

Exhibit A
(Pages 599-756)

(A) As used in this section, **HAZING** means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.

(B) (1) No person shall recklessly participate in the hazing of another.

(2) No administrator, employee, or faculty member of any primary, secondary, or post secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person.

(C) Whoever violates this section is guilty of hazing, a misdemeanor of the fourth degree.

(ORC § 2903.31) (1995 Code, § 135.17)

Statutory reference:

Civil liability for hazing, see Ohio R.C. § 2307.44

§ 135.18 CONTRIBUTING TO UNRULINESS OR DELINQUENCY OF A CHILD.

(A) No person, including a parent, guardian, or other custodian of a child, shall do any of the following:

(1) Aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child, as defined in Ohio R.C. § 2151.022, or a delinquent child, as defined in Ohio R.C. § 2152.02;

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child, as defined in Ohio R.C. § 2151.022, or a delinquent child, as defined in Ohio R.C. § 2152.02; or

(3) If the person is the parent, guardian, or custodian of a child who has the duties under Ohio R.C. Chapters 2152 and 2950 to register, register a new residence address, and periodically verify a residence address, and, if applicable, to send a notice of intent to reside, and if the child is not emancipated, as defined in Ohio R.C. § 2919.121, fail to ensure that the child complies with those duties under Ohio R.C. Chapters 2152 and 2950.

(B) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of a violation of this section is a separate offense.

(ORC § 2919.24) (1995 Code, § 135.18)

Statutory reference:

Failure to send child to school, see Ohio R.C. § 3321.38

§ 135.19 PROWLING.

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

PRIVATE PLACE. Places privately owned but open to the public generally, such as shopping centers, retail stores, transportation terminals, movie theaters, office buildings, and restaurants, as well as all distinctly private places such as homes, private residences, and apartment houses.

PROWLING. Lingering, lurking, or standing idly around.

PUBLIC PLACE. Public streets and alleyways, public restrooms, public sidewalks, public parking lots and garages, public parks, public squares, public plazas, public recreational facilities, public buildings, and municipal airports.

SURROUNDING AREA. That area easily and immediately accessible to the person under observation.

(B) No person shall prowl in any public or private place at a time, in a manner or under circumstances which warrant a reasonable man to believe that the safety of persons or security of property in the surrounding area is threatened.

(C) The following circumstances may be considered in determining whether a reasonable man would believe that the safety of persons or security of property in the surrounding area is threatened.

(1) The flight of a person on the appearance of a police officer.

(2) Attempted self-concealment by a person on the appearance of a police officer.

(3) The checking by a person other than the owner, tenant, or agent of the owner or tenant, of doors, windows, or other means of access to buildings, houses, or vehicles.

(D) Unless flight by the actor or other circumstances makes it impracticable, a police officer shall prior to any arrest for an offense under this section afford the actor an opportunity to dispel any belief of threat to the safety of persons or security of property, by requesting him or her to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the police officer did not comply with the preceding sentence.

(E) Whoever violates any provision of this section is guilty of prowling, a misdemeanor of the fourth degree.

(1995 Code, § 135.19) Penalty, see § 130.99

§ 135.20 FAILURE TO PROVIDE FOR FUNCTIONALLY IMPAIRED PERSON.

(A) No caretaker shall knowingly fail to provide a functionally impaired person under his or her care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in physical harm or serious physical harm to the functionally impaired person.

(B) No caretaker shall recklessly fail to provide a functionally impaired person under his or her care with any treatment, care, goods, or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person.

(C) (1) Whoever violates division (A) of this section is guilty of knowingly failing to provide for a functionally impaired person, a misdemeanor of the first degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of recklessly failing to provide for a functionally impaired person, a misdemeanor of the second degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(ORC § 2903.16)

(D) As used in this section:

CARETAKER. Means a person who assumes the duty to provide for the care and protection of a functionally impaired person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. **CARETAKER** does not include a person who owns, operates, or administers, or who is an agent or employee of, a care facility, as defined in Ohio R.C. § 2903.33.

FUNCTIONALLY IMPAIRED PERSON. Means any person who has a physical or mental impairment that prevents the person from providing for his or her own care or protection or whose infirmities caused by aging prevent the person from providing for his or her own care or protection.

(ORC § 2903.10)

§ 135.21 PATIENT ABUSE OR NEGLECT; PATIENT ENDANGERMENT; EXCEPTIONS; FALSE STATEMENTS; RETALIATION.

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

ABUSE. Knowingly causing physical harm or recklessly causing serious physical harm to a person by physical contact with the person or by the inappropriate use of a physical or chemical restraint, medication or isolation on the person.

CARE FACILITY. Any of the following:

(a) Any "home" as defined in Ohio R.C. § 3721.10 or 5111.20.

(b) Any "residential facility" as defined in Ohio R.C. § 5119.22 or 5123.19.

(c) Any institution or facility operated or provided by the Department of Mental Health or by the Department of Developmental Disabilities pursuant to Ohio R.C. §§ 5119.02 and 5123.03.

(d) Any unit of any hospital, as defined in Ohio R.C. § 3701.01, that provided the same services as a nursing home, as defined in Ohio R.C. § 3721.01.

(e) Any institution, residence or facility that provides, for a period of more than 24 hours, whether for consideration or not, accommodations to one individual or two unrelated individuals who are dependent upon the services of others.

(f) Any "adult care facility" as defined by Ohio R.C. § 3722.01.

(g) Any adult foster home certified by the Department of Aging or its designee under Ohio R.C. § 173.36.

GROSS NEGLECT. Knowingly failing to provide a person with any treatment, care, goods or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

INAPPROPRIATE USE OF A PHYSICAL OR CHEMICAL RESTRAINT, MEDICATION OR ISOLATION. The use of physical or chemical restraint, medication or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in quantities that preclude habilitation and treatment.

NEGLECT. Recklessly failing to provide a person with any treatment, care, goods or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

(ORC § 2903.33)

(B) *Patient abuse or neglect; spiritual treatment; defense.*

(1) No person who owns, operates, or administers, or who is an agent or employee of a care facility shall do any of the following.

(a) Commit abuse against a resident or patient of the facility.

(b) Commit gross neglect against a resident or patient of the facility.

(c) Commit neglect against a resident or patient of the facility.

(2) (a) A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered neglectful under division (B)(1)(c) of this section for that reason alone.

(b) It is an affirmative defense to a charge of gross neglect or neglect under this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person with supervisory authority over the actor.

(3) (a) Whoever violates division (B)(1)(a) is guilty of patient abuse, a felony to be prosecuted under appropriate state law.

(b) Whoever violates division (B)(1)(b) is guilty of gross patient neglect, a misdemeanor of the first degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section or a substantially equivalent state law or municipal ordinance, gross patient neglect is a felony to be prosecuted under appropriate state law.

(c) Whoever violates division (B)(1)(c) is guilty of patient neglect, a misdemeanor of the second degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section or a substantially equivalent state law or municipal ordinance, gross patient neglect is a felony to be prosecuted under appropriate state law.

(ORC § 2903.34)

(C) *Patient endangerment; spiritual treatment; defense.*

(1) As used in this section:

MENTALLY RETARDED PERSON and **DEVELOPMENTALLY DISABLED PERSON.** Have the same meanings as in Ohio R.C. § 5123.01.

MR/DD CARETAKER. Means any MR/DD employee or any person who assumes the duty to provide for the care and

protection of a mentally retarded person or a developmentally disabled person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. **MR/DD CARETAKER** includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. **MR/DD CARETAKER** does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to persons with mental retardation or a developmental disability.

MR/DD EMPLOYEE. Has the same meaning as in Ohio R.C. § 5123.50.

(2) No MR/DD caretaker shall create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person. An MR/DD caretaker does not create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person under this division when the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded person or developmentally disabled person by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(3) No person who owns, operates, or administers a care facility or who is an agent of a care facility shall condone, or knowingly permit, any conduct by an MR/DD caretaker who is employed by or under the control of the owner, operator, administrator, or agent that is in violation of division (C)(2) of this section and that involves a mentally retarded person or a developmentally disabled person who is under the care of the owner, operator, administrator, or agent. A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered endangered under this division for that reason alone.

(4) (a) It is an affirmative defense to a charge of a violation of division (C)(2) or (C)(3) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:

1. The person has supervisory authority over the actor.
2. The person has authority over the actor's conduct pursuant to a contract for the provision of services.

(b) It is an affirmative defense to a charge of a violation of division (C)(3) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved mentally retarded person or a developmentally disabled person or that the admission, discharge, and transfer rule set forth in the Ohio Administrative Code is being followed.

(c) It is an affirmative defense to a charge of a violation of division (C)(3) of this section that the actor did not have readily available a means to prevent either the harm to the person with mental retardation or a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.

(5) (a) Except as provided in division (C)(5)(b) or (C)(5)(c) of this section, whoever violates division (C)(2) or (C)(3) of this section is guilty of patient endangerment, a misdemeanor of the first degree.

(b) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section or a substantially equivalent state law or municipal ordinance, patient endangerment is a felony to be prosecuted under appropriate state law.

(c) If the violation results in serious physical harm to the person with mental retardation or a developmental disability, patient endangerment is a felony to be prosecuted under appropriate state law.

(ORC § 2903.341)

(D) *False statements.*

(1) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, alleging a violation of division (B) of this section when the statement is made with purpose to incriminate another.

(2) Whoever violates this division (D) is guilty of filing a false patient abuse or neglect complaint, a misdemeanor of the first degree.

(ORC § 2903.35)

(E) *Retaliation against person reporting patient abuse or neglect.* No care facility shall discharge or in any manner discriminate or retaliate against any person solely because such person, in good faith, filed a complaint, affidavit, or other document alleging a violation of division (B) of this section or a violation of Ohio R.C. § 2903.34.

Statutory reference:

License revocation for felony violations, see Ohio R.C. § 2903.37

§ 135.22 VIOLATING A PROTECTION ORDER, CONSENT AGREEMENT, ANTI-STALKING PROTECTION ORDER OR ORDER ISSUED BY A COURT OF ANOTHER STATE.

(A) No person shall recklessly violate the terms of any of the following:

- (1) A protection order issued or consent agreement approved pursuant to Ohio R.C. § 2919.26 or Ohio R.C. § 3113.31;
- (2) A protection order issued pursuant to Ohio R.C. § 2151.34, 2903.213 or 2903.214; or
- (3) A protection order issued by a court of another state.

(B) (1) Whoever violates this section is guilty of violating a protection order.

(2) Except as otherwise provided in division (B)(3) or (B)(4) of this section, violating a protection order is a misdemeanor of the first degree.

(3) If the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for a violation of a protection order issued pursuant to Ohio R.C. § 2151.34, 2903.213 or 2903.214, two or more violations of Ohio R.C. § 2903.21, 2903.211, 2903.22, or 2911.211, or a substantially equivalent state law or municipal ordinance, that involved the same person who is the subject of the protection order or consent agreement, or one or more violations of this section or a substantially equivalent state law or municipal ordinance, violating a protection order is a felony to be prosecuted under appropriate state law.

(4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony to be prosecuted under appropriate state law.

(5) If the protection order violated by the offender was an order issued pursuant to Ohio R.C. § 2151.34 or 2903.214 that required electronic monitoring of the offender pursuant to that section, the court may require in addition to any other sentence imposed upon the offender that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court. If the court requires under this division that the offender be electronically monitored, unless the court determines that the offender is indigent, the court shall order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device. If the court determines that the offender is indigent and subject to the maximum amount allowable and the rules promulgated by the Attorney General under Ohio R.C. § 2903.214, the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device may be paid out of funds from the Reparations Fund created pursuant to Ohio R.C. § 2743.191. The total amount paid from the Reparations Fund created pursuant to Ohio R.C. § 2743.191 for electronic monitoring under Ohio R.C. §§ 2151.34, 2903.214 and 2919.27 shall not exceed \$300,000 per year.

(C) It is an affirmative defense to a charge under division (A)(3) of this section that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. § 2265(b) for a protection order that must be accorded full faith and credit by a court of this state or that it is not entitled to full faith and credit under 18 U.S.C. § 2265(c).

(D) As used in this section, **PROTECTION ORDER ISSUED BY A COURT OF ANOTHER STATE** means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a *pendente lite* order in a proceeding for other relief, if the court issued it in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. The term does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.

§ 135.23 ADULTERATION OF FOOD.

(A) No person shall do either of the following, knowing or having reasonable cause to believe that any person may suffer physical harm or be seriously inconvenienced or annoyed thereby:

(1) Place a pin, razor blade, glass, laxative, drug of abuse, or other harmful or hazardous object or substance in any food or confection.

(2) Furnish to any person any food or confection which has been adulterated in violation of division (A)(1) of this section.

(ORC § 3716.11)

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

(ORC § 3716.99(C))

Statutory reference:

Adulteration of food generally, see Ohio R.C. § 3715.59

§ 135.24 ILLEGAL DISTRIBUTION OF CIGARETTES OR OTHER TOBACCO PRODUCTS; TRANSACTION SCANS.

(A) *Illegal distribution of cigarettes or other tobacco products.*

(1) As used in this section:

CHILD. Has the same meaning as in Ohio R.C. § 2151.011.

CIGARETTE. Includes clove cigarettes and hand-rolled cigarettes.

DISTRIBUTE. Means to furnish, give, or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, or papers used to roll cigarettes.

PROOF OF AGE. Means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under Ohio R.C. §§ 4507.50 through 4507.52 that shows that a person is 18 years of age or older.

VENDING MACHINE. Has the same meaning as **COIN MACHINE** in Ohio R.C. § 2913.01.

(2) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or any papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, and no other person shall do any of the following:

(a) Give, sell, or otherwise distribute cigarettes, other tobacco products, or papers used to roll cigarettes to any child;

(b) Give away, sell, or distribute cigarettes, other tobacco products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes, other tobacco products, or papers used to roll cigarettes to a person under 18 years of age is prohibited by law;

(c) Knowingly furnish any false information regarding the name, age, or other identification of any child with purpose to obtain cigarettes, other tobacco products, or papers used to roll cigarettes for that child;

(d) Manufacture, sell, or distribute in this state any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco; or

(e) Sell cigarettes in a smaller quantity than that placed in the pack or other container by the manufacturer.

(3) No person shall sell or offer to sell cigarettes or other tobacco products by or from a vending machine except in the following locations:

(a) An area within a factory, business, office, or other place not open to the general public;

(b) An area to which children are not generally permitted access;

(c) Any other place not identified in division (A)(3)(a) or (A)(3)(b) of this section, upon all of the following conditions:

1. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes and other tobacco product purchases from the vending machine will be readily observed by the person who owns or operates the place, or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

2. The vending machine is inaccessible to the public when the place is closed.

(4) The following are affirmative defenses to a charge under division (A)(2)(a) of this section:

(a) The child was accompanied by a parent, spouse who is 18 years of age or older, or legal guardian of the child.

(b) The person who gave, sold, or distributed cigarettes, other tobacco products, or papers used to roll cigarettes to a child under division (A)(2)(a) of this section is a parent, spouse who is 18 years of age or older, or legal guardian of the child.

(5) It is not a violation of division (A)(2)(a) or (A)(2)(b) of this section for a person to give or otherwise distribute to a child cigarettes, other tobacco products, or papers used to roll cigarettes while the child is participating in a research protocol if all of the following apply:

(a) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.

(b) An institutional human subjects protection review board, or an equivalent entity, has approved of the research protocol.

(c) The child is participating in the research protocol at the facility or location specified in the research protocol.

(6) (a) Whoever violates division (A)(2)(a), (A)(2)(b), (A)(2)(d) or (A)(2)(e) or (A)(3) of this section is guilty of illegal distribution of cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e) or (A)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree.

(b) Whoever violates division (A)(2)(c) of this section is guilty of permitting children to use cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(c) or a substantially equivalent state law or municipal ordinance, permitting children to use cigarettes or other tobacco products is a misdemeanor of the third degree.

(7) Any cigarettes, other tobacco products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a child in violation of this division (A) and that are used, possessed, purchased, or received by a child in violation of Ohio R.C. § 2151.87 are subject to seizure and forfeiture as contraband under Ohio R.C. Chapter 2981.

(ORC § 2927.02)

(B) *Tobacco product transaction scan.*

(1) As used in this division and division (C) of this section:

CARD HOLDER. Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes or other tobacco products from a seller, agent, or employee.

IDENTIFICATION CARD. Means an identification card issued under Ohio R.C. §§ 4507.50 through 4507.52.

SELLER. Means a seller of cigarettes or other tobacco products and includes any person whose gift of or other distribution of cigarettes or other tobacco products is subject to the prohibitions of division (A) of this section.

TRANSACTION SCAN. Means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes or other tobacco products.

TRANSACTION SCAN DEVICE. Means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to

check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes or other tobacco products.

(b) If the information deciphered by the transaction scan performed under division (B)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes or other tobacco products to the card holder.

(c) Division (B)(2)(a) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes or other tobacco products to the person presenting the document.

(3) Rules adopted by the Registrar of Motor Vehicles under Ohio R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (B) and division (C) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by the card holder;
2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (B)(4)(a) of this section, except for purposes of division (C) of this section.

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by division (C) of this section or another section of this code or the Ohio Revised Code.

(5) Nothing in this division (B) or division (C) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale, giving away, or other distribution of cigarettes or other tobacco products.

(6) Whoever violates division (B)(2)(b) or (B)(4) of this section is guilty of engaging in an illegal tobacco product transaction scan, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the county treasury.

(ORC § 2927.021)

(C) *Affirmative defenses.*

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (A) of this section in which the age of the purchaser or other recipient of cigarettes or other tobacco products is an element of the alleged violation, if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive cigarettes or other tobacco products presented a driver's or commercial driver's license or an identification card.

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(c) The cigarettes or other tobacco products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (C)(1) of this section, the trier of fact in the action for the alleged violation of division (A) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (A) of this section. For

purposes of division (C)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes cigarettes or other tobacco products is 18 years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (C)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under 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 action.

(ORC § 2927.022)

(D) *Shipment of tobacco products.*

(1) As used in this division (D), **AUTHORIZED RECIPIENT OF TOBACCO PRODUCTS** means a person who is:

- (a) Licensed as a cigarette wholesale dealer under Ohio R.C. § 5743.15;
- (b) Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;
- (c) An export warehouse proprietor as defined in Section 5702 of the Internal Revenue Code;
- (d) An operator of a customs bonded warehouse under 19 U.S.C. § 1311 or 19 U.S.C. § 1555;
- (e) An officer, employee, or agent of the federal government or of this state acting in the person's official capacity;
- (f) A department, agency, instrumentality, or political subdivision of the federal government or of this state; or
- (g) A person having a consent for consumer shipment issued by the Tax Commissioner under Ohio R.C. § 5743.71.

(2) The purpose of this division (D) is to prevent the sale of cigarettes to minors and to ensure compliance with the Master Settlement Agreement, as defined in Ohio R.C. § 1346.01.

(3) (a) No person shall cause to be shipped any cigarettes to any person in this municipality other than an authorized recipient of tobacco products.

(b) No common carrier, contract carrier, or other person shall knowingly transport cigarettes to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes are transported to a home or residence, it shall be presumed that the common carrier, contract carrier, or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient of tobacco products.

(4) No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this municipality in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes."

(5) A court shall impose a fine of up to \$1,000 for each violation of division (D)(3)(a), (D)(3)(b) or (D)(4) of this section.

(ORC § 2927.023)

§ 135.25 NONSMOKING AREAS IN PLACES OF PUBLIC ASSEMBLY.

(A) As used in this section, **PLACE OF PUBLIC ASSEMBLY** means:

(1) Enclosed theaters, except the lobby; opera houses; auditoriums; classrooms; elevators; rooms in which persons are confined as a matter of health care, including but not limited to a hospital room and a room in a residential care facility serving as the residence of a person living in such residential care facility;

(2) All buildings and other enclosed structures owned by the state, its agencies, or political subdivisions, including but not limited to hospitals and state institutions for the mentally disabled and the mentally ill; university and college buildings, except rooms within those buildings used primarily as the residences of students or other persons affiliated with the university or college; office buildings; libraries; museums; and vehicles used in public transportation. That portion of a building or other enclosed structure that is owned by the state, a state agency, or a political subdivision, and that is used primarily as a food service establishment, is not a place of public assembly; and

(3) Each portion of a building or enclosed structure that is not included in division (A)(1) or (A)(2) of this section is a place of public assembly if it has a seating capacity of 50 or more persons and is available to the public. Restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, as well as bowling alleys and places licensed by the Ohio Division of Liquor Control to sell intoxicating beverages for consumption on the premises, are not places of public assembly.

(B) For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of persons not smoking, in every place of public assembly there shall be an area where smoking is not permitted, which shall be designated a no smoking area, provided that not more than one-half of the rooms in any health care facility in which persons are confined as a matter of health care may be designated as smoking areas in their entirety. The designation shall be made before the place of public assembly is made available to the public. In places included in division (A)(1) of this section, the local fire authority having jurisdiction shall designate the no smoking area. In places included in division (A)(2) of this section that are owned by the state or its agencies, the Ohio Director of Administrative Services shall designate the area, and if the place is owned by a political subdivision, its legislative authority shall designate an officer who shall designate the area. In places included in division (A)(3) of this section, the person having control of the operations of the place of public assembly shall designate the no smoking area. In places included in division (A)(2) of this section which are also included in division (A)(1) of this section, the officer who has authority to designate the area in places in division (A)(2) of this section shall designate the no smoking area. A no smoking area may include the entire place of public assembly. Designations shall be made by the placement of signs that are clearly visible and that state "no smoking." No person shall remove signs from areas designated as no smoking areas.

(C) This section does not affect or modify the prohibition contained in Ohio R.C. § 3313.751(B).

(D) No person shall smoke in any area designated as a no smoking area in accordance with division (B) of this section.

(E) Whoever violates this section is guilty of a minor misdemeanor.

(ORC § 3791.031)

§ 135.26 SPREADING CONTAGION.

(A) No person, knowing or having reasonable cause to believe that he or she is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself or herself to other persons, except when seeking medical aid.

(B) No person, having charge or care of a person whom he or she knows or has reasonable cause to believe is suffering from a dangerous, contagious disease, shall recklessly fail to take reasonable measures to protect others from exposure to the contagion, and to inform health authorities of the existence of the contagion.

(C) No person, having charge of a public conveyance or place of public accommodation, amusement, resort, or trade, and knowing or having reasonable cause to believe that persons using such conveyance or place have been or are being exposed to a dangerous, contagious disease, shall negligently fail to take reasonable measures to protect the public from exposure to the contagion, and to inform health authorities of the existence of the contagion.

(ORC § 3701.81)

(D) Whoever violates this section is guilty of a misdemeanor of the second degree.

(ORC § 3701.99(C))

Statutory reference:

Contagion and quarantine, see Ohio R.C. §§ 3707.04 et seq.

Power to prevent contagious diseases, see Ohio R.C. § 715.37

§ 135.27 UNLAWFUL COLLECTION OF BODILY SUBSTANCES.

(A) No person shall knowingly collect any blood, urine, tissue, or other bodily substance of another person without privilege or consent to do so.

(B) (1) Division (A) of this section does not apply to any of the following:

(a) The collection of any bodily substance of a person by a law enforcement officer, or by another person pursuant to the direction or advice of a law enforcement officer, for purposes of a chemical test or tests of the substance under Ohio R.C. § 1547.111(A)(1) or Ohio R.C. § 4511.191(A)(2) to determine the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the bodily substance;

(b) The collection of any bodily substance of a person by a peace officer, or by another person pursuant to the direction or advice of a peace officer, for purposes of a test or tests of the substance as provided in Ohio R.C. § 4506.17(A) to determine the person's alcohol concentration or the presence of any controlled substance or metabolite of a controlled substance.

(2) Division (B)(1) of this section shall not be construed as implying that the persons identified in divisions (B)(1)(a) and (b) of this section do not have privilege to collect the bodily substance of another person as described in those divisions or as limiting the definition of "privilege" set forth in Ohio R.C. § 2901.01.

(C) Whoever violates division (A) of this section is guilty of unlawful collection of a bodily substance. Except as otherwise provided in this division, unlawful collection of a bodily substance is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section or a substantially equivalent state law or municipal ordinance, unlawful collection of a bodily substance is a felony to be prosecuted under appropriate state law.

(ORC § 2927.15)

CHAPTER 136: OFFENSES AGAINST JUSTICE AND ADMINISTRATION

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Cross-reference:

Failure to comply with order or signal of a police officer, see § 70.02

Statutory reference:

Escape from detention, see Ohio R.C. § 2921.34

Harassment by inmates by causing or attempting to cause contact with blood, semen, urine, feces or other bodily substance; knowledge of AIDS, hepatitis or tuberculosis infection; felony offenses, see Ohio R.C. § 2921.38

§ 136.01 DEFINITIONS.

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

CAMPAIGN COMMITTEE, CONTRIBUTION, LEGISLATIVE CAMPAIGN FUND, POLITICAL ACTION COMMITTEE, POLITICAL CONTRIBUTING ENTITY, and POLITICAL PARTY. Have the same meanings as in Ohio R.C. § 3517.01.

DETENTION. Arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of Ohio R.C. § 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401 or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this division, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under Ohio R.C. § 311.29(E) or Ohio R.C. § 5149.03(B). For a person confined in a county jail who participates in a county jail industry program pursuant to Ohio R.C. § 5147.30, ***DETENTION*** includes time spent at an assigned work site and going to and from the work site.

DETENTION FACILITY. Any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or an unruly child in this state or another state or under the laws of the United States.

OFFICIAL PROCEEDING. Any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.

PARTY OFFICIAL. Any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which he or she directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

PROVIDER AGREEMENT and MEDICAL ASSISTANCE PROGRAM. Have the same meanings as in Ohio R.C. § 2913.40.

PUBLIC OFFICIAL. Any elected or appointed officer, employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and includes but is not limited to legislators, judges, and law enforcement officers. The

term does not include an employee, officer, or governor-appointed member of the board of directors of the nonprofit corporation formed under Ohio R.C. § 187.01.

PUBLIC SERVANT.

(1) Any of the following:

(a) Any public official;

(b) Any person performing ad hoc a governmental function, including but not limited to a juror, member of a temporary commission, master, arbitrator, advisor, or consultant; or

(c) A person who is a candidate for public office, whether or not he or she is elected or appointed to the office for which he or she is a candidate. A person is a candidate for purposes of this division if he or she has been nominated according to law for election or appointment to public office, or if he or she has filed a petition or petitions as required by law to have his or her name placed on the ballot in a primary, general, or special election, or if he or she campaigns as a write-in candidate in any primary, general, or special election.

(2) The term does not include an employee, officer, or governor-appointed member of the board of directors of the nonprofit corporation formed under Ohio R.C. § 187.01.

VALUABLE THING or ***VALUABLE BENEFIT.*** Includes, but is not limited to, a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.

(ORC § 2921.01) (1995 Code, § 136.01)

§ 136.02 FALSIFICATION.

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies.

(1) The statement is made in any official proceeding.

(2) The statement is made with purpose to incriminate another.

(3) The statement is made with purpose to mislead a public official in performing his or her official function.

(4) The statement is made with purpose to secure the payment of unemployment compensation; Ohio Works First; prevention, retention and contingency benefits and services; disability financial assistance; retirement benefits; economic development assistance as defined in Ohio R.C. § 9.66; or other benefits administered by a governmental agency or paid out of a public treasury.

(5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release, or provider agreement.

(6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths.

(7) The statement is in writing on or in connection with a report or return that is required or authorized by law.

(8) The statement is in writing, and is made with purpose to induce another to extend credit to or employ the offender, or to confer any degree, diploma, certificate of attainment, award of excellence, or honor on the offender, or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom the statement is directed relies upon it to his or her detriment.

(9) The statement is made with purpose to commit or facilitate the commission of a theft offense.

(10) The statement is knowingly made to a probate court in connection with any action, proceeding, or other matter within its jurisdiction, either orally or in a written document, including, but not limited to, an application, petition, complaint, or other pleading, or an inventory, account, or report.

(11) The statement is made on an account, form, record, stamp, label or other writing that is required by law.

(12) The statement is made in connection with the purchase of a firearm, as defined in Ohio R.C. § 2923.11, and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or

altered identification card, or any other document that contains false information about the purchaser's identity.

(13) The statement is made in a document or instrument of writing that purports to be a judgment, lien, or claim of indebtedness and is filed or recorded with the Secretary of State, a county recorder, or the clerk of a court of record.

(14) The statement is made in an application filed with a county sheriff pursuant to Ohio R.C. § 2923.125 in order to obtain or renew a license to carry a concealed handgun or is made in an affidavit submitted to a county sheriff to obtain a temporary emergency license to carry a concealed handgun under Ohio R.C. § 2923.1213.

(15) The statement is required under Ohio R.C. § 5743.71 in connection with the person's purchase of cigarettes or tobacco products in a delivery sale.

(B) No person, in connection with the purchase of a firearm as defined in Ohio R.C. § 2923.11, shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) No person, in an attempt to obtain a license to carry a concealed handgun under Ohio R.C. § 2923.125, shall knowingly present to a sheriff a fictitious or altered document that purports to be certification of the person's competence in handling a handgun as described in Ohio R.C. § 2923.125(B)(3).

(D) It is no defense to a charge under division (A)(6) of this section that the oath or affirmation was administered or taken in an irregular manner.

(E) If contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

(F) (1) Whoever violates division (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), (A)(6), (A)(7), (A)(8), (A)(10), (A)(11), (A)(13), or (A)(15) of this section is guilty of falsification, a misdemeanor of the first degree.

(2) Whoever violates division (A)(9) of this section is guilty of falsification in a theft offense. Except as otherwise provided in this division, falsification in a theft offense is a misdemeanor of the first degree. If the value of the property or services stolen is \$500 or more, falsification in a theft offense is a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (A)(12) or (B) of this section is guilty of falsification to purchase a firearm, a felony to be prosecuted under appropriate state law.

(4) Whoever violates division (A)(14) or (C) of this section is guilty of falsification to obtain a concealed handgun license, a felony to be prosecuted under appropriate state law.

(ORC § 2921.13)

(G) (1) No person who has knowingly failed to maintain proof of financial responsibility in accordance with Ohio R.C. § 4509.101 shall produce any document with the purpose to mislead a peace officer upon the request of a peace officer for proof of financial responsibility made in accordance with Ohio R.C. § 4509.101(D)(2).

(2) Whoever violates this division (G) is guilty of falsification, a misdemeanor of the first degree.

(ORC § 4509.102) (1995 Code, § 136.02)

§ 136.03 COMPOUNDING A CRIME.

(A) No person shall knowingly demand, accept, or agree to accept anything of value in consideration of abandoning or agreeing to abandon a pending criminal prosecution.

(B) It is an affirmative defense to a charge under this section when both of the following apply:

(1) The pending prosecution involved is for a violation of Ohio R.C. § 2913.02, 2913.11, 2913.21(B)(2), or 2913.47, or a substantially equivalent municipal ordinance, of which the actor under this section was the victim; and

(2) The thing of value demanded, accepted, or agreed to be accepted, in consideration of abandoning or agreeing to abandon the prosecution, did not exceed an amount that the actor reasonably believed due him or her as restitution for the loss caused him or her by the offense.

(C) When a prosecuting witness abandons or agrees to abandon a prosecution under division (B) of this section, the abandonment or agreement in no way binds the state to abandoning the prosecution.

(D) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree.

(ORC § 2921.21) (1995 Code, § 136.03)

§ 136.04 FAILURE TO REPORT A CRIME.

(A) (1) Except as provided in division (A)(2) of this section, no person, knowing that a felony has been or is being committed, shall knowingly fail to report the information to law enforcement authorities.

(2) No person, knowing that a violation of Ohio R.C. § 2913.04(B) has been or is being committed or that the person has received information derived from such a violation, shall knowingly fail to report the violation to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no person who is a physician, limited practitioner, nurse, or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound that the person treated or observed, or any serious physical harm to other persons that the person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers a body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at that time would not be unexpected, or to a law enforcement officer, ambulance service, emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

(D) No person shall fail to provide upon request of the person to whom a report required by division (C) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within his or her knowledge that may have a bearing on the investigation of the death.

(E) (1) As used in this section, **BURN INJURY** means any of the following:

- (a) Second or third degree burns;
- (b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air; or
- (c) Any burn injury or wound that may result in death.

(2) No physician, nurse, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious, or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious, or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or (E)(3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the State Fire Marshal. The report shall be made on a form provided by the State Fire Marshal.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding Ohio R.C. § 4731.22, the physician-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted pursuant to division (E) of this section.

(F) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, professional clinical counselor, or professional counselor who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence as defined in Ohio R.C. § 3113.31 shall note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding Ohio R.C. § 4731.22, the physician-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted pursuant to division (F)(1), and the information may be admitted as evidence in accordance with the Rules of Evidence.

(G) Division (A) or (D) of this section does not require disclosure of information, when any of the following applies.

(1) The information is privileged by reason of the relationship between attorney and client, doctor and patient, licensed psychologist or licensed school psychologist and client, member of the clergy or rabbi or minister or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister or priest for a religious counseling purpose in the professional character of the member of the clergy, rabbi, minister or priest, husband and wife, or a communications assistant and those who are a party to a telecommunications relay service call.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under Ohio R.C. § 2739.04 or 2739.12.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to him or her in his or her capacity as such by a person seeking his or her aid or counsel.

(5) Disclosure would amount to revealing information acquired by the actor in the course of his or her duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or organization certified pursuant to Ohio R.C. § 3793.06.

(6) Disclosure would amount to revealing information acquired by the actor in the course of his or her duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of Ohio R.C. § 2907.02 or 2907.05, or to victims of felonious sexual penetration in violation of former Ohio R.C. § 2907.12. As used in this division, **COUNSELING SERVICES** include services provided in an informal setting by a person who, by education or experience, is competent to provide such services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A)(1) of this section is a misdemeanor of the fourth degree. Violation of division (A)(2) or (B) of this section is a misdemeanor of the second degree.

(J) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(K) (1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree.

(ORC § 2921.22) (1995 Code, § 136.04)

§ 136.05 FAILURE TO AID A LAW ENFORCEMENT OFFICER.

(A) No person shall negligently fail or refuse to aid a law enforcement officer, when called upon for assistance in preventing or halting the commission of an offense, or in apprehending or detaining an offender, when the aid can be given without a substantial risk of physical harm to the person giving it.

(B) Whoever violates this section is guilty of failure to aid a law enforcement officer, a minor misdemeanor.

(ORC § 2921.23) (1995 Code, § 136.05)

§ 136.06 OBSTRUCTING OFFICIAL BUSINESS.

(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

(B) Whoever violates this section is guilty of obstructing official business. Except as otherwise provided in this division, obstructing official business is a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, obstructing official business is a felony to be prosecuted under appropriate state law.

(ORC § 2921.31) (1995 Code, § 136.06)

§ 136.07 OBSTRUCTING JUSTICE.

(A) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime, or to assist another to benefit from the commission of a crime, and no person, with purpose to hinder the discovery, apprehension, prosecution, adjudication as a delinquent child, or disposition of a child for an act that if committed by an adult would be a crime or to assist a child to benefit from the commission of an act that if committed by an adult would be a crime, shall do any of the following.

(1) Harbor or conceal the other person or child.

(2) Provide the other person or child with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension.

(3) Warn the other person or child of impending discovery or apprehension.

(4) Destroy or conceal physical evidence of the crime or act, or induce any person to withhold testimony or information or to elude legal process summoning him or her to testify or supply evidence.

(5) Communicate false information to any person.

(6) Prevent or obstruct any person, by means of force, intimidation, or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child.

(B) A person may be prosecuted for, and may be convicted of or adjudicated a delinquent child for committing, a violation of division (A) of this section regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed. The crime or act the person or child aided committed shall be used under division (C) of this section in determining the penalty for violation of division (A) of this section, regardless of whether the person or child aided ultimately is apprehended for, is charge with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed.

(C) Whoever violates this section is guilty of obstructing justice.

(1) If the crime committed by the person aided is a misdemeanor or if the act committed by the child aided would be a misdemeanor if committed by an adult, obstructing justice is a misdemeanor of the same degree as the crime committed by the person aided or a misdemeanor of the same degree that the act committed by the child aided would be if committed by an adult.

(2) If the crime committed by the person aided is a felony or if the act committed by the child aided would be a felony if committed by an adult, or if the crime or act committed by the person or child aided is an act of terrorism, obstructing justice is a felony to be prosecuted under appropriate state law.

(D) As used in this section:

ACT OF TERRORISM. Has the same meaning as in Ohio R.C. § 2909.21.

ADULT and **CHILD.** Have the same meaning as in Ohio R.C. § 2151.011.

DELINQUENT CHILD. Has the same meaning as in Ohio R.C. § 2152.02.

(ORC § 2921.32) (1995 Code, § 136.07)

§ 136.08 RESISTING ARREST.

(A) No person, recklessly or by force, shall resist or interfere with a lawful arrest of himself, herself or another.

(B) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, cause physical harm to a law enforcement officer.

(C) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person if either of the following applies:

(1) The offender, during the course of or as a result of the resistance or interference, recklessly causes physical harm to a law enforcement officer by means of a deadly weapon; or

(2) The offender, during the course of the resistance or interference, brandishes a deadly weapon.

(D) Whoever violates this section is guilty of resisting arrest. A violation of division (A) of this section is a misdemeanor of the second degree. A violation of division (B) of this section is a misdemeanor of the first degree. A violation of division (C) of this section is a felony to be prosecuted under appropriate state law.

(E) As used in this section, **DEADLY WEAPON** has the same meaning as in Ohio R.C. § 2923.11.

(ORC § 2921.33) (1995 Code, § 136.08)

Statutory reference:

Unlawful taking of deadly weapon from a law enforcement officer, felony offense, see Ohio R.C. § 2911.01

§ 136.09 HAVING AN UNLAWFUL INTEREST IN A PUBLIC CONTRACT.

(A) No public official shall knowingly do any of the following:

(1) Authorize or employ the authority of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

(2) Authorize or employ the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security with respect to which the public official, a member of the public official's family, or any of the public official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees.

(3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder.

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected.

(5) Have an interest in the profits or benefits of a public contract that is not let by competitive bidding when required by law, and that involves more than \$150.

(B) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family, or any of a public official's business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:

(1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested.

(2) The shares owned or controlled by that person do not exceed 5% of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed 5% of the total indebtedness of the corporation or other organization.

(3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving that person's exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved.

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's

becoming associated with the political subdivision or governmental agency or instrumentality involved.

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions.

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Division (A)(4) of this section does not prohibit participation by a public employee in any housing program funded by public monies if the public employee otherwise qualifies for the program and does not use the authority or influence of the public employee's office or employment to secure benefits from the program and if the monies are to be used on the primary residence of the public employee. Such participation does not constitute an unlawful interest in a public contract in violation of this section.

(E) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (A)(2) of this section is a felony to be prosecuted under appropriate state law. Violation of division (A)(3), (A)(4), or (A)(5) of this section is a misdemeanor of the first degree.

(F) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with Ohio R.C. §§ 309.06 and 2921.421, or for a chief legal officer of a municipality or an official designated as prosecutor in a municipality to appoint assistants and employees in accordance with Ohio R.C. §§ 733.621 and 2921.421, or for a township law director appointed under Ohio R.C. § 504.15 to appoint assistants and employees in accordance with Ohio R.C. §§ 504.151 and 2921.421.

(G) Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable. Any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination or servicing fees and that was entered into in violation of this section is void and unenforceable.

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

CHIEF LEGAL OFFICER. Has the same meaning as in Ohio R.C. § 733.621.

PUBLIC CONTRACT. Any of the following:

(a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either.

(b) A contract for the design, construction, alteration, repair, or maintenance of any public property.

(ORC § 2921.42)

(ORC § 2921.42) (1995 Code, § 136.09)

Statutory reference:

Assistants and employees of Prosecutors, Law Directors, and Solicitors, see Ohio R.C. § 2921.421

§ 136.10 SOLICITING OR RECEIVING IMPROPER COMPENSATION.

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by Ohio R.C. § 102.03(G), (H), (I), or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation.

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(B) No public servant for the public servant's own personal or business use and no person for the person's own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following.

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency.

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity shall coerce any contribution in consideration of either of the following.

(1) Appointing or securing, maintaining, or renewing the appointment of any person to any public office, employment, or agency.

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion, or other material aspects of employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment, or position of trust in this state for a period of seven years from the date of conviction.

(F) Divisions (A), (B), and (C) of this section do not prohibit any person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity or prohibit a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity from accepting voluntary contributions.

(ORC § 2921.43) (1995 Code, § 136.10)

§ 136.11 DERELICTION OF DUTY.

(A) No law enforcement officer shall negligently do any of the following:

(1) Fail to serve a lawful warrant without delay; or

(2) Fail to prevent or halt the commission of an offense or to apprehend an offender, when it is in the law enforcement officer's power to do so alone or with available assistance.

(B) No law enforcement, ministerial, or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.

(C) No officer, having charge of a detention facility, shall negligently do any of the following:

(1) Allow the detention facility to become littered or unsanitary;

(2) Fail to provide persons confined in the detention facility with adequate food, clothing, bedding, shelter, and medical attention;

(3) Fail to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another;

(4) Allow a prisoner to escape; or

(5) Fail to observe any lawful and reasonable regulation for the management of the detention facility.

(D) No public official shall recklessly create a deficiency, incur a liability, or expend a greater sum than is appropriated by the legislative authority for the use in any one year of the department, agency, or institution with which the public official is connected.

(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office.

(F) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.

(G) As used in this section, **PUBLIC SERVANT** includes an officer or employee of a contractor as defined in Ohio R.C. § 9.08.

(ORC § 2921.44) (1995 Code, § 136.11)

§ 136.12 INTERFERING WITH CIVIL RIGHTS.

(A) No public servant, under color of his or her office, employment, or authority, shall knowingly deprive, conspire or attempt to deprive any person of a constitutional or statutory right.

(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.

(ORC § 2921.45) (1995 Code, § 136.12)

§ 136.13 ILLEGAL CONVEYANCE OF PROHIBITED ITEMS ONTO GROUNDS OF A DETENTION FACILITY OR OTHER SPECIFIED GOVERNMENTAL FACILITY.

(A) No person shall knowingly convey, or attempt to convey, onto the grounds of a detention facility or of an institution, office building, or other place that is under the control of the Department of Mental Health, the Department of Developmental Disabilities, the Department of Youth Services, or the Department of Rehabilitation and Correction, any of the following items:

(1) Any deadly weapon or dangerous ordnance, as defined in Ohio R.C. § 2923.11, or any part of or ammunition for use in such deadly weapon or dangerous ordnance.

(2) Any drug of abuse, as defined in Ohio R.C. § 3719.011.

(3) Any intoxicating liquor, as defined in Ohio R.C. § 4301.01.

(B) Division (A) of this section does not apply to any person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution, office building, or other place under the control of the Department of Mental Health, the Department of Developmental Disabilities, the Department of Youth Services, or the Department of Rehabilitation and Correction, with written authorization of the person in charge of the detention facility or the institution, office building, or other place and in accordance with the written rules of the detention facility or the institution, office building, or other place.

(C) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, to a prisoner who is temporarily released from confinement for a work assignment, or to any patient in an institution under the control of the Department of Mental Health or the Department of Developmental Disabilities, any item listed in division (A).

(D) No person shall knowingly deliver or attempt to deliver cash to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment.

(E) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment a cellular telephone, two-way radio, or other electronic communications device.

(F) (1) It is an affirmative defense to a charge under division (A)(1) of this section that the weapon or dangerous ordnance in question was being transported in a motor vehicle for any lawful purpose, that it was not on the actor's person, and if the weapon or dangerous ordnance was a firearm, that it was unloaded and was being carried in a closed package, box or case or in a compartment that can be reached only by leaving the vehicle.

