04

§ 93.04 MAINTAINING CERTAIN NUISANCES.

(A) No person shall erect, continue to use, or maintain a building, structure, or place for the exercise of a trade, employment, or business or for keeping or feeding an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort, or property of individuals or of the public.

(B) No person shall cause or allow offal, filth, or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public.

(C) No person shall unlawfully obstruct or impede the passage of a navigable river, harbor, or collection of water, or corrupt or render unwholesome or impure a watercourse, stream of water, or unlawfully divert such watercourse from its natural course or state to the injury or prejudice of others.

(D) Persons who are engaged in agriculture-related activities, as ***AGRICULTURE*** is defined in Ohio R.C. § 519.01, and who are conducting those activities outside the municipality, in accordance with generally accepted agricultural practices, and in such a manner so as not to have a substantial, adverse effect on the public health, safety, or welfare, are exempt from divisions (A) and (B) above and from any ordinances, resolutions, rules, or other enactments of the municipality that prohibit excessive noise.

(ORC § 3767.13)

(E) Whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 3767.99(C))

§ 93.05 COLLECTION OF COST OF ABATING DANGEROUS PROPERTY CONDITION; INJUNCTION; REHABILITATION.

(A) *Collection of costs of abating dangerous property conditions.*

(1) As used in this division, ***TOTAL COST*** means any costs incurred due to the use of employees, materials, or equipment of the municipality or its agent pursuant to division (A)(5) of this section, any costs arising out of contracts for labor, materials, or equipment, and costs of service of notice or publication required under this division.

(2) The municipality or its agent pursuant to division (A)(5) of this section may collect the total cost of removing, repairing, or securing insecure, unsafe, structurally defective, abandoned, deserted, or open and vacant buildings or other structures, of making emergency corrections of hazardous conditions, or of abating any nuisance by any of the following methods:

(a) The Clerk of the Legislative Authority of the municipality or its agent pursuant to division (A)(5) of this section may certify the total costs, together with a proper description of lands to the County Auditor who shall place the costs upon the tax list and duplicate. The costs are a lien upon such lands from and after the date the costs were incurred. The costs shall be collected as other taxes and returned to the municipality or its agent pursuant to division (A)(5) of this section, as directed by the Clerk of the Legislative Authority in the certification of the total costs or in an affidavit from the agent delivered to the County Auditor or County Treasurer. The placement of the costs on the tax list and duplicate relates back to, and is effective in priority, as of the date the costs were incurred, provided that the municipal corporation or its agent pursuant to division (A)(5) of this section certifies the total costs within one year from the date the costs were incurred.

(b) The municipality or its agent pursuant to division (A)(5) of this section may commence a civil action to recover the total costs from the owner.

(3) This division (A) applies to any action taken by the municipality, or its agent pursuant to division (A)(5) of this section, pursuant to Ohio R.C. § 715.26, which authorizes the inspection, removal and repair of buildings, or pursuant to the Ohio Constitution, Article XVIII, Section 3.

(4) The municipality or its agent pursuant to division (A)(5) of this section shall not certify to the County Auditor for placement upon the tax list and duplicate the cost of any action that it takes under division (A)(2) of this section if the action is taken on land that has been forfeited to the state for delinquent taxes, unless the owner of record redeems the land.

(5) The municipality may enter into an agreement with a County Land Reutilization Corporation organized under Ohio R.C. Chapter 1724 wherein the County Land Reutilization Corporation agrees to act as the agent of the municipality in connection with removing, repairing, or securing insecure, unsafe, structurally defective, abandoned, deserted, or open and vacant buildings or other structures, making emergency corrections of hazardous conditions, or abating any nuisance, including high weeds, overgrown brush,

and trash and debris from vacant lots. The total costs of such actions may be collected by the corporation pursuant to division (A)(2) of this section, and shall be paid to the corporation if it paid or incurred such costs and has not been reimbursed.

(6) In the case of the lien of a County Land Reutilization Corporation that is the agent of the municipality, a notation shall be placed on the tax list and duplicate showing the amount of the lien ascribed specifically to the agent's total costs. The agent has standing to pursue a separate cause of action for money damages to satisfy the lien or pursue a foreclosure action in a court of competent jurisdiction or with the Board of Revision to enforce the lien without regard to occupancy. For purposes of a foreclosure proceeding by the County Treasurer for delinquent taxes, this division does not affect the lien priority as between a County Land Reutilization Corporation and the County Treasurer, but the corporation's lien is superior to the lien of any other lienholder of the property. As to a direct action by a County Land Reutilization Corporation, the lien for the taxes, assessment, charges, costs, penalties, and interest on the tax list and duplicate is in all cases superior to the lien of a County Land Reutilization Corporation, whose lien for total costs shall be next in priority as against all other interests, except as provided in division (A)(7) of this section.

(7) A County Land Reutilization Corporation acting as an agent of the municipality under an agreement under this division (A) may, with the County Treasurer's consent, petition the court or Board of Revision with jurisdiction over an action undertaken under division (A)(6) of this section pleading that the lien of the corporation, as agent, for the total costs shall be superior to the lien for the taxes, assessments, charges, costs, penalties, and interest. If the court or Board of Revision determines that the lien is for total costs paid or incurred by the corporation as such an agent, and that subordinating the lien for such taxes and other impositions to the lien of the corporation promotes the expeditious abatement of public nuisances, the court or board may order the lien for the taxes and other impositions to be subordinate to the corporation's lien. The court or board may not subordinate the lien for taxes and other such impositions to any other liens.

(ORC § 715.261)

(B) *Injunction may be granted for failure to comply.* No person shall erect, alter, repair or maintain any residential building, office, mercantile building, workshop or factory, including a public or private garage, or other structure, within the municipality unless all ordinances or resolutions enacted pursuant to Ohio R.C. §§ 715.26 through 715.30 are fully complied with. In the event any building or structure is being erected, constructed, altered, repaired or maintained in violation of such ordinances or resolutions, or there is imminent threat of violation, the municipality or the owner of any contiguous or neighboring property who would be especially damaged by such violation, in addition to any other remedies provided by law, may institute a suit for injunction to prevent or terminate such violation.

(ORC § 715.30)

(C) *Appropriation of property to rehabilitate; demolition or sale.*

(1) In order to rehabilitate a building or structure that the municipality has determined to be blighted property as defined in Ohio R.C. § 1.08, the municipality may appropriate, in the manner provided by Ohio R.C. §§ 163.01 through 163.22, any such building or structure and the real property of which it is a part. The municipality shall rehabilitate the building or structure or cause it to be rehabilitated within two years after the appropriation so that the building or structure is no longer a public nuisance, insecure, unsafe, structurally defective, unhealthful or unsanitary, or a threat to the public health, safety, or welfare, in violation of a building code or ordinance adopted under Ohio R.C. § 731.231. Any building or structure appropriated pursuant to this division which is not rehabilitated within two years shall be demolished.

(2) If, during the rehabilitation process, the municipality retains title to the building or structure and the real property of which it is a part, then within 180 days after the rehabilitation is complete, the municipality shall appraise the rehabilitated building or structure and the real property of which it is a part, and shall sell the building or structure and property at public auction. The municipality shall advertise the public auction in a newspaper of general circulation in the municipality once a week for three consecutive weeks prior to the date of sale. The municipality shall sell the building or structure and real property to the highest and best bidder. No property that the municipality acquires pursuant to this division shall be leased.

(ORC § 719.012)

Statutory reference:

Adoption of technical ordinances and codes by reference, see Ohio R.C. § 731.231

§ 93.06 TRIMMING OF TREES AND SHRUBBERY TO PREVENT OBSTRUCTION.

(A) It shall be unlawful for any person to plant, grow, or maintain any shade tree or trees or shrubbery which will obstruct the

proper distribution of light from street lamps or which will obstruct the view of traffic approaching an intersection by operators of vehicles approaching such intersection from another direction.

(B) All trees shall be trimmed so as to have a clear height of ten feet above the surface of sidewalks and 12 feet above the surface of the street or roadway, and the branches of all trees in front of and along lots or lands near which street lights are placed shall be trimmed so as not to obstruct the free passage of light from such street lights to the street and sidewalk.

(C) The Council shall cause a written notice to be given to property owners ordering them to trim or remove trees and shrubbery so that the trees and shrubbery conform to divisions (A) and (B).

(D) If the property owner fails to trim or remove the trees and shrubbery as ordered, the Council may cause the trees and shrubbery to be trimmed or removed as ordered, and the cost thereof shall be a lien upon such real estate.

(1995 Code, § 93.02) Penalty, see § 93.99

Statutory reference:

Power to regulate shade trees, see Ohio R.C. § 715.20

§ 93.07 CLOSING OF NUISANCE ESTABLISHMENTS.

(A) Any establishment, open lot, building, or the like, which does not qualify for a permit under the provisions of the Zoning Code and specifically §§ 153.188 and 153.216 shall be determined to be a nuisance.

(B) The police shall be authorized to arrest the owner and/or persons engaged in business at the establishment determined to be a nuisance.

(C) Any and all persons thus violating this section and/or other provisions of the Zoning Code, where found applicable, shall be fined no more than $100 and each day's violation shall constitute a separate offense.

(D) The police shall be further authorized and directed to padlock and secure any establishment determined to be a nuisance. This applies to buildings, lots and other places where illegal business may be performed.

(1995 Code, § 93.05) (Ord. 82-O-7, passed 3-22-1982)

UNCLEAN HABITATIONS

§ 93.10 PERMITTING UNCLEAN HABITATIONS.

It shall be unlawful for any person to lease, let, permit the occupancy of, permit the continuation of the occupancy of, or continue the occupancy of a structure or building or any portion thereof used for human habitation, unless such structure or building or portion thereof is free from unclean and unsanitary conditions as defined in § 93.11 and unless the provisions of the subsequent sections are complied with.

(1995 Code, § 93.10) Penalty, see § 93.99

Statutory reference:

Duties of the landlord, see Ohio R.C. § 5321.04

Duties of the tenant, see Ohio R.C. § 5321.05

Injunction for failure to comply, see Ohio R.C. § 715.30

Regulating occupied buildings, see Ohio R.C. § 715.29

§ 93.11 WHEN HABITATIONS ARE DEEMED UNSANITARY.

A structure, building, or any portion thereof used for human habitation shall be deemed to be in an unclean and unsanitary condition when any of the following conditions exist:

(A) Infection with communicable disease;

(B) Absence of the toilet facilities required by law or ordinance;

(C) Presence of sewer gas;

(D) Dampness or wetness due to lack of repair;

(E) Accumulation of dirt, filth, litter, refuse, or other offensive or dangerous substances likely to cause sickness among the occupants; or

(F) Defective or improperly used drainage, plumbing, or ventilation facilities likely to cause sickness.

(1995 Code, § 93.11)

§ 93.12 ORDER FOR ABATEMENT OR VACATION OF PREMISES.

If the local Board of Health ascertains from examination or reports of its inspectors or sanitary officers or otherwise determines that a public nuisance, as defined in § 93.11, exists in or upon any structure or building, or portion thereof, and has notified the owner, occupant, or person in charge of the premises to abate the nuisance or vacate the premises, it shall be unlawful to occupy or permit the occupancy of the premises or portion thereof until the nuisance has been completely abated and the building or portion thereof has been rendered clean and sanitary in accordance with the terms of the notices of the Board of Health.

(1995 Code, § 93.12)

§ 93.13 ENFORCEMENT OF VACATION ORDER BY FIRE CHIEF OR POLICE CHIEF.

When the notice or order of vacation has not been complied with, and the Board of Health certifies such fact to the Fire Chief or Police Chief, together with a copy of the order of notice, it shall be the duty of the Fire Chief or Police Chief to enforce such notice or order of vacation and to cause the premises to be vacated in accordance with the terms of the notice or order.

(1995 Code, § 93.13)

§ 93.14 ENFORCEMENT THROUGH COURT PROCEEDINGS.

(A) Whenever the Board of Health certifies to the municipal legal officer any failure to comply with any order or notice of vacation, with the request that civil proceedings for the enforcement thereof be instituted, the municipal legal officer shall institute any and all proceedings, either legal or equitable, that may be appropriate or necessary for the enforcement of the order or notice and the abatement of the nuisance against which the order or notice was directed.

(B) These suits or proceedings shall be brought in the name of the municipality.

(C) Proceedings under this section shall not relieve any party defendant from criminal prosecution or punishment under this code or any other criminal law or ordinance in force within the municipality.

(1995 Code, § 93.14)

PRIVY VAULTS AND CESSPOOLS; WELLS; REFUSE

§ 93.20 LOCATION OF PRIVY VAULTS, CESSPOOLS, AND SEPTIC TANKS.

No owner, occupant, or person in charge of any premises situated as to permit connection with any sanitary sewer shall maintain or permit to be maintained on or in connection with such premises any privy vault, cesspool, septic tank, or other repository for human

excreta.

(1995 Code, § 93.20) Penalty, see § 93.99

Statutory reference:

Power to regulate refuse disposal, see Ohio R.C. § 715.43

Power to regulate privies, see Ohio R.C. § 715.40

§ 93.21 UNSANITARY VAULTS.

It shall be unlawful for any person being the owner, lessor, occupant, or person in charge of any premises upon which a privy vault, cesspool, or septic tank is located to permit such vault, pool, or tank, or any building, fixture, or device appurtenant thereto, to become foul, noisome, filthy, or offensive to neighboring property owners.

(1995 Code, § 93.21) Penalty, see § 93.99

§ 93.22 REMOVAL OF CONTENTS OF VAULT.

Whenever any part of the waste in any privy vault or cesspool extends to a point less than three feet below the surface of the ground adjacent thereto, or whenever use of any such vault or cesspool is abandoned or where such use or maintenance is prohibited by ordinance or health order, the owner, lessor, occupant or person in charge of such premises shall cause the vault or cesspool to be emptied of its contents, thoroughly cleaned, and disinfected, and if abandoned, to be filled with clean earth or mineral matter to the level of the adjacent ground.

(1995 Code, § 93.22) Penalty, see § 93.99

§ 93.23 DEPOSIT OF DEAD ANIMALS, OFFAL UPON LAND OR WATER.

(A) No person shall put the carcass of a dead animal or the offal from a slaughter house, butcher's establishment, packing house or fish house, or spoiled meat, spoiled fish, or other putrid substance or the contents of a privy vault, upon or into a lake, river, bay, creek, pond, canal, road, street, alley, lot, meadow, public ground, market place, or common. No owner or occupant of such place shall knowingly permit such thing to remain therein to the annoyance of any citizen or neglect to remove or abate the nuisance occasioned thereby within 24 hours after knowledge of the existence thereof, or after notice thereof in writing from the designated municipal official.

(ORC § 3767.16)

(B) Whoever violates this section is guilty of a minor misdemeanor.

(ORC § 3767.99(D)) (1995 Code, § 93.23)

§ 93.24 DEFILING SPRING OR WELL PROHIBITED.

(A) No person shall maliciously put a dead animal, carcass, or part thereof, or other putrid, nauseous, or offensive substance into, or befoul, a well, spring, brook, or branch of running water, or a reservoir of a waterworks, of which use is or may be made for domestic purposes.

(ORC § 3767.18)

(B) Whoever violates this section is guilty of a minor misdemeanor.

(ORC § 3767.99(D)) (1995 Code, § 93.24)

§ 93.25 DUMPING OF REFUSE IN VILLAGE PROHIBITED.

It shall be unlawful for any person to dump, cause to be dumped or permit to be dumped on any publicly or privately owned land or water in the municipality any paper, brush, rubbish, tin cans, vegetation, garbage, or refuse of any kind, without first having obtained a written license from the Mayor or other designated municipal officer to do so. The Mayor or other designated municipal officer shall issue a license permitting dumping of designated materials when it appears that filling of the land is necessary and that the material deposited will be immediately covered with earth or will not be objectionable to the citizens of the neighborhood, or injurious to health, safety and general welfare of the citizens.

(1995 Code, § 93.25) Penalty, see § 93.99

§ 93.26 ABANDONED REFRIGERATORS.

(A) No person shall abandon, discard, or knowingly permit to remain on premises under the person's control, in a place accessible to children, any abandoned or discarded icebox, refrigerator, or other airtight or semi-airtight container which has a capacity of 1-1/2 cubic feet or more and an opening of 50 square inches or more and which has a door or lid equipped with a hinge, latch, or other fastening device capable of securing such door or lid, without rendering the equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. This section shall not apply to an icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouse or repairer.

(ORC § 3767.29)

(B) Whoever violates this section shall be guilty of a misdemeanor of the fourth degree.

(ORC § 3767.99(B))

§ 93.27 DISCARDING LITTER PROHIBITED.

(A) No person, regardless of intent, shall deposit litter or cause litter to be deposited on any public property, on private property not owned by him or her, or in or on waters of the state, unless one of the following applies:

(1) The person is directed to do so by a public official as part of a litter collection drive;

(2) Except as provided in division (B) of this section, the person deposits the litter in a litter receptacle in a manner that prevents its being carried away by the elements; or

(3) The person is issued a permit or license covering the litter pursuant to Ohio R.C. Chapter 3734 or 6111.