(2) It is an affirmative defense to a charge under division (C) of this section that the actor was not otherwise prohibited by law from delivering the item to the confined person, the child, the prisoner, or the patient and that either of the following applies:

(a) The actor was permitted by the written rules of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(b) The actor was given written authorization by the person in charge of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(G) (1) Whoever violates division (A)(1) of this section or commits a violation of division (C) of this section involving any item listed in division (A)(1) of this section is guilty of illegal conveyance of weapons onto the grounds of a specified governmental facility, a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (A)(2) of this section or commits a violation of division (C) of this section involving any drug of abuse is guilty of illegal conveyance of drugs of abuse onto the grounds of a specified governmental facility, a felony to be prosecuted

under appropriate state law.

(3) Whoever violates division (A)(3) of this section or commits a violation of division (C) of this section involving any intoxicating liquor is guilty of illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility, a misdemeanor of the second degree.

(4) Whoever violates division (D) of this section is guilty of illegal conveyance of cash onto the grounds of a detention facility, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (D) of this section or a substantially equivalent state law or municipal ordinance, illegal conveyance of cash onto the grounds of a detention facility is a felony to be prosecuted under appropriate state law.

(5) Whoever violates division (E) of this section is guilty of illegal conveyance of a communications device onto the grounds of a specified governmental facility, a misdemeanor of the first degree. If the offender previously has been convicted or pleaded guilty to a violation of division (E) of this section or a substantially equivalent state law or municipal ordinance, illegal conveyance of a communications device onto the grounds of a detention facility is a felony to be prosecuted under appropriate state law.

(ORC § 2921.36)

(H) The person in charge of a detention facility shall, on the grounds of the detention facility, have the same power as a peace officer, as defined in Ohio R.C. § 2935.01, to arrest a person who violates this section.

(ORC § 2921.37) (1995 Code, § 136.13)

Cross-reference:

Possession of an object indistinguishable from a firearm in a school safety zone, see § 137.11

Possession of deadly weapon while under detention, see § 137.12

Statutory reference:

Conveyance or possession of deadly weapons or dangerous ordnance on school premises, felony offense, see Ohio R.C. § 2923.122

Conveyance, possession, or control of deadly weapon or dangerous ordnance in a courthouse, felony offense, see Ohio R.C. § 2923.123

Possession of deadly weapon while under detention, felony offense, see Ohio R.C. § 2923.131

§ 136.14 FALSE REPORT OF CHILD ABUSE OR NEGLECT.

(A) No person shall knowingly make or cause another person to make a false report under Ohio R.C. § 2151.421(B) alleging that any person has committed an act or omission that resulted in a child being an abused child as defined in Ohio R.C. § 2151.031 or a neglected child as defined in Ohio R.C. § 2151.03.

(B) Whoever violates this section is guilty of making or causing a false report of child abuse or child neglect, a misdemeanor of the first degree.

(ORC § 2921.14) (1995 Code, § 136.14)

§ 136.15 ASSAULTING POLICE DOG OR HORSE, OR ASSISTANCE DOG.

(A) No person shall knowingly cause, or attempt to cause, physical harm to a police dog or horse in either of the following circumstances:

(1) The police dog or horse is assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted; or

(2) The police dog or horse is not assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog or horse is a police dog or horse.

(B) No person shall recklessly do any of the following:

(1) Taunt, torment, or strike a police dog or horse;

(2) Throw an object or substance at a police dog or horse;

(3) Interfere with or obstruct a police dog or horse, or interfere with or obstruct a law enforcement officer who is being assisted by a police dog or horse, in a manner that does any of the following:

(a) Inhibits or restricts the law enforcement officer's control of the police dog or horse;

(b) Deprives the law enforcement officer of control of the police dog or horse;

(c) Releases the police dog or horse from its area of control;

(d) Enters the area of control of the police dog or horse without the consent of the law enforcement officer, including placing food or any other object or substance into that area;

(e) Inhibits or restricts the ability of the police dog or horse to assist a law enforcement officer;

(4) Engage in any conduct that is likely to cause serious physical injury or death to a police dog or horse; or

(5) If the person is the owner, keeper, or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger a police dog or horse that at the time of the conduct is assisting a law enforcement officer in the performance of the officer's duties or that the person knows is a police dog or horse.

(C) No person shall knowingly cause, or attempt to cause, physical harm to an assistance dog in either of the following circumstances:

(1) The dog is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted; or

(2) The dog is not assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog is an assistance dog.

(D) No person shall recklessly do any of the following:

(1) Taunt, torment, or strike an assistance dog;

(2) Throw an object or substance at an assistance dog;

(3) Interfere with or obstruct an assistance dog, or interfere with or obstruct a blind, deaf or hearing impaired, or mobility impaired person who is being assisted or served by an assistance dog, in a manner that does any of the following:

(a) Inhibits or restricts the assisted or served person's control of the dog;

(b) Deprives the assisted or served person of control of the dog;

(c) Releases the dog from its area of control;

(d) Enters the area of control of the dog without the consent of the assisted or served person, including placing food or any other object or substance into that area;

(e) Inhibits or restricts the ability of the dog to assist the assisted or served person;

(4) Engage in any conduct that is likely to cause serious physical injury or death to an assistance dog; or

(5) If the person is the owner, keeper, or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger an assistance dog that at the time of the conduct is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person or that the person knows is an assistance dog.

(E) (1) Whoever violates division (A) of this section is guilty of assaulting a police dog or horse. Except as otherwise provided in this division, assaulting a police dog or horse is a misdemeanor of the second degree. If the violation results in physical harm to the police dog or horse other than death or serious physical harm, assaulting a police dog or horse is a misdemeanor of the first degree. If

the violation results in serious physical harm to the police dog or horse or results in its death, assaulting a police dog or horse is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of harassing a police dog or horse. Except as otherwise provided this division, harassing a police dog or horse is a misdemeanor of the second degree. If the violation results in physical harm to the police dog or horse but does not result in its death or in serious physical harm to it, harassing a police dog or horse is a misdemeanor of the first degree. If the violation results in serious physical harm to the police dog or horse or results in its death, harassing a police dog or horse is a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (C) of this section is guilty of assaulting an assistance dog. Except as otherwise provided in this division, assaulting an assistance dog is a misdemeanor of the second degree. If the violation results in physical harm to the assistance dog other than death or serious physical harm, assaulting an assistance dog is a misdemeanor of the first degree. If the violation results in serious physical harm to the assistance dog or results in its death, assaulting an assistance dog is a felony to be prosecuted under appropriate state law.

(4) Whoever violates division (D) of this section is guilty of harassing an assistance dog. Except as otherwise provided in this division, harassing an assistance dog is a misdemeanor of the second degree. If the violation results in physical harm to the assistance dog but does not result in the death or in serious physical harm to it, harassing an assistance dog is a misdemeanor of the first degree. If the violation results in serious physical harm to the assistance dog or results in its death, harassing an assistance dog is a felony to be prosecuted under appropriate state law.

(5) In addition to any other sanctions or penalty imposed for the offense under this section, Ohio R.C. Chapter 2929 or any other provision of the Revised Code or this code, whoever violates division (A), (B), (C), or (D) of this section is responsible for the payment of all of the following:

- (a) Any veterinary bill or bill for medication incurred as a result of the violation by the Police Department regarding a violation of division (A) or (B) of this section or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog regarding a violation of division (C) or (D) of this section;
- (b) The cost of any damaged equipment that results from the violation;
- (c) If the violation did not result in the death of the police dog or horse or the assistance dog that was the subject of the violation and if, as a result of that dog or horse being the subject of the violation, the dog or horse needs further training or retraining to be able to continue in the capacity of a police dog or horse or an assistance dog, the cost of any further training or retraining of that dog or horse by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog; and
- (d) If the violation resulted in the death of the police dog or horse or the assistance dog that was the subject of the violation or resulted in serious physical harm to that dog or horse to the extent that the dog or horse needs to be replaced on either a temporary or a permanent basis, the cost of replacing that dog or horse and of any further training of a new police dog or horse or a new assistance dog by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog, which replacement or training is required because of the death of or the serious physical harm to the dog or horse that was the subject of the violation.

(F) This section does not apply to a licensed veterinarian whose conduct is in accordance with Ohio R.C. Chapter 4741.

(G) This section only applies to an offender who knows or should know at the time of the violation that the police dog or horse or assistance dog that is the subject of a violation under this section is a police dog or horse or an assistance dog.

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

ASSISTANCE DOG, BLIND and MOBILITY IMPAIRED PERSON. Have the same meaning as in Ohio R.C. § 955.011.

PHYSICAL HARM. Any injury, illness, or other psychological impairment, regardless of its gravity or duration.

POLICE DOG OR HORSE. A dog or horse that has been trained and may be used to assist law enforcement officers in the performance of their official duties.

SERIOUS PHYSICAL HARM. Any of the following:

- (a) Any physical harm that carries a substantial risk of death.

(b) Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming.

(c) Any physical harm that causes acute pain of a duration that results in substantial suffering.

(ORC § 2921.321) (1995 Code, § 136.15)

§ 136.16 GIVING FALSE ALARM OR INFORMATION.

(A) No person shall knowingly give or assist in giving a false or fictitious call or report to the Police Department, Fire Department, or other law enforcement officer, or to any person dispatching or operating an ambulance or other emergency vehicle with intent to mislead, misdirect, or improperly summon any officer or person.

(B) No person shall knowingly give a false or fictitious call or report to school officials or other persons in charge of locations where groups of persons assemble when the nature of such false or fictitious call or report results in law enforcement action.

(Am. Ord. 84-O-31, passed 12-19-1984)

(C) Whoever violates any provision of this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(1995 Code, § 136.16) (Am. Ord. 84-O-35, passed 12-19-1984)

§ 136.17 ASSAULT ON A FIREMAN OR LAW ENFORCEMENT OFFICER.

(A) No person shall knowingly cause or attempt to cause physical harm to, and no person shall recklessly cause serious physical harm to:

(1) A member of the fire division while such member is engaged in the performance of his or her duties; or

(2) A law enforcement officer while that officer is engaged in the performance of his or her duties or engaged in the performance of law enforcement duties.

(B) Whoever violates this section is guilty of assault on a fireman or law enforcement officer, a misdemeanor of the first degree.

(1995 Code, § 136.17) Penalty, see § 130.99

§ 136.18 DISCLOSURE OF CONFIDENTIAL PEACE OFFICER INFORMATION.

(A) No officer or employee of a law enforcement agency or court, or of the clerk's office of any court, shall disclose during the pendency of any criminal case the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in the case.

(B) Division (A) of this section does not prohibit a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee from disclosing the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's own home address, and does not apply to any person who discloses the home address of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee pursuant to a court-ordered disclosure under division (C) of this section.

(C) The court in which any criminal case is pending may order the disclosure of the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in the case, if the court determines after a written request for the disclosure that good cause exists for disclosing the home address of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee.

(D) Whoever violates division (A) of this section is guilty of disclosure of confidential information, a misdemeanor of the fourth degree.

(ORC § 2921.24)

(E) No judge of a court of record, or Mayor presiding over a Mayor's Court, shall order a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness in a criminal case, to disclose the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's home address during the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, or youth services employee's examination in the case unless the judge or Mayor determines that the defendant has a right to the disclosure.

(F) As used in this section:

PEACE OFFICER has the same meaning as in Ohio R.C. § 2935.01.

CORRECTIONAL EMPLOYEE and **YOUTH SERVICES EMPLOYEE** have the same meanings as in Ohio R.C. § 149.43.

(ORC § 2921.25)

§ 136.19 INTIMIDATION OF CRIME VICTIM OR WITNESS.

(A) No person shall knowingly attempt to intimidate or hinder the victim of a crime in the filing or prosecution of criminal charges, or a witness involved in a criminal action or proceeding in the discharge of the duties of the witness.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property, shall attempt to influence, intimidate, or hinder the victim of a crime in the filing or prosecution of criminal charges or an attorney or a witness involved in a criminal action or proceeding in the discharge of the duties of the attorney or witness.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information by participating in the arbitration, mediation, compromise, settlement or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or conciliation of a dispute of that nature that is conferred by any of the following.

(1) A section of the Revised Code.

(2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the Ohio Supreme Court in accordance with Ohio Constitution, Article IV, Section 5.

(3) A local rule of court, including but not limited to a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement or other conciliation programs.

(4) The order of a judge of a municipal court, county court, or court of common pleas.

(D) Whoever violates this section is guilty of intimidation of an attorney, victim or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(ORC § 2921.04)

Statutory reference:

Retaliation, felony offense, see Ohio R.C. § 2921.05

§ 136.20 USING SHAM LEGAL PROCESS.

(A) For the purpose of this section, the following definitions shall apply:

LAWFULLY ISSUED. Adopted, issued, or rendered in accordance with the United States Constitution, the Constitution of a state, and the applicable statutes, rules, regulations and ordinances of the United States, a state, and the political subdivisions of a state.

POLITICAL SUBDIVISIONS. Municipal corporations, townships, counties, school districts, and all other bodies corporate and politic that are organized under state law and are responsible for governmental activities only in geographical areas smaller than that of

a state.

SHAM LEGAL PROCESS. An instrument that meets all of the following conditions.

(a) It is not lawfully issued.

(b) It purports to do any of the following:

1. To be a summons, subpoena, judgment, or order of a court, a law enforcement officer, or a legislative, executive or administrative body;
2. To assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of any person or property; or
3. To require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property.

(c) It is designed to make another person believe that it is lawfully issued.

STATE. A state of the United States, including without limitation the state legislature, the highest court of the state that has statewide jurisdiction, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. **STATE** does not include the political subdivisions of the state.

(B) No person shall, knowing the sham legal process to be a sham legal process, do any of the following:

- (1) Knowingly issue, display, deliver, distribute, or otherwise use sham legal process.
- (2) Knowingly use sham legal process to arrest, detain, search or seize any person or the property of another person.
- (3) Knowingly commit or facilitate the commission of an offense using sham legal process.
- (4) Knowingly commit a felony by using sham legal process.

(C) It is an affirmative defense to a charge under division (B)(1) or (B)(2) of this section that the use of sham legal process was for a lawful purpose.

(D) Whoever violates this section is guilty of using sham legal process. A violation of division (B)(1) of this section is a misdemeanor of the fourth degree. A violation of division (B)(2) or (B)(3) of this section is a misdemeanor of the first degree, except that if the purpose of a violation of division (B)(3) of this section is to commit or facilitate the commission of a felony, a violation of division (B)(3) of this section is a felony to be prosecuted under appropriate state law. A violation of division (B)(4) of this section is a felony to be prosecuted under appropriate state law.

(ORC § 2921.52(A) - (D))

Statutory reference:

Civil liability, see Ohio R.C. § 2921.52(E)

§ 136.21 MAKING FALSE ALLEGATION OF PEACE OFFICER MISCONDUCT.

(A) As used in this section, **PEACE OFFICER** has the same meaning as in Ohio R.C. § 2935.01.

(B) No person shall knowingly file a complaint against a peace officer that alleges that the peace officer engaged in misconduct in the performance of the officer's duties if the person knows that the allegation is false.

(C) Whoever violates division (B) of this section is guilty of making a false allegation of peace officer misconduct, a misdemeanor of the first degree.

(ORC § 2921.15)

§ 136.22 MISUSE OF 9-1-1 SYSTEM.

(A) As used in this section, **9-1-1 SYSTEM** means a system through which individuals can request emergency service using the

telephone number 9-1-1.

(ORC § 4931.40(A))

(B) No person shall knowingly use the telephone number of a 9-1-1 system established under Ohio R.C. §§ 4931.40 through 4931.70 to report an emergency if the person knows that no emergency exists.

(C) No person shall knowingly use a 9-1-1 system for a purpose other than obtaining emergency service.

(D) No person shall disclose or use any information concerning telephone numbers, addresses, or names obtained from the database that serves the public safety answering point of a 9-1-1 system established under Ohio R.C. §§ 4931.40 through 4931.70, except for any of the following purposes or under any of the following circumstances:

(1) For the purpose of the 9-1-1 system;

(2) For the purpose of responding to an emergency call to an emergency service provider;

(3) In the circumstance of the inadvertent disclosure of such information due solely to technology of the wireless telephone network portion of the 9-1-1 system not allowing access to the database to be restricted to 9-1-1 specific answering lines at a public safety answering point;

(4) In the circumstance of access to a database being given by a telephone company that is a wireless service provider to a public utility or municipal utility in handling customer calls in times of public emergency or service outages. The charge, terms, and conditions for the disclosure or use of such information for the purpose of such access to a database shall be subject to the jurisdiction of the Public Utilities Commission; or

(5) In the circumstance of access to a database given by a telephone company that is a wireline service provider to a state and local government in warning of a public emergency, as determined by the Public Utilities Commission. The charge, terms and conditions for the disclosure or use of that information for the purpose of access to a database is subject to the jurisdiction of the Public Utilities Commission.

(ORC § 4931.49(D) - (F))

(E) (1) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates division (C) or (D) of this section is guilty of a misdemeanor of the fourth degree on a first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.

(ORC § 4931.99(A), (C))

§ 136.23 FAILURE TO DISCLOSE PERSONAL INFORMATION.

(A) No person who is in a public place shall refuse to disclose the person's name, address, or date of birth, when requested by a law enforcement officer who reasonably suspects either of the following:

(1) The person is committing, has committed, or is about to commit a criminal offense; or

(2) The person witnessed any of the following:

(a) An offense of violence that would constitute a felony under the laws of this state;

(b) A felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or property;

(c) Any attempt or conspiracy to commit, or complicity in committing, any offenses identified in division (A)(2)(a) or (A)(2)(b) of this section; or

(d) Any conduct reasonably indicating that any offense identified in division (A)(2)(a) or (A)(2)(b) of this section or any attempt, conspiracy, or complicity described in division (A)(2)(c) of this section has been, is being, or is about to be committed.

(B) Whoever violates division (A) of this section is guilty of failure to disclose one's personal information, a misdemeanor of the fourth degree.

(C) Nothing in division (A) of this section requires a person to answer any questions beyond that person's name, address, or date of birth. Nothing in division (A) of this section authorizes a law enforcement officer to arrest a person for not providing any information beyond the person's name, address, or date of birth or for refusing to describe the offense observed.

(D) It is not a violation of division (A) of this section to refuse to answer a question that would reveal a person's age or date of birth if age is an element of the crime that the person is suspected of committing.

(ORC § 2921.29)

(E) No person entering an airport, train station, port, or other similar critical transportation infrastructure site shall refuse to show identification when requested by a law enforcement officer when there is a threat to security and the law enforcement officer is requiring identification of all persons entering the site.

(F) A law enforcement officer may prevent any person who refuses to show identification when asked under the circumstances described in division (E) of this section from entering the critical transportation infrastructure site.

(ORC § 2909.31)

CHAPTER 137: WEAPONS CONTROL

Section

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Using weapons to endanger or damage aircraft or airport operations, see § 131.05

Statutory reference:

Return of surrendered firearms by law enforcement, see R.C. § 2923.163

§ 137.01 DEFINITIONS.

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

AUTOMATIC FIREARM. Any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. **AUTOMATIC FIREARM** also means any semi-automatic firearm designed or specially adapted to fire more than 31 cartridges without reloading, other than a firearm chambering only .22 caliber short, long, or long-rifle cartridges.

BALLISTIC KNIFE. A knife with a detachable blade that is propelled by a spring-operated mechanism.

DANGEROUS ORDNANCE.

(1) Any of the following, except as provided in division (2) of this definition:

(a) Any automatic or sawed-off firearm, zip-gun, or ballistic knife;

(b) Any explosive device or incendiary device;

(c) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions;

(d) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon;

(e) Any firearm muffler or silencer; or

(f) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

(2) **DANGEROUS ORDNANCE** does not include any of the following:

(a) Any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder;

(b) Any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm;

(c) Any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;

(d) Black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in division (2)(c) of this definition during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;

(e) Dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece; or

(f) Any device that is expressly excepted from the definition of a destructive device pursuant to the Gun Control Act of 1968, 18 U.S.C. § 921(a)(4), as amended, and regulations issued under that act.

DEADLY WEAPON. Any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

EXPLOSIVE. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. **EXPLOSIVE** includes all materials that have been classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses,

instantaneous fuses, and igniter cords and igniters. **EXPLOSIVES** does not include "fireworks," as defined in Ohio R.C. § 3743.01, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored, or used in any activity described in R.C. § 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including, but not limited to, the provisions of R.C. § 3743.80 and the rules of the Fire Marshal adopted pursuant to Ohio R.C. § 3737.82.

EXPLOSIVE DEVICE. Any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. **EXPLOSIVE DEVICE** includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.

FIREARM.

(1) Any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. **FIREARM** includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.

(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.

HANDGUN. Means any of the following:

- (1) Any firearm that has a short stock and is designed to be held and fired by the use of a single hand; or
- (2) Any combination of parts from which a firearm of a type described in division (1) of this definition can be assembled.

INCENDIARY DEVICE. Any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agent and a means to ignite it.

SAWED-OFF FIREARM. A shotgun with a barrel less than 18 inches long, or a rifle with a barrel less than 16 inches long, or a shotgun or rifle less than 26 inches long overall.

SEMI-AUTOMATIC FIREARM. Any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

ZIP-GUN. Any of the following:

- (1) Any firearm of crude and extemporized manufacture;
- (2) Any device, including without limitation a starter's pistol, not designed as a firearm, but that is specially adapted for use as a firearm; or
- (3) Any industrial tool, signalling device, or safety device, not designed as a firearm, but that as designed is capable of use as such, when possessed, carried, or used as a firearm.

(ORC § 2923.11) (1995 Code, § 137.01)

§ 137.02 CARRYING CONCEALED WEAPONS.

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

- (1) A deadly weapon other than a handgun;
- (2) A handgun other than a dangerous ordnance; or
- (3) A dangerous ordnance.

(B) No person who has been issued a license or temporary emergency license to carry a concealed handgun under Ohio R.C. § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69 shall do any of the following:

(1) If the person is stopped for a law enforcement purpose, and is carrying a concealed handgun, fail to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a license or

temporary emergency license to carry a concealed handgun and that the person then is carrying a concealed handgun;

(2) If the person is stopped for a law enforcement purpose and if the person is carrying a concealed handgun, knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(3) If the person is stopped for a law enforcement purpose, if the person is carrying a concealed handgun, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster, pocket, or other place in which the person is carrying it, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer;

(4) If the person is stopped for a law enforcement purpose and if the person is carrying a concealed handgun, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the person is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

(C) (1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or to a law enforcement officer, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns and is acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns, and who is subject to and in compliance with the requirements of Ohio R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (C)(1)(b) does not apply to the person.

(c) A person's transportation or storage of a firearm, other than a firearm described in R.C. § 2923.11(G) to (M), in a motor vehicle for any lawful purpose if the firearm is not on the actor's person;

(d) A person's storage or possession of a firearm, other than a firearm described in R.C. § 2923.11(G) to (M), in the actor's own home for any lawful purpose.

(2) Division (A)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under Ohio R.C. § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69, unless the person knowingly is in a place described in Ohio R.C. § 2923.126(B).

(D) It is an affirmative defense to a charge under division (A)(1) of this section of carrying or having control of a weapon other than a handgun and other than a dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following applies:

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of a character or was necessarily carried on in a manner or at a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor, a member of the actor's family, or the actor's home, such as would justify a prudent person in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.

(E) No person who is charged with a violation of this section shall be required to obtain a license or temporary emergency license to carry a concealed handgun under Ohio R.C. § 2923.125 or 2923.1213 as a condition for the dismissal of the charge.

(F) (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this division or division (F)(2) of this section, carrying concealed weapons in violation of division (A) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division or division (F)(2) of this section, if the offender previously has been convicted of a violation of this section or any substantially equivalent state law or municipal ordinance or of any offense of violence, if the weapon

involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of division (A) of this section is a felony to be prosecuted under appropriate state law. Except as otherwise provided in division (F)(2) of this section, if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons in violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) If a person being arrested for a violation of division (A)(2) of this section promptly produces a valid license or temporary emergency license to carry a concealed handgun issued under Ohio R.C. § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69, and if at the time of the violation the person was not knowingly in a place described in Ohio R.C. § 2923.126(B), the officer shall not arrest the person for a violation of that division. If the person is not able to promptly produce any of those types of license and if the person is not in a place described in that section, the officer may arrest the person for a violation of that division, and the offender shall be punished as follows:

(a) The offender shall be guilty of a minor misdemeanor if both of the following apply:

1. Within 10 days after the arrest, the offender presents a license or temporary emergency license to carry a concealed handgun issued under Ohio R.C. § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69, which license was valid at the time of the arrest to the law enforcement agency that employs the arresting officer; and

2. At the time of the arrest, the offender was not knowingly in a place described in Ohio R.C. § 2923.126(B).

(b) The offender shall be guilty of a misdemeanor and shall be fined \$500 if all of the following apply:

1. The offender previously had been issued a license to carry a concealed handgun under Ohio R.C. § 2923.125 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69 and that was similar in nature to a license issued under Ohio R.C. § 2923.125, and that license expired within the two years immediately preceding the arrest;

2. Within 45 days after the arrest, the offender presents any type of license identified in division (G)(2)(a)1. of this section to the law enforcement agency that employed the arresting officer, and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in Ohio R.C. § 2945.71; and

3. At the time of the commission of the offense, the offender was not knowingly in a place described in Ohio R.C. § 2923.126(B).

(c) If neither division (F)(2)(a) nor (F)(2)(b) of this section applies, the offender shall be punished under division (F)(1) of this section.

(3) Except as otherwise provided in this division, concealed weapons in violation of division (B)(1) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for a violation of division (B)(1) of this section, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to Ohio R.C. § 2923.128(A)(2). If, at the time of the stop of the offender for a law enforcement purpose that was the basis of the violation, any law enforcement officer involved with the stop had actual knowledge that the offender has been issued a license or temporary emergency license to carry a concealed handgun, carrying concealed weapons in violation of division (B)(1) of this section is a minor misdemeanor, and the offender's license or temporary emergency license to carry a concealed handgun shall not be suspended pursuant to R.C. § 2923.128(A)(2).

(4) Carrying concealed weapons in violation of division (B)(2) or (B)(4) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(2) or (B)(4) of this section or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (B)(2) or (B)(4) of this section, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to Ohio R.C. § 2923.128(A)(2).

(5) Carrying concealed weapons in violation of division (B)(3) of this section is a felony to be prosecuted under appropriate state law.

(G) If a law enforcement officer stops a person to question the person regarding a possible violation of this section, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer

shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, R.C. § 2923.163(B) applies.

(ORC § 2923.12) (1995 Code, § 137.02)

Statutory reference:

Carrying concealed handguns, licensing through county sheriff, see Ohio R.C. §§ 2923.124 et seq.

Conveyance or possession of deadly weapons or dangerous ordnance on school premises, felony offense, see Ohio R.C. § 2923.122

Conveyance, possession, or control of deadly weapon or dangerous ordinance in a courthouse, felony offense, see Ohio R.C. § 2923.123

Possession of deadly weapon while under detention, felony offense, see Ohio R.C. § 2923.131

Possession of firearm in liquor permit premises, felony offense, see Ohio R.C. § 2923.121

§ 137.03 USING WEAPONS WHILE INTOXICATED.

(A) No person, while under the influence of alcohol or any drug of abuse, shall carry or use any firearm or dangerous ordnance.

(B) Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree.

(ORC § 2923.15) (1995 Code, § 137.03)

§ 137.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.

(A) No person shall knowingly discharge a firearm while in or on a motor vehicle.

(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.

(C) No person shall knowingly transport or have a firearm in a motor vehicle, unless the person may lawfully possess that firearm under applicable law of this state or the United States, the firearm is unloaded, and the firearm is carried in one of the following ways:

(1) In a closed package, box, or case;

(2) In a compartment that can be reached only by leaving the vehicle;

(3) In plain sight and secured in a rack or holder made for the purpose; and

(4) If the firearm is at least 24 inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least 18 inches in length, either in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

(D) No person shall knowingly transport or have a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies.

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol, a listed controlled substance, or a listed metabolite of a controlled substance prohibited for persons operating a vehicle, as specified in Ohio R.C. § 4511.19(A), regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.

(E) No person who has been issued a license or temporary emergency license to carry a concealed handgun under Ohio R.C. § 2923.125 or 2923.1213 shall do any of the following:

(1) Knowingly transport or have a loaded handgun in a motor vehicle unless one of the following applies:

(a) The loaded handgun is in a holster on the person's person.

(b) The loaded handgun is in a closed case, bag, box, or other container that is in plain sight and that has a lid, a cover, or a closing mechanism with a zipper, snap, or buckle, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun.

(c) The loaded handgun is securely encased by being stored in a closed glove compartment or vehicle console or in a case that is locked.

(2) If the person is transporting or has a loaded handgun in a motor vehicle in a manner authorized under division (E)(1) of this section, knowingly remove or attempt to remove the loaded handgun from the holster, case, bag, box, container, or glove compartment, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers while the motor vehicle is being operated on a street, highway, or public property unless the person removes, attempts to remove, grasps, holds, or has the contact with the loaded handgun pursuant to and in accordance with directions given by a law enforcement officer.

(3) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in Ohio R.C. § 5503.34, and if the person is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, fail to do any of the following that is applicable:

(a) If the person is the driver or an occupant of a motor vehicle stopped as a result of a traffic stop or a stop for another law enforcement purpose, fail to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then possesses or has a loaded handgun in the motor vehicle;

(b) If the person is the driver or an occupant of a commercial motor vehicle stopped by an employee of the motor carrier enforcement unit for any of the defined purposes, fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a license or temporary emergency license to carry a concealed handgun and that the person then possesses or has a loaded handgun in the commercial motor vehicle.

(4) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and if the person is transporting or has a loaded handgun in the motor vehicle in any manner, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer.

(5) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose, if the person is transporting or has a loaded handgun in the motor vehicle in a manner authorized under division (E)(1) of this section, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster, case, bag, box, container, or glove compartment, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds, or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer.

(6) If the person is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose and if the person is transporting or has a loaded handgun in the motor vehicle in any manner, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

(F) (1) Divisions (A), (B), (C), and (E) of this section do not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the requirements of Ohio R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (F)(1)(b) does not apply to the person.

(2) Division (A) of this section does not apply to a person if all of the following circumstances apply:

(a) The person discharges a firearm from a motor vehicle at a coyote or groundhog, the discharge is not during the deer gun hunting season as set by the Chief of the Division of Wildlife of the Department of Natural Resources, and the discharge at the coyote or groundhog, but for the operation of this section, is lawful.

(b) The motor vehicle from which the person discharges the firearm is on real property that is located in an unincorporated area of a township and that is either zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(2)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person does not discharge the firearm in any of the following manners:

1. While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;
2. In the direction of a street, highway or other public or private property used by the public for vehicular traffic or parking;
3. At or into an occupied structure that is a permanent or temporary habitation;
4. In the commission of any violation of law, including but not limited to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(3) Division (A) of this section does not apply to a person if all of the following apply:

(a) The person possesses a valid electric-powered all-purpose vehicle permit issued under R.C. § 1533.103 by the Chief of the Division of Wildlife.

(b) The person discharges a firearm at a wild quadruped or game bird as defined in R.C. § 1531.01 during the open hunting season for the applicable wild quadruped or game bird.

(c) The person discharges a firearm from a stationary electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife, provided that the road is identified by an electric-powered all-purpose vehicle sign.

(d) The person does not discharge the firearm in any of the following manners:

1. While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;
2. In the direction of a street, a highway, or other public or private property that is used by the public for vehicular traffic or parking;
3. At or into an occupied structure that is a permanent or temporary habitation;
4. In the commission of any violation of law, including, but not limited to, a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(4) Divisions (B) and (C) of this section do not apply to a person if all of the following circumstances apply:

(a) At the time of the alleged violation of either of those divisions, the person is the operator of or a passenger in a motor vehicle.

(b) The motor vehicle is on real property that is located in an unincorporated area of a township and that is either zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(4)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person, prior to arriving at the real property described in division (F)(4)(b) of this section, did not transport or possess a firearm in the motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway or other public or private property used by the public for vehicular traffic or parking.

(4) Divisions (B) and (C) of this section do not apply to a person who transports or possesses a handgun in a motor vehicle if, at

the time of that transportation or possession, all of the following apply:

(a) The person transporting or possessing the handgun is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under Ohio R.C. § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69.

(b) The person transporting or possessing the handgun is not knowingly in a place described in Ohio R.C. § 2923.126(B).

(c) One of the following applies:

1. The handgun is in a holster on the person's person.

2. The handgun is in a closed case, bag, box, or other container that is in plain sight and that has a lid, a cover, or a closing mechanism with a zipper, snap, or buckle, which lid, cover, or closing mechanism must be opened for a person to gain access to the handgun.

3. The handgun is securely encased by being stored in a closed glove compartment or vehicle console or in a case that is locked.

(6) Divisions (B) and (C) of this section do not apply to a person if all of the following apply:

(a) The person possesses a valid electric-powered all-purpose vehicle permit issued under R.C. § 1533.103 by the Chief of the Division of Wildlife.

(b) The person is on or in an electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle during the open hunting season for a wild quadruped or game bird.

(c) The person is on or in an electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife, provided that the road is identified by an electric-powered all-purpose vehicle sign.

(G) (1) The affirmative defenses authorized in Ohio R.C. § 2923.12(D)(1) and (D)(2) are affirmative defenses to a charge under division (B) or (C) of this section that involves a firearm other than a handgun.

(2) It is an affirmative defense to a charge under division (B) or (C) of this section of improperly handling firearms in a motor vehicle that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on the actor's own property, provided that this affirmative defense is not available unless the person, immediately prior to arriving at the actor's own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(H) No person who is charged with a violation of division (B), (C), or (D) of this section shall be required to obtain a license or temporary emergency license to carry a concealed handgun under Ohio R.C. § 2923.125 or 2923.1213 as a condition for the dismissal of the charge.

(I) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. Violation of division (A) of this section is a felony to be prosecuted under appropriate state law. Violation of division (C) of this section is a misdemeanor of the fourth degree. A violation of division (D) of this section is a felony to be prosecuted under appropriate state law and, if the loaded handgun is concealed on the person's person, it is also a felony to be prosecuted under appropriate state law. Except as otherwise provided in this division, a violation of division (E)(3) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for the violation, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to Ohio R.C. § 2923.128(A)(2). If at the time of the stop of the offender for a traffic stop, for another law enforcement purpose, or for a purpose defined in R.C. § 5503.34 that was the basis of the violation any law enforcement officer involved with the stop or the employee of the motor carrier enforcement unit who made the stop had actual knowledge of the offender's status as a licensee, a violation of division (E)(3) of this section is a minor misdemeanor, and the offender's license or temporary emergency license to carry a concealed handgun shall not be suspended pursuant to R.C. § 2923.128(A)(2). A violation of division (E)(1), (E)(2), or (E)(5) of this section is a felony to be prosecuted under appropriate state law. A violation of division (E)(4) or (E)(6) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (E)(4) or (E)(6) of this section or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (E)(4) or (E)(6) of this section, the offender's license or temporary emergency license to carry a concealed handgun shall be suspended pursuant to Ohio R.C. § 2923.128(A)(2). A violation of division (B) of this section is whichever of the following is applicable:

(1) If, at the time of the transportation or possession in violation of division (B) of this section, the offender was carrying a valid license or temporary emergency license to carry a concealed handgun issued to the offender under Ohio R.C. § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69 and the offender was not knowingly in a place described in Ohio R.C. § 2923.126(B), the violation is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (B) of this section or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law.

(2) If division (I)(1) of this section does not apply, a felony to be prosecuted under appropriate state law.

(J) If a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the motor vehicle surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, R.C. § 2923.163(B) applies.

(K) As used in this section:

AGRICULTURE has the same meaning as in Ohio R.C. § 519.01.

COMMERCIAL MOTOR VEHICLE has the same meaning as in Ohio R.C. § 4506.25(A).

MOTOR CARRIER ENFORCEMENT UNIT means the Motor Carrier Enforcement Unit in the Department of Public Safety, Division of State Highway Patrol, that is created by Ohio R.C. § 5503.34.

MOTOR VEHICLE, STREET and **HIGHWAY** have the same meaning as in Ohio R.C. § 4511.01.

OCCUPIED STRUCTURE has the same meaning as in Ohio R.C. § 2909.01.

TENANT has the same meaning as in Ohio R.C. § 1531.01.

UNLOADED. Means any of the following:

(a) No ammunition is in the firearm in question, and no ammunition is loaded into a magazine or speed loader that may be used with the firearm in question and that is located anywhere within the vehicle in question, without regard to where ammunition otherwise is located within the vehicle in question. For the purposes of division (a) of this definition, ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

(b) With respect to a firearm employing a percussion cap, flintlock, or other obsolete ignition system, when the weapon is uncapped or when the priming charge is removed from the pan.

(ORC § 2923.16) (1995 Code, § 137.04)

Statutory reference:

Return of surrendered firearms by law enforcement, see R.C. § 2923.163

§ 137.05 POSSESSING CRIMINAL TOOLS.

(A) No person shall possess or have under his or her control any substance, device, instrument, or article, with purpose to use it criminally.

(B) Each of the following constitutes prima facie evidence of criminal purpose:

(1) Possession or control of any dangerous ordnance, or the materials or parts for making a dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials or parts are intended for a legitimate use;

(2) Possession or control of any substance, device, instrument, or article designed or specially adapted for criminal use; and

(3) Possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use.

(C) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division, possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony to be prosecuted under appropriate state law.

(ORC § 2923.24)

§ 137.06 FAILURE TO SECURE DANGEROUS ORDNANCE.

(A) No person, in acquiring, possessing, carrying, or using any dangerous ordnance, shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person; or

(2) To insure the safety of persons and property.

(B) Whoever violates this section is guilty of failure to a secure dangerous ordnance, a misdemeanor of the second degree.

(ORC § 2923.19) (1995 Code, § 137.06)

§ 137.07 UNLAWFUL TRANSACTIONS IN WEAPONS.

(A) No person shall:

(1) Recklessly sell, lend, give or furnish any firearm to any person prohibited by Ohio R.C. § 2923.13 or 2923.15, or a substantially equivalent municipal ordinance, from acquiring or using any firearm, or recklessly sell, lend, give or furnish any dangerous ordnance to any person prohibited by Ohio R.C. § 2923.13, 2923.15 or 2923.17, or a substantially equivalent municipal ordinance, from acquiring or using any dangerous ordnance;

(2) Possess any firearm or dangerous ordnance with purpose to dispose of it in violation of division (A)(1) of this section;

(3) Manufacture, possess for sale, sell, or furnish to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife, or similar weapon;

(4) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license, or permit showing him or her to be authorized to acquire dangerous ordnance pursuant to Ohio R.C. § 2923.17, or negligently fail to take a complete record of the transaction and forthwith forward a copy of the record to the sheriff of the county or Safety Director or Police Chief of the municipality where the transaction takes place;

(5) Knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession and under his or her control.

(B) Whoever violates this section is guilty of unlawful transactions in weapons. A violation of division (A)(1) or (A)(2) of this section is a felony to be prosecuted under appropriate state law. A violation of division (A)(3) or (A)(4) of this section is a misdemeanor of the second degree. A violation of division (A)(5) of this section is a misdemeanor of the fourth degree.

(ORC § 2923.20) (1995 Code, § 137.07)

§ 137.08 UNDERAGE PURCHASE OF FIREARM OR HANDGUN.

(A) No person under 18 years of age shall purchase or attempt to purchase a firearm.

(B) No person under 21 years of age shall purchase or attempt to purchase a handgun; provided, that this division does not apply to the purchase or attempted purchase of a handgun by a person 18 years of age or older and under 21 years of age if either of the following applies:

(1) The person is a law enforcement officer and has received firearms training approved by the Ohio Peace Officer Training Council or equivalent firearms training.

(2) The person is an active or reserve member of the armed services of the United States or the Ohio National Guard, or was honorably discharged from military service in the active or reserve armed services of the United States or the Ohio National Guard, and the person has received firearms training from the armed services or the national guard or equivalent firearms training.

(C) Whoever violates division (A) of this section is guilty of underage purchase of a firearm, a delinquent act that would be a felony to be prosecuted under appropriate state law if it could be committed by an adult. Whoever violates division (B) of this section is guilty of underage purchase of a handgun, a misdemeanor of the second degree.

(ORC § 2923.211)

Statutory reference:

Improperly furnishing firearms to a minor, felony, see Ohio R.C. § 2923.21

§ 137.09 POINTING AND DISCHARGING FIREARMS AND OTHER WEAPONS.

(A) *Discharge of firearms on or near prohibited premises.* No person shall do any of the following:

(1) Without permission from the proper officials and subject to division (B)(1) of this section, discharge a firearm upon or over a cemetery or within 100 yards of a cemetery;

(2) Subject to division (B)(2) of this section, discharge of a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution; or

(3) Discharge a firearm upon or over a public road or highway.

(B) *Exclusion.*

(1) Division (A)(1) of this section does not apply to a person who while on the person's own land, discharges a firearm.

(2) Division (A)(2) of this section does not apply to a person who owns any type of property described in that division and who, while on the person's own enclosure, discharges a firearm.

(C) *Penalty.* Whoever violates division (A) of this section is guilty of discharge of a firearm on or near prohibited premises. A violation of division (A)(1) or (A)(2) of this section is a misdemeanor of the fourth degree. A violation of division (A)(3) shall be punished as follows:

(1) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(3) of this section is a misdemeanor of the first degree.

(2) If the violation created a substantial risk of physical harm to any person, caused serious physical harm to property, caused physical harm to any person, or caused serious physical harm to any person, a violation of division (A)(3) is a felony to be prosecuted under appropriate state law.

(ORC § 2923.162)

(D) *Hunting near township park.*

(1) No person shall hunt, shoot, or kill game within one-half mile of a township park unless the Board of Township Park Commissioners has granted permission to kill game not desired within the limits prohibited by this division.

(ORC § 3773.06)

(2) Whoever violates division (D)(1) of this section is guilty of a misdemeanor of the fourth degree.

(ORC § 3773.99(A))

(E) *Discharge of firearms and other weapons.* No person shall discharge any BB gun, air gun, or firearm, or make use of any sling, bow and arrow, or crossbow, within the corporate limits of the municipality.

(F) *Pointing or aiming of firearms or other weapons.* No person shall, intentionally and without malice, point or aim any BB gun, air gun, or firearm, or any sling, bow and arrow, or crossbow at or toward another.

(G) *Violation of divisions (E) or (F).* Whoever violates division (E) or (F) of this section is guilty of a misdemeanor of the fourth

degree.

(H) *Exceptions.* This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation's armed forces acting under military authority, and shall not apply to law enforcement officials or other government officials in the proper enforcement of the law, or to any person in the proper exercise of the right of self defense, or to any person otherwise lawfully permitted by proper federal, state or local authorities to discharge a BB gun, air gun, or firearm, or to use a sling, bow and arrow, or crossbow in a manner contrary to the provisions of this section. Division (E) of this section does not extend to cases in which BB guns, air guns, or firearms, or slings, bows and arrows, or crossbows are used in the confines of structures or used within the confines of a person's own property, provided such use is under adult supervision and is approved by the municipality.

Statutory reference:

Improperly discharging firearm at or into habitation or school safety zone, felony offense, see Ohio R.C. § 2923.161

§ 137.10 LICENSE OR PERMIT TO POSSESS DANGEROUS ORDNANCE.

(A) Upon application to the sheriff of the county or Safety Director or Police Chief of the municipality where the applicant resides or has his or her principal place of business, and upon payment of the fee specified in division (B) of this section, a license or temporary permit shall be issued to qualified applicants to acquire, possess, carry or use a dangerous ordnance for the following purposes:

(1) Contractors, wreckers, quarry workers, mine operators and other persons regularly employing explosives in the course of a legitimate business, with respect to explosives and explosive devices acquired, possessed, carried or used in the course of such business;

(2) Farmers, with respect to explosives and explosive devices acquired, possessed, carried or used for agricultural purposes on lands farmed by them;

(3) Scientists, engineers, and instructors, with respect to a dangerous ordnance acquired, possessed, carried or used in the course of bona fide research or instruction;

(4) Financial institutions and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried or used by any such person while acting within the scope of his or her duties; or

(5) In the discretion of the issuing authority, any responsible person, with respect to a dangerous ordnance lawfully acquired, possessed, carried or used for a legitimate research, scientific, educational, industrial or other proper purpose.