(B) No person, without privilege to do so, shall knowingly deposit litter, or cause it to be deposited, in a litter receptacle located on any public property or on any private property not owned by him or her, unless one of the following applies:

(1) The litter was generated or located on the property on which the litter receptacle is located;

(2) The person is directed to do so by a public official as part of a litter collection drive;

(3) The person is directed to do so by a person whom he or she reasonably believes to have the privilege to use the litter receptacle; or

(4) The litter consists of any of the following:

(a) The contents of a litter bag or container of a type and size customarily carried and used in a motor vehicle;

(b) The contents of an ash tray of a type customarily installed or carried and used in a motor vehicle;

(c) Beverage containers and food sacks, wrappings, and containers of a type and in an amount that reasonably may be expected to be generated during routine commuting or business or recreational travel by a motor vehicle; or

(d) Beverage containers, food sacks, wrappings, containers, and other materials of a type and in an amount that reasonably may be expected to be generated during a routine day by a person and deposited in a litter receptacle by a casual passerby.

(C) (1) As used in division (B)(1) of this section, ***PUBLIC PROPERTY*** includes any private property open to the public for the conduct of business, the provision of a service, or upon the payment of a fee but does not include any private property to which the public otherwise does not have a right of access.

(2) As used in division (B)(4) of this section, ***CASUAL PASSERBY*** means a person who does not have depositing litter in a litter receptacle as his or her primary reason for traveling to or by the property on which the litter receptacle is located.

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

DEPOSIT. To throw, drop, discard, or place.

LITTER. Garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature.

LITTER RECEPTACLE. A dumpster, trash can, trash bin, garbage can, or similar container in which litter is deposited for removal.

(E) This section may be enforced by any sheriff, deputy sheriff, police officer of the municipality, police constable or officer of a township or township police district, wildlife officer, park officer, forest officer, preserve officer, conservancy district police officer, inspector of nuisances of a county, or any other law enforcement officer within his or her jurisdiction.

(ORC § 3767.32)

(F) Whoever violates any provision of this section shall be guilty of a misdemeanor of the third degree. The sentencing court may, in addition to or in lieu of the penalty provided in this division, require a person who violates this section to remove litter from any public or private property or in or on waters of the state.

(ORC § 3767.99(C)) (1995 Code, § 93.27)

§ 93.28 POWER OF THE VILLAGE TO FILL OR DRAIN LAND.

(A) The municipality may fill or drain any lot or land within its limits on which water at any time becomes stagnant, remove all putrid substances from any lot, and remove all obstructions from culverts, covered drains, or private property, laid in any natural watercourse, creek, brook, or branch, which obstruct the water naturally flowing therein, causing it to flow back or become stagnant, in a way prejudicial to the health, comfort, or convenience of any of the citizens of the neighborhood. If such culverts or drains are of insufficient capacity, the municipality may make them of such capacity as reasonable to accommodate the flow of such water at all times.

(B) The Village Council may, by resolution, direct the owner to fill or drain such lot, remove such putrid substance or other obstructions, and if necessary, enlarge such culverts or covered drains to meet the requirements thereof.

(C) After service of a copy of such resolution, or after a publication thereof in a newspaper of general circulation in the municipality for two consecutive weeks, the owner, or his or her agent or attorney, shall comply with the directions of the resolution within the time therein specified.

(D) In case of the failure or refusal of such owner to comply with the resolution, the work required thereby may be done at the expense of the municipality, and the amount of money so expended shall be recovered from the owner before any court of competent jurisdiction. This expense from the time of the adoption of the resolution shall be a lien on such lot, which may be enforced by suit in the Court of Common Pleas, and like proceedings may be had as directed in relation to the improvement of streets.

(E) The officers connected with the Health Department of the municipality shall see that this section is strictly and promptly enforced.

(ORC § 715.47) (1995 Code, § 93.28)

§ 93.29 OPEN WELLS AND CISTERNS.

(A) *Prohibition*. No person, firm, or corporation, their agents or assigns shall have or maintain within the corporate limits of the village, any open well, cistern, or reservoir, which is not securely covered and protected in such a manner as to prevent persons or animals from falling therein.

(B) *Order to eliminate*. In the event an unlawful well, cistern, or reservoir is found to exist within the village, it shall be the duty of the Chief of Police to immediately serve notice in writing on the owner, or his or her agent or assign, ordering that the unlawful well,

cistern, or reservoir be eliminated within three days of the written notice.

(C) *Violation*. Failure to comply with the written order of the Police Chief, by the owner, or his or her agent or assign as provided in division (B) above, shall constitute a minor misdemeanor, punishable by the provisions set forth in § 93.99. Each day's violation shall constitute a separate offense.

(1995 Code, § 93.29) (Ord. 10-1949, passed 5-2-1949)

WEEDS AND LITTER ON PRIVATE PROPERTY

§ 93.40 KEEPING DOWN WEEDS.

(A) Any person owning, possessing or having charge of land within the municipality shall keep such property free and clear from all noxious weeds and rank vegetation by cutting and removing the same.

(Am. Ord. 97-O-18, passed 4-17-1997)

(B) Any person owning or having charge of land within the municipality shall be required to cut all such weeds and vegetation on the lots owned or controlled by him or her at least twice in every year, once between June 1 and July 1 and once between August 1 and September 1.

(C) Noxious weeds and rank vegetation shall include but not be limited to:

(1) Any weeds such as the following:

Noxious Weeds	
Apple of Peru	Marestail
Buckthorn	Mile-A-Minute Weed
Canada Thistle	Musk Thistle
Columbus Grass	Oxeye Daisy
Corncockle	Perennial Sowthistle
Cressleaf Groundsel	Poison Hemlock
Curly Dock	Purple Loosestrife
Dodder	Quackgrass
Field Bindweed	Russian Knapweed
French Weed	Russian Thistle
Giant Hogweed	Serrated Tussock
Hairy Whitetop (Ballcress)	Shatter Cane
Hedge Bindweed	Wild Carrot
Heart-podded Hoary Cress	Wild Garlic
Horsenettle	Wild Mustard

Johnsongrass	Wild Onion
Leafy Spurge	Wild Parsnip

(2) Grapevines when growing in groups of 100 or more and not pruned, sprayed, cultivated, or otherwise maintained for two consecutive years;

(O.A.C. §§ 901:5-27-06 and 901:5-37-01)

(3) Bushes of the species of tall, common, or European barberry, further known as *berberis vulgaris* or its horticultural varieties; and

(4) Any weeds, grass, or plants, other than trees, bushes, flowers, or other ornamental plants, growing to a height exceeding 12 inches.

(1995 Code, § 93.40)

§ 93.41 NOTICE TO OWNER TO CUT NOXIOUS WEEDS, REMOVE LITTER; SERVICE.

(A) Upon written information that noxious weeds are growing on lands in the municipality and are about to spread or mature seeds, the Village Council shall cause written notice to be served on the owner, lessee, agent, or tenant having charge of such land, notifying him or her that noxious weeds are growing on such lands and that they must be cut and destroyed within five days after service of such notice.

(B) Upon a finding by the Village Council that litter has been placed on lands in a municipality, and has not been removed, and constitutes a detriment to public health, the Village Council shall cause a written notice to be served upon the owner and, if different, upon the lessee, agent, or tenant having charge of the littered land, notifying him or her that litter is on the land, and that it must be collected and removed within 15 days after the service of the notice.

(C) As used in this section and § 93.43, ***LITTER*** includes any garbage, waste, peelings of vegetables or fruits, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, parts of automobiles, wagons, furniture, glass, oil of an unsightly or unsanitary nature, or anything else of an unsightly or unsanitary nature.

(D) If the owner or other person having charge of the land is a nonresident of the municipality whose address is known, the notice shall be sent to his or her address by certified mail. If the address of the owner or other person having charge of the land is unknown it is sufficient to publish the notice once in a newspaper of general circulation in the county.

(E) This section does not apply to land being used under a municipal building or construction permit or license, a municipal permit or license, or a conditional zoning permit or variance to operate a junkyard, scrap metal processing facility, or similar business, or a permit or license issued pursuant to Ohio R.C. Chapter 3734, Ohio R.C. §§ 4737.05 through 4737.12, or Ohio R.C. Chapter 6111.

(ORC § 731.51) (1995 Code, § 93.41)

§ 93.42 FEES FOR SERVICE AND RETURN.

The Police Chief, any police officer, or Clerk of the Village Council may make service and return of the notice provided for in § 93.41 and shall be allowed the same fees as that provided for service and return of summons in civil cases before a magistrate.

(ORC § 731.52) (1995 Code, § 93.42)

§ 93.43 PROCEDURE WHEN OWNER FAILS TO COMPLY WITH NOTICE.

If the owner, lessee, agent, or tenant having charge of the lands mentioned in § 93.41 fails to comply with the notice required by such section, the Village Council shall cause such noxious weeds to be cut and destroyed or such litter removed and may employ the necessary labor to perform the task. All expenses incurred shall, when approved by the Village Council, be paid out of the money in the treasury of the municipality not otherwise appropriated.

(ORC § 731.53) (1995 Code, § 93.43)

§ 93.44 WRITTEN RETURN TO COUNTY AUDITOR; AMOUNT AS A LIEN UPON PROPERTY.

The Village Council shall make a written return to the County Auditor of their action under §§ 93.41, 93.42, and 93.43, with a statement of the charges for their services, the amount paid for labor, the fees of the officers serving the notices, and a proper description of the premises. These amounts, when allowed, shall be entered upon the tax duplicate and be a lien upon such lands from and after the date of entry and be collected as other taxes and returned to the municipality with the general fund.

(ORC § 731.54) (1995 Code, § 93.44)

CLEANING OF PREMISES

§ 93.50 ORDER TO CLEAN PREMISES.

Prior to May 10 in every year, the Village Manager shall cause a notice or proclamation to be inserted in one or more newspapers of general circulation within the municipality, ordering persons to clean thoroughly and provide proper drainage for all lands, yards, vaults, cesspools, sheds, and barns and to cause all tin cans, trash, and other unclean and unsightly matter to be removed therefrom on or before May 10.

(1995 Code, § 93.50)

§ 93.51 SANITARY INSPECTION.

Thereafter in the month of May of each year the County Health Officer or in his or her absence the Chief of Police shall make a thorough sanitary inspection of all public and private property in the municipality and shall transmit his or her report together with his or her recommendations to the Village Council on or before June 1. A copy of the report shall also be sent to the State Department of Health.

(1995 Code, § 93.51)

§ 93.52 INDIVIDUAL ORDERS FOR ABATEMENT.

If, on inspection, it is found that the published order has not been complied with as to any lot or parcel of ground, Council shall by resolution direct the owner, occupant, or person in charge of the land within ten days to abate the nuisance, setting forth the nature of the violation and the acts required to be done. The resolution shall provide that on failure or refusal to comply with the order, the work required will be done by the municipality, with the amount expended thereof to be a valid claim against the owner or occupant and charged as a lien on the land and recovered by the municipality by suit in a court of competent jurisdiction.

(1995 Code, § 93.52)

§ 93.53 COPY OF RESOLUTION TO BE PUBLISHED.

A copy of the resolution adopted under § 93.52 may be served personally or at the usual place of residence of the owner, occupant, or person in charge of the land or by registered mail, or in lieu of such service, may be published for two consecutive weeks in a newspaper of general circulation in the municipality.

(1995 Code, § 93.53)

§ 93.54 UNCLEAN PREMISES.

(A) *Cleanliness required.*

(1) Every owner of, and every agent in charge of, a tenement house, lodging house, tourist home, tourist cabin or hotel, or part thereof, shall cause to be kept thoroughly clean all parts of the premises not within the occupied apartments.

(2) No person shall place filth, urine, or fecal matter in any place other than provided for the same or keep filth, urine, or fecal matter in his or her apartments or on his or her premises any length of time as to create a nuisance, and every tenant shall keep his or her apartment in a clean and sanitary condition.

(3) The walls of courts and shafts, unless built in a light color brick or stone, shall be thoroughly whitewashed or painted a light color and shall be so maintained. Whitewash or paint shall be renewed as required by the local Board of Health.

(B) *Prohibition against accumulation of water.* It shall be unlawful at any time for the owner, occupant, or person in charge of any lot or parcel of ground to cause or permit water to accumulate thereon and become stagnant, to permit culverts, drains, or natural watercourses thereon to become obstructed, or to cause or permit any putrid or unsanitary substance to accumulate thereon.

(1995 Code, § 93.54) Penalty, see § 93.99

§ 93.55 PERIODIC INSPECTION.

Independent of the annual cleanup and inspection provided for in §§ 93.50 and 93.51, the County Health Officer or Police Chief shall make periodic inspection of properties within the municipality and shall report all violations of § 93.54 to Council, who shall thereupon by resolution proceed to order the nuisances abated as provided in §§ 93.52 and 93.53.

(1995 Code, § 93.55)

§ 93.56 ENFORCEMENT.

In case of failure or refusal to comply with any resolution of Council, the work required thereby may be done at the expense of the municipality and the amount of money expended therefor shall be a valid claim against the owner, occupant, or person in charge and a lien on the land which may be enforced by suit in any court of competent jurisdiction. Proceedings under this section shall not relieve any party defendant from criminal prosecution or punishment for violation of any section of this code or any other criminal law or ordinance in force within the municipality.

(1995 Code, § 93.56)

§ 93.57 REQUIREMENT OF GARBAGE COLLECTION CARRIER FOR EACH HOUSEHOLD DWELLING UNIT.

(A) Every owner, lessee or head of a household dwelling unit shall have a responsible garbage collection carrier to remove or dispose of the waste and garbage material accumulating or emanating from such dwelling unit.

(B) Whoever violates this section shall be guilty of a minor misdemeanor and subject to a fine of not more than $100.

(Ord. 97-O-27, passed 5-27-1997)

JUNK VEHICLES AND THE LIKE

§ 93.65 LEGISLATIVE FINDING.

(A) Junk, junked vehicles, rubbish or trash exist within the village on private property that constitute a serious threat and growing menace injurious and inimical to the public health, safety, morals, senses and general welfare of the residence thereof.

(B) The existence of such conditions:

(1) Contributes substantially and increasingly to the spread of disease and to losses by fire and accident, necessitating excessive and disproportionate expenditures of public funds for the preservation of public health and safety, for the maintenance of adequate police, fire and accident protection and for other public services and facilities;

(2) Constitute an economic and social liability;

(3) Substantially impairs and arrests the sound growth of the community; and

(4) Creates a public nuisance.

(B) The elimination of this menace on private property requires the village to exercise its police power by regulating and entering on private property to remove junk, junk vehicles, rubbish or trash and abate the public nuisance for the general welfare of the citizens of the village.

(1995 Code, § 93.65) (Ord. 82-O-8, passed 3-22-1982)

§ 93.66 DEFINITIONS.

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

ABANDONED JUNK MOTOR VEHICLE. Any motor vehicle:

(1) Extensively damaged and incapable of operation on the public streets for any reason, including missing or expired license plates, collision damage, inoperative or missing essential components;

(2) (a) Left on the public right-of-way of any street or highway, or upon any public property for a period exceeding 48 hours; or

(b) Left upon any privately-owned property for a period of time exceeding 48 hours, without the permission of the owner of the property.

(3) Three years old or older (ORC 4513.63); or

(4) Having a fair market value of $1,500 or less (ORC 4513.63).

HISTORICAL MOTOR VEHICLE. Any motor vehicle that is 25 years old and that is owned solely as a collector's item and for participation in club activities, tours, parades and similar uses but in no event for general transportation.

(ORC § 4503.181)

INOPERABLE TRAILER, SEMI-TRAILER, or ***MOTOR VEHICLE.*** Any vehicle missing wheels, tires, windshield, motor, or transmission or which has been so damaged as to appear not safely operable. Any vehicle that remains parked in one location for more than 30 days shall be presumed to be inoperable.

JUNK MOTOR VEHICLE. Any motor vehicle incapable of operation on the public streets for any reason, including missing or expired license plates, collision damage, inoperative or missing essential components.

UNLICENSED TRAILER, SEMI-TRAILER, or ***MOTOR VEHICLE.*** Any vehicle not displaying a current, valid license plate, including any validation sticker, other than a vehicle exempt under Ohio R.C. Chapter 4503.

(1995 Code, § 93.66) (Am. Ord. 88-O-25, passed 11-23-1988; Am. Ord. 88-025, passed 11-23-1988; Am. Ord. 99-O-91, passed 5-22-2000)

§ 93.67 PROHIBITION OF DEPOSIT, STORAGE, MAINTENANCE OR COLLECTION OF JUNK, JUNK VEHICLES, RUBBISH OR TRASH.

(A) No person in control of any real estate in the village, whether owner, tenant, lessee, occupant or having possessory interests therein, shall allow any junk, junk vehicles, rubbish or trash to remain upon such premises after the Chief of Police or his or her representative has caused a written notice to be served upon such person requesting that within ten days of the receipt of the notice, the junk, junk vehicle, rubbish or trash shall be removed from the property in accordance with § 93.74. If such person fails to remove the junk, junk vehicle, rubbish or trash, then the Chief of Police or his or her representative shall cause the same to be removed.

(1995 Code, § 93.67) (Ord. 82-O-8, passed 3-22-1982; Am. Ord. 99-O-91, passed 5-22-2000)

§ 93.68 JUNK VEHICLES DECLARED NUISANCE.

(A) Any inoperative vehicle, not bearing current state license, either sitting on village streets or in view of the public, shall be

considered a nuisance.

(B) The police shall be authorized to have junk vehicles disposed.

(C) The burden of proof shall be upon the owner to show:

(a) Ownership; and

(b) State license.

(1995 Code, § 93.68) (Ord. 82-O-21, passed 9-13-1982; Am. Ord. 99-O-91, passed 5-22-2000)

§ 93.69 VEHICLE LEFT ON PRIVATE PROPERTY.

No person shall store or park for longer than 48 hours any unlicensed or inoperable trailer, semi-trailer, or motor vehicle in any residence district other than in a garage. Each day's violation shall be considered a separate offense.