(B) Application for a license or temporary permit under this section shall be in writing under oath to the sheriff of the county or Safety Director or Police Chief of the municipality where the applicant resides or has his or her principal place of business. The application shall be accompanied by an application fee of \$50 when the application is for a license, and an application fee of \$5 when the application is for a temporary permit. The fees shall be paid into the general revenue fund of the county or municipality. The application shall contain the following information:

(1) The name, age, address, occupation and business address of the applicant, if he or she is a natural person, or the name, address, and principal place of business of the applicant if the applicant is a corporation;

(2) A description of the dangerous ordnance for which a permit is requested;

(3) A description of the places where and the manner in which the dangerous ordnance is to be kept, carried, and used;

(4) A statement of the purposes for which the dangerous ordnance is to be acquired, possessed, carried or used; and

(5) Such other information as the issuing authority may require in giving effect to this section.

(C) Upon investigation, the issuing authority shall issue a license or temporary permit only if all of the following apply:

(1) The applicant is not otherwise prohibited by law from acquiring, having, carrying or using a dangerous ordnance.

(2) The applicant is 21 years of age or over, if the applicant is a natural person.

(3) It appears that the applicant has sufficient competence to safely acquire, possess, carry or use the dangerous ordnance, and that proper precautions will be taken to protect the security of the dangerous ordnance and ensure the safety of persons and property.

(4) It appears that the dangerous ordnance will be lawfully acquired, possessed, carried and used by the applicant for a legitimate purpose.

(D) The license or temporary permit shall identify the person to whom it is issued, identify the dangerous ordnance involved and state the purposes for which the license or temporary permit is issued, state the expiration date, if any, and list such restrictions on the acquisition, possession, carriage, or use of the dangerous ordnance as the issuing authority considers advisable to protect the security of the dangerous ordnance and ensure the safety of persons and property.

(E) A temporary permit shall be issued for the casual use of explosives and explosive devices, and other consumable dangerous ordnance, and shall expire within 30 days of its issuance. A license shall be issued for the regular use of a consumable dangerous ordnance, which license need not specify an expiration date, but the issuing authority may specify such expiration date, not earlier than one year from the date of issuance, as it considers advisable in view of the nature of the dangerous ordnance and the purposes for which the license is issued.

(F) The dangerous ordnance specified in a license or temporary permit may be obtained by the holder anywhere in the state. Pursuant to Ohio R.C. § 2923.18(F), the holder of a license may use such dangerous ordnance anywhere in the state. The holder of a temporary permit may use such dangerous ordnance only within the territorial jurisdiction of the issuing authority.

(G) The issuing authority shall forward to the State Fire Marshal a copy of each license or temporary permit issued pursuant to this section, and a copy of each record of a transaction in a dangerous ordnance and of each report of a lost or stolen dangerous ordnance, given to the local law enforcement authority as required by Ohio R.C. § 2923.20(A)(4) and (A)(5) or a substantially equivalent municipal ordinance. The State Fire Marshal will keep a permanent file of all licenses and temporary permits issued pursuant to this section, and of all records of transactions in, and losses or thefts of a dangerous ordnance forwarded by local law enforcement authorities pursuant to this section.

(ORC § 2923.18)

§ 137.11 POSSESSION OF AN OBJECT INDISTINGUISHABLE FROM A FIREARM IN A SCHOOL SAFETY ZONE.

(A) No person shall knowingly possess an object in a school safety zone if both of the following apply:

(1) The object is indistinguishable from a firearm, whether or not the object is capable of being fired; and

(2) The person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm.

(B) (1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;

(b) Any person who is employed in this state, who is authorized to carry deadly weapons or dangerous ordnance, and who is subject to and in compliance with the requirements of Ohio R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (B)(1)(b) does not apply to the person.

(2) This section does not apply to premises upon which home schooling is conducted. This section also does not apply to a school administrator, teacher or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an object that is indistinguishable from a firearm under the direction of a school administrator, teacher or employee, or any other person who, with the express prior approval of a school administrator, possesses an object that is indistinguishable from a firearm for a legitimate purpose, including the use of the object in a ceremonial activity, a play, re-enactment or other dramatic presentation, or a ROTC activity or another similar use of the object.

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity;

(b) The person is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under Ohio R.C. § 2923.125 or 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under Ohio R.C. § 109.69;

(c) The person is in the school safety zone in accordance with 18 U.S.C. § 922(q)(2)(B); or

(d) The person is not knowingly in a place described in Ohio R.C. § 2923.126(B)(1) or (B)(3) through (B)(10).

(4) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if at the time of that conveyance, attempted conveyance, or possession of the handgun all of the following apply:

(a) The person is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under R.C. § 2923.125 or R.C. § 2923.1213 or a license to carry a concealed handgun that was issued by another state with which the Attorney General has entered into a reciprocity agreement under R.C. § 109.69.

(b) The person is the driver or passenger in a motor vehicle and is in the school safety zone while immediately in the process of picking up or dropping off a child.

(c) The person is not in violation of section R.C. § 2923.16.

(C) Whoever violates this section is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this division, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony to be prosecuted under appropriate state law.

(D) (1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section, and subject to division (D)(2) of this section, if the offender has not attained 19 years of age, regardless of whether the offender is attending or is enrolled in a school operated by a board of education or for which the State Board of Education prescribes minimum standards under Ohio R.C. § 3301.07, the court shall impose upon the offender a class four suspension of the offender's probationary driver's license, restricted license, driver's license, commercial driver's license, temporary instruction permit, or probationary commercial driver's license that then is in effect from the range specified in Ohio R.C. § 4510.02(A)(4) and shall deny the offender the issuance of any permit or license of that type during the period of the suspension. If the offender is not a resident of this state, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in Ohio R.C. § 4510.02(A)(4).

(2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits or privileges specified in division (D)(1) of this section or deny the issuance of one of the temporary instruction permits specified in division (D)(1) of this section, the court in its discretion may choose not to impose the suspension, revocation or denial required in division (D)(1) of this section.

(E) As used in this section, **OBJECT THAT IS INDISTINGUISHABLE FROM A FIREARM** means an object made, constructed or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.

(ORC § 2923.122(C) - (G))

Statutory reference:

Conveyance or possession of deadly weapons or dangerous ordnance in a school safety zone, felony offense, see Ohio R.C. § 2923.122(A) and (B)

§ 137.12 POSSESSION OF DEADLY WEAPON WHILE UNDER DETENTION.

(A) **DETENTION** and **DETENTION FACILITY** have the same meanings as in Ohio R.C. § 2921.01.

(B) No person under detention at a detention facility shall possess a deadly weapon.

(C) Whoever violates this section is guilty of possession of a deadly weapon while under detention.

(1) Except as otherwise provided in division (C)(2) of this section, possession of a deadly weapon while under detention is a felony to be prosecuted under state law.

(2) If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if at the time the offender commits the act for which the offender was under detention it would not be a felony if committed by an adult, possession of a deadly weapon while under detention is a misdemeanor of the first degree.

(ORC § 2923.131)

Statutory reference:

Possession of deadly weapon while under detention, felony offenses, see Ohio R.C. § 2923.131

§ 137.13 CONCEALED HANDGUN LICENSES: POSSESSION OF A REVOKED OR SUSPENDED LICENSE; ADDITIONAL RESTRICTIONS; POSTING OF SIGNS PROHIBITING POSSESSION.

(A) *Possession of a revoked or suspended concealed handgun license.*

(1) No person, except in the performance of official duties, shall possess a license to carry a concealed handgun that was issued and that has been revoked or suspended pursuant to Ohio R.C. § 2923.128 or a temporary emergency license to carry a concealed handgun that was issued and that has been revoked pursuant to Ohio R.C. § 2923.1213.

(2) Whoever violates this division (A) is guilty of possessing a revoked or suspended concealed handgun license, a misdemeanor of the third degree.

(ORC § 2923.1211(B), (C))

(B) *Additional restrictions.* Pursuant to Ohio R.C. § 2923.126:

(1) (a) A license to carry a concealed handgun that is issued under Ohio R.C. § 2923.125 on or after March 14, 2007, shall expire five years after the date of issuance, and a license that is so issued prior to March 14, 2007, shall expire four years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of 30 days after the licensee's license expires during which the licensee's license remains valid. Except as provided in divisions (B)(2) and (B)(3) of this section, a licensee who has been issued a license under Ohio R.C. § 2923.125 or 2923.1213 may carry a concealed handgun anywhere in this state if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within 45 days after that change.

(b) If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee shall promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the motor vehicle is stopped, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of Ohio R.C. § 2923.16(E), after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. Additionally, if a licensee is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in Ohio R.C. § 5503.04 and if the licensee is transporting or has a loaded handgun in the commercial motor vehicle at that time, the licensee shall promptly inform the employee of the unit who approaches the vehicle while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently possesses or has a loaded handgun.

(c) If a licensee is stopped for a law enforcement purpose and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee shall promptly inform any law enforcement officer who approaches the licensee while stopped that the licensee has been issued a license or temporary emergency license to carry a concealed handgun and that the licensee currently is carrying a concealed handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the licensee is stopped or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of Ohio R.C. § 2923.12(B), after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves.

(2) A valid license issued under Ohio R.C. § 2923.125 or 2923.1213 does not authorize the licensee to carry a concealed handgun in any manner prohibited under Ohio R.C. § 2923.12(B) or in any manner prohibited under Ohio R.C. § 2923.16. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(a) A police station, sheriff's office, or state highway patrol station, premises controlled by the Bureau of Criminal Identification and Investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to Ohio R.C. § 5119.02(A) or Ohio R.C. § 5123.03(A)(1);

(b) A school safety zone, if the licensee's carrying the concealed handgun is in violation of Ohio R.C. § 2923.122;

(c) A courthouse or another building or structure in which a courtroom is located, in violation of Ohio R.C. § 2923.123;

(d) Any premises or open air arena for which a D permit has been issued under Ohio R.C. Chapter 4303, if the licensee's carrying the concealed handgun is in violation of Ohio R.C. § 2923.121;

(e) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(f) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(g) A child day-care center, a Type A family day-care home, a Type B family day-care home, or a Type C family day-care home, except that this division does not prohibit a licensee who resides in a Type A family day-care home, a Type B family day-care home, or a Type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(h) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(i) Any building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(2)(c) of this section; or

(j) A place in which federal law prohibits the carrying of handguns.

(3) (a) Nothing in this division (B) shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. Nothing in this division (B) shall require a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer.

(b) 1. A private employer shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer. As used in this division, **PRIVATE EMPLOYER** includes a private college, university, or other institution of higher education.

2. A political subdivision shall be immune from liability in a civil action, to the extent and in the manner provided in Ohio R.C. Chapter 2744, for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises or property owned, leased, or otherwise under the control of the political subdivision. As used in this division, **POLITICAL SUBDIVISION** has the same meaning as in Ohio R.C. § 2744.01.

(c) 1. Except as provided in division (B)(3)(c)2. of this section, the owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. Except as otherwise provided in this division, a person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of R.C. § 2911.21(A)(4) and is guilty of a misdemeanor of the fourth degree. If a person knowingly violates a posted prohibition of that nature and the posted land or premises primarily was a parking lot or other parking facility, the person is not guilty of criminal trespass in violation of R.C. § 2911.21(A)(4)

and instead is subject only to a civil cause of action for trespass based on the violation.

2. A landlord may not prohibit or restrict a tenant who is a licensee and who on or after September 9, 2008 enters into a rental agreement with the landlord for the use of residential premises, and the tenant's guest while the tenant is present, from lawfully carrying or possessing a handgun on those residential premises.

3. As used in division (B)(3)(c) of this section:

RESIDENTIAL PREMISES. Has the same meaning as in R.C. § 5321.01, except **RESIDENTIAL PREMISES** does not include a dwelling unit that is owned or operated by a college or university.

LANDLORD, TENANT, and RENTAL AGREEMENT. Have the same meanings as in R.C. § 5321.01.

(4) A person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state that is recognized by the Attorney General pursuant to a reciprocity agreement entered into pursuant to Ohio R.C. § 109.69 has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under Ohio R.C. § 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that section.

(5) A peace officer has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under Ohio R.C. § 2923.125. For purposes of reciprocity with other states, a peace officer shall be considered to be a licensee in this state.

(6) (a) A qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (B)(6)(b) of this section and a valid firearms requalification certification issued pursuant to division (B)(6)(c) of this section has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under Ohio R.C. § 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that section. For purposes of reciprocity with other states, a qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (B)(6)(b) of this section and a valid firearms requalification certification issued pursuant to division (B)(6)(c) of this section shall be considered to be a licensee in this state.

(b) 1. Each public agency of this state or of a political subdivision of this state that is served by one or more peace officers shall issue a retired peace officer identification card to any person who retired from service as a peace officer with that agency, if the issuance is in accordance with the agency's policies and procedures and if the person, with respect to the person's service with that agency, satisfies all of the following:

a. The person retired in good standing from service as a peace officer with the public agency, and the retirement was not for reasons of mental instability.

b. Before retiring from service as a peace officer with that agency, the person was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and the person had statutory powers of arrest.

c. At the time of the person's retirement as a peace officer with that agency, the person was trained and qualified to carry firearms in the performance of the peace officer's duties.

d. Before retiring from service as a peace officer with that agency, the person was regularly employed as a peace officer for an aggregate of 15 years or more, or, in the alternative, the person retired from service as a peace officer with that agency, after completing any applicable probationary period of that service, due to a service-connected disability, as determined by the agency.

2. A retired peace officer identification card issued to a person under division (B)(6)(b)1. of this section shall identify the person by name, contain a photograph of the person, identify the public agency of this state or of the political subdivision of this state from which the person retired as a peace officer and that is issuing the identification card, and specify that the person retired in good standing from service as a peace officer with the issuing public agency and satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.e. of this section. In addition to the required content specified in this division, a retired peace officer identification card issued to a person under division (B)(6)(b)1. of this section may include the firearms requalification certification described in division (B)(6)(c) of this section, and if the identification card includes that certification, the identification card shall serve as the firearms requalification certification for the retired peace officer. If the issuing public agency issues credentials to active law enforcement officers who serve the agency, the agency may comply with division (B)(6)(b)1. of this section by issuing the same credentials to persons who retired from service as a peace officer with the agency and who satisfy the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section, provided that the credentials so issued to retired peace officers are stamped with the word "RETIRED".

3. A public agency of this state or of a political subdivision of this state may charge persons who retired from service as a

peace officer with the agency a reasonable fee for issuing to the person a retired peace officer identification card pursuant to division (B)(6)(b)1. of this section.

(c) 1. If a person retired from service as a peace officer with a public agency of this state or of a political subdivision of this state and the person satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.e. of this section, the public agency may provide the retired peace officer with the opportunity to attend a firearms requalification program that is approved for purposes of firearms requalification required under Ohio R.C. § 109.801. The retired peace officer may be required to pay the cost of the course.

2. If a retired peace officer who satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section attends a firearms requalification program that is approved for purposes of firearms requalification required under Ohio R.C. § 109.801, the retired peace officer's successful completion of the firearms requalification program requalifies the retired peace officer for purposes of division (B)(6) of this section for five years from the date on which the program was successfully completed, and the requalification is valid during that five-year period. If a retired peace officer who satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.e. of this section satisfactorily completes such a firearms requalification program, the retired peace officer shall be issued a firearms requalification certification that identifies the retired peace officer by name, identifies the entity that taught the program, specifies that the retired peace officer successfully completed the program, specifies the date on which the course was successfully completed, and specifies that the requalification is valid for five years from that date of successful completion. The firearms requalification certification for a retired peace officer may be included in the retired peace officer identification card issued to the retired peace officer under division (B)(6)(b) of this section.

3. A retired peace officer who attends a firearms requalification program that is approved for purposes of firearms requalification required under Ohio R.C. § 109.801 may be required to pay the cost of the program.

(7) (d) As used in division (B) of this section:

GOVERNMENT FACILITY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE. Means any of the following:

1. A building or part of a building that is owned or leased by the government of this state or a political subdivision of this state and where employees of the government of this state or the political subdivision regularly are present for the purpose of performing their official duties as employees of the state or political subdivision;
2. The office of a deputy registrar serving pursuant to R.C. Chapter 4503 that is used to perform deputy registrar functions.

QUALIFIED RETIRED PEACE OFFICER means a person who satisfies all of the following:

1. The person satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section.
2. The person is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.
3. The person is not prohibited by federal law from receiving firearms.

RETIRED PEACE OFFICER IDENTIFICATION CARD means an identification card that is issued pursuant to division (B)(6)(b) of this section to a person who is a retired peace officer.

(ORC § 2923.126)

(C) *Posting of signs prohibiting possession.* Pursuant to Ohio R.C. § 2923.1212:

(1) The following persons, boards, and entities, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises."

(a) The Director of Public Safety or the person or board charged with the erection, maintenance, or repair of police stations, municipal jails, and the municipal courthouse and courtrooms in a conspicuous location at all police stations, municipal jails, and municipal courthouses and courtrooms;

(b) The Sheriff or Sheriff's designee who has charge of the Sheriff's office in a conspicuous location in that office;

(c) The Superintendent of the State Highway Patrol or the Superintendent's designee in a conspicuous location at all state highway patrol stations;

(d) Each sheriff, chief of police, or person in charge of every county, multi-county, municipal, municipal-county, or multi-county/municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or other local

or state correctional institution or detention facility within the state, or that person's designee, in a conspicuous location at that facility under that person's charge;

(e) The board of trustees of a regional airport authority, chief administrative officer of an airport facility, or other person in charge of an airport facility in a conspicuous location at each airport facility under that person's control;

(f) The officer or officer's designee who has charge of a courthouse or the building or structure in which a courtroom is located in a conspicuous location in that building or structure;

(g) The Superintendent of the Bureau of Criminal Identification and Investigation or the Superintendent's designee in a conspicuous location in all premises controlled by that Bureau;

(h) The owner, administrator, or operator of a child day-care center, a Type A family day-care home, a Type B family day-care home, or a Type C family day-care home; or

(i) The officer of this state or of the political subdivision of this state, or the officer's designee, who has charge of a building that is owned by this state or the political subdivision of this state, or who has charge of the portion of a building that is not owned by any governmental entity listed in this division but that is leased by a governmental entity listed in this division.

(2) The following boards, bodies, and persons, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to Ohio R.C. § 2923.122, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance into a school safety zone."

(a) A board of education of a city, local, exempted village, or joint vocational school district or that board's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the board;

(b) A governing body of a school for which the State Board of Education prescribes minimum standards under Ohio R.C. § 3301.07 or that body's designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the school; or

(c) The principal or chief administrative officer of a nonpublic school in a conspicuous location on property owned or controlled by that nonpublic school.

(ORC § 2923.1212)

§ 137.14 DEFACED FIREARMS.

(A) No person shall do either of the following:

(1) Change, alter, remove, or obliterate the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on a firearm.

(2) Possess a firearm knowing or having reasonable cause to believe that the name of the manufacturer, model, manufacturer's serial number, or other mark of identification on the firearm has been changed, altered, removed, or obliterated.

(B) (1) Whoever violates division (A)(1) of this section is guilty of defacing identification marks of a firearm. Except as otherwise provided in this division, defacing identification marks of a firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(1) of this section, defacing identification marks of a firearm is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (A)(2) of this section is guilty of possessing a defaced firearm. Except as otherwise provided in this division, possessing a defaced firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) of this section, possessing a defaced firearm is a felony to be prosecuted under appropriate state law.

(C) Division (A) of this section does not apply to any firearm on which no manufacturer's serial number was inscribed at the time of its manufacture.

(ORC § 2923.201)

Section

- 138.01 Definitions
- 138.02 Trafficking in controlled substances; gift of marihuana
- 138.03 Drug abuse
- 138.04 Possessing drug abuse instruments
- 138.05 Permitting drug abuse
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- 138.11 Laboratory report required
- 138.12 Counterfeit controlled substances
- 138.13 Use, possession, or sale of drug paraphernalia
- 138.14 Loitering in drug-free zone
- 138.15 Controlled substance or prescription labels
- 138.16 Possession, sale and disposal of hypodermics
- 138.17 Controlled substance schedules
- 138.18 Unlawful furnishing of prescription to enable persons to be issued handicapped parking placards or license plates
- 138.19 Pseudoephedrine sales

Statutory reference:

Controlled substances, regulation of pharmacists and other professionals, see Ohio R.C. Chapters 3719 and 4729

Conviction of professionally licensed persons to be reported to licensing board, see Ohio R.C. § 2925.38

Criminal and civil forfeiture of property for felony drug abuse offenses, see Ohio R.C. §§ 2925.41 et seq.

Destruction of chemicals used to produce methamphetamine; preservation of samples, see Ohio R.C. § 2925.52

Driver's license suspension after certain drug convictions, see Ohio R.C. § 4510.07

Tampering with drugs, felony offense, see Ohio R.C. § 2925.24

§ 138.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words, terms and phrases and their derivatives used in this chapter which are not defined in this section shall have the meanings given to them in the Ohio Revised Code.

ADMINISTER. The direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.

ADULTERATE. To cause a drug to be adulterated as described in Ohio R.C. § 3715.63.

BULK AMOUNT. Of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II or Schedule III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (2) or (5) of this definition, whichever of the following is applicable:

(a) An amount equal to or exceeding 10 grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative;

(b) An amount equal to or exceeding 10 grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding 30 grams or 10 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a Schedule I stimulant or depressant;

(d) An amount equal to or exceeding 20 grams or 5 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative;

(e) An amount equal to or exceeding 5 grams or 10 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 *et seq.*, as amended) and the federal drug abuse control laws, as defined in this section, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

(g) An amount equal to or exceeding 3 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 *et seq.*, as amended) and the federal drug abuse control laws;

(2) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

(3) An amount equal to or exceeding 20 grams or 5 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III opiate or opium derivative;

(4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance.

(5) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

CERTIFIED GRIEVANCE COMMITTEE. A duly constituted and organized committee of the Ohio State Bar Association or of one or more local bar associations of the state that complies with the criteria set forth in Rule V, Section 6 of the Rules for the Government of the Bar of Ohio.

COCAINE. Any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(2) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine; or

(3) A salt, compound, derivative, or preparation of a substance identified in division (1) or (2) of this definition that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

COMMITTED IN THE VICINITY OF A JUVENILE. An offense is **COMMITTED IN THE VICINITY OF A JUVENILE** if the offender commits the offense within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

COMMITTED IN THE VICINITY OF A SCHOOL. An offense is **COMMITTED IN THE VICINITY OF A SCHOOL** if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

CONTROLLED SUBSTANCE. A drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of Ohio R.C. § 3719.41.

COUNTERFEIT CONTROLLED SUBSTANCE. Any of the following:

- (1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to the trademark, trade name, or identifying mark.
- (2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it.
- (3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance.
- (4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

CRACK COCAINE. A compound, mixture, preparation, or substance that is or contains any amount of cocaine that is analytically identified as the base form of cocaine or that is in a form that resembles rocks or pebbles generally intended for individual use.

CULTIVATE. Includes planting, watering, fertilizing or tilling.

DANGEROUS DRUG. Any of the following:

- (1) Any drug to which either of the following applies:
 - (a) Under the Federal Food, Drug, and Cosmetic Act, is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without a prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or may be dispensed only upon a prescription.
 - (b) Under Ohio R.C. Chapter 3715 or 3719, may be dispensed only upon a prescription.
- (2) Any drug that contains a Schedule V controlled substance and that is exempt from Ohio R.C. Chapter 3719 or to which that chapter does not apply.
- (3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

DECEPTION. Has the same meaning as in R.C. § 2913.01.

DISCIPLINARY COUNSEL. The disciplinary counsel appointed by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court under the Rules for the Government of the Bar of Ohio.

DISPENSE. Means to sell, leave with, give away, dispose of, or deliver.

DISTRIBUTE. Means to deal in, ship, transport or deliver, but does not include administering or dispensing a drug.

DRUG. Any of the following:

- (1) Any article recognized in the official United States pharmacopeia, national formulary, or any supplement intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.
- (2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or other animals.

(4) Any article intended for use as a component of any article specified in division (1), (2), or (3) above; but does not include devices or their components, parts, or accessories.

DRUG ABUSE OFFENSE. Any of the following:

(1) A violation of Ohio R.C. § 2913.02(A) that constitutes theft of drugs, or any violation of Ohio R.C. § 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36, or 2925.37.

(2) A violation of an existing or former law of a municipality, state or any other state or of the United States, that is substantially equivalent to any section listed in division (1) of this definition.

(3) An offense under an existing or former law of a municipality, state or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element.

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit, any offense under division (1), (2), or (3) of this definition.

DRUG DEPENDENT PERSON. Any person who, by reason of the use of any drug of abuse, is physically and/or psychologically dependent upon the use of such drug to the detriment of the person's health or welfare.

DRUG OF ABUSE. Any controlled substance, any harmful intoxicant, and any dangerous drug, as defined in this section.

FEDERAL DRUG ABUSE CONTROL LAWS. The "Comprehensive Drug Abuse Prevention and Control Act of 1970," 21 U.S.C. §§ 801 *et seq.*, as amended.

FELONY DRUG ABUSE OFFENSE. Any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States.

HARMFUL INTOXICANT. Does not include beer or intoxicating liquor, but means any of the following:

(1) Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes but is not limited to any of the following:

(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

(b) Any aerosol propellant;

(c) Any fluorocarbon refrigerant; or

(d) Any anesthetic gas.

(2) Gamma Butyrolactone; or

(3) 1,4 Butanediol.

HASHISH. The resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

HYPODERMIC. A hypodermic syringe or needle, or other instrument or device for the injection of medication.

JUVENILE. A person under 18 years of age.

LABORATORY. A laboratory approved by the State Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.

LAWFUL PRESCRIPTION. A prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS or PRESCRIBER. An individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following:

- (1) A dentist licensed under Ohio R.C. Chapter 4715;
- (2) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under Ohio R.C. § 4723.48;
- (3) An optometrist licensed under Ohio R.C. Chapter 4725 to practice optometry under a therapeutic pharmaceutical agent's certificate;
- (4) A physician authorized under Ohio R.C. Chapter 4731 to practice medicine and surgery, osteopathic medicine and surgery, or podiatry;
- (5) A physician assistant who holds a certificate to prescribe issued under Ohio R.C. Chapter 4730; or
- (6) A veterinarian licensed under Ohio R.C. Chapter 4741.

L.S.D. Lysergic acid diethylamide.

MAJOR DRUG OFFENDER. Has the same meaning as in Ohio R.C. § 2929.01.

MANDATORY PRISON TERM. Has the same meaning as in Ohio R.C. § 2929.01.

MANUFACTURE. To plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

MANUFACTURER. A person who manufactures a controlled substance, as "manufacture" is defined by this section.

MARIHUANA. All parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. **MARIHUANA** does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination. **MARIHUANA** does not include **HASHISH**.

METHAMPHETAMINE. Methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine.

MINOR DRUG POSSESSION OFFENSE. Either of the following:

- (1) A violation of Ohio R.C. § 2925.11 as it existed prior to July 1, 1996, or a substantially equivalent municipal ordinance; or
- (2) A violation of Ohio R.C. § 2925.11 as it exists on and after July 1, 1996, or a substantially equivalent municipal ordinance, that is a misdemeanor or a felony of the fifth degree.

OFFICIAL WRITTEN ORDER. An order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by federal law.

PERSON. Means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

PHARMACIST. A person licensed under Ohio R.C. Chapter 4729 to engage in the practice of pharmacy.

PHARMACY. Except when used in a context that refers to the practice of pharmacy, means any area, room, rooms, place of business, department, or portion of any of the foregoing, where the practice of pharmacy is conducted.

POSSESS or POSSESSION. Having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

PRESCRIPTION. A written, electronic or oral order for drugs or combination or mixtures of drugs to be used by a particular

individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.

PRESUMPTION FOR A PRISON TERM or **PRESUMPTION THAT A PRISON TERM SHALL BE IMPOSED.** A presumption as described in Ohio R.C. § 2929.13(D) that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under Ohio R.C. § 2929.11.

PROFESSIONAL LICENSE. Any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in Ohio R.C. § 2925.01(W)(1) through (W)(36) and that qualifies a person as a professionally licensed person.

PROFESSIONALLY LICENSED PERSON. Any of the following:

- (1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under Ohio R.C. Chapter 3719;
- (2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under Ohio R.C. Chapter 4701 and who holds an Ohio permit issued under that chapter;
- (3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under Ohio R.C. Chapter 4703;
- (4) A person who is registered as a landscape architect under Ohio R.C. Chapter 4703 or who holds a permit as a landscape architect issued under that chapter;
- (5) A person licensed under Ohio R.C. Chapter 4707;
- (6) A person who has been issued a certificate of registration as a registered barber under Ohio R.C. Chapter 4709;
- (7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of Ohio R.C. Chapter 4710;
- (8) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, managing cosmetologist's license, managing hair designer's license, managing manicurist's license, managing esthetician's license, managing natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license, or tanning facility permit under Ohio R.C. Chapter 4713;
- (9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under Ohio R.C. Chapter 4715;
- (10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under Ohio R.C. Chapter 4717;
- (11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under Ohio R.C. Chapter 4723;
- (12) A person who has been licensed to practice optometry or to engage in optical dispensing under Ohio R.C. Chapter 4725;
- (13) A person licensed to act as a pawnbroker under Ohio R.C. Chapter 4727;
- (14) A person licensed to act as a precious metals dealer under Ohio R.C. Chapter 4728;
- (15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under Ohio R.C. Chapter 4729;
- (16) A person who is authorized to practice as a physician assistant under Ohio R.C. Chapter 4730;
- (17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under Ohio R.C. Chapter 4731;
- (18) A person licensed as a psychologist or school psychologist under Ohio R.C. Chapter 4732;
- (19) A person registered to practice the profession of engineering or surveying under Ohio R.C. Chapter 4733;

- (20) A person who has been issued a license to practice chiropractic under Ohio R.C. Chapter 4734;
- (21) A person licensed to act as a real estate broker or real estate salesperson under Ohio R.C. Chapter 4735;
- (22) A person registered as a registered sanitarian under Ohio R.C. Chapter 4736;
- (23) A person licensed to operate or maintain a junkyard under Ohio R.C. Chapter 4737;
- (24) A person who has been issued a motor vehicle salvage dealer's license under Ohio R.C. Chapter 4738;
- (25) A person who has been licensed to act as a steam engineer under Ohio R.C. Chapter 4739;
- (26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under Ohio R.C. Chapter 4741;
- (27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under Ohio R.C. Chapter 4747;
- (28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under Ohio R.C. Chapter 4749;
- (29) A person licensed and registered to practice as a nursing home administrator under Ohio R.C. Chapter 4751;
- (30) A person licensed to practice as a speech-language pathologist or audiologist under Ohio R.C. Chapter 4753;
- (31) A person issued a license as an occupational therapist or physical therapist under Ohio R.C. Chapter 4755;
- (32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under Ohio R.C. Chapter 4757;
- (33) A person issued a license to practice dietetics under Ohio R.C. Chapter 4759;
- (34) A person who has been issued a license or limited permit to practice respiratory therapy under Ohio R.C. Chapter 4761;
- (35) A person who has been issued a real estate appraiser certificate under Ohio R.C. Chapter 4763; or
- (36) A person who has been admitted to the bar by order of the Ohio Supreme Court in compliance with its prescribed and published rules.

PUBLIC PREMISES. Any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

SALE. Includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant or employee.

SAMPLE DRUG. A drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

SCHEDULE I, II, III, IV OR V. Controlled substance Schedules I, II, III, IV, and V established pursuant to Ohio R.C. § 3719.41, as amended pursuant to Ohio R.C. § 3719.43 or 3719.44.

SCHOOL. Any school operated by a board of education, any community school established under Ohio R.C. Chapter 3314, or any nonpublic school for which the State Board of Education prescribes minimum standards under Ohio R.C. § 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

SCHOOL BUILDING. Any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

SCHOOL PREMISES. Either of the following:

- (1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed.
- (2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a

community school established under Ohio R.C. Chapter 3314, or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under Ohio R.C. § 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

STANDARD PHARMACEUTICAL REFERENCE MANUAL. The current edition, with cumulative changes if any, of any of the following reference works.

- (1) The *National Formulary*.
- (2) The *United States Pharmacopeia*, prepared by the authority of the United States Pharmacopeia Convention, Inc.
- (3) Other standard references that are approved by the State Board of Pharmacy.

THEFT OFFENSE. Has the same meaning as in R.C. § 2913.01.

UNIT DOSE. An amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

WHOLESALE. A person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced or prepared personally and includes **WHOLESALE DISTRIBUTOR OF DANGEROUS DRUGS**, which means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of that person authorized by that person to engage in the sale of dangerous drugs at wholesale.

(ORC §§ 2925.01, 3719.01, 3719.011, 4729.01) (1995 Code, § 138.01)

§ 138.02 TRAFFICKING IN CONTROLLED SUBSTANCES; GIFT OF MARIHUANA.

(A) No person shall knowingly do any of the following:

- (1) Sell or offer to sell a controlled substance;
- (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

- (1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741.
- (2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration.
- (3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug and Cosmetic Act" (21 U.S.C. §§ 301 *et seq.*, as amended), and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

(C) Whoever violates division (A) of this section is guilty of the following:

- (1) Except as otherwise provided in divisions (C)(2) and (C)(3) of this section, trafficking in controlled substances is a felony to be prosecuted under appropriate state law.
- (2) Except as otherwise provided in division (C)(3) of this section, if the offense involves a gift of 20 grams or less of marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense.
- (3) If the offense involves a gift of 20 grams or less of marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(D) In addition to any prison term authorized or required by division (C) of this section and Ohio R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or Ohio R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section.

(2) If the offender is a professionally licensed person, the court immediately shall comply with Ohio R.C. § 2925.38.

(E) (1) Notwithstanding any contrary provision of Ohio R.C. § 3719.21 and except as provided in Ohio R.C. § 2925.03(H), the Clerk of the Court shall pay any mandatory fine imposed pursuant to this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to Ohio R.C. § 2929.18(A) or (B)(5) to the county, township, municipality, park district, as created pursuant to Ohio R.C. § 511.18 or 1545.04, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the Clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (E)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (E)(2) of this section.

(2) (a) Prior to receiving any fine moneys under division (E)(1) of this section or Ohio R.C. § 2925.42(B), a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general type of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under Ohio R.C. § 149.43. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (E)(1) of this section or Ohio R.C. § 2925.42(B) shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (E)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the Attorney General. Each report received by the Attorney General is a public record open for inspection under Ohio R.C. § 149.43.

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

LAW ENFORCEMENT AGENCIES. Includes, but is not limited to, the State Board of Pharmacy and the office of a prosecutor.

PROSECUTOR. Has the same meaning as in Ohio R.C. § 2935.01.

(F) As used in this section, **DRUG** includes any substance that is represented to be a drug.

(ORC § 2925.03) (1995 Code, § 138.02)

Statutory reference:

Felony drug trafficking offenses, see Ohio R.C. § 2925.03(C)

§ 138.03 DRUG ABUSE.

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741;

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

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug, and Cosmetic Act, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act; or

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) of this section is guilty of one of the following.

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in Schedule I or II of Ohio R.C. § 3719.41, with the exception of marihuana, or is cocaine, L.S.D., heroin, or a compound, mixture or preparation containing such drug, drug abuse is a felony to be prosecuted under appropriate state law.

(2) If the drug involved is a compound, mixture, preparation, or substance included in Schedule III, IV, or V of Ohio R.C. § 3719.41, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, it is a felony to be prosecuted under appropriate state law.

(b) If the amount of the drug involved equals or exceeds the bulk amount, possession of drugs is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds 200 grams, possession of marihuana is a felony to be prosecuted under appropriate state law.

(4) If the drug involved in the violation is hashish or a compound, mixture, preparation or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved equals or exceeds ten grams of hashish in a solid form or equals or exceeds two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony to be prosecuted under appropriate state law.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and Ohio R.C. §§ 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25, or any substantially equivalent municipal ordinance, and in addition to any other sanction that is imposed for the offense under this section, Ohio R.C. §§ 2929.11 through 2929.18, or Ohio R.C. §§ 2929.21 through 2929.28, or any substantially equivalent municipal ordinance, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do the following if applicable regarding the offender:

(1) Notwithstanding any contrary provision of Ohio R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to Ohio R.C. § 2929.18(A) in accordance with and subject to the requirements of Ohio R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in Ohio R.C. § 2925.03(F).

(2) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit.

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with Ohio R.C. § 2925.38.

(ORC § 2925.11) (1995 Code, § 138.03)

Statutory reference:

Felony drug possession offenses, see Ohio R.C. § 2925.11(C)

§ 138.04 POSSESSING DRUG ABUSE INSTRUMENTS.

(A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(B) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Ohio R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731, and 4741.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, violation of this section is a misdemeanor of the first degree.

(D) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with Ohio R.C. § 2925.38.

(ORC § 2925.12) (1995 Code, § 138.04)

§ 138.05 PERMITTING DRUG ABUSE.

(A) No person who is the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other vehicle, as defined in Ohio R.C. § 4501.01, shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(B) No person, who is the owner, lessee, or occupant, or who has custody, control, or supervision of premises, or real estate, including vacant land, shall knowingly permit his or her premises, or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(C) Whoever violates this section is guilty of permitting drug abuse.

(1) Except as provided in division (C)(2) of this section, permitting drug abuse is a misdemeanor of the first degree.

(2) Permitting drug abuse is a felony to be prosecuted under appropriate state law if the felony drug abuse offense in question is a violation of Ohio R.C. § 2925.02 or 2925.03.

(D) In addition to any prison term authorized or required by division (C) of this section and Ohio R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or Ohio R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with Ohio R.C. § 2925.38.

(E) Notwithstanding any contrary provision of Ohio R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to Ohio R.C. § 2929.18(A) in accordance with and subject to the requirements of Ohio R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in Ohio R.C. § 2925.03(F).

(F) Any premises or real estate that is permitted to be used in violation of division (B) of this section constitutes a nuisance subject to abatement pursuant to Ohio R.C. Chapter 3767.

(ORC § 2925.13) (1995 Code, § 138.05)

§ 138.06 ILLEGAL CULTIVATION OF MARIHUANA.

(A) No person shall knowingly cultivate marihuana.

(B) This section does not apply to any person listed in Ohio R.C. § 2925.03(B)(1), (B)(2) or (B)(3), or a substantially equivalent municipal ordinance, to the extent and under the circumstances described in that division.

(C) Whoever commits a violation of division (A) of this section is guilty of illegal cultivation of marihuana.

(1) Except as otherwise provided in the following divisions, illegal cultivation of marihuana is a minor misdemeanor or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.

(2) If the amount of marihuana involved equals or exceeds 100 grams but is less than 200 grams, illegal cultivation of marihuana is a misdemeanor of the fourth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree.

(3) If the amount of marihuana involved equals or exceeds 200 grams, illegal cultivation of marihuana is a felony to be prosecuted under appropriate state law.

(D) In addition to any prison term authorized or required by division (C) of this section and Ohio R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or Ohio R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with Ohio R.C. § 2925.03(G). If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.

(2) If the offender is a professionally licensed person, the court immediately shall comply with Ohio R.C. § 2925.38.

(E) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(ORC § 2925.04)

Statutory reference:

Illegal manufacturing of controlled substances, felony, see Ohio R.C. § 2925.04

Sale or use of drugs not approved by Food and Drug Administration, felony, see Ohio R.C. § 2925.09

§ 138.07 ABUSING HARMFUL INTOXICANTS.

(A) Except for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant.

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the first degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a felony to be prosecuted under appropriate state law.

(C) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with Ohio R.C. § 2925.38.

(ORC § 2925.31) (1995 Code, § 138.07)

§ 138.08 ILLEGAL DISPENSING OF DRUG SAMPLES.

(A) No person shall knowingly furnish a sample drug to another person.

(B) Division (A) of this section does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4723, 4725, 4729, 4730, 4731, and 4741.

(C) (1) Whoever violates this section is guilty of illegal dispensing of drug samples.

(2) If the drug involved in the offense is a compound, mixture, preparation, or substance included in Schedule I or II of Ohio R.C. § 3719.41 with the exception of marihuana, illegal dispensing of drug samples is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV or V of Ohio R.C. § 3719.41, or is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, illegal dispensing of drug samples is a misdemeanor of the second degree.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree.

(D) In addition to any prison term authorized or required by division (C) of this section and Ohio R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or Ohio R.C. §§ 2929.11 through 2929.18, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:

(1) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license.

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with Ohio R.C. § 2925.38.

(E) Notwithstanding any contrary provision of Ohio R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to Ohio R.C. § 2929.18(A) in accordance with and subject to the requirements of Ohio R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in Ohio R.C. § 2925.03(F).

(ORC § 2925.36) (1995 Code, § 138.08)

Statutory reference:

Felony offenses, see Ohio R.C. § 2925.36(C)(2)

§ 138.09 FEDERAL PROSECUTION BAR TO MUNICIPAL PROSECUTION.

No person shall be prosecuted for a violation of this chapter if the person has been acquitted or convicted under the federal drug abuse control laws of the same act or omission which, it is alleged, constitutes a violation of this chapter.

(ORC §§ 2925.50, 3719.19) (1995 Code, § 138.09)

§ 138.10 NITROUS OXIDE: IMPROPER DISPENSING OR DISTRIBUTION; POSSESSION IN A MOTOR VEHICLE.

(A) *Improper dispensing or distribution.*

(1) No person who dispenses or distributes nitrous oxide in cartridges shall fail to comply with either of the following:

- (a) The record-keeping requirements established under division (A)(3) of this section; or
- (b) The labeling and transaction identification requirements established under division (A)(4) of this section.

(2) Whoever violates division (A)(1)(a) or (A)(1)(b) of this section is guilty of improperly dispensing or distributing nitrous oxide, a misdemeanor of the fourth degree.

(3) Beginning July 1, 2001, a person who dispenses or distributes nitrous oxide shall record each transaction involving the dispensing or distribution of the nitrous oxide on a separate card. The person shall require the purchaser to sign the card and provide a complete residence address. The person dispensing or distributing the nitrous oxide shall sign and date the card. The person shall retain the card recording a transaction for one year from the date of the transaction. The person shall maintain the cards at the person's business address and make them available during normal business hours for inspection and copying by officers or employees of the State Board of Pharmacy or of other law enforcement agencies that are authorized to investigate violations of this code, Ohio R.C. Chapters 2925, 3719, or 4729, or federal drug abuse control laws. The cards used to record each transaction shall inform the purchaser of the following:

- (a) That nitrous oxide cartridges are to be used only for purposes of preparing food;
- (b) That inhalation of nitrous oxide can have dangerous health effects; and

(c) That it is a violation of state law to distribute or dispense cartridges of nitrous oxide to any person under age 21, punishable as a felony of the fifth degree.

(4) (a) Each cartridge of nitrous oxide dispensed or distributed in this municipality shall bear the following printed warning: "Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under age 21. Do not inhale contents. Misuse can be dangerous to your health."

(b) Each time a person dispenses or distributes one or more cartridges of nitrous oxide, the person shall mark the packaging containing the cartridges with a label or other device that identifies the person who dispensed or distributed the nitrous oxide and the person's business address.

(ORC § 2925.32(B)(4), (D)(2), (F), (G))

(B) *Possession in a motor vehicle.*

(1) As used in this section, **MOTOR VEHICLE**, **STREET**, and **HIGHWAY** have the same meaning as in Ohio R.C. § 4511.01.

(2) Unless authorized by this code or by state law, no person shall possess an open cartridge of nitrous oxide in either of the following circumstances:

(a) While operating or being a passenger in or on a motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking; or

(b) While being in or on a stationary motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

(3) Whoever violates this division (B) is guilty of possessing nitrous oxide in a motor vehicle, a misdemeanor of the fourth degree.