(ORC § 4513.60) (1995 Code, § 93.69) (Am. Ord. 99-O-91, passed 5-22-2000)

§ 93.70 VEHICLE LEFT ON PUBLIC PROPERTY.

(A) The Chief of Police or his or her representative may order into storage any motor vehicle, other than an abandoned junk motor vehicle which has been left on a public street or other property open to the public for purposes of vehicular travel, or on or within the right-of-way of any road or highway, for 48 hours or longer without prior notification of the Chief of Police of the reasons for leaving the motor vehicle in that place. The Chief of Police or his or her representative shall designate the place of storage ofany motor vehicle ordered removed by him or her.

(B) The Chief of Police or his or her representative shall immediately cause a search to be made of the records of the Bureau of Motor Vehicles to ascertain the owner and any lienholder of a motor vehicle ordered into storage by the Chief of Police or his or her representative, and, if known, shall send notice to the owner or lienholder at his or her last known address by certified mail with return receipt requested, that the motor vehicle will be declared a nuisance and disposed of if not claimed within ten days of the date of mailing of the notice. The owner or lienholder of the motor vehicle may reclaim it on payment of any expenses or charges incurred in its removal and storage, and presentation of proof of ownership, which may be evidenced by a certificate of title to the motor vehicle.

(C) If the owner or lienholder makes no claim to the motor vehicle within ten days of the date of mailing of the notice, and if the vehicle is to be disposed of at public auction as provided in § 93.71, the Chief of Police, without charge to any party, or his or her representative shall file with the Clerk of Courts of the county in which the place of storage is located an affidavit showing compliance with the requirements of Ohio R.C. § 4513.63. On presentation of the affidavit, the Clerk of Courts shall without charge issue a certificate of title, free and clear of all liens and encumbrances, to the Chief of Police or his or her representative. If the vehicle is to be disposed of to a junk yard or other facility as provided in § 93.71, the Chief of Police or his or her representative shall execute in triplicate an affidavit, as prescribed by the Registrar of Motor Vehicles, describing the motor vehicle and the manner in which it was disposed of, and that all requirements of this section have been complied with. The Chief of Police or his or her representative shall retain the original of the affidavit for his or her records, and shall furnish two copies to the owner of the junk yard or other facility. On presentation of a copy of the affidavit by the owner of the junk yard or other facility, the Clerk of Courts of the county shall issue to the owner a certificate of title, free and clear of all liens and encumbrances.

(D) Whenever the owner of a junk yard or other facility receives an affidavit for the disposal of a motor vehicle as provided in this section, the owner shall not be required to obtain an Ohio certificate of title to the motor vehicle in his or her own name if, within ten days of the receipt of the affidavit, the vehicle is dismantled or destroyed and both copies of the affidavit are delivered to the Clerk of Courts.

(ORC § 4513.61) (1995 Code, § 93.70) (Am. Ord. 99-O-91, passed 5-22-2000)

§ 93.71 DISPOSAL OF UNCLAIMED VEHICLES.

Unclaimed motor vehicles ordered into storage pursuant to §§ 93.69 and 93.70 shall be disposed of at the order of the Chief of Police to a junk yard or scrap metal processing facility as defined in Ohio R.C. § 4737.05, or to any other facility owned by or under contract with the village for the disposal of the motor vehicles, or shall be sold by the Chief of Police, or licensed auctioneer at public

auction, after giving notice thereof by advertisement, published once a week for two successive weeks in a newspaper of general circulation in the county. Any moneys accruing from the disposition of an unclaimed motor vehicle that are in excess of the expenses resulting from the removal and storage of the vehicle shall be credited to the general fund of the county or the municipal corporation, as the case may be.

(ORC § 4513.62) (1995 Code, § 93.71) (Am. Ord. 99-O-91, passed 5-22-2000)

§ 93.72 DISPOSAL OF ABANDONED JUNK VEHICLES.

(A) The Chief of Police or his or her representative shall order an abandoned junk motor vehicle to be photographed by a law enforcement officer in the place where abandoned. The officer shall record the make of the motor vehicle, the serial number when available, and shall also detail the damage or missing equipment to substantiate the value of $1,500 or less. The Chief of Police shall immediately dispose of the abandoned junk motor vehicle to a junk yard or scrap metal processing facility as defined in Ohio R.C. § 4737.05, or to any other facility owned by or under contract with the village for the disposal of such motor vehicles. The records and photographs relating to the abandoned junk motor vehicle shall be retained by the law enforcement agency ordering the disposition of the vehicle for a period of at least two years. The law enforcement agency shall execute in quadruplicate an affidavit, as prescribed by the Registrar of Motor Vehicles, describing the motor vehicle and the manner in which it was disposed of, and that all requirements of this section have been complied with, and shall sign and file the same with the Clerk of Courts of the county in which the motor vehicle was abandoned. The Clerk of Courts shall retain the original of the affidavit for his or her files, shall furnish one copy thereof to the Registrar, one copy to the junk yard or to the facility handling the disposal of the vehicle, and one copy to the law enforcement agency ordering the disposal, who shall file the copy with the records and photograph relating to the disposal. Any moneys arising from the disposal of an abandoned junk motor vehicle shall be deposited in the general fund of the village.

(B) Notwithstanding § 93.70, any motor vehicle meeting the requirements of § 93.66 which was remained unclaimed by the owner or lienholder for a period of ten days or longer following notification as provided in § 93.70 may be disposed of as provided in this section.

(ORC § 4513.63) (1995 Code, § 93.72) (Am. Ord. 99-O-91, passed 5-22-2000)

§ 93.73 WILLFULLY ABANDONING JUNK VEHICLES.

(A) No person shall willfully leave an abandoned junk motor vehicle as defined in § 93.66 on private property for more than 48 hours without the permission of the person having the right to the possession of the property, or on a public street or other property open to the public for purposes of vehicular travel or parking, or on or within the right-of-way of any road or highway, for 48 hours or longer without notification to the Chief of Police or his or her representative of the reasons for leaving the motor vehicle in that place.

(B) For purposes of this section, the fact that a motor vehicle has been so left without permission or notification is prima facie evidence of abandonment.

(ORC § 4513.64) (1995 Code, § 93.73) (Am. Ord. 99-O-91, passed 5-22-2000) Penalty, see § 93.99

§ 93.74 DISPOSAL OF JUNK VEHICLES.

(A) Nothing in this chapter shall prevent a person from storing or keeping on private property with the permission of the person having the right to the possession of the property, a historical motor vehicle possessing proper historical license plates, except that applicable building and zoning code regulations may require a person having such permission to conceal or store such historical motor vehicle in accordance therewith.

(ORC 4513.65)

(B) The Chief of Police or his or her representative, may cause a written notice to be served upon the person having the right to possession of the property on which a junk motor vehicle is left, that within ten days of receipt of the notice, the junk motor vehicle either shall be housed in a garage or other suitable structure, or shall be removed from the property.

(C) No person shall willfully leave a junk motor vehicle on private property for more than ten days after receipt of a notice as provided in this section. The fact that a junk motor vehicle is so left is prima facie evidence of willful failure to comply with the notice, and each subsequent period of 30 days that a junk motor vehicle continues to be so left constitutes a separate offense.

(ORC § 4513.65) (1995 Code, § 93.74) (Am. Ord. 99-O-91, passed 5-22-2000) Penalty, see § 93.99

§ 93.75 JUNK VEHICLE DISASSEMBLING.

(A) Any person, business, or corporation who desires to operate a business of junking by disassembling automobiles, trucks, and other metal components, must first establish a designated place of business.

(B) The designated place of business must, in compliance with the established building codes, enclose the land.

(C) A ledger shall be maintained at all times for audit purposes in compliance with the village's earning tax laws.

(D) It shall be against the provisions of this section for any person, business, or corporation to engage in the disassembly of junk cars or other junk materials on the village streets or in open vacant lots.

(E) No owner, resident, or absentee landlord shall permit this type of work to be done on his or her open vacant lot.

(F) Any person, business, or corporation found in violation of this section shall have the junk vehicle or the like confiscated by the village, and proceeds from the salable item shall be turned over to the village general fund for recreational purposes.

(1995 Code, § 93.75) (Ord. 80-O-27, passed 5-12-1980; Am. Ord. 99-O-91, passed 5-22-2000)

STORAGE ON PORCHES OR IN YARDS PROHIBITED IN RESIDENTIAL DISTRICTS

§ 93.90 PURPOSE.

Council makes a legislative finding that the storage of materials on the porch or in the yard (front, back and/or sides) of a residence in any residential district may be contrary to public safety and conducive to blight, deterioration, trash, haven for rodents and decrease in land values, and therefore constitutes a nuisance unless appropriate provisions (e.g. shed, building) are constructed, with valid permit, to accommodate such storage.

(Ord. 2000-O-51, passed 10-10-2000)

§ 93.91 PROHIBITION.

(A) No storage of any kind is permitted on the front porch or in the front yard of a residence in a residential district except where a building is under construction with a valid building permit.

(B) No storage of any kind is permitted on any porch or yard (front, back and/or sides) where it limits the access of windows and doors and creates a fire and safety hazard to its residents and the public.

(Ord. 2000-O-51, passed 10-10-2000)

§ 93.99 PENALTY.

(A) *Generally*. Whoever violates any provision of this chapter, for which another penalty is not already provided, shall be guilty of a minor misdemeanor and subject to a fine of not more than $1,000.

(Ord. 98-O-23, passed 4-12-1998)

(B) *Litter*. Whoever violates any provision of § 93.27 shall be guilty of a misdemeanor of the third degree. The sentencing court may, in addition to or in lieu of the penalty provided in this division, require a person who violates § 93.27 to remove litter from any public or private property or in or on waters of the state.

(ORC § 3767.99)

(C) *Junk vehicles and the like.*

(1) Whoever violates any provision of §§ 93.65*et seq*. in the first offense is guilty of a misdemeanor of the fourth degree and may be fined not more than $250 and imprisoned not more than 30 days.

(2) For the second or subsequent offense, the offender shall be guilty of a misdemeanor of the third degree and may be fined not more than $500 and imprisoned not more than sixty days.

(Ord. 82-O-8, passed 3-22-1982; Am. Ord. 99-O-91, passed 5-22-2000)

(D) *Storage on porches or in yards prohibited in residential districts*. Whoever violates §§ 93.90*et seq*. is guilty of a misdemeanor of the third degree and subject to a fine of not less than $100.

(1995 Code, § 93.99) (Ord. 2000-O-51, passed 10-10-2000)

CHAPTER 94: SANITATION AND HEALTH

Section

General Provisions

94.01 Application

94.02 Village to provide hospitalization for indigents (Repealed)

Food and Food Handlers

94.10 Definitions

94.11 Permitting unclean premises

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94.13 Cleanliness of persons employed

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Communicable Diseases

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94.99 Penalty

GENERAL PROVISIONS

§ 94.01 APPLICATION.

The provisions of this chapter shall be enforceable within this municipality concurrently with the state and federal laws relative to sanitation and health and to the sale of pure foods and drugs, and the ordinances or orders of the local health district, and shall not be construed as modifying, repealing, limiting or affecting in any manner such laws, ordinances or orders.

§ 94.02 VILLAGE TO PROVIDE HOSPITALIZATION FOR INDIGENTS (REPEALED).

(EDITOR'S NOTE: This section was repealed by Ordinance 2002-O-48, passed September 9, 2002.)

§ 94.10 DEFINITIONS.

For purposes of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

FOOD. Breads, meats, fruits, grains vegetables, milk, juices, and all other foodstuffs, food products or food ingredients in the natural or processed state. The expression shall be deemed to include all canned, bottled, dehydrated or otherwise preserved foods.

FOOD HANDLER. Wholesale or retail grocers, bakers, butchers, restaurant or lunch stand operators, dairymen, hucksters, fruit stand operators, canners, or packers of foodstuffs, cold storage house operators, or other persons commercially engaged in processing, handling, transporting, storing, or selling food.

§ 94.11 PERMITTING UNCLEAN PREMISES.

It shall be unlawful for any food handler to keep or possess food except when in original cans, packages or containers, in any room, building, establishment or other place, unless such place:

(A) Is adequately lighted to reveal any dirt or unwholesome condition which might exist;

(B) Has smooth, tight floors, walls and ceilings, free from projections, cracks and crevices and kept clean and sanitary at all times by painting, scrubbing and cleaning to prevent the accumulation of dirt and filth;

(C) Is adequately ventilated and screened against flies and other insects;

(D) Is free from all vermin and rodents;

(E) Is provided with an ample supply of pure and uncontaminated running water with sanitary drainage into a cesspool or sewer;

Penalty, see § 94.99

§ 94.12 EQUIPMENT.

Every food handler's establishment shall be equipped with an adequate supply of furniture, machinery, implements, containers, and utensils for the proper conduct of such business, and it shall be unlawful for any food handler to have in possession or use in connection with such business any furniture, machine, implement, container, utensil, or other article of equipment which is not thoroughly clean, sanitary, and free from rust or corrosion.

Penalty, see § 94.99

§ 94.13 CLEANLINESS OF PERSONS EMPLOYED.

Every food handler or employee thereof who is engaged in handling food, except when such food is in original cans, packages or containers, shall keep his or her person, aprons, services, caps and other articles of clothing thoroughly clean and free from dirt and filth. Failure to observe the provisions of this section shall constitute a misdemeanor and the employer of any person violating the same shall be deemed an aider and abettor and may be prosecuted as if he or she were the principal offender.

Penalty, see § 94.99

§ 94.14 HEALTH OF PERSONS EMPLOYED.

It shall be unlawful for any person suffering from cholera, dysentery, epidemic or streptococcus sore throat, paratyphoid fever, poliomyelitis (acute anterior), scarlet fever, tuberculosis, typhoid fever, or who is a carrier of the organism of any such disease, or who is suffering from any venereal disease, to serve or handle food, except when such food is in original cans or containers. The employer of any person violating this section shall be deemed an aider and abettor and may be prosecuted as if he or she were the principal

offender.

Penalty, see § 94.99

§ 94.15 UNSANITARY FOOD.

(A) It shall be unlawful for any food handler to prepare, manufacture, possess, sell, or expose or offer for sale any food which is impure, moldy, tainted, rancid, unwholesome, or otherwise unsanitary or which is adulterated or misbranded.

(B) The regulations of the public health council governing food service operations and providing uniform sanitation standards are adopted and declared to be the standards of purity intended and required by this chapter.

Penalty, see § 94.99

COMMUNICABLE DISEASES

§ 94.20 ATTENDING SCHOOLS AND OTHER PUBLIC PLACES WHEN INFECTED.

It shall be unlawful for any person infected with or exposed to infection of influenza, infantile paralysis, cerebrospinal meningitis, measles, chicken pox, smallpox, whooping cough, cholera, scarlet fever, diphtheria, or other communicable disease, to attend any public, parochial or private school, theater or other public gathering. The parents, guardian or other person having custody or control of any child under 18 years of age, violating this section, shall be deemed aiders and abettors and may be prosecuted as if they were principal offenders.

Penalty, see § 94.99

Statutory reference:

Power of municipality to secure its inhabitants from contagious diseases, Ohio R.C. § 715.37

§ 94.99 PENALTY.

Whoever violates any provision of this chapter, for which another penalty is not already provided, shall be fined not more than $100.

(1995 Code, § 94.99)

CHAPTER 95: STREETS AND SIDEWALKS

Section

General Provisions

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95.02 Opening permit required

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Statutory reference:

Assessments generally, see Ohio R.C. Chapter 727

Vacation or establishment of streets by court, notice and hearings, see Ohio R.C. §§ 723.09 et seq.

GENERAL PROVISIONS

§ 95.01 CONDITIONS PRECEDENT TO IMPROVING STREETS.

No department of this municipality shall accept, lay out, open, improve, grade, pave, curb or light any street or other way, unless the street or way has been accepted or opened or otherwise has received the legal status of a public street or way prior to the effective date of this code; or unless the street or way corresponds in location and extent with a street or way shown on a recorded plat which has been legally accepted by the Village Council.

(1995 Code, § 95.01)

Statutory reference:

Power over streets and sidewalks, see Ohio R.C. §§ 715.19, 717.01(P), 723.01, 723.011, 723.02, and 729.01

§ 95.02 OPENING PERMIT REQUIRED.

It shall be unlawful for any person, other than an authorized municipal official or the authorized employees or agents of such municipal official, to make any opening in any street, alley, sidewalk, or public way of the municipality unless a permit to make the opening has been obtained prior to commencement of the work.

(1995 Code, § 95.02) Penalty, see § 95.99

§ 95.03 APPLICATION AND CASH DEPOSIT.

Each permit for making an opening shall be confined to a single project and shall be issued by the Mayor or other proper municipal officer. Application shall be made on a form prescribed by the Village Council, giving the exact location of the proposed opening, the kind of paving, the area and depth to be excavated, and such other facts as may be provided for. The permit shall be issued only after a cash deposit sufficient to cover the cost of restoration has been posted with the Mayor or other proper municipal officer, conditioned upon prompt and satisfactory refilling of excavations and restoration of all surfaces disturbed.

(1995 Code, § 95.03)

§ 95.04 RESTORATION OF PAVEMENT.

(A) The opening and restoration of pavement or other surface shall be performed under the direction and to the satisfaction of an authorized municipal official, and in accordance with rules, regulations, and specifications approved by the Village Council.