(ORC § 2925.33)

Statutory reference:

Trafficking in harmful intoxicants, see Ohio R.C. § 2925.32

§ 138.11 LABORATORY REPORT REQUIRED.

(A) (1) In any criminal prosecution for a violation of this chapter or Ohio R.C. Chapters 2925 or 3719, a laboratory report from the Bureau of Criminal Identification and Investigation or a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by

the Association of American Universities or the North Central Association of Colleges and Secondary Schools, primarily for the purpose of providing scientific service to law enforcement agencies, and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima facie evidence of the content, identity, and weight or the existence and number of unit dosages of the substance. In any criminal prosecution for a violation of Ohio R.C. § 2925.041 or a violation of this chapter, Ohio R.C. Chapter 2925 or Ohio R.C. Chapter 3719 that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V, a laboratory report from the Bureau or from any laboratory that is operated or established as described in this division that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is prima facie evidence of the content, identity, and weight of the substances.

(2) Attached to that report shall be a copy of a notarized statement by the signer of the report giving the name of the signer and stating that the signer is an employee of the laboratory issuing the report and that performing the analysis is a part of the signer's regular duties, and giving an outline of the signer's education, training, and experience for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or grand jury proceeding where the report may be used without having been previously served upon the accused.

(C) The report shall not be prima facie evidence of the contents, identity, and weight or the existence and number of unit dosages of the substance if the accused or the accused's attorney demands the testimony of the person signing the report, by serving the demand upon the prosecuting attorney, within seven days from the accused or the accused's attorney's receipt of the report. The time may be extended by a trial judge in the interests of justice.

(D) Any report issued for use under this section shall contain notice of the right of the accused to demand, and the manner in which the accused shall demand, the testimony of the person signing the report.

(E) Any person who is accused of a violation of this chapter or Ohio R.C. Chapters 2925 or 3719 is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is, or of each of the substances that are, the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or, if the accused is indigent, by a qualified laboratory analyst appointed by the court. Such portion shall be a representative sample of the entire substance that is, or of each of the substances that are, the basis of the alleged violation and shall be of sufficient size, in the opinion of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance or substances. The prosecuting attorney shall provide the accused's analyst with the sample portion at least 14 days prior to trial, unless the trial is to be held in a court not of record or unless the accused person is charged with a minor misdemeanor, in which case the prosecuting attorney shall provide the accused's analyst with the sample portion at least three days prior to trial. If the prosecuting attorney determines that such a sample portion cannot be preserved and given to the accused's analyst, the prosecuting attorney shall so inform the accused person, or the accused's attorney. In such a circumstance, the accused person is entitled, upon written request made to the prosecuting attorney, to have the accused's privately employed or court appointed analyst present at an analysis of the substance that is, or the substances that are, the basis of the alleged violation, and, upon further written request, to receive copies of all recorded scientific data that result from the analysis and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the identity of the substance or substances subject to the analysis.

(F) In addition to the rights provided under division (E) of this section, any person who is accused of a violation of this chapter or Ohio R.C. Chapters 2925 or 3719 that involves a bulk amount of a controlled substance, or any multiple thereof, or who is accused of a violation of Ohio R.C. § 2925.11 or a substantially equivalent municipal ordinance, other than a minor misdemeanor violation, that involves marijuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court, present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the weight, volume, or number of unit doses of the substance subject to the measurement or weighing.

(ORC § 2925.51) (1995 Code, § 138.11)

(G) In addition to the financial sanctions authorized or required under Ohio R.C. §§ 2929.18 and 2929.28 and to any costs otherwise authorized or required under any provision of law, the court imposing sentence upon an offender who is convicted of or

pleads guilty to a drug abuse offense may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in having tests performed under this section or Ohio R.C. § 2925.51 or in any other manner on any substance that was the basis of, or involved in, the offense to determine whether the substance contained any amount of a controlled substance if the results of the tests indicate that the substance tested contained any controlled substance. No court shall order an offender under this section to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance. The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the sentencing hearing for the offender.

(ORC § 2925.511)

§ 138.12 COUNTERFEIT CONTROLLED SUBSTANCES.

(A) No person shall knowingly possess any counterfeit controlled substance.

(B) Whoever violates division (A) of this section shall be guilty of possession of counterfeit controlled substances, a misdemeanor of the first degree.

(C) (1) Notwithstanding any contrary provision of Ohio R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to Ohio R.C. § 2929.18(A) in accordance with and subject to the requirements of Ohio R.C. § 2925.03(F).

(2) The agency that receives the fine shall use the fine as specified in Ohio R.C. § 2925.03(F).

(ORC § 2925.37(A), (G), (M)) (1995 Code, § 138.12)

Statutory reference:

Trafficking and other felony counterfeit controlled substance offenses, see Ohio R.C. § 2925.37(H) through (K)

§ 138.13 USE, POSSESSION, OR SALE OF DRUG PARAPHERNALIA.

(A) As used in this section, **DRUG PARAPHERNALIA** means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. **DRUG PARAPHERNALIA** includes, but is not limited to, any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine;

(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(5) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance;

(6) A scale or balance for weighing or measuring a controlled substance;

(7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance;

(8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marijuana;

(9) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;

(10) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;

(11) A container or device for storing or concealing a controlled substance;

(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body; or

(13) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner or by anyone in control of the equipment, product, or material, concerning its use;

(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter or Ohio R.C. Chapter 2925;

(3) The proximity of the equipment, product, or material to any controlled substance;

(4) The existence of any residue of a controlled substance on the equipment, product, or material;

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product, or material, to deliver it to any person whom he or she knows intends to use the equipment, product, or material to facilitate a violation of any provision of this chapter or Ohio R.C. Chapter 2925. A finding that the owner or anyone in control of the equipment, product, or material is not guilty of a violation of any other provision of this chapter or Ohio R.C. Chapter 2925 does not prevent a finding that the equipment, product, or material was intended or designed by the offender for use as drug paraphernalia;

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use;

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use;

(8) National or local advertising concerning the use of the equipment, product, or material;

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community; and

(12) Expert testimony concerning the use of the equipment, product, or material.

(C) (1) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if he or she knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if he or she knows that the purpose of the advertisement is to promote the illegal sale in this municipality or in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4723, 4729, 4731, and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by Ohio R.C. § 3719.172.

(E) Notwithstanding Ohio R.C. Chapter 2981, any drug paraphernalia that was used, possessed, sold, or manufactured in violation of this section shall be seized, after a conviction for that violation, shall be forfeited, and upon forfeiture shall be disposed of pursuant to Ohio R.C. § 2981.12(B).

(F) (1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug

paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with Ohio R.C. § 2925.38.

(ORC § 2925.14) (1995 Code, § 138.13)

§ 138.14 LOITERING IN DRUG-FREE ZONE.

The Safety-Service Director (i.e., the Police Chief) is empowered to certify zones within the village as drug free zones, based upon the criteria set forth herein.

(A) It is unlawful for any person to loiter about or remain at any public way, public place or place open or legally accessible to the public within a certified drug free zone, as herein provided for the purpose of engaging in drug-related activity that is prohibited by any of the provisions of Ohio R.C. §§ 2925.01 *et seq.*, as amended, relating to the manufacture, distribution, sale, possession, or administration of substances covered therein.

(B) In making a determination that a person is loitering about or remaining at any public way, public place or place open or legally accessible to the public within a certified drug free zone, as herein provided, for the purpose of engaging in prohibited drug-related activity, the totality of the circumstances involved shall be considered. Among the circumstances which may be considered in determining whether such purpose is manifested are:

(1) The conduct of the person being observed, including, by way of example only, that such person is be having in a manner raising a reasonable belief that the person is engaging or is about to engage in illegal drug activity such as the observable distribution of small packages to other persons, the receipt of currency for the exchange of a small package, operating as a "lookout," warning others of the arrival of police, fleeing without other apparent reason upon the appearance of a police officer, concealing himself or herself or any object which reasonably may be connected to unlawful drug-related activity, or engaging in any other conduct normally associated by law enforcement agencies with the illegal distribution or possession of drugs;

(2) Information from a reliable source indicating that the person being observed routinely distributes illegal drugs within the drug free zone;

(3) Information from a reliable source indicating that the person being observed is currently engaging in illegal drug-related activity within the drug free zone;

(4) Such person is physically identified by the officer as a member of a "gang" or association which engages in illegal drug activity;

(5) Such person is known unlawful drug user, possessor, or seller. A **KNOWN UNLAWFUL DRUG USER, POSSESSOR, or SELLER** is a person who has, within the knowledge of the arresting officer, been convicted in any court of any violation of a referenced provision of the referenced state code involving the regulation, use, possession, purchase, or sale of any of the substances referred to therein, or convicted of violating a substantially similar provision of federal law or such law or any other jurisdiction; or a person who displays physical characteristics of drug intoxication or usage, such as dilated pupils, glassy eyes or "needle tracks" or a person who possesses drug paraphernalia as defined in Ohio R.C. §§ 2925.01 *et seq.*;

(6) Such person has no other apparent lawful reason for loitering or remaining in the drug free zone (e.g., such as waiting for a bus or being near one's own residence); and

(7) Any vehicle involved in the observed circumstances is registered to a known unlawful drug user, possessor, or seller, or a person for whom there is an outstanding arrest warrant for a crime involving drug-related activity.

(C) A police officer shall first request a person suspected of loitering under this section within a drug free zone to leave the premises. Failure to obey the police officer shall subject the person to arrest.

(D) Certified drug free zones shall be created and enforced as follows.

(1) Those sections of the village certified as such by the Safety-Service Director (i.e., the Police Chief), including but not limited to identifiable segments of streets, alleys, walkways, parks, recreation centers, schools, bus stations, train depots, taxi stands, commercial parking lots, places of public accommodation and convenience, public housing complexes and public access areas in residential apartment structures. The Police Chief may establish, alter, recertify, or terminate such certification from time to time, but any such certification will expire three months from the date of its issuance. A certified drug free zone is a geographical area of certification unless recertified for an additional three months prior to expiring. The Safety-Service Director shall cause to be disseminated to all police enforcement personnel a current list of certified drug free zones.

(2) To determine whether to certify an area as a "drug free zone," the Safety-Service Director shall consider the following:

(a) Reporting crime accepted and relied upon by law enforcement agencies which indicate a disproportionately high occurrence of illegal drug possession or distribution activity in the proposed drug free zone;

(b) One homicide or more than one instance of violent crime verified to have been related to the possession or distribution of illegal drugs committed within the previous six-month period within the proposed drug free zone;

(c) Arrests or other statistical criteria that indicate illegal drug activity is occurring in an area listed in division (1) above or any other identifiable area legally accessible to the public; law enforcement agencies that indicate to the Safety-Service Director that the health or safety of residents that live in or near the proposed drug free zone are endangered by the possession or distribution of illegal drugs.

(d) Any other verifiable information accepted prior to such certification to the Mayor, and the President and members of the Village Council of the specific area to be certified including the boundaries of the area and the date when the certification will begin.

(3) Prior to certifying or recertifying a drug free zone, the Safety-Service Director shall:

(a) Cause to be published at least one week prior of the certified drug free zone, the date certification will begin and end, and a phone number to call for additional information.

(b) Provide written notice, not less than one week prior to certification, which informs the community in and surrounding the area to be certified of such certification including by way of example: use of mass media, publication in community newsletters or newspapers in general circulation in the village, meetings with community groups and citizens, notification at community relations councils or any other means deemed appropriate.

(c) Post at least three days prior to certification a notice in the area to be certified establishing the boundaries thereof.

(E) *Penalty.* Any person who violates the provisions of this section is guilty of a misdemeanor of the fourth degree, and upon conviction shall be subject to imprisonment for not more than 30 days or a fine of \$250.

(1995 Code, § 138.14) (Ord. 90-O-56, passed 11-14-1990)

§ 138.15 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.

(A) Whenever a manufacturer sells a controlled substance, and whenever a wholesaler sells a controlled substance in a package the wholesaler has prepared, the manufacturer or wholesaler shall securely affix to each package in which the controlled substance is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of controlled substance contained therein. No person, except a pharmacist for the purpose of dispensing a controlled substance upon a prescription, shall alter, deface or remove any label so affixed.

(B) No person shall alter, deface or remove any label affixed pursuant to Ohio R.C. § 3719.08 as long as any of the original contents remain.

(ORC § 3719.08(A), (E))

(C) Whoever violates this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, or Ohio R.C. § 3719.07 or 3719.08, or a drug abuse offense, a violation of this section is a felony to be prosecuted under appropriate state law. If the violation involves the sale, offer to sell, or possession of a Schedule I or II controlled substance, with the exception of marijuana, and if the offender, as a result of the violation, is a major drug offender, then Ohio R.C. § 3719.99(D) applies.

(ORC § 3719.99(C))

§ 138.16 POSSESSION, SALE AND DISPOSAL OF HYPODERMICS.

(A) Possession of a hypodermic is authorized for the following:

- (1) A manufacturer or distributor of, or dealer in hypodermics, or medication packaged in hypodermics, and any authorized agent of employee of that manufacturer, distributor or dealer, in the regular course of business;
- (2) A terminal distributor of dangerous drugs, in the regular course of business;
- (3) A person authorized to administer injections, in the regular course of the person's profession or employment;
- (4) A person, when the hypodermic in his or her possession was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed for the treatment of disease by a licensed health professional authorized to prescribe drugs;
- (5) A person whose use of a hypodermic is for legal research, clinical, educational or medicinal purposes;
- (6) A farmer, for the lawful administration of a drug to an animal; and
- (7) A person whose use of a hypodermic is for lawful professional, mechanical, trade or craft purposes.

(B) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no terminal distributor of dangerous drugs, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to division (A) of this section shall negligently fail to take reasonable precautions to prevent any hypodermic in the person's possession from theft or acquisition by any unauthorized person.

(ORC § 3719.172(A), (B))

(C) Whoever violates division (B) of this section is guilty of a misdemeanor of the third degree. If the offender previously has been convicted of a violation of division (B) of this section, Ohio R.C. § 3719.05, 3719.06, 3719.13, 3719.172(B), or 3719.31, or a drug abuse offense, a violation of division (B) of this section is a misdemeanor of the first degree.

(ORC § 3719.99(E))

Statutory reference:

Felony offenses, see Ohio R.C. § 3719.172(C) and (D)

§ 138.17 CONTROLLED SUBSTANCE SCHEDULES.

Controlled Substance Schedules I, II, III, IV, and V, as established in Ohio R.C. § 3719.41 and amended by Ohio R.C. §§ 3719.43 and 3719.44, are hereby adopted by reference, and shall be treated as if set forth in full herein.

Statutory reference:

For comprehensive lists of drugs identified under each of the following Schedules, see Ohio R.C. § 3719.41, as amended by Ohio R.C. §§ 3719.43 and 3719.44:

Schedule I

- (A) Narcotics - opiates*
- (B) Narcotics - opium derivatives*
- (C) Hallucinogens*
- (D) Depressants*
- (E) Stimulants*

Schedule II

- (A) Narcotics - opium and opium derivatives*
- (B) Narcotics - opiates*
- (C) Stimulants*
- (D) Depressants*
- (E) Hallucinogenic substances*
- (F) Immediate precursors*

Schedule III

- (A) Stimulants*
- (B) Depressants*
- (C) Narcotic antidotes*
- (D) Narcotics - narcotic preparations*
- (E) Anabolic steroids*
- (F) Hallucinogenic substances*

Schedule IV

- (A) Narcotic drugs*
- (B) Depressants*
- (C) Fenfluramine*
- (D) Stimulants*
- (E) Other substances*

Schedule V

- (A) Narcotic drugs*
- (B) Narcotics - narcotic preparations*
- (C) Stimulants*

(A) No physician or chiropractor shall do either of the following:

(1) Furnish a person with a prescription in order to enable the person to be issued a removable windshield placard, temporary removable windshield placard, or license plates under Ohio R.C. § 4503.44, knowing that the person does not meet any of the criteria contained in Ohio R.C. § 4503.44(A)(1); or

(2) Furnish a person with a prescription described in division (A)(1) of this section and knowingly misstate on the prescription the length of time the physician or chiropractor expects the person to have the disability that limits or impairs the person's ability to walk in order to enable the person to retain a placard issued under Ohio R.C. § 4503.44 for a period of time longer than that which would be estimated by a similar practitioner under the same or similar circumstances.

(ORC §§ 4731.481, 4734.161)

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

(ORC §§ 4731.99(F), 4734.99(B))

Cross-reference:

Parking privileges for persons with disabilities, see § 76.05

§ 138.19 PSEUDOEPHEDRINE SALES.

(A) *Unlawful purchases.*

(1) As used in this section:

CONSUMER PRODUCT. Means any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

PSEUDOEPHEDRINE. Means any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.

PSEUDOEPHEDRINE PRODUCT. Means a consumer product consisting of a single-ingredient preparation of pseudoephedrine in which pseudoephedrine is the active ingredient. **PSEUDOEPHEDRINE PRODUCT** does not include either of the following:

1. A consumer product containing pseudoephedrine that is in a liquid, liquid capsule, or gel capsule form; or

2. A consumer product primarily intended for administration to children under 12 years of age, according to the label instructions, in solid dosage form, including chewable tablets, when individual dosage units do not exceed 15 milligrams of pseudoephedrine.

RETAILER. Means a place of business that offers consumer products for sale to the general public.

SINGLE-INGREDIENT PREPARATION. Means a compound, mixture, preparation, or substance that contains a single active ingredient.

TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS. Has the same meaning as in Ohio R.C. § 4729.01.

(2) (a) No individual shall knowingly purchase, receive, or otherwise acquire more than nine grams of any pseudoephedrine product within a period of 30 consecutive days, unless the pseudoephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Ohio R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741.

(b) It is not a violation of division (A)(2)(a) of this section for an individual to receive or accept more than nine grams of any pseudoephedrine product within a period of 30 consecutive days if the individual is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(3) (a) No individual under 18 years of age shall knowingly purchase, receive, or otherwise acquire a pseudoephedrine product,

unless the pseudoephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Ohio R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741.

(b) Division (A)(3)(a) of this section does not apply to an individual under 18 years of age who purchases, receives, or otherwise acquires a pseudoephedrine product from any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides the pseudoephedrine product to that individual and whose conduct is in accordance with Ohio R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741;

2. A parent or guardian of that individual who provides the pseudoephedrine product to the individual;

3. A person, as authorized by that individual's parent or guardian, who dispenses, sells, or otherwise provides the pseudoephedrine product to the individual; or

4. A retailer or terminal distributor of dangerous drugs who provides the pseudoephedrine product to that individual if the individual is an employee of the retailer or terminal distributor of dangerous drugs and the individual receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(4) No individual under 18 years of age shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise acquiring a pseudoephedrine product.

(5) No individual shall knowingly fail to comply with the requirements of division (E)(3)(c) of this section.

(6) Whoever violates division (A)(2)(a) of this section is guilty of unlawful purchase of a pseudoephedrine product, a misdemeanor of the first degree.

(7) Whoever violates division (A)(3)(a) of this section is guilty of underage purchase of a pseudoephedrine product, a delinquent act that would be a misdemeanor of the fourth degree if it could be committed by an adult.

(8) Whoever violates division (A)(4) of this section is guilty of using false information to purchase a pseudoephedrine product, a delinquent act that would be a misdemeanor of the first degree if it could be committed by an adult.

(9) Whoever violates division (A)(5) of this section is guilty of improper purchase of a pseudoephedrine product, a misdemeanor of the fourth degree.

(ORC § 2925.55)

(B) *Unlawful retail sales.*

(1) (a) Except as provided in division (B)(1)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, offer to sell, hold for sale, deliver, or otherwise provide to any individual within a period of 30 consecutive days an amount of pseudoephedrine product that is greater than nine grams.

(b) Division (B)(1)(a) of this section does not apply to any quantity of pseudoephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs if the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Ohio R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741.

(c) It is not a violation of division (B)(1)(a) of this section for a retailer, terminal distributor of dangerous drugs, or employee of either to provide to an individual more than nine grams of any pseudoephedrine product within a period of 30 consecutive days if the individual is an employee of the retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer, terminal distributor of dangerous drugs, or employee the pseudoephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(2) (a) Except as provided in division (B)(2)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall sell, offer to sell, hold for sale, deliver, or otherwise provide a pseudoephedrine product to an individual who is under 18 years of age.

(b) Division (B)(2)(a) of this section does not apply to any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides a

pseudoephedrine product to an individual under 18 years of age and whose conduct is in accordance with Ohio R.C. Chapter 3719, 4715, 4723, 4729, 4731, or 4741;

2. A parent or guardian of an individual under 18 years of age who provides a pseudoephedrine product to the individual;

3. A person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under 18 years of age;

4. The provision by a retailer, terminal distributor of dangerous drugs, or employee of either of a pseudoephedrine product in a sealed container to an employee of the retailer or terminal distributor of dangerous drugs who is under 18 years of age in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(3) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of division (E)(3)(b) of this section.

(4) Whoever violates division (B)(1)(a) of this section is guilty of unlawfully selling a pseudoephedrine product, a misdemeanor of the first degree.

(5) Whoever violates division (B)(2)(a) of this section is guilty of unlawfully selling a pseudoephedrine product to a minor, a misdemeanor of the fourth degree.

(6) Whoever violates division (B)(3) of this section is guilty of improper sale of a pseudoephedrine product, a misdemeanor of the second degree.

(ORC § 2925.56)

(C) *Transaction scans.*

(1) As used in this division and division (D) of this section:

CARD HOLDER. Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive any pseudoephedrine product from the seller, agent, or employee.

IDENTIFICATION CARD and **TRANSACTION SCAN DEVICE.** Have the same meanings as in Ohio R.C. § 2927.021.

SELLER. Means a retailer or terminal distributor of dangerous drugs.

TRANSACTION SCAN. Means the process by which a seller or an agent or employee of a seller checks by means of a transaction scan device the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving any pseudoephedrine product.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder a pseudoephedrine product.

(b) If the information deciphered by the transaction scan performed under division (C)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any pseudoephedrine product to the card holder.

(c) Division (C)(2)(a) of this section does not preclude a seller or an agent or employee of a seller as a condition for selling, giving away, or otherwise distributing a pseudoephedrine product to the person presenting the document from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card if the document includes a bar code or magnetic strip that may be scanned by the device.

(3) Rules adopted by the Registrar of Motor Vehicles under Ohio R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (C) and division (D) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (C)(4)(a) of this section except for purposes of division (D) of this section.

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by division (D) of this section or any other section of the Ohio Revised Code.

(5) Nothing in this division (C) or division (D) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of pseudoephedrine products.

(6) Whoever violates division (C)(2)(b) or (C)(4) of this section is guilty of engaging in an illegal pseudoephedrine product transaction scan, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the county treasury.

(ORC § 2925.57)

(D) *Affirmative defenses.*

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (B) of this section in which the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive a pseudoephedrine product presented a driver's or commercial driver's license or an identification card;

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid; and

(c) The pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (D)(1) of this section, the trier of fact in the action for the alleged violation of division (B) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (B) of this section. For purposes of division (D)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is 18 years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (D)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under 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 action.

(ORC § 2925.58)

(E) *Retailer's duties.*

(1) As used in this division and division (F) of this section:

DRUG, LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS, PHARMACY, PRESCRIBER, PRESCRIPTION, and TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS. Have the same meanings as in Ohio R.C. § 4729.01.

PHARMACIST. Means a person licensed under Ohio R.C. Chapter 4729 to engage in the practice of pharmacy.

PROOF OF AGE. Means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under Ohio R.C. §§ 4507.50 through 4507.52 that shows a person is 18 years of age or older.

WHOLESALE. Has the same meaning as in Ohio R.C. § 3719.01.

(2) A retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides a pseudoephedrine product to the public shall do all of the following:

(a) Segregate pseudoephedrine products from other merchandise so that no member of the public may procure or purchase such products without the direct assistance of a pharmacist or other authorized employee of the retailer or terminal distributor of dangerous drugs;

(b) With regard to each time a pseudoephedrine product is sold or otherwise provided:

1. Determine, by examination of a valid proof of age, that the purchaser or recipient is at least 18 years of age;
2. Make a reasonable attempt to ensure that no individual purchases or receives more than nine grams of pseudoephedrine products within a period of 30 consecutive days; and

(c) Maintain a log book of pseudoephedrine product purchases, in accordance with division (E)(3) of this section.

(3) (a) As used in this division (E)(3), **LAW ENFORCEMENT OFFICIAL** means an officer or employee of any agency or authority of the United States, a state, a territory, a political division of a state or territory, or an Indian tribe, who is empowered by the law to investigate or conduct an official inquiry into a potential violation of law or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(b) A retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides a pseudoephedrine product to the public shall maintain a log book of all purchases of pseudoephedrine products. The log book may be maintained in a tangible format, in an electronic format, or in both a tangible format and an electronic format. As part of this requirement, the retailer or terminal distributor of dangerous drugs shall do all of the following:

1. Require each purchaser to sign an entry in the log book that is maintained in the electronic or tangible format;
2. Determine whether the name signed in the entry in the log book corresponds with the name on a government-issued identification card;
3. Retain the log book in a tangible format, in an electronic format, or in both a tangible format and an electronic format for a minimum of one year after the date of the last purchase recorded in the log book; and
4. Include in the log book in the manner described in division (E)(3)(e) of this section or, in the alternative, post, in a conspicuous location, the following statement: "Ohio law prohibits the over-the-counter purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient. If you purchase a consumer product in which pseudoephedrine is the only active ingredient, you are required to sign a log book that may be accessible to law enforcement officers and to provide a government-issued identification card to verify your identity. Except in limited circumstances, the purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient, and the purchase by any individual under 18 years of age of any consumer product in which pseudoephedrine is the only active ingredient, are subject to criminal prosecution or delinquency proceedings in accordance with Ohio law. Also, the provision of false information concerning an individual's name, age, or other identification for the purpose of acquiring any consumer product in which pseudoephedrine is the only active ingredient is subject to criminal prosecution or delinquency proceedings in accordance with Ohio law."

(c) Each purchaser of a pseudoephedrine product shall do all of the following:

1. Sign and print the purchaser's name and address in the log book; and
2. Provide a government-issued identification card to the retailer or terminal distributor of dangerous drugs to verify the purchaser's identity.

(d) Information contained in the log book may not be used or disclosed except in the following circumstances:

1. In response to a court order or subpoena; or
2. In response to a request from a law enforcement official to be used for law enforcement purposes.

(e) If a retailer or terminal distributor of dangerous drugs chooses to include the statement set forth in division (E)(3)(b)4. of this section in the log book maintained under division (E)(3)(b) of this section, the statement shall be set forth in the following manner:

1. If the log book is maintained in an electronic format, the statement shall be set forth in such a manner that it is presented on the viewing screen to each purchaser who is signing an entry in the log book before the purchaser may sign the entry.
2. If the log book is maintained in a tangible format, the statement shall be set forth on the cover of the log book and on each page of the log book.

(4) Prescriptions, orders, and records maintained pursuant to this section and stocks of pseudoephedrine products shall be open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks shall be open for inspection by the State Medical Board and its employees for purposes of enforcing Ohio R.C. Chapter 4731.

(ORC § 3715.05)

(F) *Theft or loss; reporting requirements.*

(1) Each retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler that sells, offers to sell, holds for sale, delivers, or otherwise provides any pseudoephedrine product and that discovers the theft or loss of any pseudoephedrine product in an amount of more than nine grams per incident of theft or loss shall notify all of the following upon discovery of the theft or loss:

(a) The State Board of Pharmacy, by telephone immediately upon discovery of the theft or loss; and

(b) Law enforcement authorities. If the incident is a theft and the theft constitutes a felony, the retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler shall report the theft to the law enforcement authorities in accordance with Ohio R.C. § 2921.22.

(2) Within 30 days after making a report by telephone to the State Board of Pharmacy pursuant to division (F)(1)(a) of this section, a retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler shall send a written report to the State Board of Pharmacy.

(3) The reports required under this section shall identify the product that was stolen or lost, the amount of the product stolen or lost, and the date and time of discovery of the theft or loss.

(ORC § 3715.06)

CHAPTER 139: MISCELLANEOUS

Section

139.01 Abuse of a corpse

139.02 [Reserved]

139.03 Interference with right of person to engage in housing transactions because of race, religion, or the like

139.04 Ethnic intimidation

139.05 Jacklighting prohibited

139.06 Careless smoking

139.07 Campaign expenditures

139.08 Tobacco free zone

§ 139.01 ABUSE OF A CORPSE.

(A) No person, except as authorized by law, shall treat a human corpse in a way that he or she knows would outrage reasonable family sensibilities.

(B) No person, except as authorized by law, shall treat a human corpse in a way that would outrage reasonable community sensibilities.

(C) Whoever violates division (A) of this section is guilty of abuse of a corpse, a misdemeanor of the second degree. Whoever violates division (B) of this section is guilty of gross abuse of a corpse, a felony to be prosecuted under appropriate state law.

(ORC § 2927.01) (1995 Code, § 139.01)

§ 139.02 [RESERVED]

§ 139.03 INTERFERENCE WITH RIGHT OF PERSON TO ENGAGE IN HOUSING TRANSACTIONS BECAUSE OF RACE, RELIGION, OR THE LIKE.

(A) No person, whether or not acting under color of law, shall by force or threat of force willfully injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with any of the following:

(1) Any person because of race, color, religion, sex, familial status, as defined in Ohio R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry and because that person is or has been selling, purchasing, renting, financing, occupying, contracting, or negotiating for the sale, purchase, rental, financing, or occupation of any housing accommodations, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations.

(2) Any person because that person is or has been doing, or in order to intimidate that person or any other person or any class of persons from doing either of the following:

(a) Participating, without discrimination on account of race, color, religion, sex, familial status, as defined in Ohio R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry, in any of the activities, services, organizations, or facilities described in division (A)(1) of this section;

(b) Affording another person or class of persons opportunity or protection so to participate.

(3) Any person because that person is or has been, or in order to discourage that person or any other person from, lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, familial status as defined in Ohio R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry, in any of the activities, services, organizations, or facilities described in division (A)(1) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.

(ORC § 2927.03) (1995 Code, § 139.06)

§ 139.04 ETHNIC INTIMIDATION.

(A) No person shall violate Ohio R.C. § 2903.21, 2903.22, 2909.06, or 2909.07, or Ohio R.C. § 2917.21(A)(3), (A)(4), or (A)(5), by reason of the race, color, religion, or national origin of another person or group of persons.

(B) Whoever violates this section is guilty of ethnic intimidation. Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation. In the case of an offense that is a misdemeanor of the first degree, ethnic intimidation is a felony to be prosecuted under appropriate state law.

(ORC § 2927.12) (1995 Code, § 139.07)

§ 139.05 JACKLIGHTING PROHIBITED.

(A) No person shall throw or cast the rays of a spotlight or other artificial light from any vehicle into any field, woodland, or forest while having in his or her possession a hunting device, or throw or cast the rays of a spotlight or other artificial light from any vehicle into any field, woodland, or forest for the purpose of locating a wild animal.

(B) This section does not apply to law enforcement officers, wildlife officers, military personnel, and officers or employees of the Department of Natural Resources while in the performance of their duties, or to any landowner or lessee having a reason to use a light while engaged in surveillance or protection of his or her property.

(C) An officer whose duty it is to enforce this chapter may arrest a person whom he or she has reasonable grounds to believe is violating this section, search the vehicle for firearms or other hunting implements in the possession or under the control of that person, and seize the same.

(ORC § 1533.161) (1995 Code, § 139.08)

§ 139.06 CARELESS SMOKING.

(A) No person shall in smoking or using lighters or matches for smoking set fire to the contents of or any building.

(B) Whoever violates this section is guilty of careless smoking, a first degree misdemeanor.

(1995 Code, § 139.09) Penalty, see § 130.99

§ 139.07 CAMPAIGN EXPENDITURES.

(A) For the purpose of this section, *POLITICAL COMMITTEE* shall mean any individual, committee, group, organization, or association organized for the support of one or more councilmanic candidates.

(B) No person shall make a contribution in cash to or for the benefit of any councilmanic candidate or political committee in excess, in the aggregate, during any calendar year, of \$50. Any contribution beyond such sum must be made by a written instrument identifying the person making the contribution.

(C) Whoever violates the provisions of this section shall be guilty of making illegal contributions, a first degree misdemeanor.

(1995 Code, § 139.10) Penalty, see § 130.99

§ 139.08 TOBACCO FREE ZONE.

All Village owned property is hereby declared to be a smoke-free zone.

(Ord. 2010-O-3, passed 5-25-2010)

TITLE XV: LAND USAGE

Chapter

- 150. BUILDING REGULATIONS**
- 151. FLOOD INSURANCE PROGRAM**
- 152. URBAN RENEWAL**
- 153. ZONING CODE**
- 154. TELECOMMUNICATIONS, ANTENNA, TOWER AND SITE REGULATIONS**
- 155. STORAGE OF WOOD**

CHAPTER 150: BUILDING REGULATIONS

Section

General Provisions

150.01 Aluminum wiring

Building Code and Permits

150.15 Building code adopted

150.16 Permit fees adopted

Housing Code

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GENERAL PROVISIONS

§ 150.01 ALUMINUM WIRING.

(A) It shall be illegal to use aluminum wire for electrical purposes in the construction of any residential buildings, apartments, schools, churches, and public buildings within the village.

(B) A special variance for commercial and industrial use must be received from the Planning Commission.

(C) The Building Inspector shall ascertain the use of copper wiring before a permit of occupancy is issued.

(1995 Code, § 150.01) (Ord. 78-O-15, passed 6-26-1978)

BUILDING CODE AND PERMITS

§ 150.15 BUILDING CODE ADOPTED.

(A) The current version of Hamilton County Building Code and any subsequent amendments thereto are hereby adopted by reference as the basic Building Code of the village unless otherwise amended or supplemented by Council.

(B) The current provisions of the Hamilton County Building Code, or any subsequent amendments thereto shall be enforced both as to new construction and existing structures within the village, unless otherwise amended or supplemented by Council.

(1995 Code, § 150.15) (Ord. 71-17, passed 5-17-1971; Am. Ord. 90-O-50, passed 11-14-1990; Am. Ord. 96-O-3, passed 2-26-1996)

Cross-reference:

Building inspector, see § 36.02

§ 150.16 PERMIT FEES ADOPTED.

(A) The current Schedule of Fees of Hamilton County Building Commissioner and any amendments thereto are hereby adopted by reference as the fee structure of the village in the issuance of building permits and certificates of occupancy, unless otherwise amended or supplemented by Council.

(B) An initial filing fee of \$40 shall be charged for new construction plans submitted to the village for review and \$25 shall be charged for plans for modifications to existing structures that are submitted to the village for review.

(C) The permit fee for erection of a tent or group of tents approved as to construction, use and location in compliance with the Ohio Basic Building Code shall be \$125 per month or any portion thereof.

(1995 Code, § 150.16) (Ord. 93-O-2, passed 3-10-1993; Am. Ord. 96-O-3, passed 2-26-1996; Am. Ord. 96-O-16, passed 6-24-1996)

HOUSING CODE

§ 150.25 ADOPTION.

(A) The current edition of the Cincinnati Building Code and any subsequent amendatory provisions thereof are hereby adopted by reference as the Housing Code of the Village of Lincoln Heights. A copy of the current edition is attached hereto as Exhibit A and made part hereof.

(B) A copy of the current Cincinnati Building Code and any amendatory provisions thereof shall be filed with the original copy of this section.

(1995 Code, § 152.25) (Ord. 8-1967, passed 7-13-1967; Am. Ord. 96-O-3, passed 2-26-1996; Am. Ord. 2001-O-58, passed 12-17-2001)

§ 150.26 AMENDMENTS (REPEALED).

(EDITOR'S NOTE: This section was repealed by Ordinance 97-O-4, passed January 29, 1997.)

(1995 Code, § 152.26) (Ord. 68-14, passed 8-9-1968; Am. Ord. 97-O-4, passed 1-29-1997)

§ 150.27 PROTECTION OF VACANT HOUSING.

(A) The owner of any vacant building, whether residential, commercial, or industrial, must within 15 days after its vacancy secure and protect such building as follows:

- (1) All exterior doors must be padlocked;
- (2) All windows must be boarded up with no less than ½ inch plywood and secured from the inside;
- (3) All utilities, including gas, electric, and water must be turned off; and
- (4) Any vacant building must be cleared of all flammable materials and debris.

(B) If the owner of a vacant building fails to comply with division (A) hereof, the Village Manager or his or her representative shall notify such owner by registered mail of the noncompliance of such owner and give the owner seven calendar days after the date of the notice to comply. If such owner fails to comply within the seven day period, then the Village Manager will direct the appropriate officer of the village to cause such security measures to be installed on the vacant building as is necessary.

(C) The Village Manager shall make a claim on the owner of any vacant building for moneys expended by the village in boarding up and securing such vacant building. If the owner of a vacant building fails to pay the village, the Village Manager or his or her representative shall proceed to take the necessary legal action to reduce the claim of the village against such owner to judgment and file the judgment in the office of County Recorder as a judgment lien.

(1995 Code, § 150.27) (Ord. 81-O-6, passed 4-13-1981)

HOUSE NUMBERS

§ 150.35 HOUSE NUMBERS REQUIRED; DESIGNATION.

House numbers shall be displayed on notification by the Safety-Service Director of the proper number of a building; the owner of

such building shall cause such number to be placed and continuously maintained in a conspicuous place in the front of that building. If a building stands back more than 45 feet from the street line, the number shall be conspicuously displayed at or near the walk, driveway, or common entrance to that building at the street line or a gate post, fence, tree, post, or other appropriate place, so as to be easily legible from the sidewalk.

(1995 Code, § 150.35) (Ord. 7-1956, passed 9-12-1956) Penalty, see § 150.99

TRAILER COACHES AND BUSINESS VEHICLES

§ 150.45 DEFINITIONS.

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

OTHER VEHICLES. Any discarded bus, ambulance, large automobile, or coach.

TRAILER COACH. Any vehicle constructed, used, or maintained for use as a conveyance on public streets, and so designed and so constructed as will permit occupancy thereof as temporary dwelling or sleeping places for one or more persons, or the conduct of any business, profession, occupation, or trade.

(1995 Code, § 150.45) (Ord. 9-1954, passed 11-1-1954)

§ 150.46 LOCATION OF TRAILER COACH AND BUSINESS VEHICLES.

No person, firm, or corporation shall locate or station on any lot, or other premises within the village, any trailer coach or other vehicle for the purposes of dwelling therein, or of conducting any business, profession, trade, or occupation.

(1995 Code, § 150.46) (Ord. 9-1954, passed 11-1-1954) Penalty, see § 150.99

UNSAFE STRUCTURES

§ 150.60 CONDEMNATION.

Buildings and structures shall be condemned as dangerous buildings or unsafe for human occupancy as provided in this subchapter.

(1995 Code, § 150.60) (Ord. 77-O-4, passed 3-14-1977)

§ 150.61 DEFINITION.

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

DANGEROUS BUILDING. All buildings or structures which have the following defects:

(1) Those whose interior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base;

(2) Those which, exclusive of the foundation, show 33% or more damage or deterioration of the supporting member of 50% of the nonsupporting, enclosing, or outside walls for the purpose used;

(3) Those which have improperly distributed loads on the floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used;

(4) Those which have been damaged by fire, wind, or other causes as to have become dangerous to life, safety, morals, or the

general health and welfare of the occupants or the people of the village;

(5) Those which have become so dilapidated, decayed, insanitary, vermin-infested, rodent-infested, or which so utterly fail to provide the amenities essential to decent living that they are unfit for human occupancy, or are likely to cause sickness or disease so as to be injurious to the health, morals, safety, or general welfare of those living therein;

(6) Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety, or general welfare of human beings who live or may live therein;

(7) Those having inadequate facilities for egress in case of fire or panic, or those having insufficient stairways, elevators, or fire escapes for normal usage and passage;

(8) Those which have parts thereof which are so attached that they may fall and injure public members or property; or

(9) Those buildings existing in violation of the Building Code as adopted by the village or any provision of the fire prevention code, or any other ordinance of this village establishing standards for the promotion and protection of the safety and health of people.

(1995 Code, § 150.61) (Ord. 77-O-4, passed 3-14-1977)

§ 150.62 STANDARDS FOR REPAIRS, VACATION, OR DEMOLITION.

The following standards shall be followed in substance by the Building Inspector in ordering repair, vacation, or demolition.

(A) If the dangerous building can reasonably be repaired so that it will no longer exist in violation of the terms of this subchapter, it shall be ordered repaired.

(B) If the dangerous building is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants, it shall be ordered vacated.

(C) In any case where a dangerous building is 50% damaged or decayed, or deteriorated from its original value or structure it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of this subchapter, it shall be demolished. In all cases where a dangerous building is a fire hazard existing or erected in violation of state laws or the Fire or Zoning Codes of the village, it shall be demolished.

(1995 Code, § 150.62) (Ord. 77-O-4, passed 3-14-1977)

§ 150.63 DANGEROUS BUILDING AS NUISANCE.

All dangerous buildings within the terms of this subchapter are declared to be public nuisances, and shall be repaired, vacated, or demolished as herein provided.

(1995 Code, § 150.63) (Ord. 77-O-4, passed 3-14-1977) Penalty, see § 150.99

§ 150.64 NOTICE.

(A) Notice of the declaration of any building under this code as being a dangerous building and the order to be vacated, repaired, or demolished shall be served as provided in § 150.66.

(B) Any structure or building declared to be a dangerous building shall be posted with a placard by the Building Inspector. The placard shall include the following:

(1) Name of the village;

(2) The name of the authorized department having jurisdiction;

(3) The subchapter and section of the code under which it is issued;

(4) An order stating the following, that this structure is an unsafe condition and is a menace to life and property. The public is hereby warned to keep out of and away from this condemned property. The removal or defacing of this notice is a criminal offense;

(5) The date that the placard is posted; and

(6) A statement of the penalty for defacing or removing the placard.

(C) Whenever the Building Inspector has declared a structure a dangerous building, he or she shall give notice in writing to the owner, occupant, lessee, mortgagee, agent, and any other persons having an interest in that property, of such declaration and placarding of the structure as a dangerous building and unfit for human habitation. Such notice shall:

(1) Be in writing;

(2) Include a description of the real estate sufficient for identification;

(3) Include an order that the owner, occupant, lessee, agent, or mortgagee must vacate, repair, or demolish the building in accordance with the terms of the notice and this subchapter; and

(4) Shall include a statement that any person notified to repair, vacate, or demolish any structure shall be given a reasonable time not to exceed 30 days to do, or have done, the work or act required by the notice, except when the notice has declared the order to be an emergency.

(1995 Code, § 150.64) (Ord. 77-O-4, passed 3-14-1977)

§ 150.65 EMERGENCY REPAIR, VACATION, OR DEMOLITION.

In cases where it appears that there is immediate danger to life or safety of any person unless a dangerous building is immediately repaired, vacated, or demolished, the Building Inspector shall report such facts to the Building Commissioner. The Building Commissioner shall then cause the immediate repair, vacation, or demolition of such dangerous building. The cost of such emergency repair, vacation, or demolition shall be collected as specified in § 150.71(D).

(1995 Code, § 150.65) (Ord. 77-O-4, passed 3-14-1977)

§ 150.66 SERVICE OF NOTICE.

Service of notice to vacate, demolish, or repair shall be by one of the following methods:

(A) By delivery to the owner personally or by leaving notice at the usual place of abode of the owner with a person of suitable age and discretion;

(B) By certified or registered mail addressed to the owner at his or her last known address with postage paid thereon;

(C) By posting and keeping posted for 24 hours a copy of the notice in placard form in a conspicuous place on the premises to be vacated; or

(D) By publication in a newspaper of general circulation in the county where structure is located. The notice shall be advertised for five days.

(1995 Code, § 150.66) (Ord. 77-O-4, passed 3-14-1977)

§ 150.67 APPEAL.