(B) Upon failure or refusal of the permittee satisfactorily to fill the excavation, restore the surface, and remove all excess materials within the time specified in the permit or where not specified therein, within a reasonable time after commencement of the work, the municipality may proceed without notice to make such fill and restoration, and the deposit referred to in § 95.03 shall be deemed forfeited. Thereupon, the deposit shall be paid into the street repair fund of the municipality, except such part demanded and paid to the permittee as the difference between the deposit and the charges of the municipality for restoration services performed by it. If the amount of such services performed by the municipality should exceed the amount of the deposit, the Clerk or other proper municipal officer shall proceed to collect the remainder due from such permittee.

(1995 Code, § 95.04)

§ 95.05 BARRIERS AROUND EXCAVATIONS.

Any person engaged in or employing others in excavating, or opening any street, sidewalk, alley, or other public way shall have the excavation or opening fully barricaded at all times to prevent injury to persons or animals.

(1995 Code, § 95.05) Penalty, see § 95.99

§ 95.06 WARNING LIGHTS.

Any person engaged in or employing others in excavating or otherwise in any manner obstructing a portion or all of any street, sidewalk, alley, or other public way, at all times during the night shall install and maintain at least two illuminated warning lamps which shall be securely and conspicuously posted on, at, or near each end of such obstruction or excavation, and if the space involved shall exceed 50 feet in extent, then at least one additional lamp for each added 50 feet or portion thereof excavated or obstructed.

(1995 Code, § 95.06) Penalty, see § 95.99

§ 95.07 SIDEWALK CONSTRUCTION BY THE VILLAGE.

It shall be the duty of the engineer of the municipality or, if none exist, another authorized municipal official, to supervise construction or repair of sidewalks within the municipality. He or she shall cause specifications to be prepared for the construction of the various kinds of pavements and transmit the same to the Village Council for approval. When the specifications are approved, the Village Council shall advertise for proposals to do all the work which may be ordered by the municipality in construction and repair of sidewalks, and shall contract therefor, for a period not exceeding one year, with the lowest responsible bidder, who shall furnish good and sufficient sureties for the faithful performance of the work. The Village Council, if it deems advisable, may make separate contracts for the different kinds of work with different parties.

(1995 Code, § 95.07)

§ 95.08 UNLOADING ON STREET OR SIDEWALK.

No person shall unload any heavy material in the streets of the municipality, by throwing or letting the same fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.

(1995 Code, § 95.08) Penalty, see § 95.99

§ 95.09 STREET OR SIDEWALK OBSTRUCTION.

(A) No person shall obstruct any street, alley, sidewalk, public ground, or other public way within the municipality by erecting thereon any fence, structure or building, or permitting any fence, structure or building to remain thereon unless authorized by the Village Council or other proper municipal official. Each day that any such fence or building is permitted to remain upon such public way shall be deemed a separate offense.

(ORC § 5589.01)

(B) Whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 5589.99(A)) (1995 Code, § 95.09)

Cross-reference:

Driving upon sidewalk prohibited, see § 72.58

§ 95.10 MATERIALS ON STREET OR SIDEWALK.

No person shall encumber any street or sidewalk. No owner, occupant, or person having the care of any building or lot of land bordering on any street or sidewalk shall permit the same to be encumbered with barrels, boxes, cans, articles, or substances of any kind so as to interfere with the free and unobstructed use thereof.

(1995 Code, § 95.10) Penalty, see § 95.99

Cross-reference:

Placing injurious materials and litter upon streets or highways prohibited, see § 72.62

§ 95.11 DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN OF ICE AND SNOW.

No owner or occupant of lots or lands abutting any sidewalk, curb or gutter shall fail to keep the sidewalks, curbs and gutters in repair and free from snow, ice or any nuisance, and to remove from such sidewalks, curbs or gutters all snow and ice accumulated thereon within a reasonable time, which will ordinarily not exceed 12 hours after any storm during which the snow and ice has accumulated.

(ORC § 723.011) (1995 Code, § 95.11) Penalty, see § 95.99

§ 95.12 RAMPED CURBING FOR PERSONS WITH DISABILITIES.

All new curbs that are authorized by the municipality, and all existing curbs which are part of any reconstruction, shall have a ramp with nonslip surface built into the curb at each pedestrian crosswalk so that the sidewalk and street blend to a common level. These ramps shall be not less than 40 inches wide and shall, insofar as feasible, be constructed in accordance with the standard drawings and specifications for curb ramps of the state Department of Transportation.

(ORC § 729.12) (1995 Code, § 95.12) Penalty, see § 95.99

§ 95.13 FLAGPOLE ALONG RIGHT-OF-WAY.

(A) A property owner in the municipality may install a flagpole between the sidewalk and curb along the right-of-way of any public street or highway adjacent to his or her property. A property owner may also install underground lighting for the display of the flag. Installation of the flagpole and holder shall meet the following specifications:

(1) The flagpole holder shall be embedded in concrete, flush with the sidewalk or sodded area, and possess a cap or cover which shall be used when the holder is not used for the purpose of displaying the American flag;

(2) The holder shall not exceed two inches in diameter and shall be installed not less than one foot from the curb;

(3) Underground lighting for the flagpole shall be situated within a reasonable distance to the holder and meet all underwriters' requirements governing installation. The highest part of the lighting fixture shall at all times be flush with the sidewalk or sodded area in which it is embedded; and

(4) At no time shall the flag, flagpole, or holder limit or restrict the view of pedestrian or vehicular traffic, nor shall a flag, flagpole, or holder be installed that comes in physical contact, or is likely to come in physical contact, with overhead wiring.

(B) The municipality may require the issuance of a permit for installation of flagpoles but shall not charge the property owner a permit fee or an inspection fee in excess of $1 per installation.

(ORC § 723.012) (1995 Code, § 95.13) Penalty, see § 95.99

§ 95.14 ALTERING OR INJURING MARKER OR MONUMENT.

(A) No person shall alter, deface, injure or destroy any marker or monument placed along, upon, or near a public highway by the proper authorities to mark the boundary thereof, or for any other purpose.

(ORC § 5589.02)

(B) Whoever violates this section is guilty of a minor misdemeanor.

(ORC § 5589.99(B))

CONSTRUCTION AND REPAIR

§ 95.25 CONSTRUCTION AND REPAIR MAY BE REQUIRED.

In addition to the power conferred upon the municipality under Ohio R.C. § 727.01 to construct sidewalks, curbs or gutters and levy an assessment therefor, the Village Council may require the construction or repair of sidewalks, curbs or gutters within the municipality by the owners of lots or lands abutting thereon, and upon the failure of such owners to construct or repair such sidewalks, curbs or gutters within the time prescribed in the resolution adopted under § 95.26, may cause such sidewalks, curbs or gutters to be constructed or repaired and assess the total cost thereof against the lots or land abutting thereon, notwithstanding the provisions of Ohio R.C. §§ 727.03 and 727.05.

(ORC § 729.01)

§ 95.26 RESOLUTION OF NECESSITY.

(A) When it is deemed necessary by the municipality to require the construction or repair of sidewalks, curbs, or gutters within the municipality by the owners of the lots or lands abutting thereon, the Village Council shall cause plans, specifications, and an estimate of the cost of such construction or repair to be prepared, showing the location and dimensions of such sidewalks, curbs or gutters and the specifications for the construction or repair thereof, and to be filed in the office of the Clerk of the Village Council.

(B) After such plans, specifications and estimate of cost have been filed, as provided in this section, the Village Council may declare the necessity for the construction or repair of such sidewalks, curbs or gutters by the adoption of a resolution which shall:

(1) Approve the plans, specifications and estimate of cost of the proposed construction or repair on file as provided by this section;

(2) Describe the lots and lands abutting upon the sidewalks, curbs or gutters to be constructed or repaired by the termini of the improvement or by the street address;

(3) Set forth that such sidewalks, curbs or gutters shall be constructed or repaired by the owners of the lots or lands abutting thereon in accordance with the specifications on file in the office of the Clerk of the Village Council;

(4) Set forth the time within which such sidewalks, curbs or gutters shall be constructed or repaired by the owners of the lots and lands abutting thereon, which shall not be less than 30 days from the date of service of notice under § 95.27 on the owner of the lots or lands;

(5) State than in the event such sidewalks, curbs or gutters are not constructed or repaired by the owners of the lots and lands abutting thereon in accordance with such plans and specifications and within the time prescribed in this resolution, the municipality will so construct or repair such sidewalks, curbs or gutters and assess the costs thereof against the lots and lands abutting thereon.

(ORC § 729.02)

§ 95.27 NOTICE TO CONSTRUCT OR REPAIR.

Notice of the passage of a resolution of necessity under § 95.26 shall be served by the Clerk of the Village Council, or a person designated by such Clerk, upon the owners of the lots or lands abutting upon the sidewalks, curbs or gutters to be constructed or repaired in the same manner as service of summons in civil cases, or by certified mail addressed to such owner at his or her last known address or to the address to which tax bills are sent, or by a combination of the foregoing methods. If it appears by the return of service or the return of the certified mail notice that one or more of the owners cannot be found, such owners shall be served by publication of the notice once in a newspaper of general circulation within the municipality. The return of the person serving the notice or a certified copy thereof or a returned receipt for notice forwarded by certified mail accepted by the addressee or anyone purporting to act for him or her shall be prima facie evidence of the service of notice under this section. The notice shall also set forth the place where the specifications governing the construction or repair of such sidewalks, curbs or gutters are on file, the time within which the owner of such lot or parcel of land may construct or repair the sidewalks, curbs or gutters, and that in the event the owner does not construct or repair the sidewalks, curbs or gutters in accordance with the specifications and within such time, the municipality will construct or repair such sidewalks, curbs or gutters and assess the costs thereof against the lot or land of the owner.

(ORC § 729.03)

§ 95.28 ASSESSMENTS OF COSTS AGAINST OWNER.

(A) Upon the expiration of the time within which sidewalks, curbs or gutters shall be constructed or repaired by the owner of the lots or lands abutting thereon as set forth in the resolution adopted under § 95.26, the sidewalks, curbs or gutters not constructed or repaired by the owners of the lots and lands abutting thereon shall be constructed or repaired by the municipality in accordance with the resolution adopted under § 95.26, and the Village Council shall, upon the completion of such construction or repair, assess the costs thereof against the lots or lands abutting thereon.

(B) In anticipation of the collection of the costs of construction or repair of such sidewalks, curbs or gutters from the owners of the lots or lands abutting thereon, the Village Council may provide for the issuance of bonds or notes and the proceeds thereof shall be used to pay for the construction or repair of such sidewalks, curbs or gutters.

(ORC § 729.04)

§ 95.29 PROCEEDINGS MAY INCLUDE DIFFERENT OWNERS.

In all proceedings pertaining to the construction or repair of sidewalks, curbs or gutters under this subchapter or Ohio R.C. §§ 729.01 through 729.08, sidewalks, curbs or gutters upon different streets abutting upon lots or lands owned by different owners may be included in the same resolution, notice, contract, ordinance, or other proceedings.

(ORC § 729.05)

§ 95.30 MAKING AND LEVYING ASSESSMENTS.

(A) *Estimated assessments.* Upon completion of the construction or repair of sidewalks, curbs or gutters under this subchapter, the total cost of such construction, repair, or installation as defined in division (B) shall be ascertained and reported to the Village Council by its Clerk, and the Village Council shall cause a list of estimated assessments to be prepared. Such list shall include the total cost of such construction, repair, or installation to each lot or land abutting upon such construction, repair, or installation and shall be filed in the office of the Clerk of the Village Council and be available for public inspection.

(ORC § 729.07)

(B) *Notice of assessment; objection.*

(1) The Village Council shall cause a notice to be published for three consecutive weeks in a newspaper of general circulation in the municipal corporation stating that such list of estimated assessments has been made and is on file in the office of the Clerk of the Village Council for the inspection and examination of persons interested therein.

(2) If any person objects to an assessment on such list, the person shall file the objection in writing with the Clerk of the Village Council within two weeks after the expiration of the notice provided for in division (B)(1) of this section.

(ORC § 729.08)

(C) *Assessment ordinance.* The Clerk of the Village Council shall deliver the objections received under division (B) of this section to the Village Council. The Village Council shall review the written objections and shall adopt an ordinance levying upon the lots and lands enumerated in the list of estimated assessments the amount set forth on such list with such changes or corrections as the Village Council shall determine to be proper after consideration of the written objections filed under division (B) of this section. Such ordinance shall state the number of annual installments, not exceeding ten, over which the assessments shall be payable and shall establish a period of time during which the assessments shall be payable in cash.

(ORC § 729.09)

(D) *Assessment proceedings.* The provisions of Ohio R.C. §§ 727.26 through 727.43, inclusive, shall apply to and govern the proceedings taken under and the assessments levied under this subchapter. The proceedings taken under this subchapter shall be construed in accordance with the provisions of Ohio R.C. § 727.40.

(ORC § 729.10)

Statutory reference:

Assessments generally, see Ohio R.C. Chapter 727

CHANGES IN STREETS

§ 95.40 CHANGE OF NAME, VACATING OR NARROWING STREETS BY PETITION.

The Village Council, on petition by a person owning a lot in the municipality requesting that a street or alley in the immediate vicinity of such lot be vacated or narrowed, or the name thereof changed, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation, or narrowing, that it will not be detrimental to the general interest, and that it should be made, may, by ordinance, declare such street or alley vacated, narrowed or the name thereof changed. The Village Council may include in one ordinance the change of name, vacation, or narrowing of more than one street, avenue or alley.

(ORC § 723.04)

§ 95.41 CHANGE OF NAME, VACATING OR NARROWING STREETS WITHOUT PETITION.

(A) The Village Council may, when there are two or more streets, avenues or alley of the same name in the municipality, by ordinance and without petition therefor, change the name of any such street, avenue or alley so as to leave only one to be designated by the original name.

(B) When, in the opinion of the Village Council, there is good cause for vacating or narrowing a street or alley, or any part thereof, and that such vacation or narrowing will not be detrimental to the general interest, it may, by ordinance and without petition therefor, vacate or narrow such street or alley or any part thereof.

(ORC § 723.05)

§ 95.42 NOTICE; EXCEPTION.

Notice of the intention of the Village Council to vacate any street, alley, avenue, or part thereof shall be given as provided in § 95.43, except when written consent to such vacation is filed with the Village Council by the owners of the property abutting the part of the street or alley proposed to be vacated, in which case such notice shall not be required.

(ORC § 723.06)

§ 95.43 PUBLICATION OF NOTICE.

No street or alley shall be vacated or narrowed unless notice of the pendency and request of the petition under § 95.40 is given by publishing, in a newspaper published or of general circulation in the municipality, for six consecutive weeks preceding action on such petition, or where no newspaper is published or generally circulated in the municipality, by posting the notice in three public places therein six weeks preceding such action. Action thereon shall take place within three months after completion of the notice.

(ORC § 723.07)

§ 95.44 EFFECT OF ORDER OF VACATION.

The order of the Village Council vacating or narrowing a street or alley which has been dedicated to public use by the proprietor thereof shall, to the extent to which it is vacated or narrowed, operate as a revocation of the acceptance thereof by the Village Council, but the right-of-way and easement therein of any lot owner shall not be impaired by such order.

(ORC § 723.08)

§ 95.45 EFFECT ON PUBLIC UTILITY EASEMENTS.

When any street, alley or public highway, or a portion thereof, is vacated or narrowed by the municipality pursuant to the provisions of this subchapter or the provisions of Ohio R.C. Chapter 723, and the relocation of any conduits, cables, wires, towers, poles, sewer lines, steam lines, pipelines, gas and water lines, tracks, or other equipment or appliances of any railroad or public utility, whether owned privately or by any governmental authority, located on, over or under the portion of the street, alley, or highway affected by such vacation or narrowing, is not required for purposes of the municipality, including urban renewal, any affected railroad or public utility shall be deemed to have a permanent easement in such vacated portion or excess portion of such street, alley or highway for the purpose of maintaining, operating, renewing, reconstructing, and removing such utility facilities and for purposes of access to such facilities.

(ORC § 723.041)

§ 95.99 PENALTY.

Whoever violates any provisions of this chapter for which another penalty is not already provided shall be subject to the penalty as prescribed in § 10.99.

(1995 Code, § 95.99)

CHAPTER 96: SPOT BLIGHT

Section

96.01 Definitions

96.02 Determination of blighted premises

96.03 Notice prior to determination of blighted premises

96.04 Alternatives to acquisition

96.05 Public hearing prior to acquisition

96.06 Procedure at hearing

96.07 Legislative determination

96.08 Acquisition and blight elimination by Village Manager

96.09 Terms of sale; prohibition of recurrence of blight

96.10 Unconstitutionality

§ 96.01 DEFINITIONS.

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

BLIGHTED PREMISES. Real property which because of age, obsolescence, dilapidation, deterioration, lack of maintenance or repair or any combination thereof constitute a fire hazard, a health hazard, a substantial and unreasonable interference with the reasonable and lawful use and enjoyment of other property within the neighborhood or a factor seriously depreciating property values in the neighborhood.

REDEVELOPMENT. The acquisition of blighted premises, the demolition of a structure or structures thereon, the making of site improvements, including the construction or reconstruction thereon, or the sale of property for use in accordance with the Zoning Code and the Ohio Basic Building Code. ***REDEVELOPMENT*** may include the construction of improvement by the village of any building for public use or resale to private persons.

REHABILITATION. The restoration, rebuilding or conservation of blighted premises by improvement, modernization or repair of a structure or structures thereon to bring it into conformance with applicable building and zoning provisions followed by the Village of Lincoln Heights.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.02 DETERMINATION OF BLIGHTED PREMISES.