The Building Commissioner shall on receipt of the report that written notice to vacate, repair, or demolish has been given to the owner, occupant, mortgagee, lessee, and agent, cause a written notice to be sent to the above-mentioned parties that they have the right to appeal the order to the Housing Board of Appeals, in writing within 15 days of the date of the notice to show cause why the dangerous building should not be repaired, vacated, or demolished in accordance to the order of the Building Inspector.

(1995 Code, § 150.67) (Ord. 77-O-4, passed 3-14-1977)

§ 150.68 HOUSING BOARD OF APPEALS.

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

(B) The Board with the approval of Council may pass regulations to establish procedures for its operation.

(C) The Housing Board of Appeals shall hold hearings and hear such testimony as the Building Inspector, owner, occupant, mortgagee, lessee, or any other person having an interest in the building shall offer relative to the dangerous building within ten days of filing an appeal by the objectors.

(D) The Housing Board of Appeals shall make a record of its findings of fact from the testimony offered concerning whether the structures or building in question is a dangerous.

(E) The Housing Board of Appeals may affirm, modify, reverse, or remand for further action any orders of the Building Inspector.

(F) The Housing Board of Appeals shall render a final order within five days of the hearing.

(G) Any final order rendered by the Housing Board of Appeals requiring actions by the owner, occupant, lessee, or agent of property owner shall have a time limitation for completion of such activity.

(1) If the final order requires demolition, then the owner or his or her agent shall be required to complete this action within 15 days after the final order is rendered.

(2) If the final order requires vacation of the premises, then the owner-occupant or renter-lessee shall be required to complete this action within ten days after the final order is rendered.

(1995 Code, § 150.68)

§ 150.69 INSPECTIONS.

(A) The Building Inspector or Building Commissioner shall inspect or cause to be inspected semiannually all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial manufacturing, or loft buildings for the purpose of determining whether any conditions exist which render the place a dangerous building.

(B) The Building Inspector or Building Commissioner shall:

(1) Inspect any building walls or structure about which complaints have been filed by any person; and

(2) Inspect any building wall or structure reported by the Fire or Police Department.

(1995 Code, § 150.69) (Ord. 77-O-4, passed 3-14-1977)

§ 150.70 ADMINISTRATIVE LIABILITY.

No officer, agent, or employee of the village shall render himself or herself personally liable for any damage that may accrue to persons or property liable as a result of any act required or permitted in the discharge of his or her duties under this subchapter. Any suit brought against any officer, agent, or employee of the village as a result of any act required or permitted in the discharge of his or her duties under this subchapter shall be defended by the Director of Legal Services until the final determination of the proceedings therein.

(1995 Code, § 150.70) (Ord. 77-O-4, passed 3-14-1977)

§ 150.71 VIOLATION.

(A) In case any violation order is not promptly complied with, the Building Inspector may request the legal representative of the village to institute an appropriate action or proceeding at law or in equity against the person responsible for the violation, ordering him or her:

(1) To restrain, correct, or remove the violation or refrain from any further execution of work;

(2) To restrain or correct the erection, installation, or alteration of such building;

(3) To require the removal of work in violation; or

(4) To comply with penalty provision of this code.

(B) Notice of the violation shall be served on the owner through the Clerk of Courts by the process of summons. The summons shall be served on the owner personally, or if not found, then by leaving a copy thereof at his or her usual place of abode with a person of suitable age or by sending the summons by certified U.S. mail.

(C) The summons shall include:

(1) A description of real estate sufficient for identification;

(2) A specification of the violation which exists and remedial action required; and

(3) The date and time for appearance in the Mayor's Court.

(D) If the owner, occupant, mortgagee, or lessee fail to comply with the order of the Building Department or Housing Board of Appeals, in addition to the criminal penalties set forth in § 150.99, the village shall cause such building or structure to be repaired, vacated, or demolished as the facts may warrant. The cost of such repair, vacation, or demolition shall be charged against the owner, occupant, or lessee.

(1995 Code, § 150.71) (Ord. 77-O-4, passed 3-14-1977)

RESIDENTIAL CODE OF OHIO

§ 150.80 ENFORCEMENT OF RESIDENTIAL CODE OF OHIO.

Ohio Administrative Code 4101:8 - Residential Code of Ohio as promulgated by the Ohio Board of Building Standards, shall apply and be enforced within the Village.

(Ord. 2006-O-10, passed 2-13-2006)

§ 150.99 PENALTY.

(A) *Generally.* Any person, firm or corporation who violates any provision of this chapter for which no other penalty is set forth shall be subject to the penalty provisions set forth in § 10.99.

(B) *Unsafe structures.* Any person, firm, or corporation who shall violate any provision of the subchapter set forth in §§ 150.60*et seq.* shall on conviction be guilty of a misdemeanor in the fourth degree subject to a fine not to exceed \$250 and imprisonment not to exceed 30 days.

(1995 Code, § 150.99) (Ord. 77-O-4, passed 3-14-1977)

CHAPTER 151: FLOOD HAZARD PREVENTION

Section

151.01 Land use and control measures

151.02 Responsibility of Building and Zoning Officer

151.03 Record of elevations

§ 151.01 LAND USE AND CONTROL MEASURES.

The Village Council shall enact as necessary, and maintain in force for those areas having flood or mud slide hazards, adequate land

use and control measures with effective enforcement provisions consistent with the criteria set forth in § 1910 of the National Flood Insurance Program Regulations.

(1995 Code, § 151.01) (Ord. 75-49, passed 6-24-1975)

§ 151.02 RESPONSIBILITY OF BUILDING AND ZONING OFFICER.

The Building and Zoning Officer shall have the responsibility, authority, and means to:

- (A) Delineate or assist the Administrator, at his or her request, in delineating the limits of the area having special flood or mudslide hazards on available local maps of sufficient scale to identify the location of building sites;
- (B) Provide such information as the Administrator may request concerning present uses and occupancy of the floodplain or mudslide areas;
- (C) Cooperate with federal, state, and local agencies and private firms which undertake to study, survey, map, and identify floodplain or mudslide areas, and cooperate with neighboring communities with respect to management of adjoining floodplain or mudslide area in order to prevent aggravation of existing hazards; and
- (D) Submit on the anniversary date of the community's initial eligibility an annual report to the Administrator on the progress made during the past year within the community in the development and implementation of floodplain or mudslide area management measures.

(1995 Code, § 151.02) (Ord. 75-49, passed 6-24-1975)

§ 151.03 RECORD OF ELEVATIONS.

The Housing and Zoning Officer shall maintain for public inspection and furnish on request a record of elevations (in mean relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures located in the special flood hazard areas. If the lowest floor is below grade on one or more sides, the elevation of the floor immediately above that floor shall be recorded also.

(1995 Code, § 151.03) (Ord. 75-49, passed 6-24-1975)

CHAPTER 152: URBAN RENEWAL

Section

General Provisions

- 152.01 Necessity of urban renewal
- 152.02 Policy
- 152.03 Definitions
- 152.04 Village Manager to supervise activities
- 152.05 Preparation of studies and plans
- 152.06 Contents of plans; supporting documentation
- 152.07 Action by Planning Commission
- 152.08 Public hearing and Council action
- 152.09 Federal aid contracts
- 152.10 Modification of plans

- 152.11 Execution of urban renewal plans
- 152.12 Finance
- 152.13 Building permits
- 152.14 Tax exemption

Administration

- 152.20 Officers to administer program
- 152.21 Relocation supervisor
- 152.22 Coordinator of social services
- 152.23 Other personnel

GENERAL PROVISIONS

§ 152.01 NECESSITY OF URBAN RENEWAL.

It is found and determined that there exist within the village, slum, blighted, deteriorated, and deteriorating areas of the nature defined in this chapter which constitute a serious and growing menace injurious and inimicable to the public health, safety, morals, and general welfare of the residents thereof; and the existence of such areas:

(A) Contributes substantially and increasingly to the spread of disease and crime, and to losses by fire and accident, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire, and accident protection, and for other public services and facilities;

(B) Constitutes an economic and social liability; and

(C) Substantially impairs and arrests the sound growth of the community; retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that this menace is beyond remedy and control solely by regulatory processes and exercise of the police power, and cannot be dealt with effectively by ordinary operation of private enterprise without the aids herein provided; that the elimination in whole or in part of slum, blighted, deteriorated, and deteriorating areas, and the prevention of occurrence or recurrence of such areas by redevelopment and by the conservation, rehabilitation, and reconditioning, to the extent feasible, of the salvageable portions of such areas, and by other activities pursuant to urban redevelopment or urban renewal, are public uses and purposes for which public money may be expended and private property acquired by purchase, by donation, and by eminent domain and are governmental functions of concern to the village, and require the exercise of the powers of government granted to the village by the provisions of Article XVI II of the Ohio Constitution and that the necessity in the public interest and general welfare, for the provision of this chapter is declared as a matter of legislative determination.

(1995 Code, § 152.01) (Ord. 9-1967, passed 10-10-1967)

§ 152.02 POLICY.

It is declared to be the policy of the Village Council to promote and encourage the sound development, including renewal and redevelopment where necessary, of the entire village in accordance with the general plan for the village. Council realizes that the village government will be unable to carry out coordinated and effective programs for renewing the village without the cooperation and support of the public as a whole. Therefore, the Council stands ready to cooperate with private enterprise, civic groups, neighborhood agencies, and governmental agencies in developing and carrying out urban renewal programs and projects to promote the sound development of new areas, to prevent the spread of slums and blight and to eliminate slums, blighted, deteriorated, and deteriorating areas in the village.

(1995 Code, § 152.02) (Ord. 9-1967, passed 10-10-1967)

§ 152.03 DEFINITIONS.

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

AGENCY or **URBAN RENEWAL AGENCY** or **LOCAL PUBLIC AGENCY** or **VILLAGE**. The Village of Lincoln Heights.

DETERIORATING AREA.

(1) An area, whether predominantly built up or open, which is not a slum, blighted, or deteriorated area but which, because of incompatible land uses, nonconforming uses, lack of adequate parking facilities, faulty street arrangement, obsolete platting, inadequate community and public utilities, diversity of ownership, tax delinquency, increased density of population without commensurate increases in new residential buildings and community facilities, high turnover in residential or commercial occupancy, lack of maintenance and repair of buildings, or any combination thereof, is detrimental to the public health, safety, morals, and general welfare, and which will deteriorate, or is in danger of deteriorating, into a slum, blighted, or deteriorated area.

(2) An area consisting principally of land in highways, railway, or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air right sites can be developed thereby eliminating such blighting influence.

GENERAL NEIGHBORHOOD RENEWAL AREA. An urban renewal area of such scope that urban renewal activities therein have to be carried out in more than one separate urban renewal project, over an estimated period of up to ten years.

GENERAL NEIGHBORHOOD RENEWAL PLAN. The plan and program, as it exists from time to time, for the urban renewal or redevelopment of a general neighborhood renewal area. The general neighborhood renewal plan need not contain all of the required contents set forth in § 152.06 hereof with respect to an urban renewal plan or urban redevelopment plan. Approval of the general neighborhood renewal plan by the Council does not create authority to carry out project execution activities.

GENERAL PLAN or **MASTER PLAN.** A broad and general guide and pattern for the future growth and development of the village including maps, plats, charts, and descriptive, interpretive and analytical narratives, as may be appropriate and specifically shall mean the Comprehensive Plan adopted by the Village Planning Commission pursuant to Ohio R.C. § 713.02, and any subsequent amendments thereto.

OPEN SPACE LAND. Land which has not been developed by the construction or installation of streets, utilities, buildings (except sporadic or incidental structures), or other site improvements. Whether or not such area has been platted in whole or in part does not prevent its classification as open space land.

PROJECT AREA or **URBAN DEVELOPMENT AREA** or **URBAN RENEWAL AREA.** A slum, blighted, deteriorated, or deteriorating area of any combination or part thereof which Council designates as of a character and size appropriate for urban renewal activities and for which an urban redevelopment plan or urban renewal plan is proposed or prepared.

REDEVELOPER. Any person or entity purchasing property from the village within a project area, or owning property located within such area and entering into a conforming agreement with the village in consideration of being permitted by the village to retain title to that property.

REHABILITATION or **CONSERVATION** or **RECONDITIONING.** Those undertakings and activities identified in the definition **URBAN RENEWAL PROJECT** in divisions (3), (4), (5), (6), and (8).

SLUM AREA or **BLIGHTED AREA** or **DETERIORATED AREA.** An area within the corporate limits of the village in which there are a majority of structures or other improvements, which by reason of dilapidation, deterioration, age, or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsafe and unsanitary conditions, or the existence of conditions which endanger life or property by fire or other hazards and causes, or any combination of such factors, and an area with overcrowding or improper location of structures on the land, excessive dwelling unit density, detrimental land uses or conditions, unsafe, congested, poorly designed streets or inadequate public facilities or utilities, all of which substantially impairs the sound growth and planning of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, and is detrimental to the public health, safety, morals, and general welfare.

SLUM CLEARANCE or **CLEARANCE** or **URBAN REDEVELOPMENT.** Those undertakings and activities identified in the definition **URBAN RENEWAL PROJECT** in divisions (1), (2), (3), (4), and (7).

URBAN RENEWAL or **URBAN REDEVELOPMENT.** The activities of the village, with or without federal or state aid or assistance for developing, undertaking, and carrying out of urban renewal or redevelopment programs and projects, including all

planning and other related activities of the village in connection therewith, or any part of such activities.

URBAN RENEWAL PLAN or **URBAN REDEVELOPMENT PLAN**. A plan as it exists from time to time for the urban renewal or redevelopment of a project area or part thereof.

URBAN RENEWAL PROJECT, URBAN REDEVELOPMENT PROJECT or **PROJECT**. Undertakings and activities of the village, with or without federal or state aid or assistance, in a project area for the elimination and for the prevention of the development or spread of slum, blighted, deteriorated, or deteriorating areas, and may involve clearance and redevelopment in a project area, or rehabilitation and conservation in a project area, or any combination or part thereof, in accordance with the urban renewal or urban redevelopment plan for the project area to the full extent of and in accordance with the rights, powers, and authority of the village, whether derived from the applicable provisions of the federal or state constitution or statutes, or the village ordinances. Such undertakings and activities in a project area may include:

- (1) Acquisition of realty, including the acquisition of air rights;
- (2) Demolition and removal of buildings and improvements;
- (3) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the urban renewal or urban redevelopment plan;
- (4) Disposition of property for uses in accordance with the urban renewal or urban redevelopment plan;
- (5) Encouraging and assisting interested citizens in a private program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan, with or without aid and assistance by Federal Housing Administration mortgage insurance or special support for mortgage financing through the Federal National Mortgage Association or similar organizations;
- (6) Acquisition of any real property where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, lessen such lot occupancy or population density as create those conditions, eliminate uses incompatible with the general character of a neighborhood and which are detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities, and disposition of property, so acquired in accordance with this division, for voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;
- (7) Construction of foundations and platforms necessary for the appropriate provision of air right sites in accordance with the urban renewal or urban redevelopment plan; and
- (8) Acquisition and repair or rehabilitation for guidance purposes, and resale, of structures which, under the urban renewal plan, are to be repaired or rehabilitated for dwelling use or related facilities, provided, that there shall not be acquired for such purposes, in any project area, buildings, which contain or will contain more than 100 dwelling units, or 5% of the total number of dwelling units in such area which under the urban renewal plan are to be repaired or rehabilitated, whichever is the lesser. The **URBAN RENEWAL PROJECT** shall not include the construction or improvement by the village of any building other than municipal buildings, except as provided in division (7) above.

(1995 Code, § 152.03) (Ord. 9-1967, passed 10-10-1967)

§ 152.04 VILLAGE MANAGER TO SUPERVISE ACTIVITIES.

The Village Manager is charged with the responsibility of supervising the urban renewal and urban redevelopment activities of this village, coordinating the activities of the several officers, employees, commissions, and boards concerned with such projects and executing on behalf of the village, as its authorized representative, all applications to the federal government for grants, loans, and advances.

(1995 Code, § 152.04) (Ord. 9-1967, passed 10-10-1967)

§ 152.05 PREPARATION OF STUDIES AND PLANS.

(A) The Village Manager shall with the approval of Council, enter into such contracts on behalf of the village, with engineers, architects, and other professional services as may be necessary to provide the necessary inspections, studies, plans, surveys, and reports in connection with the preparation of the general neighborhood renewal plan, and in connection with the urban renewal or

redevelopment activities to be undertaken by the village to the extent that funds have been appropriated therefor. The Planning Commission may itself conduct such inspections, studies, plans, surveys, and reports.

(B) When studies, plans, surveys, and reports pursuant to division (A) above have been prepared, they shall be submitted to the Council and filed as provided from time to time.

(1995 Code, § 152.05) (Ord. 9-1967, passed 10-10-1967; Am. Ord. 10-1967, passed 10-10-1967)

§ 152.06 CONTENTS OF PLANS; SUPPORTING DOCUMENTATION.

(A) Any urban renewal or redevelopment plan hereafter prepared shall be prepared in such detail as to clearly set forth sufficient information to permit the Planning Commission to exercise its power of approval or disapproval under Ohio R.C. § 713.02, and in any event such plans shall include, but not be limited to, the following:

- (1) A description of the boundaries of the project area;
- (2) A land use plan showing the location, character, and extent of public and private land ownership, utilities, use, and occupancy proposed within the area;
- (3) A delineation of areas of land acquisition, demolition, and removal of structures, or of rehabilitation, conservation, or reconditioning of existing structures, if any, as may be proposed to be carried out in the project area;
- (4) A statement indicating the controls and the use, development and building restrictions to be placed on the property in the project area to prevent a recurrence of slum or blighted conditions; and, in addition thereto, such plan or its supporting documentation shall include, but shall not be limited to, the following:
 - (a) A report showing the proposed changes, if any, in the Building, Housing, or Zoning Codes, or maps and street layout, levels, or grades;
 - (b) A statement from the appropriate village official, setting forth the capability of the village to finance the portion of the project costs to be contributed by the village; and
 - (c) A statement of the relationship of the plan to such definite objectives of the village respecting appropriate land uses, improved traffic conditions and transportation, public utilities, recreation and community facilities, and other public improvements.

(B) A relocation plan shall indicate a feasible method for the temporary relocation of individuals and families displaced from the project area, and that there are, or are being provided in the project area, or in other areas not generally less desirable in regard to public utilities and public commercial facilities and at rents or prices within the financial means of the individuals and families to be displaced from the project area, decent, safe, and sanitary dwellings equal in number to the number of such displaced individuals and families, and available to them and reasonably accessible to their places of employment.

(1995 Code, § 152.06) (Ord. 9-1967, passed 10-10-1967)

§ 152.07 ACTION BY PLANNING COMMISSION.

(A) When a general neighborhood renewal plan, or an urban renewal, or urban redevelopment plan and the supporting documentation therefor is filed with the Council, the Council shall refer such plan and supporting documentation to the Planning Commission for its review and recommendations, including the exercise of its power of approval or disapproval under Ohio R.C. § 713.02, and its certification as to whether or not the plan is in conformity with the general plan of the village, by causing a copy of such plan and supporting documentation to be delivered to the person charged with the preparation and custody of the record of proceedings of the Planning Commission.

(B) The Planning Commission shall submit in writing to Council its approval or recommendations concerning such plan. The approval of the Commission shall also constitute its approval of those matters placed under its jurisdiction by Ohio R.C. § 713.02, except that the recommendations of the Planning Commission may include a disapproval pursuant to such section. Except as recommendations or disapprovals are received from the Planning Commission on or before the thirtieth day after the delivery to the person charged with the preparation and custody of the record of proceedings of the Planning Commission of such plan and supporting documentation, the plan shall be conclusively presumed to have been approved by the Planning Commission.

(1995 Code, § 152.07) (Ord. 9-1967, passed 10-10-1967)

§ 152.08 PUBLIC HEARING AND COUNCIL ACTION.

(A) The Village Council, before approving a general neighborhood renewal plan, or an urban renewal, or urban redevelopment plan, shall hold a public hearing on the plan at which an opportunity shall be provided to all persons interested to be heard, either in person or by counsel, which hearing may be adjourned from time to time. Notice of the date, time, and place of such hearing will be published in a newspaper of general circulation in the village once a week for two consecutive weeks on the same day of the week, and at least seven full days shall elapse between the second publication and the date set for the public hearing. The notice shall also contain a description of the project area by its location in relation to highways, streets, watercourses, or other natural or artificial boundaries, and shall also designate the place at which the plan, maps, plats, and other materials describing the project area are and will be available for public inspection.

(B) Following the completion of such public hearing, the Council may either approve or reject the general neighborhood renewal plan, or the urban renewal or urban redevelopment plan, or make modifications and approve such plan as modified; provided that, if:

(1) The boundaries of the project area are extended to include any land (except land contained within the right-of-way lines of a dedicated street or alley) not included in the urban renewal or urban redevelopment plan upon which the public hearing was held pursuant to division (A) hereof, if there is added a type of urban renewal or redevelopment activity not included in the urban renewal or urban redevelopment plan upon which the public hearing was held pursuant to division (A) hereof which requires the acquisition of property, or if there is any change in land use or redevelopment restrictions contained in the urban renewal or urban redevelopment plan upon which the public hearing was held pursuant to division (A) hereof, a public hearing shall be held on such urban renewal or urban redevelopment plan as modified prior to the approval, thereof by the Village Council in accordance with the provisions of division (A) hereof; and

(2) Such modifications are other than in accordance with the recommendations of the Planning Commission, such general neighborhood renewal plan, urban renewal plan, or urban redevelopment plan as modified shall be resubmitted to the Planning Commission for its written approval or recommendations pursuant to the provisions of § 152.07.

(C) When Council wishes to approve a general neighborhood renewal plan, an urban renewal or redevelopment plan, it shall do so by ordinance passed by not less than a majority vote, after reading in full on three separate days or under suspension of rules, provided, that if such plan has not been approved by the Planning Commission, or if there were any partial disapprovals by or adverse recommendations of the Planning Commission under Ohio R.C. § 713.02, not accepted by Council by its modifications of the plan in accordance therewith, then an affirmative vote of 2/3 of the members of Council shall be required to pass such ordinance and, to the extent that such disapproval involves the construction of an improvement or utility within the meaning of Ohio R.C. § 713.02, the concurrence of the head of the department having control of the construction of such proposed improvement or utility shall also be necessary.

(D) The ordinance of Council approving a general neighborhood renewal plan should contain a finding that the plan conforms to the general plan and to the workable program of the village and such other findings as may be necessary or desirable, but need not contain the other findings set forth below in division for approval of urban renewal or redevelopment plans. Such approval of a general neighborhood renewal plan may be made before or at the same time as the approval of an urban renewal or redevelopment plan for a project within the general neighborhood renewal area.

(E) The ordinance of Council approving urban renewal or redevelopment plan shall include the following findings:

(1) Specific finding of fact as to the conditions in the project area which make it a slum, blighted, deteriorated, or deteriorating area, and findings that the project area is a slum, blighted, deteriorated, or deteriorating area;

(2) That the size and character of the area and the location of elements of slum, blight, and deterioration in the area make it appropriate for urban renewal activities;

(3) That the proposals for the proper relocation of individuals and families displaced in carrying out the project in decent, safe, and sanitary dwellings in conformity with acceptable standards are feasible and can be reasonably and timely effected to permit the proper prosecution and completion of the project; and that such dwellings, or dwelling units available, or to be made available to such displaced individuals and families, are at least equal in number to the number of displaced individuals and families, are not generally less desirable in regard to public utilities and public and commercial facilities than the dwellings of the displaced individuals and families in the project area, are available at rents or prices within the financial means of the displaced individuals and families, and are reasonably accessible to their places of employment;

(4) This finding is made only if federal aid is needed. That financial aid to be provided by the federal government under its contract is necessary to enable the project to be undertaken in accordance with the plan;

(5) That the plan for the project area will afford maximum opportunity consistent with the sound needs of the community as a whole for the rehabilitation or redevelopment of the project area by private enterprise;

(6) That the plan conforms to the existing general or master plan for the overall development of the village as prepared by the Planning Commission pursuant to Ohio R.C. § 713.02;

(7) That the plan gives due consideration to the provision of adequate park and recreational areas and facilities, as may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of the children residing in the general vicinity of the site covered by the plan;

(8) This finding is made only if there is included in the plan any provision permitting the new construction of hotels, motels, or other housing for transient use. That the village has caused to be made a competent independent analysis of the local supply of transient housing and as a result thereof determines that there exists in the project area a need for additional units of such housing;

(9) This finding is to be made only if the project area is not predominantly residential in character and is not to be redeveloped for predominantly residential use. That the redevelopment of the project area for predominantly nonresidential uses is necessary for the proper development of the community;

(10) This finding is to be made only where an open space land program is involved. That the land and the interest in land to be acquired are for the purpose of preserving such area as open space land and are necessary to orderly long range development, to curb urban sprawl and the spread of urban blight and deterioration, to encourage more economical and desirable urban development and to provide areas for parks, playgrounds, parkways, conservation areas, watersheds, and to preserve natural resources, and that the area so to be acquired is of a size and character appropriate for such purposes;

(11) This finding is to be made only if federal aid is involved and clearing is the sole treatment proposed. That the objectives of the urban renewal plan cannot be achieved through rehabilitation of the urban renewal area;

(12) This finding is to be made only if federal aid is involved and both clearance and rehabilitation treatment are proposed. That the objectives of the urban renewal plan cannot be achieved through more extensive rehabilitation of the urban renewal area;

(13) This finding is to be made only if federal aid is involved. That the United States of America and the Secretary of the Department of Housing and Urban Development be, and they are, assured of full compliance by the village with regulations of the Department of Housing and Urban Development effectuating Title VI of the Civil Rights Act of 1964, being 42 U.S.C. §§ 200a et seq.; and

(14) This finding is to be made only where an educational institution or a hospital is located in or near the project area and it is desired to utilize § 112 of the Housing Act of 1949, being 42 U.S.C. §§ 1450 et seq.; as amended. That in addition to the elimination of slums and blight from such area, the undertaking of an urban renewal or urban redevelopment project in such area will further promote the public welfare and the proper development of the community:

(a) By making land in such area available for disposition, for uses in accordance with the urban renewal or urban redevelopment plan, to such educational institution or hospital for redevelopment in accordance with the uses specified in the urban renewal or urban redevelopment plan;

(b) By providing, through the redevelopment of the area in accordance with the urban renewal or urban redevelopment plan, a cohesive neighborhood environment compatible with the functions and needs of such educational institution or hospitals; or

(c) By any combination of the foregoing.

(F) Any documents which were submitted to Council to support findings in the ordinance should be filed by the Clerk of Council with a copy of the ordinance.

(G) The taking effect of the ordinance approving an urban renewal or redevelopment plan shall constitute authority to spend moneys of the village appropriated for carrying out urban renewal or redevelopment activities in accordance with the plan, as well as the proceeds of bonds or notes issued for such purpose, and to accept advances, gifts, donations, and grants from the federal government, the State of Ohio, any entity, instrumentality, or subdivision of either, or from any other entity, or person for such purpose.

(1995 Code, § 152.08) (Ord. 9-1967, passed 10-10-1967)

§ 152.09 FEDERAL AID CONTRACTS.

Any contract with a federal agency for loans, advances, grants, or other federal aid to the village shall be approved by the Director of Legal Services as to form and legality and, after approval and authorization by ordinance of Council, shall be executed by the Mayor.

(1995 Code, § 152.09) (Ord. 9-1967, passed 10-10-1967)

§ 152.10 MODIFICATION OF PLANS.

(A) An approved urban renewal plan may be amended, modified, or changed by ordinance of Council from time to time, provided, that, if the boundaries of the project area are extended to include any land (except land contained within the right-of-way lines of a dedicated street or alley) not previously included therein, or if there is added a new type of urban renewal activity which requires the acquisition of property, or if there is any change in the land use or redevelopment restrictions, or if there is a change in the proposed location, extent, or character of a public improvement or utility within the project area, or in any matter directly within the jurisdiction of the Planning Commission to approve or disapprove under Ohio R.C. § 713.02, or if such amendment, modification, or change is deemed by Council to be a substantial change in the urban renewal or redevelopment plan, then all of the proceedings provided for in §§ 152.07 and 152.08 shall be carried out in connection with such amendment, modification, or change, except that the findings to be made in the ordinance approving the urban renewal or urban redevelopment plan shall be altered to fit the then circumstances. The land use, or redevelopment restrictions applicable to any land previously conveyed by the village may not be amended, modified, or changed without the consent of the property owner thereto.

(B) A general neighborhood renewal plan may be amended, modified, or changed by ordinance of Council from time to time, provided that any such amendment, modification, or change shall be submitted to the Planning Commission for its written approval or recommendation pursuant to the provisions of § 152.07.

(1995 Code, § 152.10) (Ord. 9-1967, passed 10-10-1967)

§ 152.11 EXECUTION OF URBAN RENEWAL PLANS.

(A) *Acquisition of property.* As authorized by Council, the Urban Renewal Director, with the appropriate advice and assistance of the Director of Legal Services, shall cause the necessary steps to be taken to acquire the parcels of land in the project area in accordance with the urban renewal, or redevelopment plan, including, but not limited to, the negotiation for such parcels, obtaining appraisals, title examinations and reports, with the Mayor executing contracts for any of such services and appropriate documents to transfer title to the village, provided, that in the event appropriation of property is necessary, Council shall initiate and carry out the necessary proceedings, with the appropriate assistance of the several officers, employees, boards, and commissions of the village. Acquisition may take place at any time after compliance with §§ 152.07 and 152.08.

(B) *Village activities preparing property for disposition.* After any necessary appropriations of village moneys and authorization of expenditures by ordinances of Council; Council action, where appropriate, to rezone property, vacate, or dedicate streets, or other public places and provide for the establishment and preservation of open space are; certification of funds by the Director of Finance, where appropriate; and preparation of or approval of legal form of contracts by the Director of Legal Services; the Village Manager shall make the contracts and cause the purchase of the necessary supplies and materials and the provision of the necessary labor for such activities as may be necessary to carry the urban renewal project, including, but not limited to, the demolition, rehabilitation, or repair of structures (whether voluntarily by the private owners thereof or by the village for demonstration purposes in limited numbers), the removal of pavement, sidewalk, lighting and trees, capping, removal, and relocation of village-owned utility lines, grading, construction of site improvements, and supporting facilities and the temporary lease, rental, or permission to let others use structures, or parcels of land while owned by the village, relocation activities and the enforcement of any applicable provisions of law or conforming agreements relative to building, zoning, platting, and the repair or rehabilitation of land and structures remaining in private ownership.

(C) *Disposition of property.* The Council may authorize by ordinance the transfer, lease, or conveyance of any real property in accordance with and for the purpose of the plan, subject to such lawful terms, conditions, restrictions, and covenants (including covenants running with the land) to assist in carrying out the purposes of the plan. All dispositions of real property shall be at not less than the fair value thereof determined by the Village Council based on the proposed new uses and restrictions thereof determined by the Village Council based on the proposed new uses and restrictions thereon to be imposed under the urban renewal plan by the Village Council through zoning ordinances, private covenant, or otherwise. Such determination shall be made only after obtaining independent appraisals of such fair value on the aforesaid bases, which appraisals shall not be binding on the village. The manner of disposition shall be prescribed by ordinance, and may be by negotiation, with or without any competitive bidding, and such competition

and award of a disposition contract may be based on factors other than price alone. Two weeks publication in a newspaper of general circulation in the village shall be sufficient notice for the taking of competitive bids or of the execution of a disposition contract without competitive bidding. The financial and legal ability of those proposing to acquire or lease such real property shall be considered in all dispositions. The Village Manager shall execute, on behalf of the village, such instruments as may be necessary to transfer, lease, or convey such real property in the form approved by the Director of Legal Services and authorized by Council, which form shall include all covenants running with the land, including any portions of the plan incorporated by reference, and shall execute any certificates of completion of improvements or other appropriate instruments, on behalf of the village, that may be necessary in accordance with any covenants in such instruments of lease or conveyance.

(D) *Conforming agreement.* If the owner of property in the project area is willing to make the use of his or her property conform to the urban renewal or redevelopment plan and the Council finds and determines that the acquisition of the property by the village will not be necessary if so conformed, the Village Manager, on Council authorization, may enter into a conforming agreement upon such terms and security as may be authorized by Council. Such agreement may provide for the acquisition of property on continued failure of the property owner to keep his or her agreement after notice from the village specifying such failure.

(E) *Council action.* In the execution of urban renewal, or redevelopment projects, the Council may authorize, as to any appropriate projects, or parts of projects, the employment of community improvement corporations, community redevelopment corporations and metropolitan housing authorities, as defined by the state statutes, and when authorized by ordinance of Council may grant leases, make conveyances, and enter into agreements with such corporations related to appropriate aspects of such projects to the full extent of the powers possessed by such corporations.

(1995 Code, § 152.11) (Ord. 9-1967, passed 10-10-1967)

§ 152.12 FINANCE.

(A) The cost of urban renewal activities may be paid in whole or in part by the village from appropriate general or special fund or accounts established pursuant to Ohio R.C. Chapters 135 and 5705, and the village may accept grants or gifts of moneys or real personal property from persons, entities, governments, or taxing authorities to be used for the planning and financing of such urban renewal activities.

(B) All bonds or notes payable from the general credit and taxes of the village to finance the urban renewal activities shall be issued in accordance with the applicable provisions of Ohio R.C. Chapter 133. Accounts shall be maintained for the carrying out of those urban renewal activities being financed by loans or advances from the federal government separate from any other village accounts, including village accounts used to carry out any activities being financed by the village, and no money or real or personal property shall in any way be pledged as security for the repayment of any federal loans or advances, except the separately described portion of a project area set aside for such purpose, together with the proceeds from the sale, lease, or temporary operation thereof, and federal capital grant moneys earned in connection therewith in order to avoid violating statutory and constitutional debt and tax limitations.

(1995 Code, § 152.12) (Ord. 9-1967, passed 10-10-1967)

§ 152.13 BUILDING PERMITS.

After approval of an urban renewal or redevelopment plan by the Village Council, no building permit shall be issued for the improvement or enlargement of any existing structure, or for the construction of a new structure, in the clearance and redevelopment portion of the project area, except that such permit may be issued for the repair of an existing structure when such repair is deemed necessary by the Village Manager for the immediate preservation of the public health and safety, or is required by the redeveloper in accordance with the redevelopment plan.

(1995 Code, § 152.13) (Ord. 9-1967, passed 10-10-1967)

§ 152.14 TAX EXEMPTION.

(A) All property of the village, including funds, owned or held by it for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against the village be a charge or lien on such property. However, the provisions of this section shall not apply to or limit the right of obligees to

pursue any remedies for the enforcement of any pledge or lien given pursuant to this ordinance by the village on its rents, fees, grants, or revenues from the urban renewal or redevelopment projects.

(B) The property of the village, acquired or held for the purposes of this chapter on January 1 of any year, is declared to be public property used exclusively for essential public and governmental purposes and such property shall be exempt from all taxes of the village, county, state, or any taxing authority thereof. However, such tax exemptions shall terminate when the village sells, leases, or otherwise disposes of such property in a project area to a purchaser or lessee which is not a person, corporation, partnership, or other association entitled to tax exemption with respect to such property.

(1995 Code, § 152.14) (Ord. 9-1967, passed 10-10-1967)

ADMINISTRATION

§ 152.20 OFFICERS TO ADMINISTER PROGRAM.

(A) The Village Manager is authorized and directed to appoint the following officers and personnel as required for the proper administration of the village's urban renewal program:

- (1) A Director of Urban Renewal;
- (2) Director of Relocation and Rehabilitation; and
- (3) A program secretary.

(B) The salary ranges shall be set by Council from time to time.

(C) Bonds shall be posted by the above named directors in the amount of \$5,000, and in the amount of \$1,000 by the program secretary.

(1995 Code, § 152.20) (Ord. 68-6, passed 3-4-1968)

§ 152.21 RELOCATION SUPERVISOR.

The Urban Renewal Department of the village shall have a relocation supervisor, who shall receive a salary as set by Council from time to time.

(1995 Code, § 152.21) (Ord. 70-9, passed 3-2-1970)

§ 152.22 COORDINATOR OF SOCIAL SERVICES.

(A) The part-time position of Coordinator of Social Services is established for the assistance (two hours per day) of urban renewal residents through the coordination of services available to the community, as shall prove beneficial towards the completion of the urban renewal program.

(B) Compensation for this position shall be set by Council from time to time and charged to the urban renewal fund as an administrative expense.

(1995 Code, § 152.22) (Ord. 68-21, passed 11-18-1968)

§ 152.23 OTHER PERSONNEL.

Other employees in the Urban Renewal Department may be authorized by Village Council at such salaries and fringe benefits as determined from time to time by Council.

(1995 Code, § 152.23)

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GENERAL PROVISIONS

§ 153.001 PURPOSE.

The purpose of this chapter is to regulate and restrict the location and use of buildings, structures, and land for trade, industry, residence, and for public and semipublic or other specified uses; and to regulate and limit the height and bulk of buildings and other structures; to regulate and to determine the size of yards, courts, and open spaces; to regulate and limit the density of population; and for such purposes to divide the village into districts and establishing the boundaries thereof; providing for changes in the regulations, restrictions, and boundaries of such districts; defining certain terms used herein; providing for enforcement; establishing a Zoning Board of Appeals; and imposing penalties for the violation of this chapter.

(1995 Code, § 153.001) (Ord. 68-15, passed 8-22-1968)

§ 153.002 PREAMBLE.

Pursuant to the authority conferred by Ohio R.C. Chapter 713, and for the purpose of promoting and protecting the public health, safety, peace, morals, comfort, convenience, and general welfare of the inhabitants of the village by protecting and conserving the character and social and economic stability of the residential, commercial, industrial, and other use areas; by securing the most appropriate use of land; providing adequate light, air, and reasonable access; and facilitating adequate and economical provision of transportation, water, sewer, schools, recreation, and other public requirements, and by other means all in accordance with a Comprehensive Plan; this code is adopted.

(1995 Code, § 153.002) (Ord. 68-15, passed 8-22-1968)

§ 153.003 SHORT TITLE.

This chapter shall be known and may be cited as the Zoning Code.

(1995 Code, § 153.003) (Ord. 68-15, passed 8-22-1968)

§ 153.004 DEFINITIONS.

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

***ACCESSORY USE* or *ACCESSORY*.**

(1) An ***ACCESSORY USE***:

(a) Is a use conducted on the same zoning lot as the principal use to which it is related (whether located within the same or an accessory building or other structure, or as an accessory use of land), except that, where specifically provided in the applicable district regulations, accessory off- street parking or loading need not be located on the same zoning lot; and

(b) Is a use which is clearly incidental to, and customarily found in connection with, such principal use; and

(c) Is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use.

(2) When ***ACCESSORY*** is used in the text, it shall have the same meaning as accessory use.

(3) An ***ACCESSORY USE*** includes:

(a) Living or sleeping accommodations for servants;

(b) Living or sleeping accommodations for caretakers in connection with any use;

(c) Living or sleeping accommodations for employees in connection with commercial or manufacturing uses;

(d) Keeping of domestic animals, but not for sale or hire. A commercial stable or kennel is not an ***ACCESSORY USE***;

(e) Swimming pools not located within a building, provided that:

1. The use of such pools shall be restricted to occupants of the principal use and guests for whom no admission or membership fees are charged;

2. If accessory to a nonresidential use, the edge of the pool shall be located not less than 50 feet from any lot line;

3. If accessory to a residential use, the edge of the pool shall be located not less than ten feet from any lot line, and in the event that such pool is located less than 50 feet from any rear lot line or side lot line, it shall be screened by a continuous fence, supplemented with a strip of densely planted trees or shrubs at least four feet high at the time of planting, along such rear lot line and that portion of any side lot line adjacent to such pool;

4. Illumination of such pools shall be limited to underwater lighting; and

5. Swimming pool clubs are not accessory uses.

(f) Domestic or agricultural storage in a barn, shed, tool room, or similar building or other structure;

(g) Home occupations;

(h) Incinerators;

(i) In connection with commercial or manufacturing uses, the storage of goods normally carried in stock, used in, or produced by such uses, unless the storage is expressly prohibited under the applicable district regulations;

(j) In connection with commercial and manufacturing uses, incidental repairs, unless expressly prohibited under the applicable district regulations;

(k) The removal for sale of sod, loam, clay, sand, gravel, or stone in connection with the construction of a building or other structure on the same zoning lot, or in connection with the regrading of a zoning lot, but in the latter case not below the legal street grade;

(l) Accessory off-street parking spaces, open or enclosed;

(m) Accessory off-street loading berths;

(n) Accessory signs;

(o) Accessory radio or television towers; and

(p) Accessory activities when conducted underground as part of the operation of railroad passenger terminals, such as switching, storage, maintenance, or servicing of trains.

ALTERATIONS, INCIDENTAL, or TO ALTER INCIDENTALLY.

(1) Changes or replacements in the nonstructural parts of a building or other structure, without limitation to the following examples:

(a) Alteration of interior partitions to improve livability in a nonconforming residential building, provided that no additional dwelling units are created thereby;

(b) A minor addition on the exterior of a residential building, such as an open porch;

(c) Alteration of interior nonloadbearing partitions in all other types of buildings or other structures; or

(d) Replacement of, or minor changes in, the capacity of utility pipes, ducts, or conduits.

(2) Changes or replacements in the structural parts of a building or other structure, limited to the following examples or others of similar character or extent:

(a) Making windows or doors in exterior walls;

(b) Replacement of building facades; and

(c) Strengthening the loadbearing capacity, in not more than 10% of the total floor area, to permit the accommodation of a specialized unit of machinery or equipment.

(3) To ***ALTER INCIDENTALLY*** is to make an incidental alteration.

ALLEY. Any dedicated public way affording a secondary means of access to abutting property, and not intended for general traffic circulation.

APARTMENT. A room or group of rooms in an apartment house designed for and occupied exclusively as a residence for only one family.

APARTMENT HOUSE. A building designed for and occupied exclusively by three or more families living independent of one another.

AUTOMOTIVE SERVICE STATION.

(1) A building or other structure or a tract of land used exclusively for the storage and sale of gasoline or other motor fuels and for any uses accessory thereto. The sale of lubricants, accessories, or supplies, the lubrication of motor vehicles, the minor adjustment or repair of motor vehicles with hand tools only, or the occasional washing of motor vehicles are permitted accessory uses.

(2) A public parking lot or public parking garage is not a permitted accessory use. For the purposes of this definition, ownership of a zoning lot to be used for an ***AUTOMOTIVE SERVICE STATION*** shall be deemed to include a lease of not less than ten years duration. In regard to the location of service station equipment, a pump, light stand, air tower, water outlet, or similar installation may be placed within the required front yard, but no closer to the curb line than 20 feet.

BASEMENT or CELLAR. A story or portion of a story partly below curb level, with at least 1/2 of its height measured from floor to ceiling below curb level. On through lots the curb level nearest to a story or portion of a story shall be used to determine whether such story or portion of a story is a basement.

BLOCK. A tract of land bounded by:

(1) Streets;

(2) Public parks;

(3) Railroad rights-of-way, when located at or above ground level but not including sidings or spurs in the same ownership as the zoning lot; or

(4) Corporate boundary lines of the village.

BOARDING HOUSE or **ROOMING HOUSE.** A dwelling, not a single-family or two-family dwelling, apartment house, or a hotel, providing lodging with or without meals, and having lodging accommodations for less than ten guests.

BUFFER AREA. A strip of land in a nonresidential district at the point where the nonresidential district touches a residential district. Yard requirements may be included in the buffer area requirements.

BUILDING.

(1) Any structure which:

- (a) Is permanently affixed to the land;
- (b) Has one or more floors and a roof; and
- (c) Is bounded by either open area or the lot lines of a zoning lot.

(2) A **BUILDING** shall not include such structures as billboards, fences, or radio towers, or structures with interior surfaces not normally accessible for human use, such as gas holders, tanks, smoke stacks, grain elevators, coal bunkers, oil cracking towers, or similar structures.

(3) A **BUILDING** may, for example, consist of a one-family detached residence, a two-family residence, either a row house or a series of row houses (depending on location of lot lines), a row of garden apartments with individual entrances, or an apartment house; a single store or a row of stores (depending on location of lot lines); or a single factory or loft.