(A) The Building Commissioner shall submit to the Village Manager a list of properties that meet the definition of blighted premises.

(B) The Village Manager shall present a report to the Village Council which includes the list of properties. The report must include the location of the premises and identification of any owners of the properties.

(C) The report must state, with particularity, all factors that warrant a determination that the premises is blighted.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.03 NOTICE PRIOR TO DETERMINATION OF BLIGHTED PREMISES.

(A) Prior to issuing a report under § 96.02, the Village Manager shall first cause the Building Department to order the owner(s), by lawful order, to take action to eliminate the blighted condition within 30 days after notice.

(B) Notice must be given by:

(1) Posting the order on the premises;

(2) Personal delivery to owner(s);

(3) Mailing the order to the last known address of the owner; or

(4) Publishing once a week for three consecutive weeks in a newspaper of general circulation a notice of the issuance of the order relating to the premises and directing the owner to contact the director of buildings and inspections in regard to such order.

(C) Any premises that has not first received orders to correct the condition, may not be included in the report to Council.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.04 ALTERNATIVES TO ACQUISITION.

Where the notice provisions have been followed and the owner(s) fails to comply, prior to acquisition the village may, at its option, clear the blighted structure of debris, demolish the blighted structure or barricade such structure, as outlined in §§ 93.56, 150.27, and 150.65 of the Lincoln Heights Municipal Code.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.05 PUBLIC HEARING PRIOR TO ACQUISITION.

(A) Upon receipt of a report from the Village Manager, Council shall set a date for a public hearing in regard to the existence of blight on the premises and necessity for acquisition by the village in order to eliminate blight and prevent the recurrence thereof. The hearing shall be held not less than 30 nor more than 45 days from the time such report of the Village Manager is received. Upon the fixing of a day for a public hearing, the Clerk of Council shall promptly cause notice to be given to the owner or owners of record of the premises and the occupants thereof, if any, or the person in charge of the premises, if any, notifying them of the time and place of the hearing and apprising them of their right to appear at such hearing to show cause why the premises should not be declared to be blighted or why the village should not acquire the premises for the purpose of eliminating blight thereon and preventing the recurrence of blight.

(B) Notice of such hearing shall be given by at least two of the following:

(1) Posting the notice thereof on the premises;

(2) Personal service;

(3) Mailing such order or notice to the last known address of the owner or person in charge of the premises or to the occupants thereof; or

(4) Publishing the notice once a week for three consecutive weeks in a newspaper of general circulation within the Village of Lincoln Heights.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.06 PROCEDURE AT HEARING.

(A) At the hearing required by § 96.05, the report of the Village Manager shall be read and shall constitute prima facie evidence of

blight on the premises and need for the Village of Lincoln Heights to acquire such premises in order to eliminate the blight and prevent recurrence of blight thereon. Thereafter, the owner, person in charge, occupant of the premises or any person having an interest therein may proceed to show cause why the premises should not be declared blighted or the village should not acquire the premises for the purposes of eliminating blight or preventing its recurrence. If the owner, person in charge or occupant of the premises does appear and presents testimony for the purpose of showing cause why the premises should not be declared blighted or the village should not acquire the premises for the purposes of eliminating the blight and preventing recurrence of blight, the Village Manager, or duly appointed representative, shall proceed to present evidence to Council of the existence of blight on the premises and need to acquire the premises for elimination of the blight and the prevention of the recurrence of the blight thereon. Members of the public residing in the neighborhood or who may otherwise have knowledge of the condition of such premises may address the Council at the hearing in regard to the proposed action of the village.

(B) Council may adjourn the hearing, from time to time, and grant continuances to the Village Manager, the Village Manager's representative or the owner, person in charge or occupant of the premises, in order for them to present further argument or evidence in regard to the existence of blight on the premises or the need for the village to acquire the premises in order to eliminate blight or prevent the recurrence of blight thereon.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.07 LEGISLATIVE DETERMINATION.

(A) Council, upon completion of the hearing, shall at the same or a subsequent meeting decide and make findings as to:

(1) Whether or not the premises are blighted in accordance with this chapter; and

(2) Whether are not it is necessary for the village to acquire the premises in order to eliminate blight thereon and to prevent the recurrence of blight.

(B) Should Council determine that the premises are not blighted as defined in this chapter, it may direct the Village Manager to take action under any other provisions of the Zoning Code of the Village of Lincoln Heights, the Lincoln Heights Municipal Code or the Ohio Revised Code in order to correct any illegal conditions on the premises.

(C) Should Council determine that the premises are blighted but that it is not necessary for the village to acquire the premises in order to eliminate the blight and prevent its recurrence in the future, it may direct the Village Manager to take appropriate action in regard thereto short of acquisition.

(D) If Council finds that the premises are blighted as defined in this chapter and that acquisition by the village is necessary in order to eliminate the blight and prevent the recurrence of blight on the premises, the Village Manager shall be and hereby is authorized to proceed to take the proper action to acquire the premises, eliminate the blight and prevent the recurrence of blight in accordance with the provisions of this chapter.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.08 ACQUISITION AND BLIGHT ELIMINATION BY VILLAGE MANAGER.

Upon determination of Council that premises are blighted and that acquisition by the village is necessary in order to eliminate the blight and prevent recurrence of blight upon the premises, the Village Manager is hereby authorized to:

(A) Acquire the premises by purchase;

(B) Acquire the premises by court action exercising the village's constitutional right of eminent domain pursuant to the procedures outlined in Ohio R.C. Chapters 163 and 719; and

(C) After acquisition, to eliminate the blight by:

(1) Demolition and clearance of the premises by an independent contractor or village forces, or clearance if demolition of structures is not necessary;

(2) Rehabilitation by an independent contractor or by village forces;

(3) Sale of the blighted premises to a purchaser upon terms and conditions providing for the elimination of the blight and

prevention of its recurrence;

(4) Sale of the premises after demolition and clearance (if not needed for municipal purposes) for use or development in accordance with applicable Lincoln Heights Municipal Code and Zoning Code provisions; or

(5) Any combination of the above provisions.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.09 TERMS OF SALE; PROHIBITION OF RECURRENCE OF BLIGHT.

(A) Premises sold under the provisions of this chapter shall provide in the instrument of conveyance that the purchaser, successors and assigns, shall rehabilitate or develop the premises in accordance with all applicable provisions of the Lincoln Heights Municipal Code and Zoning Code regulations of the Village of Lincoln Heights, and shall henceforth use the premises in accordance with all applicable provisions of the Lincoln Heights Municipal Code and Zoning Code of the Village of Lincoln Heights and shall eliminate any blight thereon and prevent the recurrence of blight. Such provisions shall be both covenants and conditions of the conveyance and the instrument of conveyance shall further provide for reversion to the Village of Lincoln Heights if blight does recur upon the premises or the use, development or rehabilitation thereof is not carried out in accordance with the terms of the conveyance and the provisions of the Lincoln Heights Municipal Code and the Zoning Code of the Village of Lincoln Heights and shall provide for a tight of immediate re-entry by the Village of Lincoln Heights in such event.

(B) The Village Manager is hereby authorized to negotiate for the sale of premises acquired under the provisions of this chapter which are not to be retained by the village. No land shall be sold by the Village Manager except pursuant to a special ordinance of Council authorizing such sale which ordinance shall prescribe in detail the terms and conditions upon which such sale is to be made and the covenants to be contained in the deed from the village to the redeveloper.

(Ord. 2002-O-12, passed 3-11-2002)

§ 96.10 UNCONSTITUTIONALITY.

In the event any section of this chapter or any part of any section of this chapter is declared to be unconstitutional, such decision shall in no way affect the operation of any other section or part thereof of this chapter, and the remainder of this chapter shall remain in full force and effect.

(Ord. 2002-O-12, passed 3-11-2002)

CHAPTER 97: PARADES, MARCHES OR PROCESSIONS

Section

97.01 Prohibition

97.02 Permit required

97.03 Application for permit

97.99 Penalty

§ 97.01 PROHIBITION.

It shall be unlawful for any person or persons to conduct or participate in any parade, march or procession, other than a wedding or funeral procession, upon any public highway except upon a permit issued by the Village Manager.

(Ord. 95-O-13, passed 11-27-1995) Penalty, see § 97.99

§ 97.02 PERMIT REQUIRED.

The person, group, organization or association sponsoring the parade shall apply for a permit in writing not less than 48 hours in advance of the date of the parade, march or procession.

(Ord. 95-O-13, passed 11-27-1995)

§ 97.03 APPLICATION FOR PERMIT.

Application for such permit shall be upon forms provided by the Village Manager or person designated by the Village Manager, and shall state:

(A) The name and address of the sponsoring group, association or organization;

(B) The names, addresses and telephone numbers of the officers of the organization or persons authorized to speak for or on behalf of such organization and to represent the organizations in all matters pertaining to the parade permit;

(C) The date, time and proposed route of the parade;

(D) The nature of the parade, i.e., whether it will consist of or include:

(1) Pedestrians;

(2) Vehicles;

(3) Animals;

(4) A combination of any of the above; and

(5) The approximate size or length of the parade.

(E) Those traffic laws or regulations which the group, association or organization sponsoring the parade wish to be waived in regard to it;

(F) Whether or not it is desirous that parking be restricted along the parade route or any part of the parade route;

(G) If the parade, march or procession involves the use of motor vehicles or animals, the organization, group or association sponsoring the parade shall obtain liability insurance and file a copy of the policy with the Village Manager, which policy shall:

(1) List the sponsoring group, association or organization and the Village of Lincoln Heights as named insureds; and

(2) Provide liability coverage against all hazards arising from the parade for personal injuries in the amounts of $100,000 per person, $1,000,000 per accident and for property damages in the amount of $50,000.

(Ord. 95-O-13, passed 11-27-1995)

§ 97.99 PENALTY.

Whoever is found guilty of violating this section is guilty of a minor misdemeanor and shall be fined not more than $100.

(Ord. 95-O-13, passed 11-27-1995)

TITLE V: PUBLIC WORKS

[Reserved]

TITLE VII: TRAFFIC CODE

Chapter

70. GENERAL PROVISIONS

71. LICENSING PROVISIONS

72. TRAFFIC RULES

73. MOTOR VEHICLE CRIMES; MISCELLANEOUS OFFENSES

74. EQUIPMENT AND LOADS

75. BICYCLES, MOTORCYCLES, AND OFF-ROAD VEHICLES; TOY VEHICLES

76. STOPPING, STANDING AND PARKING

77. TRAFFIC SCHEDULES

CHAPTER 70: GENERAL PROVISIONS

Section

General Provisions

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70.29 Signal preemption devices; prohibitions

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Cross-reference:

Streets and sidewalks, general regulations, see Chapter 95

Unauthorized use of a motor vehicle, see § 131.08

Unclaimed and abandoned motor vehicles, see Chapter 93

Statutory reference:

Local traffic regulations, scope and authority, see Ohio R.C. § 4511.07

Notice of arrest of certain commercial drivers, see Ohio R.C. § 5577.14

Uniform application and precedence of state traffic laws, see Ohio R.C. § 4511.06

GENERAL PROVISIONS

§ 70.01 DEFINITIONS.

Except as otherwise provided, the definitions set forth in Ohio R.C. § 4501.01 shall apply to this title and the penal laws of the municipality. For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGRICULTURAL TRACTOR. Every self-propelled vehicle designed or used for drawing other vehicles or wheeled machinery, but having no provision for carrying loads independently of such other vehicles, and used principally for agricultural purposes.

ALLEY. A street or highway intended to provide access to the rear or side of lots or buildings in urban districts, and not intended for the purpose of through vehicular traffic, and any street or highway that has been declared an ***ALLEY*** by the Village Council of the municipality in which the street or highway is located.

ARTERIAL STREET. Any United States or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system of streets or highways.

BICYCLE. Every device, other than a tricycle designed solely for use as a play vehicle by a child, propelled solely by human power, upon which any person may ride having two tandem wheels, or one wheel in the front and two wheels in the rear, or two wheels in the front and one wheel in the rear, any of which is more than 14 inches in diameter.

BUS. Every motor vehicle designed for carrying more than nine passengers, and used for the transportation of persons other than in a ridesharing arrangement, and every motor vehicle, automobile for hire, or funeral car, other than a taxicab or motor vehicle used in a ridesharing arrangement, designed and used for the transportation of persons for compensation.

BUSINESS DISTRICT. The territory fronting upon a street or highway, including the street or highway, between successive intersections within the municipality, where 50% or more of the frontage between successive intersections is occupied by buildings in use for business, or within or outside the municipality where 50% or more of the frontage for a distance of 300 feet or more is occupied by buildings in use for business, and the character of the territory is indicated by official traffic-control devices.

CENTERLINE. The line of the center of a roadway when not marked, otherwise the yellow line indicating the boundary between portions of a highway devoted to traffic in opposite directions.

CHAUFFEURED LIMOUSINE. A motor vehicle that is designed to carry nine or fewer passengers and is operated for hire on an hourly basis pursuant to a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route. "Prearranged contract" means an agreement, made in advance of boarding, to provide transportation from a specific location in an chauffeured limousine at a fixed rate per hour or trip. ***CHAUFFEURED LIMOUSINE*** does not include any vehicle that is used exclusively in the business of funeral directing.

(ORC § 4501.01(LL))

CHILD DAY-CARE CENTER and ***TYPE A FAMILY DAY-CARE HOME.*** These terms shall have the same meanings as set forth in Ohio R.C. § 5104.01.

COMMERCIAL TRACTOR. Every motor vehicle having motive power designed or used for drawing other vehicles, and not so constructed as to carry any load thereon, or designed or used for drawing other vehicles while carrying a portion of the other vehicles, or the load thereon, or both.

CONTROLLED-ACCESS HIGHWAY. Every street or highway in respect to which owners or occupants of abutting lands and other persons have no legal right or access to or from the same except at certain points only and in a manner as may be determined by the public authority having jurisdiction over the street or highway.

CROSSWALK.

(1) That part of a roadway at intersections ordinarily included within the real or projected prolongation of property lines and curb lines or, in the absence of curbs, the edges of the traversable roadway;

(2) Any portion of a roadway at an intersection or elsewhere, distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(3) Notwithstanding the foregoing provisions of this definition, there shall not be a crosswalk where the Village Council has

placed signs indicating no crossing.

DRIVER or ***OPERATOR.*** Any person who drives or is in actual physical control of a vehicle.

EMERGENCY VEHICLE. Emergency vehicles of municipal, township or county departments or public utility corporations, when identified as such as required by law, the Director of Public Safety, or local authorities, and motor vehicles when commandeered by a police officer.

EXPLOSIVES. Any chemical compound or mechanical mixture that is intended for the purpose of producing an explosion that contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by a detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases, such that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb. Manufactured articles shall not be held to be explosives when the individual units contain explosives in limited quantities of such nature or in such packing that it is impossible to procure a simultaneous or a destructive explosion of the units, to the injury of life, limb, or property by fire, friction, concussion, percussion, or by a detonator, such as fixed ammunition for small arms, firecrackers, or safety fuse matches.

EXPRESSWAY. A divided arterial highway for through traffic with full or partial control of access with an excess of 50% of all crossroads separated in grade.

FLAMMABLE LIQUID. Any liquid which has a flash point of 70°F or less, as determined by a tagliabue or equivalent closed cup test device.

FREEWAY. A divided multi-lane highway for through traffic with crossroads separated in grade and with full control of access.

FUNERAL ESCORT VEHICLE. Any motor vehicle, including a funeral hearse, while used to facilitate the movement of a funeral procession.

GROSS WEIGHT. The weight of a vehicle plus the weight of any load thereon.

HOUSE VEHICLE. Any vehicle, with or without motive power, designed or equipped for human habitation, including but not limited to vehicles known as mobile homes, campers, truck campers, trailer homes, or house trailers.

INTERSECTION.

(1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway shall be regarded as a separate intersection. If an intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of the highways shall be regarded as a separate intersection.

(3) The junction of an alley with a street or highway, or with another alley, shall not constitute an intersection.

LANED HIGHWAY. A highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

LOCAL AUTHORITIES. Every county, municipal, and other local board or body having authority to adopt police regulations under the Constitution and laws of this state.

MOTOR VEHICLE. Every vehicle propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes and other equipment used in construction work, and not designed for or employed in general highway transportation, hole-digging machinery, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.

MOTORCYCLE. Every motor vehicle other than a tractor having a seat or saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter," or "motorcycle" without regard to weight or brake horsepower.

MOTORIZED BICYCLE. Any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that is capable of being pedaled, and is equipped with a helper motor of not more than 50 cubic centimeters piston displacement which

produces no more than one brake horsepower, and is capable of propelling the vehicle at a speed of no greater than 20 miles per hour on a level surface.

MOTORIZED WHEELCHAIR. Any self-propelled vehicle designed for, and used by, a person with a disability and that is incapable of a speed in excess of eight miles per hour.

MULTI-WHEEL AGRICULTURAL TRACTOR. A type of agricultural tractor that has two or more wheels or tires on each side of one axle at the rear of the tractor, is designed or used for drawing other vehicles or wheeled machinery, has no provision for carrying loads independently of the drawn vehicles or machinery, and is used principally for agricultural purposes.

OPERATE. To cause or have caused movement of a vehicle.

OWNER. A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof, with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner for the purposes of this code.

PARKING or ***PARKED.*** The standing of a vehicle upon a street, road, alley, highway or public ground, whether accompanied or unaccompanied by a driver, but does not include the temporary standing of a vehicle for the purpose of and while actually engaged in loading or loading merchandise or passengers.

PEDESTRIAN. Any natural person afoot.

PERSON. Every natural person, firm, partnership, association or corporation.

POLE TRAILER. Every trailer or semitrailer attached to the towing vehicle by means of a reach, pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

POLICE OFFICER. Every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

PREDICATE MOTOR VEHICLE OR TRAFFIC OFFENSE. Any of the following:

(1) A violation of Ohio R.C. § 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78, or 4511.84;

(2) A violation of Ohio R.C. § 4511.17(A)(2), 4511.51(A) through (D), or 4511.74(A);

(3) A violation of any provision of Ohio R.C. §§ 4511.01 through 4511.76 for which no penalty otherwise is provided in the section that contains the provision violated;

(4) A violation of a municipal ordinance that is substantially equivalent to any section or provision set forth or described in division (1), (2), or (3) of this definition.

PRIVATE ROAD OR DRIVEWAY. Every way or place in private ownership used for vehicular travel by the owner, and those having express or implied permission from the owner, but not by other persons.

PUBLIC SAFETY VEHICLE. Any of the following:

(1) Ambulances, including private ambulance companies under contract to a municipality, township, or county, and private ambulances and nontransport vehicles bearing license plates issued under Ohio R.C. § 4503.49;

(2) Motor vehicles used by public law enforcement officers or other persons sworn to enforce the criminal and traffic laws of the state;

(3) Any motor vehicle when properly identified as required by the Director of Public Safety, when used in response to fire emergency calls or to provide emergency medical service to ill or injured persons, and when operated by a duly qualified person who is a member of a volunteer rescue service or a volunteer fire department, and who is on duty pursuant to the rules or directives of that service. The State Fire Marshal shall be designated by the Director of Public Safety as the certifying agency for all public safety

vehicles described herein;

(4) Vehicles used by fire departments, including motor vehicles when used by volunteer firefighters responding to emergency calls in the fire department service when identified as required by the Director of Public Safety;

(5) Any vehicle used to transport or provide emergency medical service to an ill or injured person, when certified as a ***PUBLIC SAFETY VEHICLE***, shall be considered such a vehicle when transporting an ill or injured person to a hospital, regardless of whether such vehicle has already passed a hospital;

(6) Vehicles used by the Motor Carrier Enforcement Unit for the enforcement of orders and rules of the Public Utilities Commission as specified in Ohio R.C. § 5503.34.

RAILROAD. A carrier of persons or property operating upon rails placed principally on a private right-of-way.

RAILROAD SIGN OR SIGNAL. Any sign, signal, or device erected by authority of a public body or official or by a railroad, and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

RAILROAD TRAIN. A steam engine or an electric or other motor, with or without cars coupled thereto, operated by a railroad.

RESIDENCE DISTRICT. The territory, not comprising a business district, fronting on a street or highway, including the street or highway, where, for a distance of 300 feet or more, the frontage is improved with residences or residences and buildings in use for business.

RIDESHARING ARRANGEMENT. Includes the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of a volunteer driver, and includes ***RIDESHARING ARRANGEMENTS*** known as carpools, vanpools, and buspools.

RIGHT-OF-WAY. Either of the following, as the context requires:

(1) The right of a vehicle or pedestrian to proceed uninterruptedly in a lawful manner in the direction in which it, he or she is moving, in preference to another vehicle or pedestrian approaching from a different direction into its, his or her path;

(2) A general term denoting land, property, or the interest therein, usually in the configuration of a strip, acquired for or devoted to transportation purposes. When used in this context, ***RIGHT-OF-WAY*** includes the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority.

ROAD SERVICE VEHICLE. Wreckers, utility repair vehicles, and state, county, and municipal service vehicles equipped with visual signals by means of flashing, rotating, or oscillating lights.

ROADWAY. That portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a highway includes two or more separate roadways, the term ***ROADWAY*** means any roadway separately, but not all the roadways collectively.

RURAL MAIL DELIVERY VEHICLE. Every vehicle used to deliver United States mail on a rural mail delivery route.

SAFETY ZONE. The area or space officially set apart within a roadway for the exclusive use of pedestrians, and protected or marked or indicated by adequate signs so as to be plainly visible at all times.

SCHOOL BUS. Every bus designed for carrying more than nine passengers which is owned by a public, private, or governmental agency or institution of learning, and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function; provided ***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 a municipality, or within such limits and the territorial limits of municipalities immediately contiguous to the municipality, nor a common passenger carrier certified by the Public Utilities Commission unless the bus is devoted exclusively to the transportation of children to and from a school session or a school function, and ***SCHOOL BUS*** does not include a van or bus used by a licensed child day-care center or Type A family day-care home to transport children from the child day-care center or Type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time.

SEMITRAILER. Every vehicle designed or used for carrying persons or property with another and separate motor vehicle so that in operation a part of its own weight or that of its load, or both, rests upon and is carried by another vehicle.

SIDEWALK. That portion of a street between the curb lines, or the lateral line of a roadway, and the adjacent property lines, intended for the use of pedestrians.

STATE HIGHWAY. A highway under the jurisdiction of the Department of Transportation, outside the limits of municipalities, provided that the authority conferred upon the Director of Transportation in Ohio R.C. § 5511.01 to erect state highway route markers and signs directing traffic shall not be modified by Ohio R.C. §§ 4511.01 through 4511.79 and 4511.99.

STATE ROUTE. Every highway which is designated with an official state route number and so marked.

STOP. When required, means a complete cessation of movement.

STOP INTERSECTION. Any intersection at one or more entrances of which stop signs are erected.

STOPPING or ***STANDING.*** When prohibited, means any halting of a vehicle, even momentarily, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device.

STREET or ***HIGHWAY.*** The entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

THROUGH HIGHWAY. Every street or highway as provided in Ohio R.C. § 4511.65, or a substantially equivalent municipal ordinance.

THRUWAY. A through highway whose entire roadway is reserved for through traffic and on which roadway parking is prohibited.

TRAFFIC. Pedestrians, ridden or herded animals, vehicles and other devices, either singly or together, while using any highway for purposes of travel.

TRAFFIC-CONTROL DEVICES. All flagpersons, signs, signals, markings, and devices placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic, including signs denoting names of streets and highways.

TRAFFIC-CONTROL SIGNAL. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop, to proceed, to change direction, or not to change direction.

TRAILER. Every vehicle designed or used for carrying persons or property wholly on its own structure, and for being drawn by a motor vehicle, including any vehicle when formed by or operated as a combination of a semitrailer and a vehicle of the dolly type, such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a street or highway at a speed greater than 25 miles per hour and a vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of more than ten miles or at a speed of more than 25 miles per hour.

TRUCK. Every motor vehicle, except trailers and semitrailers, designed and used to carry property.

URBAN DISTRICT. The territory contiguous to and including any street or highway which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of 1/4 of a mile or more, and the character of the territory is indicated by official traffic-control devices.

VEHICLE. Every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except that ***VEHICLE*** does not include any motorized wheelchair, any electric personal assistive mobility device, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a bicycle, that is moved by human power.

VIOLATE. To do anything declared to be unlawful, or otherwise forbidden, or to fail or neglect or refuse to do anything declared to be a duty or otherwise enjoined to be done.

(ORC § 4511.01) (1995 Code, § 70.01)

§ 70.02 SCOPE; COMPLIANCE WITH ORDER OF POLICE OFFICER.

(A) *Scope.*

(1) The provisions of the traffic code are intended to apply to all traffic and to all operators not specifically excepted, and nothing in the traffic code shall be construed to exempt from its provisions and penalties either:

(a) Operators of vehicles owned or used in the service of the United States or of the State of Ohio or any subdivision thereof; or

(b) Persons propelling pushcarts.

(2) Every person riding, driving, or leading any animal or animals on a roadway shall be subject to the provisions of the traffic code applicable to the driver of a vehicle, except those provisions which by their nature can have no application.

(3) All provisions relative to the operating, parking, standing, or movement of vehicles, animals, and to the movement of pedestrians, apply on all the highways of the village, except as specifically limited.

(B) *Compliance with order of police officer.*

(1) No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.

(2) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

(3) (a) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.

(b) A violation of division (B)(1) of this section is a misdemeanor of the first degree.

(c) Except as provided in divisions (B)(3)(d) and (B)(3)(e) of this section, a violation of division (B)(2) of this section is a misdemeanor of the first degree.

(d) Except as provided in division (B)(3)(e) of this section, a violation of division (B)(2) of this section is a felony and shall be prosecuted under appropriate state law if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that in committing the offense, the offender was fleeing immediately after the commission of a felony.

(e) 1. A violation of division (B)(2) of this section is a felony and shall be prosecuted under appropriate state law if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:

a. The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property; and/or

b. The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

2. If a police officer pursues an offender who is violating division (B)(2) of this section and division (B)(3)(e)1. of this section applies, the sentencing court, in determining the seriousness of an offender's conduct for purposes of sentencing the offender for a violation of division (B)(2) of this section, shall consider, along with the factors set forth in Ohio R.C. §§ 2929.12 and 2929.13 that are required to be considered, all of the following:

a. The duration of the pursuit;

b. The distance of the pursuit;

c. The rate of speed at which the offender operated the motor vehicle during the pursuit;

d. Whether the offender failed to stop for traffic lights or stop signs during the pursuit;

e. The number of traffic lights or stop signs for which the offender failed to stop during the pursuit;

f. Whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required;

g. Whether the offender committed a moving violation during the pursuit;

h. The number of moving violations the offender committed during the pursuit;

i. Any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense.

(4) In addition to any other sanction imposed for a violation of this section, the court shall impose a class two suspension from the range specified in Ohio R.C. § 4510.02(A)(2). If the offender previously has been found guilty of an offense under this section or under Ohio R.C. § 2921.331, the court shall impose a class one suspension as described in Ohio R.C. § 4510.02(A)(1). The court shall not grant limited driving privileges to the offender. No judge shall suspend the first three years of suspension under a class two suspension of an offender's license, permit, or privilege required by this division or any portion of the suspension under a class one suspension of an offender's license, permit, or privilege required by this division.

(5) As used in this section:

MOVING VIOLATION. Has the same meaning as in Ohio R.C. § 2743.70.

POLICE OFFICER. Has the same meaning as in Ohio R.C. § 4511.01.

(ORC § 2921.331(A) - (C), (E), (F)) (1995 Code, § 70.02)

Cross-reference:

Resisting arrest, see § 136.08

§ 70.03 EMERGENCY VEHICLES TO PROCEED CAUTIOUSLY PAST RED OR STOP SIGNAL.

(A) The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign, shall slow down as necessary for safety to traffic, but may proceed cautiously past the red or stop sign or signal with due regard for the safety of all persons using the street or highway.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.03) (1995 Code, § 70.03)

§ 70.04 EXCEPTIONS GENERALLY; EMERGENCY, PUBLIC SAFETY AND CORONER VEHICLES EXEMPT.

(A) The provisions of this traffic code, except for §§ 73.01 and 73.011, do not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway within an area designated by traffic-control devices, but apply to those persons and vehicles when traveling to or from such work.

(B) The driver of a highway maintenance vehicle owned by this state or any political subdivision of this state, while the driver is engaged in the performance of official duties upon a street or highway, provided the highway maintenance vehicle is equipped with flashing lights and such other markings as are required by law and such lights are in operation when the driver and vehicle are so engaged, shall be exempt from criminal prosecution for violations of Ohio R.C. §§ 4511.22, 4511.25, 4511.26, 4511.27, 4511.28, 4511.30, 4511.31, 4511.33, 4511.35, 4511.66, and 4513.02, and Ohio R.C. §§ 5577.01 through 5577.09, and any substantially equivalent municipal ordinance.

(C) (1) This section does not exempt a driver of a highway maintenance vehicle from civil liability arising from a violation of Ohio R.C. § 4511.22, 4511.25, 4511.26, 4511.27, 4511.28, 4511.30, 4511.31, 4511.33, 4511.35, 4511.66, or 4513.02 or Ohio R.C. §§ 5577.01 through 5577.09, or any substantially equivalent municipal ordinance.

(2) This section does not exempt the driver of a vehicle that is engaged in the transport of highway maintenance equipment from criminal liability for a violation of Ohio R.C. §§ 5577.01 through 5577.09, or any substantially equivalent municipal ordinance.

(D) As used in this section, ***HIGHWAY MAINTENANCE VEHICLE*** means a vehicle used in snow and ice removal or road surface maintenance, including a snow plow, traffic line striper, road sweeper, mowing machine, asphalt distributing vehicle, or other such vehicle designed for use in specific highway maintenance activities.

(ORC § 4511.04)

(E) The provisions of Ohio R.C. §§ 4511.12, 4511.13, 4511.131, 4511.132, 4511.14, 4511.15, 4511.202, 4511.21, 4511.211, 4511.22,

4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.62, 4511.66, 4511.68, 4511.681, and 4511.69, and any substantially equivalent municipal ordinances, do not apply to the driver of an emergency vehicle or public safety vehicle if the emergency vehicle or public safety vehicle is responding to an emergency call, is equipped with and displaying at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and if the driver of the vehicles is giving an audible signal by siren, exhaust whistle, or bell. This section does not relieve the driver of an emergency vehicle or public safety vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(ORC § 4511.041)

(F) The provisions of Ohio R.C. §§ 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.35, 4511.36, 4511.37, 4511.38, and 4511.66, or any substantially equivalent municipal ordinances, do not apply to a coroner, deputy coroner or coroner's investigator operating a motor vehicle in accordance with Ohio R.C. § 4513.171 or a substantially equivalent municipal ordinance. This division does not relieve a coroner, deputy coroner or coroner's investigator operating a motor vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway.

(ORC § 4511.042) (1995 Code, §§ 70.04, 70.041)

§ 70.05 PERSONS RIDING OR DRIVING ANIMALS UPON ROADWAYS.

Every person riding, driving, or leading an animal upon a roadway is subject to the provisions of this traffic code, applicable to the driver of a vehicle, except those provisions of this traffic code which by their nature are inapplicable.

(ORC § 4511.05) (1995 Code, § 70.05)

§ 70.06 PROHIBITIONS AGAINST PEDESTRIANS AND SLOW-MOVING VEHICLES ON FREEWAYS.

(A) No person, unless otherwise directed by a police officer, shall:

(1) As a pedestrian, occupy any space within the limits of the right-of-way of a freeway, except: in a rest area; on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for pedestrian use; in the performance of public works or official duties; as a result of an emergency caused by an accident or breakdown of a motor vehicle; or to obtain assistance; or

(2) Occupy any space within the limits of the right-of-way of a freeway, with an animal-drawn vehicle, a ridden or led animal, herded animals, a pushcart, a bicycle, except on a facility that is separated from the roadway and shoulders of the freeway and is designed and appropriately marked for bicycle use, a bicycle with motor attached, a motor-driven cycle with a motor which produces not to exceed five brake horsepower, an agricultural tractor, or farm machinery, except in the performance of public works or official duties.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.051) (1995 Code, § 70.06)

Statutory reference:

Designation of a freeway, see Ohio R.C. § 4511.011

§ 70.07 USE OF PRIVATE PROPERTY FOR VEHICULAR TRAVEL.

The provisions of this traffic code do not prevent the owner of real property, used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right, from prohibiting such use or from requiring additional conditions to those specified in this traffic code, or otherwise regulating such use as may seem best to the owner.

(ORC § 4511.08) (1995 Code, § 70.07)

§ 70.08 NAMES OF PERSONS DAMAGING REAL PROPERTY BY OPERATION OF VEHICLE TO BE PROVIDED TO OWNER.

(A) As used in this section, ***MOTOR VEHICLE*** has the same meaning as in Ohio R.C. § 4501.01.

(B) If damage is caused to real property by the operation of a motor vehicle in, or during the, violation of any section of the Revised Code or of any municipal ordinance, the law enforcement agency that investigates the case, upon request of the real property owner, shall provide the owner with the names of the persons who are charged with the commission of the offense. If a request for the names is made, the agency shall provide the names as soon as possible after the persons are charged with the offense.

(C) The personnel of law enforcement agencies who act pursuant to division (B) of this section in good faith are not liable in damages in a civil action allegedly arising from their actions taken pursuant to that division. Political subdivisions and the state are not liable in damages in a civil action allegedly arising from the actions of personnel of their law enforcement agencies if the personnel have immunity under this division.

(ORC § 2935.28) (1995 Code, § 70.08)

§ 70.09 LIMITED ACCESS HIGHWAYS; BARRIERS ALONG; VEHICLES TO ENTER AND LEAVE AT DESIGNATED INTERSECTIONS.

(A) No person, firm or corporation shall cut, injure, remove, or destroy any fence or other barrier designed and erected to prevent traffic from entering or leaving a limited access highway without the permission of the Director of Transportation, except in a case of emergency where life or property is in danger. No person, firm or corporation shall cause a vehicle of any character to enter or leave a limited access highway at any point other than intersections designated by the Director for such purposes, except in a case of emergency where life or property is in danger.

(ORC § 3767.201)

(B) Whoever violates this section is guilty of a minor misdemeanor.

(ORC § 3767.99(D))

§ 70.10 THROUGH HIGHWAYS.

(A) All state routes are hereby designated as through highways, provided that stop signs, yield signs, or traffic-control signals shall be erected at all intersections with such through highways by the Department of Transportation as to highways under its jurisdiction and by local authorities as to highways under their jurisdiction, except as otherwise provided in this section. Where two or more state routes that are through highways intersect, and no traffic-control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the Department or by local authorities having jurisdiction, except as otherwise provided in this section. Whenever the Director of Transportation determines on the basis of an engineering and traffic investigation that stop signs are necessary to stop traffic on a through highway for safe and efficient operation, nothing in this section shall be construed to prevent such installations. When circumstances warrant, the Director also may omit stop signs on roadways intersecting through highways under his or her jurisdiction. Before the Director either installs or removes a stop sign under this division, he or she shall give notice, in writing, of that proposed action to the affected local authority at least 30 days before installing or removing the stop sign.