- (a) **DETACHED.** A building which has no party wall.
- (b) **SEMIDETACHED.** A building which has only one party wall in common with another building.
- (c) **ATTACHED.** A building which has two party walls in common with adjacent buildings.

BUILDING, MIXED. A building in a commercial district used partly for residential use and partly for community facility or commercial use.

BUILDING AREA. The aggregate of the maximum horizontal cross section areas of all buildings on a lot above ground level, measured at the greatest outside dimensions, excluding steps, cornices, eaves, gutters, and patios, but including breezeways and porches.

BUILDING HEIGHT. A building's vertical measurements from the mean level of the ground abutting the building to a point midway between the highest and lowest points of the roof, excluding chimneys, spires, towers, elevator penthouses, tanks, flagpoles, aeriels, stacks, beacons, and similar projections of the building, but in no case shall any projection above the measured height of the building exceed 85 feet.

BUILDING LINE. A line parallel to the right-of-way line at a distance therefrom equal to the depth of the front yard required for the district in which the lot is located.

CLINIC. An institution providing diagnostic, therapeutic, or preventive out-patient treatment by a group of doctors in the same building.

CLUB. An organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics, or the like, but not for profit.

COURT. An open unoccupied space, other than a yard, and bounded on at least two sides by a building. A **COURT** extending to the front yard or front lot line or to the rear yard or rear lot line is an **OUTER COURT**. Any other **COURT** is an **INNER COURT**.

CURB LINE. A line sometimes containing a raised concrete structure of not more than six inches located on either edge of the cartway but within the right-of-way line.

DISTRICT. A portion of the incorporated area of the village within which certain regulations and requirements or various combinations thereof apply under the provisions of this chapter.

DRIVE-IN. A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure, regardless of whether self-servicing is involved.

DWELLING UNIT. One or more rooms in a residential building or residential portion of building, which are arranged, designed, used, or intended for use by one or more persons living together and maintaining a common household, and which include lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

(1) **MULTIPLE-FAMILY.** A building on a lot designed and used exclusively as a residence for three or more families living independently of one another.

(2) **ROW HOUSE.** A semi-detached building on a lot designed for and occupied exclusively as a residence for only one family and having a party wall in common with an adjacent single-family residence.

(3) **SINGLE-FAMILY.** A building on a lot designed and occupied exclusively as a residence for one family.

(4) **TWO-FAMILY.** A building on a lot designed and occupied exclusively as a residence for two families.

ENLARGEMENT or **TO ENLARGE.** An addition to the floor area of an existing building, an increase in the size of any other structure, or an increase in that portion of a tract of land occupied by an existing use. To **ENLARGE** is to make an enlargement.

ERECTED. Built, constructed, altered, reconstructed, moved on, or any physical operations on the premises required for the construction. Excavation, fill, drainage, and the like, shall be considered a part of the erection.

EXTENSION or **TO EXTEND.** An increase in the amount of existing floor area used for an existing use, within an existing building. To **EXTEND** is to make an extension.

FAMILY. One or two persons or parents, with their direct lineal descendants and adopted children (and including the domestic employees thereof), together with not more than two persons not so related, living together in the whole or part of a dwelling unit comprising a single housekeeping unit. Every additional group of two or less persons living in such housekeeping unit shall be considered a separate family for the purpose of this chapter.

FLOOR AREA. For the purposes of computing the minimum allowable floor area in a residential dwelling unit, the term **FLOOR AREA** shall mean the sum of the horizontal areas of each story of the building measured from the exterior faces of the exterior walls. The **FLOOR AREA MEASUREMENT** is exclusive of areas of basements, unfinished attics, attached garages, breezeways, and unenclosed porches.

FLOOR AREA, USABLE. For the purposes of computing parking, that area used for, or intended to be used for, the sale of merchandise or services or for use to serve patrons, clients, or customers. Such floor area which is used or intended to be used principally for the storage or processing of merchandise, or for utilities, shall be excluded from this computation of **USABLE FLOOR AREA**. Measurement of floor area shall be the sum of the gross horizontal areas of the several floors of the building measured from the interior faces of the exterior walls. For the purposes of computing parking for those uses not enclosed within a building, the area used for the sale of merchandise, display of merchandise, or area used to serve patrons, or clients shall be measured to determine necessary parking spaces.

GARAGE.

(1) **PRIVATE.** A building accessory to a single-family or two-family dwelling for the storage of motor vehicles owned and used by the owner, or tenant, of the lot on which it is erected.

(2) **PUBLIC.** A building used for the storage of more than four motor vehicles. Repairing and servicing of vehicles may be carried on in conjunction with the primary function of vehicular storage.

GRADE. The ground elevation established for the purpose of regulating the number of stories and the height of the building. The building grade shall be the level of the ground adjacent to the walls of the building if the finished grade is level. If the ground is not entirely level, the grade shall be the average elevation of the ground for each face of the building.

GREENBELT. A strip of land of definite width and location reserved for planting of shrubs or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this chapter.

HOME OCCUPATION.

(1) An accessory use which:

(a) Is clearly incidental to or secondary to the residential use of a dwelling unit or rooming unit;

(b) Is carried on within a dwelling unit, rooming unit, or accessory building by one or more occupants of such dwelling unit or

rooming unit, except that, in connection with the practice of a profession, one person not residing in such dwelling unit or rooming unit may be employed; and

(c) Occupies not more than 25% of the total floor area of such dwelling unit or rooming unit and in no event more than 500 square feet of floor area.

(2) In connection with the operation of a **HOME OCCUPATION** it shall not be permitted:

(a) To sell articles produced elsewhere than on the premises;

(b) To have exterior displays, or a display of goods visible from the outside;

(c) To store materials or products outside of a principal or accessory building or other structure;

(d) To display, in an R-1 or R-2 District, a nameplate or other sign except as permitted in connection with the practice of a profession;

(e) To make external structural alterations which are not customary in residential buildings; and

(f) To produce offensive noise, vibration, smoke, dust, or other particulate matter, odorous matter, heat, humidity, glare, or other objectionable effects.

(3) **HOME OCCUPATIONS** include:

(a) Fine art studios;

(b) Professional offices; and

(c) Teaching of not more than four pupils simultaneously, or, in the case of musical instruction, of not more than a single pupil at a time.

(4) However, **HOME OCCUPATIONS** shall not include:

(a) Advertising or public relations agencies;

(b) Barber shops;

(c) Beauty parlors;

(d) Commercial stables or kennels;

(e) Depilatory, electrolysis, or similar offices;

(f) Interior decorators' offices or workshops;

(g) Real estate or insurance offices; and

(h) Stockbrokers' offices.

HOSPITAL, GENERAL. An institution providing health services primarily for in-patient medical or surgical care of the sick or injured and including related facilities, such as laboratories, out-patient departments, training facilities, central service facilities, and staff offices which are an integral part of the facilities.

HOTEL, APARTMENT.

(1) A building or part of a building in which:

(a) The dwelling units or rooming units are used primarily for permanent occupancy;

(b) One or more common entrances serve all such units; and

(c) One or more of the following services are provided of maid, telephone, desk, or bellboy service, or the furnishing of laundering of linens.

(2) Restaurants, cocktail lounges, or indoor swimming pools are permitted accessory uses, provided that in residence districts, such facilities shall be accessible only through the lobby and there shall be no signs except as permitted by the applicable district regulations. Public banquet halls, ballrooms, or meeting rooms are not permitted accessory uses.

HOTEL, TRANSIENT.

(1) A building or part of a building in which:

- (a) Living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis;
- (b) One or more common entrances serve all such living or sleeping units; and

(c) Is provided 24-hour desk service, in addition to one or more of the following services of maid, telephone, or bellboy service, or the furnishing of laundering of linens.

(2) Permitted accessory uses include restaurants, cocktail lounges, public banquet halls, ballrooms, or meeting rooms.

INCIDENTAL ALTERATIONS. See ***ALTERATIONS, INCIDENTAL.***

JUNK. The miscellaneous waste material resulting from housekeeping, mercantile enterprises, trades, manufacturing and offices, including ashes, tin cans, glass, scrap metals, rubber, paper, and rags.

JUNK YARDS. An open area where waste, used or secondhand materials are bought and sold, exchanged, stored, baled, packed, or disassembled, or handled. Junk shall include, but not be limited to rubbish, scrap iron and other metals, paper, rags, rubber tires, and bottles. A ***JUNK YARD*** includes automobile wrecking yards and includes any area of more than 200 square feet for storage, keeping or abandonment of junk, but does not include uses established entirely within enclosed buildings.

KENNEL, COMMERCIAL. Any lot or premises on which three or more dogs or cats are either permanently or temporarily boarded.

LOADING SPACE. An off-street space on the same lot with a building, or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

LOT. A parcel of land occupied, or to be occupied, by a main building or a group of such buildings and accessory buildings, or utilized for the principal use and uses accessory thereto, together with such open spaces as required under the provisions of this chapter. A ***LOT*** may or may not be specifically designated as such on public records. The word ***LOT*** includes the word ***PLOT*** or ***PARCEL***.

LOT OF RECORD. A parcel of land, the dimensions of which are shown on a document or map on file with the office of the County Recorder or in common use by village or county officials, and which actually exists as so shown, or any part of such parcel held in record ownership separate from that of the remainder thereof.

LOT AREA. The total horizontal area within the lot lines of the lot.

LOT, CORNER. A lot where the interior angle of two adjacent sides at the intersection of the two streets is less than 135 degrees. A lot abutting on a curved street or streets shall be considered a ***CORNER LOT*** for the purposes of this chapter if the arc is of less radius than 150 feet and the tangents to the curve, at the two points where the lot lines meet the curve or the straight street line extended, form an interior angle or less than 135 degrees.

LOT COVERAGE. The part or percent of the lot occupied by buildings, including accessory buildings.

LOT DEPTH. The horizontal distance between the front and rear lot lines, measured along the median between side lot lines.

LOT, DOUBLE FRONTAGE. Any interior lot having frontages on two more or less parallel streets as distinguished from a corner lot. In the case of a row of double frontage lots, all sides of those lots adjacent to streets shall be considered frontage, and front yards shall be provided as required.

LOT, INTERIOR. Any lot other than a corner lot.

LOT LINES. The lines bounding a lot.

(1) ***FRONT LOT LINE.*** In the case of an interior lot, the line separating the lot from the street. In the case of a corner lot, or double frontage lot, is that line separating the lot from that street which is designated as the front street in the plat and in the application for a building permit or zoning compliance permit.

(2) ***REAR LOT LINE.*** The lot line opposite the front lot line. In the case of a lot pointed at the rear, the ***REAR LOT LINE*** shall be an imaginary line parallel to the front lot line not less than ten feet long lying farthest from the front lot line and wholly within

the lot.

(3) **SIDE LOT LINE.** Any lot lines other than the front lot line or rear lot line. A **SIDE LOT LINE** separating a lot from a street is a side street lot line. A **SIDE LOT LINE** separating a lot from another lot or lots is an interior side lot line.

LOT WIDTH. The horizontal distance between the side lot lines measured at the two points where the building line, or setback intersects the side lot lines.

MAJOR THOROUGHFARE. An arterial street which is intended to serve as a large volume trafficway for both the immediate village area and the region beyond, and designated as a freeway, regional arterial, primary arterial or secondary arterial on the Comprehensive Plan.

MOBILE HOME. Any vehicle designed, used, or so constructed as to permit its being used as a conveyance on the public streets or highways and duly licensable as such, and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one or more persons.

MOBILE HOME COURT. Any plot of ground on which two or more mobile homes, occupied for dwelling or sleeping purposes, are located.

MOTEL. A building used for the purpose of furnishing meals and lodging to the transient public and (having lodging accommodations for ten or more paying families or individuals) having off-street parking provided contiguous to the lodging accommodations.

NONCONFORMING. A lawful building, use, or lot, which by reason of design, size or use does not conform with the requirements of the district, or districts, in which it is located as designated by this chapter.

NURSING HOME. A building to house and within which services are provided for ill and aged persons.

OFF-STREET PARKING LOT. A facility providing vehicular parking spaces along with adequate drives and aisles, for maneuvering so as to provide access for entrance and exit for the parking of more than two automobiles.

PARKING SPACE. An area of definite length and width, exclusive of drives, driveways, aisles, or entrances giving access thereto, and fully accessible for the storage or parking of permitted vehicles.

PLANNED DEVELOPMENT. A parcel or tract of land, initially under single ownership or control, which contains two or more principal buildings and one or more principal uses, planned and constructed as a unified development, and where certain regulations of this chapter for the district where it is located are modified. A **PLANNED DEVELOPMENT** requires a special use permit issued in accordance with procedures set forth in this chapter.

PUBLIC UTILITY. Any person, firm, or corporation, municipal department, board, or commission duly authorized to furnish and furnishing under federal, state, or municipal regulations to the public, gas, steam, electricity, sewage disposal, communication, telegraph, transportation, or water.

RESERVOIR PARKING. Those off-street parking spaces allocated to automobiles awaiting entrance to a particular establishment.

RIGHT-OF-WAY LINE. The dividing line between a lot and a public street, legally open or officially plotted by the village, county, or state, or over which the owners or tenants of two or more lots held in single or separate ownership have the right-of-way.

SIGN. The use of any words, numerals, figures, devices, designs, or trademarks by which anything is made known such as are used to show an individual, firm, profession, or business, and are visible to the general public.

SINGLE AND SEPARATE OWNERSHIP. The ownership of a lot by one or more persons, partnerships, or corporations which ownership is separate and distinct from that of any abutting or adjoining use.

SPECIAL EXCEPTION. Permission or approval granted by the Council in accordance with § 153.216, hereof in situations where provision thereof is made by the terms of this chapter.

STORY. That part of a building (except a mezzanine) included between the surface of one floor and the surface of the next floor, or if there is no floor above, then the ceiling next above. A **STORY** thus defined shall not be counted as a story when more than 50% by cubic content is below the height level of the adjoining ground.

STREET. A public thoroughfare which affords the principal means of access to abutting property.

STRUCTURE. Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

TOURIST HOME. A building containing a single dwelling unit and guest rooms offered to the public for compensation and catering primarily to the public traveling by motor vehicles.

TEMPORARY BUILDING OR USE. A structure or use permitted by the Zoning Board of Appeals to exist during periods of construction of the main building or use, or for special events.

USE. The purpose for which land or a building is designed, arranged, or intended, or for which land or a building is or may be occupied.

USE, ACCESSORY. A use subordinate to the main use of a lot and used for purposes clearly incidental to those of the main use.

USE, MAIN. The principal use to which the premises are devoted and the principal purpose for which the premises exist.

VARIANCE. Permission or approval granted by the Zoning Board of Appeals in accordance with § 153.229(B), hereof, constituting a modification of, or deviation from the exact provisions of this chapter as applied to a special property.

WALL or FENCE. An obscuring structure of definite height and location to serve as an obscuring screen in carrying out the requirements of this chapter.

YARDS. The area around the inner periphery of each lot in which no building or structure shall be erected. The size of such area is determined by the distance from the property lines and right-of-way lines set forth in the various zoning districts to the main building on the lot exclusive of steps, overhanging eaves, gutters, or cornices.

(1) **FRONT.** The minimum required open space, extending the full width of the lot from the right-of-way line to the nearest point on the nearest building or structure.

(2) **REAR.** The minimum required open space extending the full width of the building and extending back from the rear lot line to the nearest point on the nearest building.

(3) **SIDE.** The minimum required open space extending the full depth of the lot and extending from the side lot line to the nearest point of the main building.

ZONING LOT.

(1) Either:

(a) A lot of record existing on the effective date of this chapter or any applicable subsequent amendment thereto;

(b) A tract of land, either unsubdivided or consisting of two or more contiguous lots of record, located within a single block, which, on the effective date of this chapter or any applicable subsequent amendment thereto, was in single ownership; or

(c) A tract of land, located within a single block, which at the time of filing for a building permit (or, if no building permit is required, at the time of filing for a certificate of occupancy), is designated by its owner or developer as a tract all of which is to be used, developed, or built on as a unit under single ownership.

(2) A **ZONING LOT** therefore may or may not coincide with a lot as shown on the official tax maps of the village, or on any recorded subdivision plat or deed.

(3) A **ZONING LOT** may be subdivided into two or more zoning lots, provided that all resulting zoning lots and all buildings thereon shall comply with all of the applicable provisions of this chapter. If such **ZONING LOT**, however, is occupied by a noncomplying building, such **ZONING LOT** may be subdivided provided such subdivision does not create a new noncompliance or increase the degree of noncompliance of such building.

(1995 Code, § 153.004) (Ord. 68-15, passed 8-22-1968)

§ 153.005 ESTABLISHMENT AND CONTROL.

(A) *New uses.* In all districts, all buildings, or structures erected hereafter, all uses of land, buildings, or structures established hereafter, all structural alteration, enlargement, or relocation of existing buildings, or structures occurring hereafter shall be subject to

all regulations of this chapter which are applicable to the zoning districts in which such building, structure, uses, or land shall be located.

(B) *Existing uses.* In all districts, after the effective date of this chapter, and except as otherwise provided in §§ 153.200*et seq.*:

(1) The existing use of any existing building or other structure may be continued, changed, or extended;

(2) The use of any existing tract of land may be continued, changed, or enlarged; or

(3) Any existing building or other structure may be enlarged, altered, converted, reconstructed, or relocated only in accordance with the use, bulk, and all other applicable regulations of this chapter.

(1995 Code, § 153.005) (Ord. 68-15, passed 8-22-1968)

§ 153.006 ESTABLISHMENT OF DISTRICTS.

In order to carry out the purposes and provisions of this chapter, the following districts are established:

<i>Public Lands</i>	
P-1	Public Lands
<i>Residential Districts</i>	
R-1	Low Density Residential District
R-2	Medium Density Residential District
R-3	High Density Residential District
<i>Commercial Districts</i>	
C-1	Neighborhood Commercial District
C-2	Central Commercial District
C-3	Highway Oriented Commercial District
<i>Manufacturing Districts</i>	
M-1	Light Manufacturing District
M-2	Heavy Manufacturing District

(1995 Code, § 153.006) (Ord. 68-15, passed 8-22-1968)

§ 153.007 INCORPORATION OF MAP.

(A) The locations and boundaries of the districts established by this chapter are shown on the zoning map, which is incorporated into the provisions of this Zoning Code and which map in its entirety, including all amendments thereto, shall be as much a part of this resolution as if fully set forth and described herein.

(B) The zoning map, and amendments thereto, shall be maintained by the Village Clerk.

(1) Unless shown otherwise, the boundaries of the districts are lot lines, the centerlines of streets, alleys, roads, or such lines extended, and the limits of the village.

(2) Where, due to the scale, lack of detail, or illegibility of the zoning map accompanying this chapter, there is any uncertainty,

contradiction, or conflict as to the intended location of any district boundaries shown thereon, interpretation concerning the exact location of district boundary lines shall be determined on written application to, or on its own motion, by the Zoning Board of Appeals, after recommendation by the Planning Commission.

(C) If, in accordance with the provisions of this chapter, changes are made in district boundaries or other matter portrayed on the official zoning map, such changes shall be entered on the official zoning map promptly after the amendment has been approved by the Village Council. No amendment to this chapter which involves matter portrayed on the official zoning map shall become effective until after such change and entry has been made on the map.

(D) No changes of any nature shall be made in the official zoning map or matter shown thereon except in conformity with the procedures set forth in this chapter. Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, the official zoning map which shall be located in the Village Clerk's office shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the village.

(1995 Code, § 153.007) (Ord. 68-15, passed 8-22-1968)

§ 153.008 REPLACEMENT OF OFFICIAL ZONING MAP.

In the event that the official zoning map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the Village Council may by resolution adopt a new official zoning map which shall supersede the prior official zoning map. The new official zoning map may correct drafting or other errors or omissions in the prior official zoning map, but no such correction shall have the effect of amending the original official zoning map or any subsequent amendment thereof.

(1995 Code, § 153.008) (Ord. 68-15, passed 8-22-1968)

§ 153.009 BOUNDARY TOLERANCES.

Where a district boundary line divides a lot held in single and separate ownership at the effective date of this chapter, the regulations applicable to the less restricted district shall extend over the portion of the lot in the more restricted district a distance of not more than 50 feet beyond the district boundary line, provided that full use is made of the less restricted area before the extension into the more restricted area.

(1995 Code, § 153.009) (Ord. 68-15, passed 8-22-1968)

§ 153.010 ZONING OF VACATED AREAS.

Whenever any street, alley, or other public way within the village shall be vacated, such street, alley, or other public way or portion thereof shall automatically be classified in the same zone districts as the property to which it attaches.

(1995 Code, § 153.010) (Ord. 68-15, passed 8-22-1968)

§ 153.011 CONFLICT AND OTHER LAWS.

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the intended purposes. Where the provisions of this chapter impose greater restrictions than those of any statute, other ordinance, or regulation, the provisions of this chapter shall be controlling. Where the provisions of any statute, other ordinance, or regulation impose greater restrictions than this chapter, the provisions of such statute, other ordinance, or regulation shall be controlling.

(1995 Code, § 153.011) (Ord. 68-15, passed 8-22-1968)

§ 153.012 ZONING OF ANNEXED AREAS.

Any area annexed to the village shall immediately on such annexation be classified as an R-1 Low Density Residential District until a zoning map for that area has been adopted by the Village Council. The Planning Commission shall recommend appropriate zoning for

such area within three months after the matter is referred to it by the Village Council.

(1995 Code, § 153.012) (Ord. 68-15, passed 8-22-1968)

P-1 PUBLIC LAND DISTRICT

§ 153.020 INTENDED PURPOSES.

This district is intended to identify and preserve public lands and open spaces as well as to preserve privately owned reservoir sites from encroachment by intensive uses that will destroy the open character of such sites.

(1995 Code, § 153.020) (Ord. 68-15, passed 8-22-1968)

§ 153.021 USE REGULATIONS.

The following uses are permitted, so long as the use does not require the erection of a structure intended for year around habitation.

- (A) Public parks, playgrounds and recreational areas, and private recreational developments.
- (B) Public elementary and secondary schools.
- (C) Public or semipublic neighborhood and community and recreational centers held in nonprofit ownership.
- (D) Buffer strips established as transition areas which have been other use areas.
- (E) Municipal services buildings and public administrative offices.
- (F) Buildings and structures accessory to the above uses.
- (G) All uses other than those permitted above are prohibited.

(1995 Code, § 153.021) (Ord. 68-15, passed 8-22-1968)

R-1 LOW DENSITY RESIDENTIAL DISTRICT

§ 153.030 INTENDED PURPOSES.

(A) The general character of these residential districts is to consist of single-family detached dwellings, set on large building lots. Nonresidential uses would be restricted to those community facilities which:

- (1) May appropriately be located in residential areas to serve educational needs or to provide other essential services for the residents;
- (2) May appropriately be located in residential areas to provide recreational, religious, health, and other essential services for residents;
- (3) Can perform their activities more effectively in a residential environment, unaffected by adjacent industrial or general services uses; and
- (4) Do not create significant objectionable influences in residential areas.

(B) In R-1 Low Density Residential Districts, the following regulations in § 153.031 shall apply.

(1995 Code, § 153.030) (Ord. 68-15, passed 8-22-1968)

§ 153.031 USE REGULATIONS.

A building may be erected, altered, or used, and a lot may be used or occupied, for any of the following purposes and no other.

(A) *Permitted uses.*

- (1) Single-family detached dwelling units.
- (2) Accessory uses.

(B) *Special exception.*

- (1) Churches, rectories or parish houses.
- (2) Clubs, except:
 - (a) Clubs, the chief activity of which is a service predominantly carried on as a business;
 - (b) Noncommercial outdoor swimming pool clubs; or
 - (c) Any other noncommercial clubs with outdoor swimming pools located less than 50 feet from any lot line.
- (3) Community centers.
- (4) Health centers (clinics).
- (5) Libraries, museums, or noncommercial art galleries.
- (6) Medical offices or group medical centers, including the practice of dentistry or osteopathy, limited to a location below the level of the first story ceiling, except that in multiple dwellings (permitted only in R-3 Residential District), such uses may be located on the floor, if separate access to the outside is provided.
- (7) Monasteries, convents, or novitiates.
- (8) Municipal facilities and public utility uses directly related to and necessary for services within the district or village.
- (9) Nonprofit or voluntary hospitals or related hospital facilities including animal hospitals.
- (10) Philanthropic or nonprofit institutions with sleeping accommodations, including nursing homes or sanitariums, provided that not more than 25% of the floor area shall be used for central office purposes.
- (11) Proprietary nursing homes or sanitariums.
- (12) Radio and television transmitting stations and towers may be erected and used by federally licensed operators, including amateur radio operators ancillary to their private residences.
- (13) Welfare centers.
- (14) Cemeteries.
- (15) Outdoor tennis courts or ice skating rinks, provided that all lighting shall be directed away from nearby residential zoning lots.
- (16) Public parks or playgrounds or private parks.

(1995 Code, § 153.031) (Ord. 68-15, passed 8-22-1968)

§ 153.032 HEIGHT REGULATIONS.

- (A) For any dwelling, 28 feet, not exceeding 2-1/2 stories;
- (B) For any building accessory to any dwelling use, 14 feet, not exceeding one story; and
- (C) For any other nondwelling building or other structure, 28 feet, except that such height may be increased to a maximum of 65 feet, provided that for every foot of height in excess of 28 feet, there shall be added to each yard requirement one corresponding foot or width or depth.

(1995 Code, § 153.032) (Ord. 68-15, passed 8-22-1968)

§ 153.033 AREA, WIDTH, AND YARD REGULATIONS.

(A) Minimum lot area and width.

(1) A lot area of not less than 6,000 square feet, and a lot width of not less than 60 feet at the building line shall be provided for every building or other structure erected or used for any use permitted in this district, except that in the case of a use set forth in § 153.031(B)(10), the minimum lot area and width requirements may be reduced when authorized as a special exception.

(2) Each permitted building or structure other than a single-family detached dwelling and accessory building, shall be located on a lot having an area of not less than 24,000 square feet and a width at the building line of not less than 200 feet.

(B) Front yard. There shall be a front yard between the building line and the highway and street right-of-way lines as follows:

(1) On existing four lane federal or state highways, a distance of 60 feet;

(2) On existing two-lane federal or state highways, a distance of 75 feet;

(3) All county highways, a distance of 50 feet; and

(4) All other streets, a distance of 30 feet.

(C) Side yards.

(1) On each interior lot, there shall be two side yards having an aggregate width of not less than 12 feet, neither side yard having a width of less than six feet.

(2) On each corner lot, there shall be two side yards, the side yard abutting the street having a width of not less than 12 feet, and the side yard not abutting the street having a width of not less than six feet.

(3) On any lot, in any side yard not abutting the street, a detached private garage may be erected and maintained within the rear quarter of the lot if not closer to the side lot line than six feet.

(D) Rear yard. There shall be a rear yard on each lot, the depth of which shall be not less than 30 feet, except that an accessory use structure may be erected within the rear yard not closer to the property line than ten feet.

(E) Building coverage. Not more than 25% of the area of any lot shall be occupied by buildings.

(1995 Code, § 153.033) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.034 BUILDING SIZE.

No building shall be erected for residential purposes having ground floor area of less than 1,200 square feet, without basement, and 1,000 square feet with basement, if a single story dwelling, or a ground floor area of less than 800 square feet, with basement if more than one story, exclusive of unenclosed porches, terraces, and garages.

(1995 Code, § 153.034) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.035 LANDSCAPING.

One 2-1/2 inch caliper deciduous tree for every 30 feet of street frontage or portion thereof shall be planted in (any section of) the front yard of every lot and a minimum of five foundation plantings, two upright, and three spreaders.

(1995 Code, § 153.035) (Ord. 68-15, passed 8-22-1968)

§ 153.036 OFF-STREET PARKING.

Off-street parking requirements will be in accordance with the provisions set forth in §§ 153.185*et seq.*

(1995 Code, § 153.036) (Ord. 68-15, passed 8-22-1968)

§ 153.037 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.037) (Ord. 68-15, passed 8-22-1968)

R-1B LOW DENSITY RESIDENTIAL DISTRICT

§ 153.045 INTENDED PURPOSES.

(A) The general character of these residential districts is to consist of single-family detached dwellings, set on lots as originally platted, in the R-1B areas. Nonresidential uses would be restricted to those community facilities which:

(1) May appropriately be located in residential areas to serve educational needs or to provide other essential services for the residents;

(2) May appropriately be located in residential areas to provide recreational, religious, health, and other essential services for residents;

(3) Can perform their activities more effectively in a residential environment, unaffected by adjacent industrial or general services uses; and

(4) Do not create significant objectionable influences in residential areas.

(B) In R-1B Low Density Residential Districts, the following regulations in § 153.046 shall apply.

(1995 Code, § 153.045) (Ord. 68-15, passed 8-22-1968)

§ 153.046 USE REGULATIONS.

A building may be erected, altered, or used, and a lot may be used or occupied, for any of the following purposes and no other.

(A) *Permitted uses.*

(1) Single-family detached dwelling units.

(2) Accessory uses.

(B) *Special exception.*

(1) Churches, rectories or parish houses.

(2) Clubs, except:

(a) Clubs, the chief activity of which is a service predominantly carried on as a business;

(b) Noncommercial, outdoor swimming pool clubs; or

(c) Any other noncommercial clubs with outdoor swimming pools located less than 50 feet from any lot line.

(3) Community centers.

(4) Health centers (clinics).

(5) Libraries, museums, or noncommercial art galleries.

(6) Medical offices or group medical centers, including the practice of dentistry or osteopathy, limited to a location below the level of the first story ceiling, except that in multiple dwellings (permitted only in R-3 Residential District), such uses may be located on the floor, if separate access to the outside is provided.

(7) Monasteries, convents, or novitiates.

- (8) Municipal facilities and public utility uses directly related to and necessary for services within the district or village.
- (9) Nonprofit or voluntary hospitals or related hospital facilities including animal hospitals.
- (10) Philanthropic or nonprofit institutions with sleeping accommodations, including nursing homes or sanitariums, provided that not more than 25% of the floor area shall be used for central office purposes.
- (11) Proprietary nursing homes or sanitariums.
- (12) Radio and television transmitting stations and towers may be erected and used by federally licensed operators, including amateur radio operators ancillary to their private residences.
- (13) Welfare centers.
- (14) Cemeteries.
- (15) Outdoor tennis courts or ice skating rinks, provided that all lighting shall be directed away from nearby residential zoning lots.
- (16) Public parks or playgrounds or private parks.

(1995 Code, § 153.046) (Ord. 68-15, passed 8-22-1968)

§ 153.047 HEIGHT REGULATIONS.

- (A) For any dwelling, 20 feet, not exceeding 2-1/2 stories;
- (B) For any building accessory to any dwelling use, 14 feet, not exceeding one story; and
- (C) For any other nondwelling building or other structure, 20 feet, except that such height may be increased to a maximum of 65 feet, provided that for every foot of height in excess of 20 feet, there shall be added to each yard requirement one corresponding foot of width or depth.

(1995 Code, § 153.047) (Ord. 68-15, passed 8-22-1968)

§ 153.048 AREA, WIDTH, AND YARD REGULATIONS.

- (A) *Minimum lot area and width.*
 - (1) A lot area of not less than 4,000 square feet, and a lot width of not less than 40 feet at the building line shall be provided for every building or other structure erected or used for any use permitted in this district, except that in the case of a use set forth in § 153.046(B)(10), the minimum lot area and width requirements may be reduced when authorized as a special exception.
 - (2) Each permitted building or structure other than a single-family detached dwelling and accessory building, shall be located on a lot having an area of not less than 25,000 square feet and a width at the building line of not less than 200 feet.
- (B) *Front yard.* There shall be a front yard between the building line and the highway and street right-of-way lines as follows:
 - (1) On existing four-lane federal or state highways, a distance of 60 feet;
 - (2) On existing two-lane federal or state highways, a distance of 75 feet;
 - (3) All county highways, a distance of 50 feet; and
 - (4) All other streets, a distance of 30 feet.
- (C) *Side yards.*
 - (1) On each interior lot, there shall be two side yards having an aggregate width of not less than 12 feet, neither side yard having a width of less than six feet.
 - (2) On each corner lot, there shall be two side yards, the side yard abutting the street having a width of not less than 12 feet, and the side yard not abutting the street having a width of not less than six feet.

(3) On any lot, in any side yard not abutting the street, a detached private garage may be erected and maintained within the rear quarter of the lot if not closer to the side lot line than six feet.

(D) *Rear yard.* There shall be a rear yard on each lot, the depth of which shall be not less than 30 feet, except that an accessory use structure may be erected within the rear yard not closer to the property line than ten feet.

(E) *Building coverage.* Not more than 30% of the area of any lot shall be occupied by buildings.

(1995 Code, § 153.048) (Ord. 68-15, passed 8-22-1968; Am. Ord. 96-O-8, passed 6-10-1996) Penalty, see § 153.999

§ 153.049 BUILDING SIZE.

(A) *Generally.* No building shall be erected for residential purposes having ground floor area of less than 1,200 square feet, exclusive of unenclosed porches, terraces and garages.

(B) *Exceptions.*

(1) Buildings erected for residential purposes having a basement greater than 200 square feet, may have a ground floor area not less than 1,000 square feet.

(2) Buildings erected for residential purposes having a basement, greater than 200 square feet and more than one story may have a ground floor area not less than 800 square feet.

(1995 Code, § 153.049) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.050 LANDSCAPING.

One 2-1/2 inch caliper deciduous tree for every 30 feet of street frontage or portion thereof shall be planted in (any section of) the front yard of every lot and a minimum of five foundation plantings, two upright, and three spreaders.

(1995 Code, § 153.050) (Ord. 68-15, passed 8-22-1968)

§ 153.051 OFF-STREET PARKING.

Off-street parking requirements will be in accordance with the provisions set forth in §§ 153.185*et seq.*

(1995 Code, § 153.051) (Ord. 68-15, passed 8-22-1968)

§ 153.052 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.052) (Ord. 68-15, passed 8-22-1968)

R-2 MEDIUM DENSITY RESIDENTIAL DISTRICT

§ 153.060 INTENDED PURPOSES.

The general character of these residential districts is to consist of single-family and two-family dwellings, set on medium sized building lots. Nonresidential uses would be of similar character as those in R-1 Low Density Residential Districts. In R-2 Medium Density Residential Districts, the following regulations in § 153.061 shall apply.

(1995 Code, § 153.060) (Ord. 68-15, passed 8-22-1968)

§ 153.061 USE REGULATIONS.

A building may be erected, altered, or used, and a lot may be used or occupied for any of the following purposes, and no other.

- (A) A use permitted in the R-1 Low Density Residential District.
- (B) Single-family semidetached dwellings.
- (C) Two-family dwellings.
- (D) Accessory uses.

(1995 Code, § 153.061) (Ord. 68-15, passed 8-22-1968)

§ 153.062 HEIGHT REGULATIONS.

The maximum height of buildings and other structures erected or enlarged in this district shall be as prescribed in § 153.032, insofar as applicable to uses permitted in this district.

(1995 Code, § 153.062) (Ord. 68-15, passed 8-22-1968)

§ 153.063 AREA, WIDTH, AND YARD REGULATIONS.

(A) *Minimum lot area and width.* A lot area of not less than 4,000 square feet, and a lot width of not less than 40 feet at the building line shall be provided for a single-family dwelling and not less than 6,000 square feet with a lot width of not less than 60 feet for a two-family dwelling. Other structures erected or used for any use permitted in this district, except that in the case of a use set forth in § 153.031(B)(10) the minimum lot area and width requirements may be reduced when authorized as a special exception.

(B) *Front yard.* Same as required in R-1 Low Density Residential District.

(C) *Side yards.*

(1) On each interior lot, there shall be two side yards having an aggregate width of not less than 10 feet, and neither side yard having a width of less than five feet.

(2) On each corner lot, there shall be two side yards, the side yard abutting the street having a width of not less than nine feet, and the side yard not abutting the street having a width of not less than five feet.

(3) On any lot, in any side yard not abutting a street, a detached private garage may be erected and maintained within the rear quarter of the lot if not closer to the side lot line than five feet.

(D) *Rear yard.* There shall be a rear yard on each lot, the depth of which shall not be less than 25 feet, except that an accessory use structure may be erected within the rear yard not closer to the rear property line than ten feet, and except that on a corner lot an accessory use structure within 13 feet of the street line may be erected not closer to the rear property line than ten feet.

(E) *Building coverage.* Not more than 30% of the area of any lot shall be occupied by buildings.

(1995 Code, § 153.063) (Ord. 68-15, passed 8-22-1968)

§ 153.064 BUILDING SIZE.

No building shall be erected for residential purposes having a ground floor area of less than 1,000 square feet for a single-family dwelling, or less than a total floor area of 1,600 square feet for a two-family dwelling, exclusive of unenclosed porches, terraces, and garages.

(1995 Code, § 153.064) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.065 LANDSCAPING.

Same as required in R-1 Low Density Residential District.

(1995 Code, § 153.065) (Ord. 68-15, passed 8-22-1968)

§ 153.066 OFF-STREET PARKING.

Off-street parking requirements will be in accordance with the provisions set forth in §§ 153.185*et seq.*

(1995 Code, § 153.066) (Ord. 68-15, passed 8-22-1968)

§ 153.067 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.067) (Ord. 68-15, passed 8-22-1968)

R-3 HIGH DENSITY RESIDENTIAL DISTRICT

§ 153.075 INTENDED PURPOSES.

(A) The general character of these residential districts is to consist of single-family, two-family, and twin-family detached and semidetached dwellings, set in a high density living environment. Nonresidential uses would be of similar character as those permitted in R-1 Low Density Residential Districts.

(B) In R-3 High Density Residential Districts, the following regulations in § 153.076 shall apply.

(1995 Code, § 153.075) (Ord. 68-15, passed 8-22-1968)

§ 153.076 USE REGULATIONS.

A building may be erected, altered, or used, and a lot may be used or occupied for any of the following purposes and no other.

(A) A use permitted in R-2 Medium Density Residential Districts.

(B) Single-family attached, not to exceed six dwellings per structural unit.

(C) Multiple-family dwellings (multiple-family dwellings of 25 units or more in a single development will require a special exception permit).

(D) Accessory uses.

(1995 Code, § 153.076) (Ord. 68-15, passed 8-22-1968)

§ 153.077 HEIGHT REGULATIONS.

The maximum height of buildings and other structures erected or enlarged in this district shall be as prescribed in § 153.032 herein, insofar as applicable to the uses permitted in this district.

(1995 Code, § 153.077) (Ord. 68-15, passed 8-22-1968)

§ 153.078 AREA, WIDTH, AND YARD REGULATIONS.

(A) *Minimum lot area and width.* A minimum lot area per housing unit and a minimum lot width at the building line shall be

provided for every building erected, altered, or used for any dwelling use permitted in this district in accordance with the following table:

<i>Type of Dwelling Unit</i>	<i>Minimum Lot Area per Dwelling Unit (sq. ft.)</i>	<i>Minimum Lot Width per Dwelling Unit (feet)</i>
Single-family dwelling	4,800	40
Single-family, attached	2,400	30
Two-family dwelling	7,200	60
Multi-family three bedroom	2,500	
Multi-family two bedroom	2,000	
Multi-family one bedroom	1,500	
Studio apartments	1,500	

(B) *Front yards.* Same as in R-1 Low Density Residential District.

(C) *Side yards.*

(1) On each interior lot, side yards shall be provided in accordance with the following table:

<i>Type of Dwelling Unit</i>	<i>Minimum Number of Yards</i>	<i>Minimum Aggregate Width (feet)</i>	<i>Minimum for Any One (feet)</i>
Single-family dwelling	2	10	5
Single-family, attached (end only)	1	12	6
Two-family dwelling	2	20	8
Multi-family dwelling	2	20	8

(2) On each corner lot, there shall be a side yard abutting the street having a width of not less than 15 feet and, except where the lot is occupied by a single-family semidetached dwelling, a two-family semidetached dwelling, or by a town house, a side yard abutting the interior side lot line having a width of not less than eight feet.

(3) For every building erected, altered, or used for any other use permitted in this district, there shall be side yards provided in accordance with the following.

(a) On interior lots, there shall be two side yards having an aggregate width of not less than 20 feet, neither side yard having a width of less than eight feet.

(b) On each corner lot, there shall be two side yards, the side yard abutting the street having a width of not less than 15 feet,

and the side yard not abutting the street having a width of not less than eight feet.

(4) On any lot, in any side yard not abutting the street, a detached private garage may be erected and maintained within the rear quarter of the lot if not closer to the side lot line than five feet, and private garages may be erected and maintained on adjacent lots within the rear quarters thereof having a wall in common located on the common side lot line.

(D) *Rear yard.* There shall be a rear yard on each lot, the depth of which shall be not less than 25 feet, except that an accessory use structure may be erected within the rear yard not closer to the rear lot line than ten feet.

(E) *Building coverage.* The maximum percentage of the area of each lot which may be occupied by buildings shall be in accordance with the following table:

<i>Type of Dwelling Unit</i>	<i>Maximum Coverage</i>
Single-family	30%
Single-family, attached	40%
Two-family	30%
Multi-family	40%

(1995 Code, § 153.078) (Ord. 68-15, passed 8-22-1968)

§ 153.079 LANDSCAPING.

One 2-1/2 inch caliper deciduous tree for every 30 feet of street frontage or portion thereof shall be planted in (any section of) the front yard of every lot and a minimum of five foundation plantings, two upright, and three spreaders.

(1995 Code, § 153.079) (Ord. 68-15, passed 8-22-1968)

§ 153.080 OFF-STREET PARKING.

Off-street parking requirements will be in accordance with the provisions set forth in §§ 153.185*et seq.*

(1995 Code, § 153.080) (Ord. 68-15, passed 8-22-1968)

§ 153.081 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.081) (Ord. 68-15, passed 8-22-1968)

C-1 NEIGHBORHOOD COMMERCIAL DISTRICT

§ 153.090 INTENDED PURPOSES.

The general character of these commercial districts would be designed for local shopping and include a limited range of retail establishments catering to frequently recurring needs. In District C-1 Neighborhood Commercial Districts, the following regulations in § 153.091 shall apply.

(1995 Code, § 153.090) (Ord. 68-15, passed 8-22-1968)

§ 153.091 USE REGULATIONS.

A building may be erected, altered, or used, and a lot may be used or occupied for any of the following purposes, and no other.

(A) Foods, beverages, drugs, household supplies, scientific or professional instruments, or florist shop.

(B) Business or professional office, studio, bank, savings and loan or other financial institutions, library, museum, and public transportation stations.

(C) Restaurants, confectionery, or other place serving food or alcoholic beverages, provided however that an outdoor counter, drive-in, or curb service shall not be permitted.

(D) Personal service shop, including barber, beauty salon, shoe repair, tailor, dressmaking, and pickup for dry cleaning and laundry, none of which shall exceed 2,500 square feet of floor area per establishment.

(E) Municipal or commercial parking garage or lot, other than the required parking space provided by establishments within the districts.

(F) Any use of the same general character as any of the above permitted uses when authorized as a special exception.

(G) Accessory uses.

(1995 Code, § 153.091) (Ord. 68-15, passed 8-22-1968)

§ 153.092 HEIGHT REGULATIONS.

The maximum height of any building or other structure shall be two stories or not more than 30 feet.

(1995 Code, § 153.092) (Ord. 68-15, passed 8-22-1968)

§ 153.093 AREA, WIDTH, AND YARD REGULATIONS.

(A) *Minimum lot area and width.* A minimum lot area of not less than 4,800 square feet, and a lot width of not less than 40 feet at the building line shall be provided for every building or other structure erected or used for any use permitted in this district, and in no case shall an individual establishment exceed 5,000 square feet of floor space. In the case of a planned development, the heights of buildings and other structures erected or enlarged in this district, and area, width, yard, and building coverage requirements therefore shall be as specified on or in connection with the aforesaid planned development. The planned development shall encompass an area of not less than 2-1/2 acres.