(B) Other streets or highways, or portions thereof, are hereby designated as through highways if they are within the municipality, if they have a continuous length of more than one mile between the limits of the street or highway or portion thereof, and if they have stop or yield signs or traffic-control signals at the entrances of the majority of intersecting streets or highways. For purposes of this section, the limits of the street or highway, or portion thereof, shall be the municipal corporation line, the physical terminus of the street or highway, or any point on the streets or highway at which vehicular traffic thereon is required by regulatory signs to stop or yield to traffic on the intersecting street, provided, that in residence districts, the municipality may by ordinance designate such street or highway, or portion thereof, not to be a through highway and thereafter the affected residence district shall be indicated by official traffic-control devices. Where two or more through highways designated under this division intersect and no traffic-control signal is in operation, stop signs or yield signs shall be erected at one or more entrances thereto by the Department or by local authorities having

jurisdiction, except as otherwise provided in this section.

(C) The Department or local authorities having jurisdiction need not erect stop signs at intersections they find to be so constructed as to permit traffic to safely enter a through highway without coming to a stop. Signs shall be erected at such intersections indicating that the operator of a vehicle shall yield the right-of-way to or merge with all traffic proceeding on the through highway.

(D) Local authorities, with reference to highways under their jurisdiction, may designate additional through highways, and shall erect stop signs, yield signs, or traffic-control signals at all streets and highways intersecting such through highways, or may designate any intersection as a stop or yield intersection, and shall erect like signs at one or more entrances to the intersection.

(ORC § 4511.65) (1995 Code, § 72.50)

§ 70.11 OFFICER MAY REMOVE IGNITION KEY.

A law enforcement officer may remove the ignition key left in the ignition switch of an unlocked and unattended motor vehicle parked on a street or highway. The officer removing the key shall place notification upon the vehicle detailing his or her name and badge number, the place where the key may be reclaimed, and the procedure for reclaiming the key. The key shall be returned to the owner of the motor vehicle upon presentation of proof of ownership.

(ORC § 4549.05) (1995 Code, § 73.26)

§ 70.12 REMOVAL OF VEHICLES AFTER ACCIDENTS.

(A) If a motor vehicle accident occurs on any highway, public street, or other property open to the public for purposes of vehicular travel and if any motor vehicle, cargo, or personal property that has been damaged or spilled as a result of the motor vehicle accident is blocking the highway, street, or other property or is otherwise endangering public safety, the Chief of Police or the Chief of the Fire Department may, without consent of the owner but with the approval of the law enforcement agency conducting any investigation of the accident, remove the motor vehicle if the motor vehicle is unoccupied, cargo, or personal property from the portion of the highway, public street, or property ordinarily used for vehicular travel on the highway, public street, or other property open to the public for purposes of vehicular travel.

(B) (1) Except as provided in division (B)(2) or (B)(3) of this section, the Chief of Police, any police officer, the Chief of the Fire Department, and any firefighter who authorizes or participates in the removal of any unoccupied motor vehicle, cargo, or personal property as authorized by division (A) of this section is not liable in civil damages for any injury, death, or loss to person or property that results from the removal of that unoccupied motor vehicle, cargo, or personal property. Except as provided in division (B)(2) or (B)(3) of this section, if the Chief of Police or Chief of the Fire Department authorizes, employs, or arranges to have a private tow truck operator or towing company remove any unoccupied motor vehicle, cargo, or personal property as authorized by division (A) of this section, that private tow truck operator or towing company is not liable in civil damages for any injury, death, or loss to person or property that results from the removal of that unoccupied motor vehicle, cargo, or personal property, and the Chief of Police or Chief of the Fire Department is not liable in civil damages for any injury, death, or loss to person or property that results from the private tow truck operator or towing company's removal of that unoccupied motor vehicle, cargo, or personal property.

(2) Division (B)(1) of this section does not apply to any person or entity involved in the removal of an unoccupied motor vehicle, cargo, or personal property pursuant to division (A) of this section if that removal causes or contributes to the release of a hazardous material or to structural damage to the roadway.

(3) Division (B)(1) of this section does not apply to a private tow truck operator or towing company that was not authorized, employed, or arranged by the Chief of Police or Chief of the Fire Department or to a private tow truck operator or towing company that was authorized, employed, or arranged by the Chief of Police or Chief of the Fire Department to perform the removal of the unoccupied motor vehicle, cargo, or personal property and the private tow truck operator or towing company performed the removal in a reckless or willful manner.

(C) As used in this section, ***HAZARDOUS MATERIAL*** has the same meaning as in Ohio R.C. § 2305.232.

(ORC § 4513.66)

§ 70.20 OBEYING TRAFFIC-CONTROL DEVICES.

(A) (1) No pedestrian or driver of a vehicle shall disobey the instructions of any traffic-control device placed in accordance with the provisions of this traffic code, unless at the time otherwise directed by a police officer.

(2) No provision of this traffic code for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section of this traffic code does not state that signs are required, that section shall be effective even though no signs are erected or in place.

(ORC § 4511.12(A))

(B) (1) Except as provided in division (C) of this section, any operator of a commercial motor vehicle, upon approaching a scale location established for the purpose of determining the weight of the vehicle and its load, shall comply with any traffic control device or the order of a peace officer directing the vehicle to proceed to be weighed or otherwise inspected.

(2) Any operator of a commercial motor vehicle, upon bypassing a scale location in accordance with division (C) of this section, shall comply with an order of a peace officer to stop the vehicle to verify the use and operation of an electronic clearance device.

(C) Any operator of a commercial motor vehicle that is equipped with an electronic clearance device authorized by the Superintendent of the State Highway Patrol under Ohio R.C. § 4549.081 may bypass a scale location, regardless of the instruction of a traffic control device to enter the scale facility, if either of the following apply:

(1) The in-cab transponder displays a green light or other affirmative visual signal and also sounds an affirmative audible signal; or

(2) Any other criterion established by the Superintendent of the State Highway Patrol is met.

(D) Any peace officer may order the operator of a commercial motor vehicle that bypasses a scale location to stop the vehicle to verify the use and operation of an electronic clearance device.

(E) As used in this section, ***COMMERCIAL MOTOR VEHICLE*** means any combination of vehicles with a gross vehicle weight rating or an actual gross vehicle weight of more than 10,000 pounds if the vehicle is used in interstate or intrastate commerce to transport property and also means any vehicle that is transporting hazardous materials for which placarding is required pursuant to 49 C.F.R. Parts 100 through 180.

(ORC § 4511.121(A)-(C), (E))

(F) No person shall use an electronic clearance device if the device or its use is not in compliance with rules of the Superintendent of the State Highway Patrol.

(ORC § 4549.081(B))

(G) (1) Except as otherwise provided in this division, whoever violates division (A) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A) of this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.12(B))

(2) Whoever violates division (B) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to a violation of division (B) of this section or any substantially equivalent state law or municipal ordinance, whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) of this section or any substantially equivalent state law or municipal ordinance, whoever violates division (B) of this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.121(D))

(3) Whoever violates division (F) of this section is guilty of a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense.

(ORC § 4549.081(C)) (1995 Code, § 70.10)

Statutory reference:

Traffic-control devices to conform to the state manual and specifications, see Ohio R.C. § 4511.11

Placing traffic-control devices on state highways, permission required, see Ohio R.C. § 4511.10

Uniform system of traffic-control devices, see Ohio R.C. § 4511.09

§ 70.21 SIGNAL LIGHTS.

(A) Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying words or symbols, and these lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) *Green indication.*

(a) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left, unless a sign at the place prohibits either turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by the arrow, or such other movement as is permitted by other indications shown at the same time. The vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian-control signal, as provided in Ohio R.C. § 4511.14 or a substantially equivalent municipal ordinance, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) *Steady yellow indication.*

(a) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in Ohio R.C. § 4511.14 or a substantially equivalent municipal ordinance, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

(3) *Steady red indication.*

(a) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until an indication to proceed is shown except as provided in divisions (A)(3)(b) and (A)(3)(c) of this section.

(b) Unless a sign is in place prohibiting a right turn as provided in division (A)(3)(e) of this section, vehicular traffic facing a steady red signal may cautiously enter the intersection to make a right turn after stopping as required by division (A)(3)(a) of this section. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless a sign is in place prohibiting a left turn as provided in division (A)(3)(e) of this section, vehicular traffic facing a steady red signal on a one-way street that intersects another one-way street on which traffic moves to the left may cautiously enter the intersection to make a left turn into the one-way street after stopping as required by division (A)(3)(a) of this section, and yielding the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(d) Unless otherwise directed by a pedestrian-control signal as provided in Ohio R.C. § 4511.14 or a substantially equivalent municipal ordinance, pedestrians facing a steady red signal alone shall not enter the roadway.

(e) Local authorities may by ordinance, or the Director of Transportation on state highways may, prohibit a right or a left turn against a steady red signal at any intersection, which shall be effective when signs giving notice thereof are posted at the intersection.

(B) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but, in the absence of any sign or marking, the stop shall be made at the signal.

(ORC § 4511.13) (1995 Code, § 70.11)

§ 70.22 SIGNALS OVER REVERSIBLE LANES.

When lane-use control signals are placed over individual lanes of a street or highway, these signals shall indicate and apply to drivers of vehicles as follows:

(A) *A steady (downward) green arrow.* Vehicular traffic may travel in any lane over which a green arrow signal is shown.

(B) *A steady yellow "X."* Vehicular traffic is warned to vacate in a safe manner any lane over which such signal is shown to avoid occupying that lane when a steady red "X" signal is shown.

(C) *A flashing yellow "X."* Vehicular traffic may use with proper caution any lane over which this signal is shown for only the purpose of making a left turn.

(D) *A steady red "X."* Vehicular traffic shall not enter or travel in any lane over which this signal is shown.

(ORC § 4511.131) (1995 Code, § 70.12)

§ 70.23 AMBIGUOUS OR NON-WORKING TRAFFIC SIGNALS.

(A) The driver of a vehicle who approaches an intersection where traffic is controlled by traffic-control signals shall do all of the following, if the signal facing the driver either exhibits no colored lights or colored lighted arrows or exhibits a combination of such lights or arrows that fails to clearly indicate the assignment of right-of-way:

(1) Stop at a clearly marked stop line, but if none, stop before entering the crosswalk on the near side of the intersection, or, if none, stop before entering the intersection;

(2) Yield the right-of-way to all vehicles in the intersection or approaching on an intersecting road, if the vehicles will constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways; and

(3) Exercise ordinary care while proceeding through the intersection.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.132) (1995 Code, § 70.121)

§ 70.24 PEDESTRIAN-CONTROL SIGNALS.

Whenever special pedestrian-control signals exhibiting the words "walk" or "don't walk," or the symbol of a walking person or an upraised palm are in place, these signals shall indicate the following instructions:

(A) *"Walk" or the symbol of a walking person.* Pedestrians facing this signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the operators of all vehicles.

(B) *"Don't walk" or the symbol of an upraised palm.* No pedestrian shall start to cross the roadway in the direction of the signal.

(C) *"Wait."* Nothing in this section shall be construed to invalidate the continued use of pedestrian-control signals utilizing the word "wait" if those signals were installed prior to March 28, 1985.

(ORC § 4511.14) (1995 Code, § 70.13)

§ 70.25 FLASHING TRAFFIC SIGNALS.

(A) Whenever an illuminated flashing red or yellow traffic signal is used in a traffic signal or with a traffic sign, it shall require obedience as follows:

(1) *Flashing red stop signal.* Operators of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) *Flashing yellow caution signal.* Operators of vehicles may proceed through the intersection or past the signal only with caution.

(B) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by Ohio R.C. §§ 4511.61 and 4511.62, or substantially equivalent municipal ordinances.

(ORC § 4511.15) (1995 Code, § 70.14)

§ 70.26 UNAUTHORIZED SIGNS AND SIGNALS PROHIBITED.

(A) (1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be, is an imitation of, or resembles a traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or hides from view or interferes with the effectiveness of any traffic-control device or any railroad sign or signal, and no person shall place or maintain, nor shall any public authority permit, upon any highway any traffic sign or signal bearing thereon any commercial advertising. This section does not prohibit either the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for traffic-control devices, or the erection upon private property of traffic-control devices by the owner of real property in accordance with Ohio R.C. §§ 4511.211 and 4511.432.

(2) Every prohibited sign, signal, marking, or device is a public nuisance, and the authority having jurisdiction over the highway may remove the same or cause it to be removed.

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.16) (1995 Code, § 70.15)

§ 70.27 ALTERATION, DEFACEMENT, OR REMOVAL PROHIBITED.

(A) No person, without lawful authority, shall do any of the following:

(1) Knowingly move, deface, damage, destroy, or otherwise improperly tamper with any traffic-control device, any railroad sign or signal, or any inscription, shield, or insignia on the device, sign, or signal, or any part of the device, sign, or signal;

(2) Knowingly drive upon or over any freshly applied pavement marking material on the surface of a roadway while the marking material is in an undried condition, and is marked by flags, markers, signs, or other devices intended to protect it;

(3) Knowingly move, damage, destroy, or otherwise improperly tamper with a manhole cover.

(B) (1) Except as otherwise provided in this division, whoever violates division (A)(1) or (A)(3) of this section is guilty of a misdemeanor of the third degree. If a violation of division (A)(1) or (A)(3) of this section creates a risk of physical harm to any person, the offender is guilty of a misdemeanor of the first degree. If a violation of division (A)(1) or (A)(3) of this section causes serious physical harm to property that is owned, leased, or controlled by a state or local authority, the offender is guilty of a felony to be

prosecuted under appropriate state law.

(2) Except as otherwise provided in this division, whoever violates division (A)(2) of this section is guilty of a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, whoever violates division (A)(2) of this section is guilty of a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, whoever violates division (A)(2) of this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.17) (1995 Code, § 70.16)

§ 70.28 UNAUTHORIZED POSSESSION OR SALE OF DEVICES.

(A) As used in this section, ***TRAFFIC CONTROL DEVICE*** means any sign, traffic control signal or other device conforming to and placed or erected in accordance with the manual adopted under Ohio R.C. § 4511.09 by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic, including signs denoting the names of streets and highways, but does not mean any pavement marking.

(B) No individual shall buy or otherwise possess, or sell, a traffic control device, except when one of the following applies:

(1) In the course of the individual's employment by the state or a local authority for the express or implied purpose of manufacturing, providing, erecting, moving or removing such a traffic control device;

(2) In the course of the individual's employment by any manufacturer of traffic control devices other than a state or local authority;

(3) For the purpose of demonstrating the design and function of a traffic control device to state or local officials;

(4) When the traffic control device has been purchased from the state or a local authority at a sale of property that is no longer needed or is unfit for use; or

(5) When the traffic control device has been properly purchased from a manufacturer for use on private property and the person possessing the device has a sales receipt for the device or other acknowledgment of sale issued by the manufacturer.

(C) This section does not preclude, and shall not be construed as precluding, prosecution for theft in violation of Ohio R.C. § 2913.02, or a substantially equivalent municipal ordinance, or for receiving stolen property in violation of Ohio R.C. § 2913.51, or a substantially equivalent municipal ordinance.

(D) Whoever violates this section is guilty of a misdemeanor of the third degree.

(ORC § 4511.18)

§ 70.29 SIGNAL PREEMPTION DEVICES; PROHIBITIONS.

(A) (1) No person shall possess a portable signal preemption device.

(2) No person shall use a portable signal preemption device to affect the operation of a traffic-control device.

(B) Division (A)(1) of this section does not apply to any of the following persons and division (A)(2) of this section does not apply to any of the following persons when responding to an emergency call:

(1) A peace officer, as defined in Ohio R.C. § 109.17(A)(1), (A)(12), (A)(14), or (A)(19);

(2) A state highway patrol officer; or

(3) A person while occupying a public safety vehicle as defined in Ohio R.C. § 4511.01(E)(1), (E)(3), or (E)(4).

(C) Whoever violates division (A)(1) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates division (A)(2) of this section is guilty of a misdemeanor of the first degree.

(D) As used in this section, ***PORTABLE SIGNAL PREEMPTION DEVICE*** means a device that, if activated by a person, is capable of changing a traffic-control signal to green out of sequence.

(ORC § 4511.031)

§ 70.30 OBSTRUCTED OR DEFACED SIGNS.

No provision of the traffic code requiring signs shall be enforceable against an alleged violator if, at the time and place of the alleged violation, the sign required is not in proper position and sufficiently clear to be recognized by an ordinarily observant person. The provisions of any section which does not state that signs are required shall be effective without them.

(1995 Code, § 70.17)

§ 70.31 VILLAGE MANAGER TO PLACE AND MAINTAIN TRAFFIC-CONTROL DEVICES.

It shall be the duty of the Village Manager to place and maintain traffic-control devices required by the traffic code, and he or she is authorized to place and maintain such other traffic-control devices as he or she shall deem necessary for the proper control of traffic.

(1995 Code, § 70.18)

§ 70.32 SAFETY ZONES.

The Village Manager is empowered to establish safety zones of such kind and character and at such places as he or she may deem necessary for the protection of pedestrians.

(1995 Code, § 70.19)

§ 70.33 TURNING MARKERS.