(B) *Front yard.* There shall be a front yard on each lot, the depth of which shall be not less than 25 feet from the right-of-way line.

(C) *Side yards.*

(1) On each corner lot, there shall be a side yard, abutting the street, having a width of not less than 15 feet, and another side yard having a width of not less than eight feet unless the building employs a common party wall with the building on the adjoining lot.

(2) On a lot abutting any residential zoning district, there shall be a side yard abutting such district having a width of not less than 12 feet, which shall be effectively screened from abutting lots by a strip of planting not less than 12 feet in ultimate width, such planting consisting of not less than 50% evergreen material scattered throughout.

(3) Where abutting lots having buildings or other structures, employing a common party wall, no side yard is required.

(4) All interior lots shall have two side yards, each having a width of not less than eight feet, except where party walls are used.

(D) *Rear yard.* There shall be a rear yard on each lot, the depth of which shall be not less than 30 feet from the rear lot line.

(E) *Building coverage.* No more than 40% of any lot may be covered by buildings.

(1995 Code, § 153.093) (Ord. 68-15, passed 8-22-1968)

§ 153.094 LANDSCAPING.

One 2-1/2 inch caliper deciduous tree for every 30 feet of street frontage or portion thereof shall be planted in (any section of) the front yard of every lot.

(1995 Code, § 153.094) (Ord. 68-15, passed 8-22-1968)

§ 153.095 OFF-STREET PARKING AND LOADING.

Adequate off-street parking and loading space shall be provided in accordance with §§ 153.185*et seq.* herein, except in the case of a planned development the required space for individual establishments need not be provided separately but may be made a component part of such plan.

(1995 Code, § 153.095) (Ord. 68-15, passed 8-22-1968)

§ 153.096 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.096) (Ord. 68-15, passed 8-22-1968)

§ 153.097 SPECIAL CONDITIONS.

All business shall be conducted within a completely enclosed building, except for off-street parking. Any major development of 10,000 square feet of gross floor area or more will require a special exception permit.

(1995 Code, § 153.097) (Ord. 68-15, passed 8-22-1968)

DISTRICT C-2 HIGHWAY ORIENTED COMMERCIAL DISTRICT

§ 153.105 INTENDED PURPOSES.

The general character of these commercial districts would be designed to accommodate highway oriented shopping and service facilities which cater largely to needs of the traveling public and to essential services to business establishments over a wide area of the village, and which would generate considerable traffic.

(1995 Code, § 153.105) (Ord. 68-15, passed 8-22-1968)

§ 153.106 USE REGULATIONS.

A building may be erected, altered, or used, and a lot may be used or occupied for any of the following purposes and no other.

- (A) Any use permitted in Districts C-1 Neighborhood Commercial without regard to maximum floor area restraints.
- (B) Amusements.
 - (1) Bowling alleys.
 - (2) Theaters.
- (C) Retail and service establishments.

- (1) Motels and hotels.
- (2) Automobile sales and repair garages.
- (3) Indoor restaurants.
- (4) Motor banks.
- (5) Gift shops.
- (6) Automobile service stations only when authorized by special exception.
- (7) Any use of similar character when authorized by special exception.

(D) Accessory uses.

(1995 Code, § 153.106) (Ord. 68-15, passed 8-22-1968)

§ 153.107 HEIGHT REGULATIONS.

The maximum height of any building or other structure shall be two stories or not more than 30 feet.

(1995 Code, § 153.107) (Ord. 68-15, passed 8-22-1968)

§ 153.108 AREA, WIDTH, AND YARD REGULATIONS.

(A) *Minimum lot area and width.* A minimum lot area of not less than 8,000 square feet, and a lot width of not less than 70 feet at the building line shall be provided for every building or other structure erected or used for any use permitted in this district. In the case of a planned development, the heights of buildings and other structures erected or enlarged in this district, and area, width, yard, and building coverage requirements therefor shall be as specified on or in connection with the aforesaid planned development. The planned development shall encompass an area of not less than 1/2 acre.

(B) *Front yard.* There shall be a front yard on each lot, the depth of which shall be not less than 30 feet from the right-of-way line.

(C) *Side yards.*

(1) On each corner lot, there shall be a side yard, abutting the street, having a width of not less than 15 feet, and another side yard having a width of not less than 15 feet unless the building employs a common party wall with the building on the adjoining lot.

(2) Where abutting lots have buildings or other structures, employing a common party wall, no side yard is required.

(3) All interior lots shall have two side yards, each having a width of not less than 15 feet, except where party walls are used.

(D) *Rear yard.* There shall be a rear yard on each lot, the depth of which shall be not less than 40 feet.

(E) *Building coverage.* No more than 35% of any lot may be covered by buildings.

(1995 Code, § 153.108) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.109 LANDSCAPING.

Two 2-1/2 inch caliper deciduous trees for every 30 feet of street frontage or portion thereof shall be planted in (any section of) the front yard of every lot.

(1995 Code, § 153.109) (Ord. 68-15, passed 8-22-1968)

§ 153.110 OFF-STREET PARKING AND LOADING.

Adequate off-street parking and loading space shall be provided in accordance with the regulations specified within §§ 153.185 *et seq.* herein, except in the case of a planned development the required space for individual establishments need not be provided separately but may be made a component part of such plan.

(1995 Code, § 153.110) (Ord. 68-15, passed 8-22-1968)

§ 153.111 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.111) (Ord. 68-15, passed 8-22-1968)

§ 153.112 SPECIAL CONDITIONS.

All business shall be conducted within a completely enclosed building except for off-street parking. Any major development of 10,000 square feet of gross floor area or more will require a special exception permit.

(1995 Code, § 153.112) (Ord. 68-15, passed 8-22-1968)

M-1 LIGHT MANUFACTURING DISTRICT

§ 153.120 INTENDED PURPOSES.

The general character of these manufacturing districts is designed to consist of industries which:

- (A) Can conform to high and medium performance standards by controlling objectionable influences;
- (B) In so doing, can limit their impact on adjacent residential areas; and
- (C) Normally generate a great deal of traffic, both pedestrian and freight.

(1995 Code, § 153.120) (Ord. 68-15, passed 8-22-1968)

§ 153.121 USE REGULATIONS.

A building or other structure may be erected, altered, or used, and a lot may be occupied or used for any of the following purposes on receiving a special exception permit.

(A) *Service or wholesale establishments.*

(1) Building materials or contractors' yards, open or enclosed, except that yards shall be limited to 20,000 square feet per establishment.

(2) Wholesale produce or meat markets.

(B) *Manufacturing establishments.*

(1) Adhesives.

(2) Aircraft.

(3) Apparel.

(4) Automobiles, trucks, and trailers.

(5) Beverages, nonalcoholic.

(6) Boats, less than 200 feet in length.

- (7) Bottling works.
- (8) Brushes and brooms.
- (9) Cameras or other photographic equipment.
- (10) Carpets.
- (11) Canvas or like products.
- (12) Ceramic products.
- (13) Chemicals, compounding or packaging.
- (14) Cosmetics.
- (15) Electrical appliances and equipment, excluding machinery.
- (16) Food products.
- (17) Glass products.
- (18) Hosiery.
- (19) Ice.
- (20) Ink.
- (21) Jute and hemp products.
- (22) Laboratories, research, experimental, and test.
- (23) Leather products and luggage.
- (24) Business machines.
- (25) Miscellaneous machines.
- (26) Machine tools.
- (27) Mattresses.
- (28) Metal finishing.
- (29) Metal stamping.
- (30) Musical instruments.
- (31) Novelty products.
- (32) Optical equipment, clocks, and instruments.
- (33) Orthopedic and medical appliances.
- (34) Outdoor theater.
- (35) Paper products.
- (36) Pharmaceutical products.
- (37) Plastic products.
- (38) Printing and publishing.
- (39) Rubber products.
- (40) Soap packaging.
- (41) Sporting and athletic equipment.

(42) Steel fabrication.

(43) Textiles.

(44) Tobacco products.

(45) Tools and hardware products.

(46) Toys.

(47) Upholstering.

(48) Vehicles for children.

(49) Venetian blinds and similar products.

(50) Wood products.

(C) *Miscellaneous uses.*

(1) Agriculture, including greenhouses, nurseries, or truck gardens.

(2) Lumber yards.

(3) Public transit and utility facilities.

(4) Truck terminals.

(5) Warehousing.

(D) *Accessory uses.* Any applicant for a special permit for any of the above uses shall have the burden of demonstrating to the satisfaction of the Planning Commission that provision will be made to adequately reduce or minimize the noxious, offensive, dangerous, or hazardous feature or features thereof, as the case may be. Uses of the same general character, not specifically named will also be permitted when authorized as a special exception.

(1995 Code, § 153.121) (Ord. 68-15, passed 8-22-1968)

§ 153.122 HEIGHT REGULATIONS.

The maximum height of buildings and other structures erected or enlarged in this district shall be 35 feet, except that such height may be increased to a maximum of 5 feet provided that for every foot of height in excess of 35 feet, there shall be added to each yard requirement one corresponding foot of width or depth.

(1995 Code, § 153.122) (Ord. 68-15, passed 8-22-1968)

§ 153.123 AREA, WIDTH, AND YARD REGULATIONS.

(A) *Minimum lot area and width.* A lot area of not less than 30,000 square feet, and a lot width of not less than 100 feet at the building line shall be provided for every building or other structure erected or used for any use permitted in this district.

(B) *Front yards.* There shall be a front yard on each lot which shall be not less than 30 feet in depth.

(C) *Side yards.*

(1) On each interior lot, there shall be two side yards having an aggregate width of not less than 20 feet, neither side yard having a width of less than ten feet, except as hereinafter provided in division (F) hereof.

(2) On each corner lot, there shall be two side yards, the side yard abutting the street having a width of not less than 50 feet and the side yard not abutting the street having a width of not less than 20 feet, except as hereinafter provided in division (F) hereof.

(D) *Rear yard.* There shall be a rear yard on each lot the depth of which shall be not less than 50 feet, except as hereinafter provided in division (F) hereof.

(E) *Building coverage.* Not more than 50% of the area of any lot shall be occupied by building.

(F) *Lots abutting residential districts.* Unless authorized as a special exception, in no case shall any building or structure be erected closer than 100 feet to any residential district nor shall any parking area be closer than 60 feet to any residential district which 60 feet area between such parking lot and such residential district shall be maintained as green area entirely covered by grass, shrubs, or trees.

(1995 Code, § 153.123) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.124 LANDSCAPING AND SCREENING.

All areas delineated by the front lot line and a depth of 30 feet there from for the entire length thereof, and all areas delineated by any lot line abutting a residential district and a depth of 30 feet for the entire length thereof shall be maintained as green areas and planted in grass, shrubs, or trees, except for necessary ways of access therethrough.

(1995 Code, § 153.124) (Ord. 68-15, passed 8-22-1968)

§ 153.125 OFF-STREET PARKING.

The provisions of §§ 153.185*et seq.* to the contrary notwithstanding, no parking area shall be permitted closer than 20 feet to the front line of any lot in this district, nor closer than 20 feet to any residential district.

(1995 Code, § 153.125) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.126 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.126) (Ord. 68-15, passed 8-22-1968)

M-2 HEAVY MANUFACTURING DISTRICT

§ 153.135 INTENDED PURPOSES.

The general character of these manufacturing districts is designed to consist of industries which:

(A) Either involve considerable danger of fire, explosion, or other hazards to public health or safety, or cannot be designed without appreciable expense to conform to high or medium performance standards with respect to the emission of objectionable influences; or

(B) Normally generate a great deal of traffic, both pedestrian and freight.

(1995 Code, § 153.135) (Ord. 68-15, passed 8-22-1968)

§ 153.136 USE REGULATIONS.

A building or other structure may be erected, altered, or used, and a lot may be occupied or used for any of the following purposes on receiving a special exception permit.

(A) *Generally.* All uses permitted in the M-1 Light Manufacturing District.

(B) *Manufacturing establishments.*

(1) Asphalt or asphalt products.

(2) Beverages, alcoholic, or breweries.

- (3) Brick, tile, or clay.
- (4) Cement.
- (5) Charcoal, lampblack, or fuel briquettes.
- (6) Chemical products.
- (7) Coal, coke, or tar products.
- (8) Excelsior or packing materials.
- (9) Fertilizers.
- (10) Foundries.
- (11) Gelatin, glue, or size.
- (12) Glass products.
- (13) Grain milling or processing.
- (14) Gypsum.
- (15) Film, photographic.
- (16) Incineration or reduction of garbage, offal, or dead animals.
- (17) Insecticides or related industrial or household chemical compounds.
- (18) Leather or fur tanning, curing, finishing, or dyeing.
- (19) Machinery, heavy and electrical.
- (20) Matches.
- (21) Meat or fish products, including slaughter and preparation thereof.
- (22) Metal or metal ores.
- (23) Metal alloys or foil.
- (24) Metal or metal products.
- (25) Metal casting or foundry products.
- (26) Monument works.
- (27) Paint, varnishes, or turpentine.
- (28) Petroleum or petroleum products, refining.
- (29) Plastic, raw.
- (30) Porcelain products.
- (31) Railroad equipment.
- (32) Rubber, natural or synthetic products.
- (33) Sewage disposal plants.
- (34) Soaps or detergents, including fat rendering.
- (35) Steel, structural products.
- (36) Solvent extracting.
- (37) Stone processing or stone products.

- (38) Sugar refining.
- (39) Wood or bone distillation.
- (40) Wood or lumber processing.
- (41) Wood pulp or fiber reduction or processing.
- (42) Wool scouring or pulling.

(C) *Storage or miscellaneous uses.*

- (1) Coal or gas storage.
- (2) Electric power or steam generating plants.
- (3) Explosives storage, when not prohibited by other ordinances.
- (4) Gas manufacturing plants.
- (5) Grain storage.
- (6) Lumber yards.
- (7) Manure, peat or topsoil storage.
- (8) Refrigerating plants.
- (9) Scrap metal, paper, or rags storage.

(D) *Accessory uses.* Any applicant for a special exception permit for any of the above uses shall have the burden of demonstrating to the satisfaction of the Planning Commission that provision will be made to adequately reduce or minimize the noxious, offensive, dangerous, or hazardous feature or features thereof, as the case may be. Uses of the same general character, not specifically named, will be permitted when authorized as a special exception.

(1995 Code, § 153.136) (Ord. 68-15, passed 8-22-1968)

§ 153.137 HEIGHT REGULATIONS.

The maximum height of buildings and other structures erected or enlarged in this district shall be 35 feet, except that such height may be increased to a maximum of 65 feet provided that for every foot in excess of 35 feet, there shall be added to each yard requirement one corresponding foot of width or depth.

(1995 Code, § 153.137) (Ord. 68-15, passed 8-22-1968)

§ 153.138 AREA, WIDTH, AND YARD REGULATIONS.

(A) *Minimum lot area and width.* A lot area of not less than 50,000 square feet, and a lot width of not less than 100 feet at the building line shall be provided for every building or other structure erected or used for any use permitted in this district.

(B) *Front yards.* There shall be a front yard on each lot which shall be not less than 30 feet in depth.

(C) *Side yards.*

(1) On each interior lot there shall be two side yards having an aggregate width of not less than 50 feet, neither side yard having a width of less than 20 feet, except as hereinafter provided in division (F) hereof.

(2) On each corner lot there shall be two side yards, the side yard abutting the street having a width of not less than 50 feet and the side yard not abutting the street having a width of not less than 20 feet, except as hereinafter provided in division (F) hereof.

(D) *Rear yard.* There shall be a rear yard on each lot the depth of which shall be not less than 50 feet, except as hereinafter provided in division (F) hereof.

(E) *Building coverage.* Not more than 50% of the area of any lot shall be occupied by building.

(F) *Lots abutting residential districts.* Unless authorized as a special exception, in no case shall any building or structure be erected closer than 100 feet to any residential district nor shall any parking area be closer than 60 feet to any residential district which 60 feet area between such parking lot and such residential district shall be maintained as green area entirely covered by grass, shrubs, or trees.

(1995 Code, § 153.138) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.139 LANDSCAPING AND SCREENING.

All areas delineated by the front lot line and a depth of 60 feet therefrom for the entire length thereof, and all areas delineated by any lot line abutting a residential district and a depth of 60 feet for the entire length thereof shall be maintained as green areas and planted in grass, shrubs, or trees, except for necessary ways of access therethrough.

(1995 Code, § 153.139) (Ord. 68-15, passed 8-22-1968)

§ 153.140 OFF-STREET PARKING.

The provisions of §§ 153.185*et seq.* to the contrary notwithstanding, no parking area shall be permitted closer than 40 feet to the front line of any lot in this district, nor closer than 40 feet to any residential district.

(1995 Code, § 153.140) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.141 SIGNS.

Sign requirements will be in accordance with the provisions of § 153.163.

(1995 Code, § 153.141) (Ord. 68-15, passed 8-22-1968)

SPECIAL PROVISIONS

§ 153.150 MODIFICATION OF FRONT YARD REQUIREMENTS.

(A) Where an unimproved lot is situated between two improved lots having on each a principal building within 25 feet of the side boundary line of such unimproved lot, which extends into the required front yard of each such unimproved lot has been so maintained since the effective date of this chapter, the front yard depth of such unimproved lot may be the average depth of the front yard of the two adjacent improved lots, notwithstanding the yard requirements of the district in which it is located.

(B) Where an unimproved lot adjoins only one improved lot having a principal building thereon within 25 feet of the common side lot line which extends into the required front yard of such improved lot and has been so maintained since the effective date of this chapter, the front yard depth of such unimproved lot may be the average depth of the front yard of such adjacent improved lot and the front yard required for the district in which such unimproved lot is located, notwithstanding the yard requirements for such district.

(1995 Code, § 153.150) (Ord. 68-15, passed 8-22-1968)

§ 153.151 DWELLINGS IN INDUSTRIAL DISTRICTS.

One single-family detached dwelling may be erected and used on any lot located in any industrial district which is unimproved and held in single and separate ownership at the effective date of this chapter, if permitted by, and subject to, the zoning regulations applicable to such lot immediately prior to the effective date of this chapter, and such lot shall be used only for such dwelling purpose and accessory uses customarily incidental thereto.

(1995 Code, § 153.151) (Ord. 68-15, passed 8-22-1968)

§ 153.152 PROJECTIONS INTO REQUIRED YARDS.

No building and no part of a building shall be erected within or shall project into any required yard in any district except that:

(A) An unenclosed porch, not more than 14 feet in height, may be erected to extend into a required front or rear yard at a distance of not more than ten feet, provided that in no case shall it extend into such front or rear yards more than 1/2 of the required depth of the yard;

(B) A terrace, platform, or land place, not covered by a roof, canopy, or trellis, which does not extend above the level of first floor of the building, may be erected to extend into a required yard a distance of not more than 12 feet provided that it shall not extend into such yard more than 40% of the required depth or width of the yard;

(C) A porte cochere may be erected over a driveway in a required side yard, provided that such structure is:

(1) Not more than 14 feet in height and 20 feet in length;

(2) Entirely open on at least three sides, exclusive of the necessary supporting columns and customary architectural features; and

(3) At least three feet from the side lot line.

(D) A buttress, chimney, cornice, pier, or pilaster of a building may project not more than 18 inches into a required yard; or

(E) Open unenclosed fire escapes, steps, bay windows, and balconies may project not more than three feet into a required yard;

(1995 Code, § 153.152) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.153 CONVERSION OF DWELLINGS.

A single-family detached dwelling existing on the effective date of this chapter, may be converted into and used as a two-family or multi-family dwelling, when authorized as a special exception, provided that:

(A) The plan for the conversion of such dwelling shall be submitted to the Zoning Board of Appeals;

(B) Such plan shall provide adequate and suitable parking or storage space, at a safe distance from the public highway, for not less than one automobile per family;

(C) Such dwelling shall be subject to the height, area, width, and yard regulations effective in the district wherein such dwelling is situated, except that there shall be a lot area not less than the product of the minimum lot area prescribed in the district regulations and the number of families for the use of which such dwelling is to be converted;

(D) There shall be no external alteration of the building except as may be necessary for reasons of safety, and, fire escapes and outside stairways shall, where practical, be located to the rear of the building; and

(E) The Zoning Board of Appeals shall specify the maximum number of families permitted to occupy such dwelling, and prescribe such further conditions and restrictions in respect to conversion and use of such dwelling, and to the use of the lot, as the Board may consider appropriate.

(1995 Code, § 153.153) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.154 CORNER VISION OBSTRUCTION.

On any corner lot, no wall, fence, or other structure shall be erected or altered and no hedge, tree or shrub, or other growth, shall be maintained which may cause danger to traffic on a street by obscuring the view.

(1995 Code, § 153.154) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.155 HEIGHT LIMITATION OF FENCES AND WALLS.

No fence or wall except a retaining wall, or a wall of a building permitted under the terms of this chapter, over six feet in height shall be erected within any of the open spaces required for this chapter unless that portion of the fence or wall which exceeds six feet in

height has a ratio of open area to solid area of at least four to one.

(1995 Code, § 153.155) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.156 ACCESSORY BUILDINGS.

Accessory buildings, except as otherwise permitted in this chapter, shall be subject to the following regulations.

(A) Where the accessory building is structurally attached to a main building, it shall be subject to and must conform to, all regulations of this chapter applicable to main buildings.

(B) In residential districts accessory buildings shall not be erected in any yard, except a rear yard.

(C) An accessory building not exceeding one story or 15 feet in height may occupy not more than 25% of a required rear yard, plus 40% of any nonrequired rear yard.

(D) No detached accessory building shall be located closer than ten feet to any main building nor shall it be located closer than five feet to any side lot line with eaves no closer than four feet to any lot line.

(1995 Code, § 153.156) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.157 MORE THAN ONE PRINCIPAL STRUCTURE.

In any district, more than one structure housing a permitted or permissible principal use may be erected on a single lot, provided that yard and other requirements of this chapter shall be met for each structure as though it were on an individual lot.

(1995 Code, § 153.157) (Ord. 68-15, passed 8-22-1968)

§ 153.158 EXCEPTIONS TO HEIGHT REGULATIONS.

The height limitations contained in the schedule of district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

(1995 Code, § 153.158) (Ord. 68-15, passed 8-22-1968)

§ 153.159 STRUCTURES TO HAVE ACCESS.

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

(1995 Code, § 153.159) (Ord. 68-15, passed 8-22-1968)

§ 153.160 MAJOR RECREATIONAL EQUIPMENT.

For purposes of this chapter, *MAJOR RECREATIONAL EQUIPMENT* is defined as including boats and boat trailers, travel trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. No major recreational equipment shall be parked or stored on any lot in a residential district except in a carport or enclosed building or behind the nearest portion of a building to a street, provided, however, that such equipment may be parked anywhere on residential premises for not to exceed 24 hours during loading or unloading. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.

(1995 Code, § 153.160) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.161 PARKING AND STORING OF CERTAIN VEHICLES.

Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any residentially zoned property other than in completely enclosed buildings.

(1995 Code, § 153.161) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.162 TOPSOIL.

Excavations of, or the removal of topsoil from any property in the village is prohibited except as such excavations or removal of topsoil is incidental to the erection and maintenance of structures or appurtenances thereto or the use of property permitted by this and other ordinances of the village.

(1995 Code, § 153.162) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.163 SIGNS.

(A) *Signs in residential districts.*

(1) Illuminated nameplates are permitted, subject to the following regulations.

(a) In R-1 and R-2 Districts, a nameplate shall not exceed 48 square inches in area, and shall indicate only the name or name and address of the occupant. There shall be not more than one such nameplate for each dwelling.

(b) In R-3 Districts, only such a nameplate shall be permitted for a single-family or a two-family dwelling; but for a multiple-family dwelling, a nameplate may be not more than three square feet in area, provided it indicates only the name or name and address of the dwelling; such a nameplate may be located in a front yard not less than four feet from the front lot line, or one-half the depth of the front yard, whichever is greater, nor be higher than one story, or 20 feet above the curb level, whichever is lower.

(2) Unilluminated "For Sale" and "For Rent" signs are permitted, except, there shall be not more than one sign per lot, except that on a corner lot, two signs, one facing each street shall be permitted. No sign shall exceed 12 square feet in area; nor be closer than eight feet to any side and rear lot line, and four feet to the front lot line, or one-half the depth of the front yard, whichever is greater; nor project higher than one story, or 20 feet above curb level, whichever is lower.

(3) Illuminated, nonflashing church-bulletin signs are permitted subject to the following regulations that there shall be not more than one sign per lot, except that on a corner lot two signs, one facing each street shall be permitted. No sign shall exceed 16 square feet in area, nor be closer than eight feet to any side and rear lot line, and four feet to the front lot line, or 1/2 the depth of the front yard, whichever is greater, nor project higher than one story, or 20 feet above curb level, whichever is lower.

(B) *Signs in commercial districts.* Nonflashing but illuminated business signs with no moving parts, awnings, and marquees are permitted subject to regulations set forth elsewhere in the ordinances of the village and the following.

(1) Exterior signs may be illuminated between the hours of 7:00 a.m. and 11:00 p.m., or the close of business, whichever is later. Where a sign is illuminated by light reflected on it, direct rays of light shall not beam on any part of any part of any existing residential building nor into a residential district, or into a street. A sign in direct line of vision of any traffic signal shall not have red, green, or amber illumination.

(2) The gross surface area in square feet of all signs on a lot shall not exceed six times the lineal feet of frontage of the lot, and for lots fronting on more than one street, only the established front lot line shall be considered as frontage of the lot.

(3) Any sign affixed to a building shall not project therefrom nearer than two feet from the abutting street right-of-way line. A ground sign shall be not nearer than two feet from the nearest street right-of-way line and not nearer than five feet from a side or rear lot line.

(4) A sign affixed to a building shall not project higher than four feet above building height, and a sign projecting more than 15 inches from a building wall shall have its lowest level not less than ten feet above the grade below it. A ground sign shall not project higher than 24 feet above the grade below it. However, such signs located within 50 feet of the intersection of two or more streets shall have their lowest levels not less than ten feet above the grade below it, and when located within three feet of a driveway or parking area they shall have their lowest levels not less than 12 feet above the grade below it. Such signs may be supported by not

more than two columns, each having a dimension of not more than 8 by 15 by 12 inches, and an additional structural part thereof not more than two feet above grade. The narrow dimensions of the columns shall be parallel to the line connecting the 50 foot points back from the street intersection.

(5) In a unified shopping center, in single ownership or control, one additional sign may be erected for it, the sign shall not exceed 150 square feet in area nor display more than the name and location of the shopping center, such sign shall be set back at least half the required yard depth distance from each abutting street and its bottom edge shall be at least ten feet above the level of the ground, and its overall height shall not exceed 24 feet above the curb level.

(1995 Code, § 153.163) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.164 RAIL LEADS.

Right-of-way requirements for single tracks should be 18 feet and not less than 33 feet for two tracks. The minimum radius for curves shall not be less than 300 feet and 2% is the maximum grade of trackage.

(1995 Code, § 153.164) (Ord. 68-15, passed 8-22-1968)

NONCONFORMING BUILDINGS, USES, AND LOTS

§ 153.170 CONTINUATION.

Any lawful building or other structure, or any lawful use of a building or other structure or land, existing on the effective date of this chapter, which does not conform with the provisions of this chapter, shall be considered a lawful nonconforming building, structure or use, and may be continued, except as otherwise herein provided.

(1995 Code, § 153.170) (Ord. 68-15, passed 8-22-1968)

§ 153.171 EXTENSION.

Any lawful nonconforming use of a portion of a building may be extended throughout the building, and any lawful nonconforming building or any building of which a lawful nonconforming use is made, may be extended or enlarged on the lot occupied by such building that is held in single and separate ownership on the effective date of this chapter, provided that the area of such buildings shall not be increased by more than a total of 25% of the area of such building existing on the date it first became a lawful nonconforming building or a building on which a lawful nonconforming use is made, and provided further that any structural alteration, extension, or addition, shall conform with all height, area, width, yard, and coverage requirements, for the district in which it is located.

(1995 Code, § 153.171) (Ord. 68-15, passed 8-22-1968)

§ 153.172 CHANGE.

Any lawful nonconforming use of a building or land may be changed to another nonconforming use of the same classification, which shall thereafter not be subject to any further change except to a conforming use, and for such purpose, a building may be extended.

(1995 Code, § 153.172) (Ord. 68-15, passed 8-22-1968)

§ 153.173 RESTORATION.

Any lawful nonconforming building or other structure which has been involuntarily damaged or destroyed by fire, explosion, windstorm, or other similar active cause, to an extent of not more than 75% of its fair market value, may be reconstructed in the same location, provided that:

(A) The reconstructed building or structure shall not exceed the height, area, or volume of the damaged or destroyed building or

structure except as provided in § 153.171, herein; and

(B) Reconstruction shall begin within one year from the date of damage or destruction and shall be carried on without interruption.

(1995 Code, § 153.173) (Ord. 68-15, passed 8-22-1968)

§ 153.174 ABANDONMENT.

If a lawful nonconforming use of a building or other structure is abandoned or discontinued for a continuous period of two years or more, or if a lawful nonconforming use of land is abandoned or discontinued for a continuous period of two years or more, subsequent use of such building or structure or land shall be in conformity with the provisions of this chapter.

(1995 Code, § 153.174) (Ord. 68-15, passed 8-22-1968)

§ 153.175 NONCONFORMING SIGNS.

Every lawful nonconforming sign shall be discontinued and removed, or changed to a conforming sign, within a period of two years from the effective date of this chapter, provided that signs which, at the effective date of this chapter, are maintained in connection with and on the same lot as a lawful nonconforming use and may be maintained or repaired, or replaced with signs similar in size and character so long as such lawful nonconforming use continues, and may not be enlarged or otherwise altered (nor may the illumination or lack of illumination thereof be changed) except in accordance with the regulations applicable to the district in which this lot is located.

(1995 Code, § 153.175) (Ord. 68-15, passed 8-22-1968)

§ 153.176 NONCONFORMING TO AREA AND WIDTH REGULATIONS; UNUSUAL DIMENSIONS.

(A) When authorized as a special exception, a building may be erected or altered on any lot held in single and separate ownership on the effective date of this chapter which is not of the required minimum area or width or is of such unusual dimensions that the owner would have difficulty in providing the required open spaces for the district in which the lot is situated.

(B) Where two or more contiguous undeveloped lots are held in single ownership, within a subdivision which has been duly recorded prior to the effective date of this chapter, which lots are individually not of the required minimum area or width for the district in which they are situated, no special exception shall be required for the issuance of building permits provided that such lots shall be developed in groups or fractions thereof, as single lots, to provide the minimum lot frontage required for each structure.

(1995 Code, § 153.176) (Ord. 68-15, passed 8-22-1968)

§ 153.177 SUBDIVISIONS PREVIOUSLY APPROVED.

In the case of a plot of land, a plan for the subdivision of which into two or more parcels or lots for the purpose of development and sale has, prior to the effective date of this chapter, been duly approved and recorded as required by law, which plan does not make provisions for full adherence to the regulations of this chapter governing minimum lot areas or widths, front, side or rear yards, or building coverage, but was in conformity with such regulations as were effective at the time such plan was approved and recorded, the development and sale contemplated by the plan may be proceeded with when authorized as a special exception. The Zoning Board of Appeals shall have power to grant a variance with respect to the whole of such plot of land or any portion thereof.

(1995 Code, § 153.177) (Ord. 68-15, passed 8-22-1968)

OFF-STREET PARKING AND OFF-STREET LOADING

§ 153.185 SCOPE OF REGULATIONS.

The off-street parking and off-street loading provisions of this chapter shall apply as follows.

(A) Accessory off-street parking and off-street loading facilities shall be provided as required by the regulations of this subchapter for all buildings and structures erected and all uses of land established in each district after the effective date of this chapter. However, where a building permit has been issued prior to the effective date of this chapter, and provided that construction is begun within six months of such effective date and diligently prosecuted to completion, parking and loading facilities in the amounts required for the issuance of the building permit may be provided in lieu of any different amounts required by this chapter.

(B) When the intensity of use of any building, structure, or premises shall be increased through the addition of dwelling units, gross floor area, seating capacity, or other units of measurement in the amount specified herein requiring parking or loading facilities, such additional parking and loading facilities as required herein shall be provided.

(C) Whenever the existing use of a building or structure shall hereafter be changed to a new use, parking or loading facilities shall be provided as required for such new use. However, if the building or structure was erected prior to the effective date of this chapter, additional parking or loading facilities are mandatory only in the amount by which the requirements for the new use would exceed those for the existing use, if the latter were subject to the parking and loading provisions of this chapter.

(1995 Code, § 153.185) (Ord. 68-15, passed 8-22-1968)

§ 153.186 EXISTING PARKING FACILITIES.

Accessory off-street parking facilities in existence on the effective date of this chapter and located on the same lot as the building or use served shall not hereafter be reduced below, or if already less than shall not be further reduced below the requirements for a similar new building or use under the provisions of this chapter.

(1995 Code, § 153.186) (Ord. 68-15, passed 8-22-1968)

§ 153.187 PERMANENCY OF SPACES PROVIDED.

Any parking or loading space established prior to the effective date of this chapter which is used or intended to be used in connection with any building, structure, or use, or any space designed and intended to comply with the requirements of this chapter for any such building or structure erected after such effective date shall hereafter be maintained in conformance with the provisions of this chapter so long as the building or structure remains, unless the owner provides in another location an equivalent number of spaces in conformance with the provisions of this chapter. The Planning Commission shall at all times be furnished proof in writing of permanency of the parking area provided in compliance with this chapter.

(1995 Code, § 153.187) (Ord. 68-15, passed 8-22-1968)

§ 153.188 OFF-STREET PARKING.

Off-street parking facilities for motor vehicles shall be provided in accordance with additional regulations set forth hereinafter:

(A) *Use.* Accessory off-street parking facilities required as accessory to uses listed herein, shall be solely for the parking of passenger automobiles of patrons, occupants, or employees. When bus transportation is provided, for patrons, occupants, or employees of a specific establishment, additional open or enclosed off-street parking spaces for each bus to be parked on the premises shall be provided in accordance with regulations herein for access, in yards, design, and maintenance and area applicable to accommodating such buses.

(B) *Exemption.* When the application of the off-street parking regulations specified hereinafter results in a requirement of not more than three spaces on a single lot in any commercial district, such parking spaces need not be provided. However, where two or more uses are located on a single lot, only one of these uses shall be eligible for the above exemption. This exemption shall not apply to dwelling units.

(C) *Collective provisions.* Off-street parking facilities for separate uses may be provided collectively if the total number of spaces so provided is not less than the sum of the separate requirements for each such use and provided that all regulations governing location of accessory parking spaces, or portion thereof shall serve as a required space for more than one use.

(D) *Plans.*

(1) Plans for the layout of off-street parking shall be in accord with the following minimum requirements:

<i>Parking Pattern (degrees)</i>	<i>Maneuvering Lane Width (feet)</i>	<i>Parking Space Width (feet)</i>	<i>Parking Space Length (feet)</i>	<i>Total Width of One Tier of Spaces Plus Maneuvering Lane (feet)</i>	<i>Total Width of Two Tiers of Space Plus Maneuvering Lane (feet)</i>
75 - 90	20	9	20	40	60
54 - 74	15	8-1/2	20	36-1/2	58
30 - 53	12	8-1/2	20	32	52

(2) All maneuvering lane widths shall permit one-way traffic movement, with the exception of the 90 degree pattern where two-way movement may be permitted.

(E) *Enclosed areas.* Enclosed parking spaces shall have a vertical clearance of at least seven feet.

(F) *Access.* Each required off-street parking space shall open directly on an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space. All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement. No driveway across public property at the right-of-way line shall exceed a width of 25 feet.

(G) *In yards.* Off-street parking spaces, open to the sky, may be located in any yard except a front yard and a side yard adjoining a street. Enclosed buildings and carports containing off-street parking spaces shall be subject to applicable yard requirements.

(H) *Design and maintenance.*

(1) *Open or enclosed.* Accessory parking spaces may be open to the sky or enclosed in a building.

(2) *Surfacing.* All open off-street parking spaces and access drives shall be surfaced with smooth and durable surface material other than cinders so that they will remain free from dust or litter particles, and be adequately drained so that they will not retain water, except all open off-street parking areas containing more than four parking spaces and access drives shall be improved with seven inches of water-bound macadam base, plus one inch of bituminous concrete binder, plus two inches of bituminous concrete surface. All materials and method of installation of any surfacing shall be in accordance with the village specifications.

(3) *Screening, landscaping, and barriers.* All open off-street parking areas, containing more than four parking spaces, located less than 40 feet from the nearest property line of a lot in a residential district, shall be effectively screened on each side adjoining or fronting on such property line by a wall, fence, or densely planted compact hedge, not less than five feet nor more than eight feet in height. There shall be installed a substantial barrier on or adjacent to the lot line along all open off-street parking spaces and such barrier shall be so located that no portion of any vehicle parked on the lot shall extend over the lot line.

(4) *Lighting.* Any lighting used to illuminate off-street parking areas shall be directed away from residential properties in such a way as not create a nuisance and in a parking area containing four or more parking spaces such lighting shall be extinguished one-half hour after the close of business.

(5) *Repair and service.* No motor vehicle repair work or service of any kind shall be permitted in conjunction with any parking facilities. No gasoline or motor oil shall be sold in conjunction with any accessory parking facilities.

(6) *Surrounding sidewalks.* All sidewalks surrounding off-street parking spaces shall be kept free from dirt, ice, sleet, and snow and maintained in a safe condition for pedestrian travel.

(I) *Location.* All parking spaces required to serve buildings or uses erected or established after the effective date of this chapter shall be located on the same lot as the building or use served. Buildings or uses in any district except single-family and two-family dwellings existing on the effective date of this chapter which are subsequently altered or enlarged so as to require the provision of parking spaces under this chapter and new uses established in any Commercial District may be served by parking facilities located on

land other than the lot on which the building or use served is located, provided such facilities are within 300 feet walking distance of a main entrance to the use served, and in any case are located in districts where parking lots or storage garages are listed as permitted uses or special uses.

(J) *Employee parking.* Parking spaces required on an employee basis shall be based on the maximum number of employees on duty or residing, or both, on the premises at any time.

(K) *Required spaces.* The minimum number of off-street parking spaces accessory to designated uses shall be provided as follows.

(1) *Dwelling and lodging uses.*

(a) Boarding or rooming houses. Two parking spaces plus one parking space for each three lodging rooms.

(b) Hotels and apartment hotels. One parking space for each three separate lodging rooms and one parking space for each dwelling unit.

(c) Motels or tourist homes. One parking space for each dwelling unit and one parking space for each lodging room.

(d) Multiple-family dwellings. One and one-half parking spaces for each dwelling unit.

(e) Single-family dwellings. Two parking spaces for each dwelling, but no more than four parking spaces for each single-family dwelling.

(f) Two-family dwellings. One and one-half parking spaces per dwelling unit, but not more than four for each dwelling unit.

(2) *School, institution, auditorium, or other places of assembly uses.*

(a) Churches. One parking space for each six seats, or for each 108 inches of seating space used for the principal church service.

(b) Convalescent homes, nursing homes, rest homes, and institutions for the care of the aged and for children. One parking space for each three beds plus one parking space for each two employees and each doctor assigned to the staff.

(c) Gymnasiums, stadiums, and grandstands. One parking space for each six seats or for each 108 inches of seating space.

(d) Libraries and museums. One parking space for each 800 square feet of floor area.

(e) Medical and dental clinics. Three parking spaces for each examining and treatment room plus one parking space for each doctor and employee in the building.

(f) Meeting halls, convention halls, and exhibition halls. The number of parking spaces equal to 30% of the maximum number of people that can be accommodated in accordance with such design capacity.

(g) Private clubs and lodges. One parking space for each lodging room and one parking space for each six seats in accordance with design seating capacity of the main meeting room.

(h) Schools, commercial or trade, and music, dance, or business. One parking space for each two employees, plus one space for each five students, based on the maximum number of students that can be accommodated in accordance with such design capacity.

(i) Schools, high, public or private. One parking space for each seven students based on the maximum number of students that can be accommodated in accordance with such design capacity of the building.

(j) School, and other institutional auditoriums. One parking space for each two persons employed on the premises, and one additional parking space for each six seats, or for each 108 inches of seating space in the main auditorium or assembly hall.

(k) Schools, nursery, elementary, or junior high, public or private. One parking space for each faculty member and each other full-time employee.

(3) *Recreational uses, commercial or noncommercial.*

(a) Bowling alleys. Seven parking spaces for each lane plus such additional spaces as may be required herein for affiliated uses such as restaurants and the like.

(b) Gymnasiums, health salons, swimming pools, skating rinks, and dance halls, commercial. One parking space for each three

persons, based on the maximum number of persons that can be accommodated at the same time in accordance with such design capacity, and one parking space for each two employees.

(c) Parks, recreation areas, or community centers, private, semipublic, or public. One parking space for each two employees, plus spaces in adequate number as determined by the Planning Commission to serve the visiting public.

(4) *Commercial and manufacturing uses.*

(a) All business and commercial establishments, except those specified hereafter. One parking space for each 250 square feet of floor area.

(b) Automobile laundries. One parking space for each two employees, plus one space for the owner or manager, and in addition, reservoir parking spaces to accommodate automobiles awaiting entrance to the automobile laundry equal in number to five times the maximum capacity of the automobile laundry. Maximum capacity, in this instance, shall mean the greatest possible number of automobiles undergoing some phase of laundering at the same time.

(c) Automobile service stations. One parking space for each employee, plus two for each service stall.

(d) Banks. One parking space for each 400 square feet of floor area.

(e) Business, professional, and public administration or service office buildings. One parking space for each two persons employed based on the designed maximum employee capacity of the building.

(f) Cartage, express, parcel delivery, and freight terminal establishments. One parking space for each employee employed on the premises, and one and one-half parking space for each vehicle maintained on the premises.

(g) Drive-in business and commercial establishments. Reservoir parking spaces equal in number to 15% of the number of vehicle spaces used for serving customers.

(h) Establishments handling the sale and consumption on the premises of food and refreshment. One parking space for each 150 square feet of floor area.

(i) Furniture and appliance stores, motor vehicle sales, wholesale stores, and stores for repair of household equipment or furniture. One parking space for each 400 square feet of floor area.

(j) Manufacturing establishments and establishments engaged in production, processing, assembly, disassembly, cleaning, servicing, testing, or repairing of materials, goods, or products. One parking space for each two employees or one parking space for each 1,200 square feet of floor area, whichever requires the greater number of parking spaces.

(k) Theaters. One parking space for each four seats up to 400 seats, plus one parking space for each six seats over 400.

(l) Undertaking establishments and funeral parlors. Eight parking spaces for each chapel or parlor, plus one parking space for each funeral vehicle maintained on the premises.

(m) Warehouse, storage, wholesale, and mail order establishments. One parking space for each employee and one parking space for each vehicle maintained on the premises.

(5) *Miscellaneous uses.*

(a) Planned developments. The number of parking spaces in accordance with the required spaces for each individual use.

(b) Public utility and public service uses. One parking space for each two employees, plus spaces in adequate number as determined by the Planning Commission to serve the visiting public.

(6) *Other uses.* Parking spaces for other permitted or special uses not listed above shall be provided in accordance with requirements designated by the Planning Commission.

(1995 Code, § 153.188) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.189 OFF-STREET LOADING.

(A) *Location.* All required loading spaces shall be located on the same lot as the use served. All motor vehicle loading spaces which abut a residential district or intervening alley separating a residential district from a commercial or manufacturing district shall be

completely screened therefrom by building walls, or a uniformly painted solid fence, wall, or door, or any combination thereof, not less than eight feet in height. No permitted or required loading space shall be located within 40 feet of the nearest point of intersection of any two streets. No loading space shall be located in a required front or side yard, and any loading space located in a required rear yard shall be open to the sky.

(B) *Area.* Unless otherwise specified, a required off-street loading space shall be at least 12 feet in width by at least 35 feet in length, exclusive of aisle and maneuvering space, and enclosed loading spaces shall have a vertical clearance of at least 14 feet.