Where traffic conditions are such as to require it, the Village Manager is authorized to place turning markers within or at the entrance to an intersection, and such markers may, at intersections where unusual traffic conditions prevail, direct movements to be made otherwise than as provided in the applicable provisions of Chapter 72 of this code of ordinances. All operators of vehicles shall be governed by such markers.

(1995 Code, § 70.20) Penalty, see § 70.99

§ 70.34 CROSSWALKS.

The Village Manager is authorized to establish crosswalks at such places as he or she shall deem necessary, and shall designate them by appropriate marks or signs.

(1995 Code, § 70.21)

§ 70.35 REGULATION OF TRAFFIC.

Whenever, because of the construction, repair, reconstruction, or resurfacing of a street or because of the laying of underground installations in a street, it is deemed necessary by the Village Manager, he or she may temporarily close the street adjacent thereto to vehicular traffic, may temporarily alter the normal movement of vehicular traffic of the street adjacent thereto by making them one-way streets, or temporarily reroute truck traffic over parkways. Whenever a street is closed or the normal movement of traffic over a street is altered by the Village Manager pursuant to this section, the Village Manager shall cause appropriate traffic signs to be erected indicating that the street is closed or the normal movement of traffic has been altered.

(1995 Code, § 70.22)

§ 70.36 SNOW EMERGENCY.

(A) For the purpose of this section, ***SNOW EMERGENCY ROUTES*** shall mean through streets, or portions of through streets, designated by official signs on one or both sides thereof, installed by order of the Village Manager. The Village Manager is authorized and directed to designate such streets as snow emergency routes which for the safety or convenience of the public and the accommodation of traffic should be kept on and clear in times of snow emergency.

(B) When snow, sleet, freezing rain, or other weather conditions cause or appear likely to cause, in the judgment of the Village Manager, slippery or hazardous conditions which might lead to serious congestion or hazard, the Village Manager may declare a snow emergency. The Village Manager shall also declare the termination of such snow emergency as soon as conditions permit.

(1995 Code, § 70.23)

§ 70.37 STREET FETES.

(A) With the consent of the owner or occupants of the abutting property, the Village Manager may, where the public travel will not be greatly interfered with thereby, close any highway or portion thereof to vehicular traffic and permit the holding thereon of fetes, bazaars, or similar events for religious, charitable, civic, patriotic, or fraternal purposes.

(B) No person shall drive any vehicle on any highway or portion thereof closed to traffic pursuant to this section while such highway or portion thereof is so closed.

(1995 Code, § 70.24) Penalty, see § 70.99

§ 70.38 PLAY STREETS.

(A) The Village Manager, or the Safety-Service Director when authorized by the Village Manager, shall have authority in cases and during hours when public travel will not be greatly interfered with thereby, to close any highway or portion thereof to vehicular traffic, except that requiring access to or egress from premises not accessible except by such highway. Such authority shall be exercised only in cases where it is necessary or expedient to do so in order to provide safe places in which the children or residents of the neighborhood may play, and such play streets shall be properly marked while so restricted.

(B) No person shall drive any vehicle on such restricted highway while it is so restricted, except as permitted by this section.

(1995 Code, § 70.25)

§ 70.39 QUIET ZONES.

(A) The Village Manager may designate zones of quiet on any highway within 250 feet of any hospital, school, court, church, asylum, or other like institution.

(B) When any such zone is so designated by official traffic signs, no person therein shall blow a horn or a whistle or make or cause any outcry or any avoidable noise or clamor likely to disturb persons within such zone.

(1995 Code, § 70.26) Penalty, see § 70.99

§ 70.40 DIRECTING TRAFFIC.

Police officers and members of the Fire Department are authorized in the event that a fire or other emergency condition or the safeguarding or expediting of traffic so require, to direct traffic otherwise than as the traffic code specifically provides. The direction of traffic may be by word or audible signal, by gesture or visible signal, or by any combination thereof.

(1995 Code, § 70.27)

§ 70.41 MARKING OF VERTICAL CLEARANCE.

Where the vertical clearance between an overhead structure and any point of the roadway surface underneath that structure is less

than 14 feet, the clearance height shall be indicated on an advance warning sign and additional protection should be provided by markings on the structure itself.

(1995 Code, § 70.28)

§ 70.42 TRAFFIC LAW PHOTO-MONITORING DEVICES.

(A) As used in this section, ***TRAFFIC LAW PHOTO-MONITORING DEVICE*** means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle or its license plate.

(B) (1) The municipality shall not use traffic law photo-monitoring devices to enforce any traffic law until after it has erected signs on every highway that is not a freeway that is part of the state highway system and that enters the municipality. The signs shall inform inbound traffic that the municipality utilizes traffic law photo-monitoring devices to enforce traffic laws. The signs shall be erected within the first 300 feet of the boundary of the municipality or, if the signs cannot be located within the first 300 feet of the boundary of the municipality, as close to that distance as possible, provided that if a particular highway enters and exits the territory of the municipality multiple times, the municipality shall erect the signs as required by this division at the locations in each direction of travel where inbound traffic on the highway first enters the territory of the municipality and is not required to erect additional signs along such highway each time the highway reenters the territory of the municipality. The municipality is responsible for all costs associated with the erection, maintenance, and replacement, if necessary, of the signs. All signs erected under this division shall conform in size, color, location, and content to standards contained in the manual adopted by the Department of Transportation pursuant to R.C. § 4511.09 and shall remain in place for as long as the municipality utilizes traffic law photo- monitoring devices to enforce any traffic law. Any ticket, citation, or summons issued by or on behalf of the municipality for any traffic law violation based upon evidence gathered by a traffic law photo-monitoring device after March 12, 2009, but before the signs have been erected, is invalid; provided that no ticket, citation, or summons is invalid if the municipality is in substantial compliance with the requirement of this division to erect the signs.

(2) The municipality is deemed to be in substantial compliance with the requirement of division (B)(1) of this section to erect the advisory signs if the municipality does both of the following:

(a) First erects all signs as required by division (B)(1) of this section and subsequently maintains and replaces the signs as needed so that at all times at least 90% of the required signs are in place and functional;

(b) Annually documents and upon request certifies its compliance with division (B)(2)(a) of this section.

(C) If the municipality uses traffic law photo-monitoring devices to enforce any traffic law at an intersection where traffic is controlled by traffic control signals that exhibit different colored lights or colored lighted arrows, the municipality shall time the operation of the yellow lights and yellow arrows of those traffic control signals so that the steady yellow indication exceeds by one second the minimum duration for yellow indicators at similar intersections as established by the provisions of the manual adopted by the Department of Transportation under R.C. § 4511.09.

(ORC § 4511.094)

§ 70.98 FINE SCHEDULE.

(A) The following fine schedule applies when a traffic citation is issued and it is not a citation to court or is not registered for court.

(B) The current fine schedule shall be established by ordinance from time to time and is incorporated into this section as though fully set forth herein.

(1995 Code, § 70.98) (Ord. 76-O-13, passed 4-12-1976; Am. Ord. 78-O-25, passed 9-25-1978; Am. Ord. 78-O-30, passed 10-24-1978; Am. Ord. 78-O-32, passed 10-24-1978; Am. Ord. 91-O-33, passed 12-11-1991; Am. Ord. 93-O-21, passed 9-22-1993; Am. Ord. 96-O-19, passed 8-12-1996; Am. Ord. 97-O-55, passed 8-25-1997; Am. Ord. 2007-O-14, passed 1-22-2007)

§ 70.99 PENALTY.

(A) Whoever is convicted of or pleads guilty to a misdemeanor or minor misdemeanor shall be sentenced in accordance with §

130.99(B) through (G).

(B) Whoever violates any provision of this traffic code for which no penalty otherwise is provided in the section violated is guilty of one of the following:

(1) Except as otherwise provided in division (B)(2) or (B)(3) of this section, a minor misdemeanor;

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, a misdemeanor of the fourth degree; or

(3) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two or more predicate motor vehicle or traffic offenses, a misdemeanor of the third degree.

(ORC § 4511.99)

(C) Whoever is convicted of or pleads guilty to a misdemeanor, other than a minor misdemeanor, shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the court as provided in this section.

(1) Terms of imprisonment for misdemeanors shall be imposed as follows:

(a) For a misdemeanor of the first degree, not more than six months;

(b) For a misdemeanor of the second degree, not more than 90 days;

(c) For a misdemeanor of the third degree, nor more than 60 days;

(d) For a misdemeanor of the fourth degree, not more than 30 days.

(2) Fines for a misdemeanor shall be imposed as follows:

(a) For a misdemeanor of the first degree, not more than $1,000;

(b) For a misdemeanor of the second degree, not more than $750;

(c) For a misdemeanor of the third degree, not more than $500;

(d) For a misdemeanor of the third degree, not more than $250.

(3) Whoever is convicted of or pleads guilty to a minor misdemeanor shall be fined not more than $150.

(1995 Code, § 70.99) (Am. Ord. 2004-O-15, passed 7-20-2004)

Cross-reference:

Imposing sentence for misdemeanor, see § 130.19

Multiple sentences, see § 130.20

Statutory reference:

Reimbursement for costs of confinement, see Ohio R.C. §§ 2929.36 et seq.

CHAPTER 71: LICENSING PROVISIONS

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Village motor vehicle license tax, see § 39.60

Statutory reference:

Commercial driver's licenses, see Ohio R.C. Chapter 4506

Driver's licenses, see Ohio R.C. Chapter 4507

Motor vehicle licensing, see Ohio R.C. Chapter 4504

Municipal motor vehicle license tax, see Ohio R.C. § 4504.06

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Suspension and revocation of driver's licenses, see Ohio R.C. Chapter 4510

Suspension of driver's licenses; municipal power to suspend for a period not to exceed time permitted or required by state law, see Ohio R.C. § 4510.05

MOTOR VEHICLE LICENSING

§ 71.01 DISPLAY OF LICENSE PLATES OR VALIDATION STICKERS; REGISTRATION.

(A) (1) No person who is the owner or operator of a motor vehicle shall fail to display in plain view on the front and rear of the motor vehicle the distinctive number and registration mark, including any county identification sticker and any validation sticker issued under Ohio R.C. §§ 4503.19 and 4503.191, furnished by the Director of Public Safety, except that a manufacturer of motor vehicles or dealer therein, the holder of an in-transit permit, and the owner or operator of a motorcycle, motorized bicycle, manufactured home, mobile home, trailer, or semitrailer shall display on the rear only. A motor vehicle that is issued two license plates shall display the validation sticker only on the rear license plate, except that a commercial tractor that does not receive an apportioned license plate under the international registration plan shall display the validation sticker on the front of the commercial tractor. An apportioned vehicle receiving an apportioned license plate under the international registration plan shall display the license plate only on the front of a commercial tractor and on the rear of all other vehicles. All license plates shall be securely fastened so as not to swing, and shall not be covered by any material that obstructs its visibility.

(2) No person to whom a temporary license placard or windshield sticker has been issued for the use of a motor vehicle under Ohio R.C. § 4503.182, and no operator of that motor vehicle, shall fail to display the temporary license placard in plain view from the rear of the vehicle either in the rear window or on an external rear surface of the motor vehicle, or fail to display the windshield sticker in plain view on the rear window of the motor vehicle. No temporary license placard or windshield sticker shall be covered by any material that obstructs its visibility.

(ORC § 4503.21(A))

(B) Except as otherwise provided by Ohio R.C. §§ 4503.103, 4503.173, 4503.41, 4503.43, and 4503.46, no person who is the owner or chauffeur of a motor vehicle operated or driven upon the public roads or highways shall fail to file annually the application for registration or to pay the tax therefor.

(ORC § 4503.11(A))

(C) 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.

(ORC § 4549.11(A)) (1995 Code, § 73.29)

(D) 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.

(ORC § 4549.12(A)) (1995 Code, § 73.30)

(E) (1) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

(ORC § 4503.21(B))

(2) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree.

(ORC § 4503.11(D))

(3) Whoever violates division (C) 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.

(ORC § 4549.11(B))

(4) Whoever violates division (D) 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.

(ORC § 4549.12(B)) (1995 Code, § 71.01)

§ 71.02 IMPROPER USE OF NONCOMMERCIAL MOTOR VEHICLE.

(A) No person shall use a motor vehicle registered as a noncommercial motor vehicle for other than the purposes set forth in Ohio R.C. § 4501.01.

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

(ORC § 4503.05)

§ 71.03 OPERATING MOTOR VEHICLE ORDERED IMMOBILIZED; FORFEITURE.

(A) No person shall operate a motor vehicle or permit the operation of a motor vehicle upon any public or private property used by the public for vehicular travel or parking knowing or having reasonable cause to believe that the motor vehicle has been ordered immobilized pursuant to an immobilization order issued under Ohio R.C. § 4503.233.

(B) A motor vehicle that is operated by a person during a violation of division (A) of this section shall be criminally forfeited to the state in accordance with the procedures contained in Ohio R.C. § 4503.234.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the second degree.

(ORC § 4503.236)

§ 71.04 OPERATION OR SALE WITHOUT CERTIFICATE OF TITLE.

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

(1) Operate in this municipality a motor vehicle for which a certificate of title is required without having that certificate in accordance with Ohio R.C. Chapter 4505 or, if a physical certificate of title has not been issued for a motor vehicle, operate the motor vehicle in this state knowing that the ownership information relating to the vehicle has not been entered into the automated title processing system by a Clerk of a Court of Common Pleas;

(2) Display or display for sale or sell as a dealer or acting on behalf of a dealer, a motor vehicle without having obtained a manufacturer's or importer's certificate, a certificate of title, or an assignment of a certificate of title for it as provided in Ohio R.C. Chapter 4505;

(3) Fail to surrender any certificate of title or any certificate of registration or license plates upon cancellation of the same by the Registrar of Motor Vehicles and notice of the cancellation as prescribed in Ohio R.C. Chapter 4505;

(4) Fail to surrender the certificate of title to a Clerk of a Court of Common Pleas as provided in Ohio R.C. Chapter 4505 in case of the destruction or dismantling or change of a motor vehicle in such respect that it is not the motor vehicle described in the certificate of title;

(5) Violate any rules adopted pursuant to Ohio R.C. Chapter 4505;

(6) Except as otherwise provided in Ohio R.C. Chapters 4505 and 4517, sell at wholesale a motor vehicle ownership of which is not evidenced by an Ohio certificate of title, or the current certificate of title issued for the motor vehicle, or the manufacturer's certificate of origin, and all title assignments that evidence the seller's ownership of the motor vehicle, and an odometer disclosure statement that complies with Ohio R.C. § 4505.06 and subchapter IV of the "Motor Vehicle Information and Cost Savings Act," 86 Stat. 961 (1972), 15 U.S.C. § 1981; or

(7) Operate in this state a motor vehicle knowing that the certificate of title to the vehicle or ownership of the vehicle as otherwise reflected in the automated title processing system has been canceled.

(B) This section does not apply to persons engaged in the business of warehousing or transporting motor vehicles for the purpose of salvage disposition.

(C) Whoever violates this section shall be fined not more than $200, imprisoned not more than 90 days, or both.

(ORC § 4505.18)

§ 71.05 DISPLAY OF CERTIFICATE OF REGISTRATION.

(A) (1) The operator of a ***COMMERCIAL CAR***, as defined in Ohio R.C. § 4501.01, when the commercial car is required to be registered under state law, shall, when operating the commercial car, trailer or semitrailer on the streets, roads, or highways of this municipality display inside or on the vehicle the certificate of registration for the commercial car, trailer or semitrailer provided for in Ohio R.C. § 4503.19, or shall carry the certificate on the operator's person and display it upon the demand of any peace officer.

(2) Every person operating a commercial car, trailer or semitrailer required to be registered under state law shall permit the inspection of the certificate of registration upon demand of any peace officer.

(B) Whoever violates division (A) of this section is guilty of a commercial car certificate of registration violation, a minor misdemeanor.

(ORC § 4549.18)

§ 71.06 USE OF UNAUTHORIZED PLATES.

(A) No person shall operate or drive a motor vehicle upon the public roads and highways in this municipality if it displays a license plate or a distinctive number or identification mark that meets any of the following criteria:

(1) It is fictitious;

(2) It is a counterfeit or an unlawfully made copy of any distinctive number or identification mark; or

(3) It belongs to another motor vehicle, provided that this section does not apply to a motor vehicle that is operated on the public roads and highways in this municipality when the motor vehicle displays license plates that originally were issued for a motor vehicle that previously was owned by the same person who owns the motor vehicle that is operated on the public roads and highways in this municipality during the 30-day period described in Ohio R.C. § 4503.12(A)(4).

(B) A person who fails to comply with the transfer of registration provisions of Ohio R.C. § 4503.12 and is charged with a violation of that section shall not be charged with a violation of this section.

(C) Whoever violates division (A)(1), (A)(2), or (A)(3) of this section is guilty of operating a motor vehicle bearing an invalid license plate or identification mark, a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense.

(ORC § 4549.08) (1995 Code, § 73.27)

§ 71.07 OPERATING WITHOUT DEALER OR MANUFACTURER LICENSE PLATES.

(A) No person shall operate or cause to be operated upon a public road or highway a motor vehicle of a manufacturer or dealer unless the vehicle carries and displays two placards, except as provided ln Ohio R.C. § 4503.21, issued by the Director of Public Safety that bear the registration number of its manufacturer or dealer.

(B) Whoever violates division (A) of this section is guilty of illegal operation of a manufacturer's or dealer's motor vehicle, a minor misdemeanor.

(ORC § 4549.10) (1995 Code, § 73.28)