(C) *Access.* Each required off-street loading space shall be designed with appropriate means of vehicle access to a street or alley in a manner which will least interfere with traffic movement.

(D) *Surfacing.* All open off-street loading spaces shall be improved with water drainage facilities and pavements surfacing in accordance with the village specifications.

(E) *Repair and service.* No motor vehicle repair work or service of any kind shall be permitted in conjunction with loading facilities.

(F) *Utilization.* Space allocated to any off-street loading space shall not, while so allocated, be used to satisfy the space requirements for any off-street parking facilities or portions thereof.

(G) *Minimum facilities.* Uses for which off-street loading facilities are required herein but which are located in buildings of less floor area than the minimum prescribed for such required facilities, shall be provided with adequate receiving facilities, accessible by motor vehicle, off any adjacent alley, service drive, or open space on the same lot.

(H) *Off-street loading space requirements.*

(1) On the same premises with every building, structure, or part thereof, hereafter erected, established, or enlarged and occupied for manufacturing, storage, warehouse goods display, department store, wholesale store, market, hotel, mortuary, laundry, dry cleaning or other uses, involving the receipt or distribution by vehicles of material or merchandise, there shall be provided and maintained adequate space for standing, loading, and unloading in order to avoid undue interference with public use of the street or alley.

(2) Such space, unless otherwise adequately provided for, shall include a 12 foot by 35 foot loading space with 14 foot height clearance for every 20,000 square feet or fraction thereof in excess of 3,000 square feet of floor area used for above mentioned purposes, or for every 20,000 square feet or fraction thereof in excess of 3,000 square feet of land used for the above mentioned purposes. These requirements may, on appeal, be increased, modified, or waived by the Zoning Board of Appeals where the conditions or circumstances justify such action.

(1995 Code, § 153.189) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

PLANNED UNIT DEVELOPMENT

§ 153.200 INTENT AND PURPOSE.

Recognizing that there is a need for flexibility in providing future village needs, in keeping abreast of new building methods, and materials, and in providing for the planning of: dwellings and the various types and groups thereof, to secure the benefit of solar orientation, climate control, and additional privacy, and to provide for variety in dwelling types to meet changing needs of future residences; and commercial buildings and groups thereof to secure greater convenience to the public through improved methods of merchandising, transportation, office management, and distribution of services necessary to the public welfare; and industrial buildings and groups thereof to secure greater convenience in production through improved methods of manufacturing, transportation, office management, and distribution of products necessary to the public welfare; may necessitate the variation in the use and area requirements of this chapter (which are designed primarily to apply to the traditional pattern of lot development and building arrangement generally prevailing within the village) and in the regulations applying to buildings and yards, the Village Council may amend this chapter and zoning map for the accomplishment of the foregoing purposes, in accordance with the following procedure in § 153.201.

(1995 Code, § 153.200) (Ord. 68-15, passed 8-22-1968)

§ 153.201 DEVELOPMENT PLAN.

For the purpose of accomplishing the objectives of this section, the owner of any tract of land may submit to the Village Council a preliminary plan for the use and development of the land. Following submission of the preliminary plan, the Council shall refer it to the Planning Commission for review. The Planning Commission shall hold a public hearing in accordance with § 153.228, herein. If the Village Council approves the preliminary submission, on recommendation of the Planning Commission, the preliminary plan shall be signed by the Village Council and recorded by the applicant, the Council shall amend the zoning map to include the zoning district change. Within a period of 18 months following such approval, a detailed plan shall be submitted to the Village Council, showing that specific and detailed provisions have been made for the essential conditions listed in § 153.203. The detailed plan may be submitted to the Planning Commission and processed as required by law for the approval of subdivisions. Following the approval by the Village Council, the Council shall sign the detailed plans, and the applicant shall cause the detailed plans to be recorded in Hamilton County. No construction shall commence before a detailed plan is approved, signed, and recorded.

(1995 Code, § 153.201) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.202 GENERAL CONDITIONS OF PRELIMINARY PLAN.

The preliminary plan shall show the layout of the total area to be included in the proposed district and shall indicate and be accompanied by documentary evidence to the satisfaction of the Planning Commission and Village Council:

- (A) The plan shall be consistent with the Comprehensive Plan for the orderly development of the village and with the purpose of this chapter to promote the general welfare of the village;
- (B) The appropriate use and value of property adjacent to the area included in the plan will be safeguarded;
- (C) The capacity of existing or proposed utilities, streets, and thoroughfares is adequate to absorb the additional burden created by the special use district;
- (D) The development will consist of a harmonious grouping of buildings or other structures, adequate service, parking and open spaces, planned as a single and common operating and maintenance unit, as applicable;
- (E) The uses included are limited to those permitted in these districts where the special use district is applicable;
- (F) All buildings be served by a central sewage disposal system, public water supply, and public utilities; and
- (G) That, if the development is to be carried out in progressive stages, each stage shall be so planned that the foregoing conditions and intent of the chapter shall be fully complied with at the completion of any stage.

(1995 Code, § 153.202) (Ord. 68-15, passed 8-22-1968)

§ 153.203 SPECIFIC CONDITION OF FINAL PLANS.

The comprehensive detailed plans and accompanying evidence shall show the following.

- (A) Adequate provision is made for safe and efficient pedestrian and vehicular circulation within the site.
- (B) The scale of the plan should not be less than 1 inch equals 50 feet with contours at five feet intervals and indicating any unusual topographical features.
- (C) The location, dimensions, and arrangements of all open spaces, yards, access ways, entrances, exits, off-street parking facilities, loading and unloading zones, pedestrian ways, widths of roads, streets and sidewalks are adequate to provide for safe and efficient ingress and egress to and from public streets and highways serving the development.
- (D) Capacity of all areas to be used for automobile access, parking, loading, and unloading.
- (E) Location, uses planned, dimensions, gross floor area, building coverage, and height of each building or other structure.
- (F) Location, dimension, and arrangement of all areas devoted to planted lawns, trees, recreation, and similar purposes.
- (G) Provisions made for the location of existing or proposed sewage disposal, water supply, storm water drainage, parking lot lights, and other utilities.
- (H) Sufficient additional data as has been required by the Planning Commission or Village Council subsequent to the approval of

the preliminary plan to enable the Council to judge the effectiveness of the design and character of the entire special use district and to consider properly such things as the relationship to surrounding area, anticipated traffic, public health, safety, and general welfare.

(I) A bond or other acceptable assurance for on or off site improvements, exclusive of the buildings or structures intended for occupancy, rental or use, which the Village Council deems necessary to protect public health, safety, and welfare of the neighborhood shall be furnished.

(1995 Code, § 153.203) (Ord. 68-15, passed 8-22-1968)

§ 153.204 TIME LIMIT FOR CONSTRUCTION; REVERSION TO FORMER ZONING CLASSIFICATION.

Every application, when approved by the Village Council either as submitted or resubmitted in modified form, shall constitute an agreement by the applicant or owner that such installation shall be made, completed and operated as indicated by the approved plan and in accordance with the provisions of this section and that the area which has been rezoned shall lose its new classification and revert to its former zoning classification in any of the following events.

(A) If construction of approved buildings and improvements shall not be undertaken within 18 months after the approval of the detailed plans or within such additional time as may be authorized by the Village Council.

(B) If there shall be a failure to complete construction or to comply or to continue to comply with the specified conditions listed in § 153.203 and in this section, or with conditions imposed by the Village Council hereunder in the zoning of the area.

(C) If, as a result of voluntary sale or conveyance, or any other transfer of ownership whatever, the area shall cease to be held, in its entirety in single and separate ownership.

(1995 Code, § 153.204) (Ord. 68-15, passed 8-22-1968)

ADMINISTRATION

§ 153.210 OFFICE OF BUILDING INSPECTOR.

The Building Inspector of the village and such deputies or assistants that have been, or shall be duly appointed by the village, shall enforce the Zoning Code, and in addition thereto, and in furtherance of the authority shall:

(A) Issue all building permits and certificates of occupancy and make and maintain records thereof;

(B) Conduct inspections of buildings, structures, and uses of land to determine compliance with the terms of this chapter;

(C) Maintain permanent and current records of the chapter, including, but not limited to, all maps, amendments, special uses, variations, appeals, and applications therefor;

(D) Receive, file, and forward to the Planning Commission, all applications for special uses or petitions for amendments to this chapter which may be filed initially in the office of the Building Inspector;

(E) Receive and transmit to the Zoning Board of Appeals copies of applications for appeals, variations, and other matters on which the Zoning Board of Appeals is authorized to decide under this chapter; and

(F) Provide such clerical and technical assistance as may be required by the Zoning Board of Appeals in the exercise of its duties.

(1995 Code, § 153.210) (Ord. 68-15, passed 8-22-1968)

§ 153.211 BUILDING PERMIT.

(A) (1) No building or structure shall be hereafter erected, reconstructed, altered, or razed, nor shall any work be started to erect, move, reconstruct, alter, or raze until a building permit shall have been applied for in writing and issued by the Building Inspector, nor shall any change be made in the use of any building or land without a building permit having been obtained from the Building Inspector.

(2) Satisfactory evidence of ownership of the entire lot shall accompany all applications for permits under the provisions of this chapter. No such building permit shall be issued to erect a building or structure or make any change of use of a building or land unless it is in conformity with the provisions of this chapter and all amendments hereto. If the permit is denied, reasons for the denial shall be provided to the applicant in writing.

(3) Unless construction is started within six months after the date of issuance of a building permit, the building permit shall automatically become void and fees forfeited. The Building Inspector may reinstate a building permit that has become void for failure to commence construction without payment of further fees in his or her discretion. Fees for inspection and the issuance of permits or certificates or copies thereof required or issued under the provisions of this chapter shall be collected by the Building Inspector in advance of issuance. The amount of such fees shall be established by resolution of Village Council.

(4) Unless 50% of the construction of the building or structure is completed within 18 months after the issuance of the building permits, the Building Inspector may declare such building permit void.

(B) The Building Inspector shall record all nonconforming uses existing at the date of this chapter for the purposes of carrying out the provisions of §§ 153.170*et seq.*

(C) (1) The Building Inspector shall require that all applications for building permits be accompanied by plans and specifications including a plot plan, in duplicate, drawn to scale, showing the following:

(a) The actual shape, location, and dimension of the lot drawn to scale.

(b) The shape, size, and location of all buildings or other structures on it, including, in residential areas, the number of dwelling units the building is intended to accommodate.

(c) Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this chapter are being observed.

(2) One copy of the plans shall be returned to the applicant by the Building Inspector after he or she shall have marked such copy either as approved or disapproved. The second copy shall be retained in the office of the Building Inspector.

(D) On completion of the work authorized by a building permit, the holder thereof shall seek final inspection thereof by notifying the Building Inspector.

(1995 Code, § 153.211) (Ord. 68-15, passed 8-22-1968; Am. Ord. 2-25-85, passed - -) Penalty, see § 153.999

§ 153.212 OCCUPANCY PERMITS.

(A) No land, building, structure, or part thereof shall be occupied or used, and no building hereafter erected or altered shall be occupied or used, in whole or in part, for any purpose unless and until a certificate of occupancy shall have been issued by the Building Inspector for such new use. No land, or building shall be occupied or reoccupied, used, or changed in use, now or hereafter erected or altered, until a certificate of occupancy and compliance shall have been issued by the Building Inspector stating that the land or building or proposed use of land or building complies with all the building or health laws and ordinances and provisions of this chapter.

(B) Nothing in this section shall prevent the continuance of the present occupancy or use of any existing building, except as may be necessary for safety of life and property.

(C) Certificate of occupancy and compliance shall be applied for coincident with the application for a building permit. The certificate of occupancy and compliance shall be issued within 21 days after receipt of notice of completion of erection or alteration of such building, and proof of compliance with requirements of this and other applicable ordinances.

(D) A record of all certificates shall be kept on file in the office of the Building Inspector and copies shall be furnished on request to any person having proprietary or tenancy interest in the property involved. A fee shall be charged for each original certificate and each copy thereof, the amount of which shall be established by resolution of the Village Council.

(1995 Code, § 153.212) (Ord. 68-15, passed 8-22-1968) Penalty, see § 153.999

§ 153.213 CERTIFICATES FOR DWELLING ACCESSORY BUILDINGS.

Building accessories to dwellings shall not require separate certificates of occupancy but may be included in the certificate of

occupancy for the dwelling when shown on the plot plan and when completed at the same time as such dwelling.

(1995 Code, § 153.213) (Ord. 68-15, passed 8-22-1968)

§ 153.214 APPLICATION FOR CERTIFICATES.

Application for certificates of occupancy shall be made in writing to the Building Inspector on forms furnished by the Department and such certificates shall be issued if, after final inspection, it is found that the building or structure, or part thereof, or the use of land is in accordance with the provisions of this chapter. If such certificate is refused for cause, the applicant therefor shall be notified in writing of such refusal and cause thereof.

(1995 Code, § 153.214) (Ord. 68-15, passed 8-22-1968)

§ 153.215 ISSUANCE OR REFUSAL OF PERMITS.

If the Building Inspector determines that an application is in compliance with the provisions of this chapter, it will be his or her duty to issue the appropriate permit, if he or she determines that the application is not in compliance with the provisions of this chapter, it shall be his or her duty to refuse the permit, in which case he or she shall instruct the applicant in the method of appeal of the application to the Zoning Board of Appeals.

(1995 Code, § 153.215) (Ord. 68-15, passed 8-22-1968)

§ 153.216 SPECIAL EXCEPTIONS PERMITS.

(A) *Purpose.* The development and execution of the Zoning Code is based on the division of the village into districts, within any one of which the use of land and buildings and the bulk and location of buildings or structures, as related to the land, are essentially uniform. It is recognized, however, that there are special uses which, because of their unique character, cannot be properly classified into any particular district or districts without consideration in each case of the impact of those uses on neighboring lands, and on the public need for the particular use of the particular location. Such special uses fall into two categories:

- (1) Uses operated by a public agency or publicly-regulated utilities, or uses traditionally affected with a public interest; or
- (2) Uses entirely private in character, but of such a nature that the operation may give rise to unique problems with respect to their impact on neighboring property or public facilities.

(B) *Authorization.* Special uses shall be authorized only by the Village Council, provided that no application for a special use shall be acted on by the Village Council until after a public hearing is scheduled and notice posted, and thereafter held by the Planning Commission and its findings and recommendations are reported to the Village Council.

(C) *Application.* An application for special use shall be filed with the Village Council. The Village Council shall process such applications in the manner prescribed herein for amendments to this chapter.

(D) *Standards.* No special use shall be granted by the Village Council unless the special use:

- (1) Is deemed necessary for the public convenience at that location;
- (2) Is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected; and
- (3) Will not cause substantial injury to the value of other property in the neighborhood in which it is located.

(E) *Conditions.* The Planning Commission may recommend and the Village Council may provide such conditions and restrictions on the construction, location, and operation of a special use, including, but not limited to, location of points of vehicular ingress and egress, off-street parking and loading, and building setbacks, as may be deemed necessary to promote the general objectives of this chapter, and to minimize any injury to the value of property in the neighborhood. Failure to maintain such conditions or restrictions as may have been imposed shall constitute grounds for revocation of the permit for such special use.

(F) *Expiration of a special exception.* Unless otherwise specified by the Council, a special exception shall expire if the applicant fails to obtain a building permit or use and occupancy permit, as the case may be, within six months from the date of authorization thereof.

(1995 Code, § 153.216) (Ord. 68-15, passed 8-22-1968)

ZONING BOARD OF APPEALS

§ 153.225 CREATION AND MEMBERSHIP.

Pursuant to § 11.04, Lincoln Heights Charter there shall be established and appointed by Council a Zoning Board of Appeals consisting of five electors of the village appointed by 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. Thereafter each member shall be appointed for a four year term. All the members on the Board shall be citizens of the United States. No elected officer or employee shall be a member of the Board.

(1995 Code, § 153.225) (Ord. 68-15, passed 8-22-1968; Am. Ord. 2000-O-25, passed 4-10-2000; Am. Ord. 2002-O-17, passed 3-11-2002)

§ 153.226 PROCEDURE.

(A) The Board shall annually elect its own Chairperson, Vice-Chairperson, and secretary.

(B) Meetings of the Board shall be heard at the call of the Chairperson and at such times as the Board may determine by rule. All regular meetings of the Zoning Board of Appeals shall be open to the public. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. Every decision upon which the Zoning Board of Appeals is required to act under this chapter shall be a public record.

(1995 Code, § 153.226) (Ord. 68-15, passed 8-22-1968)

§ 153.227 APPEALS.

(A) An appeal to the Zoning Board of Appeals based in whole or in part on the provisions of this chapter may be taken by any person, firm, or corporation aggrieved or by any governmental officer, department, board, or bureau affected by the decision of the Building Inspector. Such appeal shall be taken by filing a notice of appeal with the Zoning Board of Appeals on appropriate forms provided by the Building Inspector, payment of the required fee, and shall specify the grounds for such appeal.

(B) The Building Inspector shall forthwith transmit all papers constituting the records of such appeal to the Board. The Board may require the applicant to furnish such surveys, plans, or other information as may be reasonably required, to the Board for the proper consideration of the matter. On a hearing before the Board, any person or party may appear in person, or by agent, or by attorney.

(1995 Code, § 153.227) (Ord. 68-15, passed 8-22-1968)

§ 153.228 PUBLIC HEARINGS.

(A) On the filing with the Planning Commission of an application for a zoning amendment, a public hearing shall be established and notice thereof shall be given. The procedure shall be the same as that taken by the Zoning Board of Appeals.

(B) The Zoning Board of Appeals shall fix a reasonable time and place for the hearing of the appeal and give due notice thereof to all persons appearing on the tax rolls of the village, who have an interest in land on the same street within 500 feet from the property in question, and on every lot not on the same street within 300 feet of the lot or building and place all information on file for public examination, as required by Ohio R.C. § 713.12, provided that failure to give notice required by this division shall not invalidate any action taken. On the hearing, any party may appear in person or by agent or by attorney. Provided further, that notice of such hearing together with a short resume of the petition coming before the Board shall be published at least once 30 days before the hearing, in one or more newspapers of general circulation within the village, and that a written notice is served at least 20 days before the hearing on the owners of the properties located adjacent to the location for which the variation is requested, as required by Ohio R.C. § 713.12.

(C) The Board may reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination as, in its opinion, ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of 3/4 of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector or to decide in favor of the applicant any matter on which they are required to, under this chapter, or to effect any variation in this chapter. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the Zoning Board of Appeals after notice of appeal shall have been filed with him or her, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order which shall be granted by the courts on notice of the Building Inspector and on due cause shown.

(1995 Code, § 153.228) (Ord. 68-15, passed 8-22-1968)

§ 153.229 POWER OF BOARD.

The Board shall have the following powers.

(A) *Administrative review.* To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, decision, or determination made by the Building Inspector in the enforcement of this chapter.

(B) *Variance.* To authorize, on an appeal, a variance from the strict applications of the provisions of this chapter where by reason of exceptional narrowness, shallowness, shape, or area of a specific piece of property at the time of enactment of this chapter or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship on the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the purpose of this chapter. In granting a variance, the Board shall state the grounds on which it justifies the granting of a variance.

(1995 Code, § 153.229) (Ord. 68-15, passed 8-22-1968)

§ 153.230 APPLICATIONS FOR VARIANCES.

(A) A variance from the terms of this Zoning Code shall not be granted by the Zoning Board of Appeals unless and until a written application for a variance is submitted to the Building Commissioner. The application shall be signed by the owner or applicant attesting to the truth and exactness of all information supplied by the application.

(B) At a minimum, the application shall contain the following information:

- (1) Name, address and telephone number of applicant;
- (2) Legal description of property;
- (3) Description of the nature of variance requested;
- (4) A statement demonstrating that the requested variance conforms to the standards set forth in § 153.226; and
- (5) A fee as established by Council.

(Ord. 2001-O-17, passed 7-9-2001)

§ 153.231 STANDARDS FOR VARIANCES.

A variance from the terms of this Zoning Code shall not be granted by the Board of Zoning Appeals unless it finds that all of the following standards are met:

(A) The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this Zoning Code on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare;

(B) The granting of the variance shall not alter the essential character of the location;

(C) There shall exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land and building and do not apply generally to land or buildings in the area, and which are such that the strict application of the provisions of this Zoning Code would deprive the applicant of the reasonable use of such land or building. Mere loss in value shall not justify a variance; there shall be deprivation of beneficial use of land;

(D) There shall be proof of hardship created by the strict application of this Zoning Code. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it shall result from the application of this Zoning Code; it shall be suffered directly by the property in question; an evidence of variance granted under similar circumstances need not be considered;

(E) The granting of the variance is necessary for the reasonable use of the land or building and the variance as granted is the minimum variance that will accomplish this purpose; and

(F) The proposed variance shall not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.

(Ord. 2001-O-17, passed 7-9-2001)

§ 153.232 PROCEDURES AND REQUIREMENTS FOR APPEALS OF VARIANCES.

(A) *Appeals.* Appeals to the Zoning Board of Appeals concerning interpretation or administration of this Zoning Code may be taken by any person aggrieved by any zoning decision of the Building Commissioner. Such appeal to the Zoning Board of Appeals shall be taken after the decision of the Building Commissioner by filing with the Building Commissioner and with the Zoning Board of Appeals a notice of appeal specifying the grounds upon which the appeal is being taken. Appeals shall be made in writing accompanied by an application fee as set by Council. The Building Commissioner shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

(B) *Stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from unless the Building Commissioner from whom the appeal is taken certifies to the Zoning Board of Appeals, after the notice of appeal is filed with him or her, that by reason of facts stated in the application a stay would, in his or her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by restraining order which may be granted by the Zoning Board of Appeals or by a court of record upon application, or notice to the Building Commissioner from whom the appeal is taken, on due cause shown.

(C) *Public hearing by Zoning Board of Appeals.* The Zoning Board of Appeals shall set a public hearing within 20 days after the receipt of an application for a variance or a notice of appeal. The hearing on the appeal or variance shall be held within 30 days of receipt of application for the variance or the notice of appeal.

(D) *Notice of public hearing in newspaper.* Before holding the public hearing, notice of such hearing shall be given by publication in a newspaper of general circulation in the village not less than ten days prior to the hearing. The notice shall set forth the time and place of the public hearing and the nature of the proposed appeal or variance.

(E) *Notice to parties in interest.* Before holding the public hearing the applicant shall submit a notification form signed by each record owner of any property located within 200 feet in any direction of the property upon which an applicant for an appeal or variance has been filed. The notification form to be signed by each such property owner shall be available from the Building Department and shall contain the same information as required of notices published in newspapers.

(F) *Authority of Zoning Board of Appeals.* The Zoning Board of Appeals may authorize upon appeal in specific cases such variance from the terms of this Zoning Code as will not be contrary to the public interest where, owing to special conditions of the property, a literal enforcement of the provisions of this Zoning Code would result in unnecessary hardship. No variance shall be granted by the Zoning Board of Appeals unless it is found that all of the requirements and standards are met. No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted or nonconforming uses of land, structures or buildings in other districts shall be considered grounds for issuance of a variance.

(G) *Action by Zoning Board of Appeals.* Within 30 days after the public hearing the Board shall either approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved or approved with modifications, the Board shall direct the Building Commissioner to issue a conditional zoning permit listing the specific conditions specified by the Board for approval. If the application is disapproved by the Board the applicant may seek relief through the Court of Common Pleas.

(Ord. 2001-O-17, passed 7-9-2001)

§ 153.233 CERTIFICATES OF THE BOARD.

(A) It shall be the duty of the Board to issue a certificate in any case wherein a variance is granted.

(B) The Board may, at any time, cancel or revoke such certificate, for any violation of the Zoning Code or conditions imposed.

(Ord. 2001-O-17, passed 7-9-2001)

§ 153.234 EXPIRATION OF VARIANCES.

Unless otherwise specified by the Board, a variance shall expire if the applicant fails to obtain a building permit or use and occupancy permit as the case may be within six months from the date of authorization thereof.

(Ord. 2001-O-17, passed 7-9-2001)

§ 153.235 APPEAL TO COURT.

Any person, firm, or corporation aggrieved or any governmental office, department, board or bureau affected by the decision of the Zoning Board of Appeals, or Village Council, or any taxpayer, or any officer of the village, within 30 days after any decision of the Board, may appeal to the courts by filing a complaint duly verified, setting forth that such decision is arbitrary, capricious and abuse of discretion or otherwise not in accordance with the law, specifying the grounds on which he or she relies.

(Ord. 2001-O-17, passed 7-9-2001)

AMENDMENTS, INTERPRETATION, AND VESTED RIGHT

§ 153.240 POWER OF AMENDMENT.

The Village Council may, from time to time, on recommendation from the Planning Commission, on its own motion, or on petition amend, supplement, modify or change this chapter in accordance with the authority of Ohio R.C. Chapter 713, in accordance with the following procedural outline.

(A) All amendment proposals not originating with the Planning Commission shall be referred by the Village Council to the Planning Commission for a recommendation before any action is taken.

(B) The Planning Commission shall study the proposed ordinance amendment and make written recommendation to the Village Council for approval, conditional approval, or disapproval. In the course of such study, the Planning Commission may hold public information meetings on the proposed amendment.

(C) On receipt of the Planning Commission's recommendation, the Village Council shall hold a public hearing thereon per the provisions of Ohio R.C. Chapter 713, provided, that such hearing need not be held if the Village Council concurs with Planning Commission recommendations for disapproval.

(D) In case a protest against a proposed amendment, supplement, or change be presented, duly signed by the owners of 20% or more of the frontage proposed to be altered, or by the owners of 20% or more of the frontage immediately in the rear thereof, or by the owners of 20% of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by a 3/4 vote of the Village Council.

(1995 Code, § 153.240) (Ord. 68-15, passed 8-22-1968)

§ 153.241 INTERPRETATION.

(A) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the health, safety, morals, comfort, prosperity, or general welfare.

(B) Where the conditions imposed by any provision of this chapter, on the use of land or buildings, or on the bulk of buildings, are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or of any law, ordinance, resolution, rule, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern.

(C) This chapter is not intended to abrogate any easement, covenant, or any other private agreement, provided that where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easements, covenants, or other private agreements, the requirements of this chapter shall govern.

(D) No building, structure, or use which was not lawfully existing at the time of the adoption of this chapter shall become or be made lawful solely by reason of the adoption of this chapter, and to the extent that, and in any manner that the unlawful building, structure, or use is in conflict with the requirements of this chapter, the building, structure, or use remains unlawful hereunder.

(1995 Code, § 153.241) (Ord. 68-15, passed 8-22-1968)

§ 153.242 VESTED RIGHT.

Nothing in the chapter should be interpreted or construed to give rise to any permanent vested rights in the continuation of any particular use, district, zoning classification, or any permissible activities therein, and, they are hereby declared to be subject to subsequent amendment, change, or modification as may be necessary to the preservation or protection of public health, safety, and welfare.

(1995 Code, § 153.242) (Ord. 68-15, passed 8-22-1968)

§ 153.997 NOTICE OF VIOLATION.

When written notice of a violation of any of the provisions of this chapter has been served by the Building Inspector on the owner, agent, or occupant, contractor, or builder, such violation shall be discontinued immediately.

(1995 Code, § 153.997) (Ord. 68-15, passed 8-22-1968)

§ 153.998 REMEDIES.

In case any building, sign, or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, sign, structure, or land is used, or any hedge, trees, shrub, or other growth is maintained, in violation of this chapter or any regulations pursuant thereto, in addition to other remedies provided by law, any appropriate action or proceeding, whether by legal process or other ways, may be instituted or taken to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of that building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

(1995 Code, § 153.998) (Ord. 68-15, passed 8-22-1968)

§ 153.999 PENALTY.

For any and every violation of the provisions of this chapter, the owner, general agent, or contractor of a building or premises where such violation has been committed, or shall exist, and the lessee or tenant of an entire building or entire premises where such violation has been committed, or shall exist, and the owner, general agent, contractor, lessee, or tenant of any part of the building or premises in which part of such violation has been committed or shall exist, the general agent, architect, builder, contractor, or any other person who knowingly commits, takes part or assists in any such violation, or maintains any building or premises in which any such violations exist, shall be liable on conviction thereof to a penalty not exceeding \$100; for each and every offense or suffer to undergo imprisonment for a period of not less than 30 days, and whenever such person shall have been notified by the Building Inspector by service of summons in a prosecution, or in any other way, that he or she is committing such violation of this chapter, each day that he or she shall continue

such violation after such notification shall constitute a separate offense punishable by a like fine or penalty. Such fine or penalty shall be collected as like fines or penalties are now by law collected.

(1995 Code, § 153.999) (Ord. 68-15, passed 8-22-1968)

CHAPTER 154: TELECOMMUNICATIONS, ANTENNA, TOWER AND SITE REGULATIONS

Section

- 154.01 Intent
- 154.02 Definitions
- 154.03 Establishment of Telecommunications District, overlay map and incorporation into the Zoning Code and zoning map
- 154.04 Other zoning district regulations unaffected except to the extent they are in conflict
- 154.05 Prohibition unless in compliance with regulations
- 154.06 Use regulations for cellular or wireless communication antenna, towers or site
- 154.07 Application for permit and procedure to place or operate an antenna, tower or site
- 154.08 Standards for approval
- 154.09 Permit for placement of micro antenna not attached to tower or site
- 154.10 Permit for placement or operation antennas, towers or sites outside of Telecommunication District
- 154.11 Variances
- 154.12 Maintenance
- 154.13 Notice of change in ownership; discontinuance of operations and annual meeting with Village Building Inspector
- 154.14 Continuing use of cellular or wireless communications site; abandonment
- 154.15 Collocation
- 154.16 Application fees

§ 154.01 INTENT.

In recognition of the fact that the Village of Lincoln Heights is approximately .67 square miles in size, that 80% of the village's existing zoned area consists of small sized and densely spaced residential housing, that the village is zoned for business and industry, and that by virtue of these factors there is a very limited area within the village to accommodate telecommunications antennas, towers and sites as defined herein, it is the intent of this chapter to:

- (A) Strike a balance between the demand for cellular or wireless communications towers and sites while accommodating their location and number in the village;
- (B) Minimize adverse visual effects of communications towers and support structures through proper siting, design and screening;
- (C) Minimize any impact on adjacent properties, including but not limited to diminution in property values, aesthetics, and potential damage from communications towers and support structure failure; and
- (D) Require the joint use of any new and existing communications towers and support structures in order to reduce the number of such structures needed in the future.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.02 DEFINITIONS.

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

APPLICANT. The person applying for a permit to place or operate a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site in the Village of Lincoln Heights.

CELLULAR COMMUNICATIONS SERVICES. Personal communications accessed by means of cellular equipment and services including portable cellular or wireless two-way communications.

CELLULAR OR WIRELESS COMMUNICATIONS ANTENNA or ANTENNA. Any structure or device used to receive or transmit electromagnetic waves between cellular phones, pagers, commercial mobile services, wireless services and ground-wired communications systems including both directional antennas such as panels, microwave dishes and satellite dishes and omni-directional antennas such as whips and other equipment utilized to serve personal communication services.

CELLULAR OR WIRELESS COMMUNICATIONS SITE or SITE. A tract, lot, or parcel of land containing a cellular or wireless communications tower, cellular or wireless communications antenna, and any support structures, facilities, or uses ancillary to cellular or wireless transmission activity.

CELLULAR OR WIRELESS COMMUNICATIONS SUPPORT STRUCTURE. Any building or structure accessory to but necessary for the proper functioning of the cellular or wireless communications antenna or tower, including accessory transmission and receiving equipment.

CELLULAR OR WIRELESS COMMUNICATION TOWER or TOWER. Any freestanding structure used to support a cellular or wireless communication antenna including but not limited to self-supporting lattice, guyed, or monopole with an elevated cellular or wireless communications antenna.

CLEAR AND CONVINCING EVIDENCE. Evidence which is certain and trustworthy to the extent that it causes the decision maker to have a firm belief or conviction as to the truthfulness of the facts sought to be established.

MICRO ANTENNA. Any cellular or wireless communications antenna or tower which consists solely of an antenna without any additional supporting structures or ancillary apparatus other than necessary brackets for affixing the antenna. A **MICRO ANTENNA** shall not be greater than 25 feet in length or height and with an antenna area no greater than 580 square inches.

PERSON. Any business entity, person, individual, or telecommunications company or operator.

PERSONAL WIRELESS SERVICES. Commercial mobile services, licensed or unlicensed wireless services and common carrier wireless exchange access services including cellular services.

TALL STRUCTURES. Include, but not be limited to, smoke stacks, water towers, buildings over 50 feet in height, antenna support structures or other cellular or wireless communication structures, other communication towers and roadway lighting poles.

VILLAGE. The Village of Lincoln Heights, Ohio.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.03 ESTABLISHMENT OF TELECOMMUNICATIONS DISTRICT, OVERLAY MAP AND INCORPORATION INTO THE ZONING CODE AND ZONING MAP.

(A) A Telecommunications District is hereby established and the boundaries are shown and set forth within the Telecommunications District map signed by the Chairperson and secretary of the Planning Commission and attested by and filed with the Clerk of Council. The Telecommunications District shall be part of the Zoning Code and the Telecommunications District map shall be construed in conjunction with the zoning map, Village of Lincoln Heights, Ohio, as established in § 153.007 as if fully incorporated into a single map, and shall be used for the purpose of ascertaining the applicable boundaries and zoning districts within the Village of Lincoln Heights.

(B) Except where otherwise designated by the Telecommunications District map the district boundary lines are to follow lot lines as they existed at the time of the enactment of the Zoning Code. If any portion of the district boundary line does not coincide with lot lines, or where a lot is not delineated by dimensions, the affected portion of boundary line shall be deemed to be 100 feet back from the

nearest street or roadway line parallel to which the line is drawn.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.04 OTHER ZONING DISTRICT REGULATIONS UNAFFECTED EXCEPT TO THE EXTENT THEY ARE IN CONFLICT.

(A) To the extent the regulations of other zoning districts, as set forth in the Zoning Code and shown in the zoning map, Village of Lincoln Heights, Ohio, do not conflict with the regulation of cellular or wireless communication antennas, cellular or wireless communication towers, or cellular or wireless communication sites, as provided herein such regulations shall remain unaffected.

(B) To the extent the regulations of other zoning districts, as set forth in the Zoning Code and shown in the zoning map, Village of Lincoln Heights, Ohio are in conflict with the regulation of cellular or wireless communication antennas, cellular or wireless communication towers or cellular or wireless communication sites, as provided herein such regulation shall be superseded by the regulations herein.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.05 PROHIBITION UNLESS IN COMPLIANCE WITH REGULATIONS.

A cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site shall not be placed, operated, constructed, affixed or otherwise located within the Village of Lincoln Heights except as conditionally allowed and permitted by the telecommunications antenna tower and site regulations set forth herein.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.06 USE REGULATIONS FOR CELLULAR OR WIRELESS COMMUNICATION ANTENNA, TOWERS OR SITE.

The following use regulations shall apply to cellular or wireless communication antennas, cellular or wireless communication towers or cellular or wireless communication sites:

(A) Unless otherwise provided by these regulations, a cellular or wireless communication antenna, cellular or wireless communication site may only be placed, operated, constructed, affixed, or located in a Telecommunications District.

(B) No cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site shall be placed in a Telecommunications District unless the person or applicant requesting the placement of the antenna, tower or site the obtains a permit from Village of Lincoln Heights in accordance with the applicable discretionary permitting process set forth in §§ 154.07, 154.08, 154.09, and 154.11.

(C) All other accessory uses to any cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site including, but not limited to, business offices, maintenance or storage areas, and vehicle parking spaces, are permitted only to the extent they are in compliance with the applicable zoning district use regulations provided within the Zoning Code.

(D) No cellular or wireless communication tower shall exceed 250 feet in total height. The height shall be measured from the base of the tower, at grade, to the highest point of the tower or site to include any attached equipment, devices, or other apparatus. Grade shall be determined as the elevation of the existing ground level topography at the precise location of the base of the tower prior to construction of the tower.

(E) No cellular or wireless communication tower or site shall be closer than 100 feet to any Telecommunication District boundary line. The 100-foot distance shall be measured in a straight line from the nearest point of the base of the tower or site or in the case of the use of guy wires, from the point where the guy wire is secured, to the closest part of the Telecommunication District boundary line.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.07 APPLICATION FOR PERMIT AND PROCEDURE TO PLACE OR OPERATE AN ANTENNA, TOWER OR SITE.

(A) Notwithstanding any otherwise applicable provision of Chapter 153 of the Zoning Code, the following permit application process shall be the exclusive process for any person seeking the placement or operation of a cellular or wireless communication antenna, tower, or site within the Village of Lincoln Heights.

(B) No permit shall be issued allowing for the placement or operation of a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site within the Village of Lincoln Heights unless the following permit application process is followed.

(1) Notwithstanding any provision of Chapter 153 of the Zoning Code, any person applying for the placement or operation of a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site within a Telecommunications District must first arrange a conference with the Village Building Inspector to provide information regarding the proposed placement within the village. Any designees of the Village Building Inspector shall also be permitted to attend the conference. The information shall include a preliminary plan, which provides a rendering of any proposed tower or site to scale and in relation to surrounding area.

(2) No later than five business days after the conference with the Village Building Inspector is conducted, as set forth in division (B)(1) of this section, the applicant shall provide written notice by certified mail, of the applicant's intent to place or operate a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site to all owners of property whose land is contiguous to and/or directly across the street from the property on which the applicant intends to place or operate the antenna, tower, or site. If the notice is unclaimed or refused, the applicant shall mail the notice by regular mail. All such property owners and their mailing addresses shall be provided to the village. The notice shall include:

(a) A brief description of the proposed plan to place and operate the proposed antenna, tower, or site, to include a legal description of all affected property, the address of all affected property, and the identification of all streets which are proximate to or in the immediate vicinity of the site sufficient to identify the particular location and boundaries upon which the antenna, tower, or site is to be placed or operated;

(b) A site rendering or illustration of the proposed antenna, tower, or site as it would appear upon completion; and

(c) A brief statement outlining the necessity, purpose, or intended use of the proposed antenna, tower, or site.

(3) At the next regular Village Council session following the conference, the Building Inspector shall give notice of the application to Village Council and shall submit any preliminary plan.

(4) Upon receiving notice of the conference and plans, Village Council shall conduct a special meeting within a reasonable time for the purpose of making a determination as to whether the proposed plan satisfies the standards of approval set forth in § 154.08. The special meeting shall provide:

(a) A full opportunity for the applicant to make a presentation to Village Council regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site including the land and any issues pertaining to the standards for approval set forth in § 154.08;

(b) A full opportunity for the Village Council to submit questions to the applicant regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site, including the plans to any issues pertaining to the standards for approval set forth in § 154.08;

(c) A full opportunity for any interested property owners or other affected persons to address Village Council regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site, including the plans and any issues pertaining to the standards for approval set forth in § 154.08;

(d) A full opportunity for Village Council to seek input from the Village Administration or other retained consultants or experts regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site, including the plans and any issues pertaining to the standards for approval set forth in § 154.08; and

(e) A full opportunity for Village Council to deliberate, debate, and vote on whether to grant a permit to the applicant.

(5) Upon the conclusion of the initial special session, Village Council may conduct such additional special sessions as it may deem necessary so as to further deliberate, obtain additional information, or conduct additional fact-finding prior to making its determination as to whether to issue a permit.

(6) All Village Council special sessions conducted pursuant to this section shall provide for the transcription of testimony, a record for any admitted evidence, and offer the applicant, affected property owners, or other interested party a full opportunity to appear in person, with an attorney, to:

- (a) Present positions, arguments, and contentions;
- (b) Offer and examine witnesses and present any supporting evidenced;
- (c) Cross-examine witnesses purporting to refute a position, argument, or contention;
- (d) Offer evidence to refute evidence and testimony offered in opposition to a position, argument, or contention; and
- (e) Proffer evidence into the record if the admission of it is denied by Village Council.

(7) All testimony adduced before Village Council under this subsection shall be given under oath.

(8) Village Council shall conduct such deliberations in a quasi-judicial capacity, and not as a legislative body. Such deliberations shall be conducted in public.

(9) Upon making a determination whether to issue a permit pursuant to this section, Village Council shall place into the record its supporting findings of fact and conclusions of law.

(10) A permit shall be issued only upon a 2/3 majority vote of Village Council in favor of such issuance. In the event Village Council determines that a permit shall be issued, it shall incorporate into the permit any conditions or limitations as it may deem necessary based upon the standards for approval set forth in § 154.08.

(C) In addition to the required public notice for any special Council meetings held pursuant to this section, the village shall provide written notice by regular mail of the initial special meeting to all affected owners of property, as identified by the applicant to the village as provided by division (B)(2) of this section.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.08 STANDARDS FOR APPROVAL.

(A) In cases of cellular or wireless communication antennas, cellular or wireless communication towers, or cellular or wireless communication sites, the applicant shall demonstrate, within generally accepted telecommunications industry standards, that there are no other reasonably suitable locations within the geographic area to be served except for the placement of the antenna tower or site in the Telecommunication District, to include the follows:

(1) The sole feasible method of providing the proposed telecommunications services is through the utilization of the proposed tower, site, or antenna; and

(2) As opposed to other currently available or feasible telecommunications technologies, an antenna, tower, or site must be physically placed or operated at the proposed location.

(B) The applicant shall demonstrate, utilizing the most recent technological evidence, that an antenna, tower, or site must be physically placed or operated at the proposed location as a necessary component of a cellular or wireless communications grid system.

(C) The applicant shall demonstrate, utilizing the most recent technological evidence, the non-feasibility of placing an antenna or tower on existing structures, including the placement of an antenna on any existing or permitted towers or sites. In cases where the applicant does not propose to place an antenna or tower on an existing tower or site, the applicant must demonstrate by clear and convincing evidence that the antenna or tower cannot be located on any other tower site, building, or structure in the geographic area to be served, and that all, reasonable means have been undertaken to avoid any undue impact caused by the "clustering" of towers or sites within an area, including any telecommunications districts. The applicant must send a certified mail announcement to all other existing tower or site operators in the geographic area to be served stating the applicant's siting needs and/or sharing capabilities. In determining whether the applicant has met the requirements of this section, Village Council's determination shall consider those factors set forth in divisions (B) and (C) of this section.

(D) The applicant shall demonstrate that public safety communications; including police, fire, and emergency response services communications will not be negatively affected or otherwise impaired by the operation of the proposed antenna, tower, or site.

(E) The applicant shall demonstrate that the physical design of the proposed cellular or wireless communications tower and its

antenna are safe and that the surrounding properties will not be negatively affected by tower structure failure, falling ice or other debris.

(F) The applicant shall demonstrate that the cellular or wireless communications tower is fitted with manufacturer approved anti-climbing devices.

(G) An enclosure fence shall be required around the cellular or wireless communications tower and any supporting structures unless the antenna is mounted on an existing structure. The fence shall be a minimum of eight feet in height and shall be erected to prevent access to non-authorized personnel. The fence shall be constructed out of chain link. Running along the top of the fence shall be three separated strands of barbwire.

(H) Landscaping shall be required to screen as much of the support structures as possible, the fence surrounding the cellular or wireless communications tower or site and in general, to soften the appearance of the cellular or wireless communications site. A tower or site landscaping proposal shall include trees, shrubs and other landscaping vegetation. Existing vegetation, topography, walls, decorative fences or other features may be incorporated into the landscaping plan.

(I) If the antenna is mounted on an existing structure, and other equipment is housed inside of an existing structure, landscaping shall not be required.

(J) The proposed cellular or wireless communications tower shall be designed and constructed to accommodate anticipated advances in telecommunications technology and any anticipated future uses.

(K) The applicant shall demonstrate that the tower has been maximized in design, engineering, and construction to reasonably accommodate other cellular or wireless communications operators or companies, including collocation capabilities. The purpose of this section is to minimize the number of towers in the Village of Lincoln Heights while maximizing the number of uses and capabilities for any permitted towers and to provide for advances in public emergency response. Nothing in this section shall forbid the applicant from requesting adequate and reasonable compensation from any third party user of the tower.

(L) The applicant shall demonstrate that it is currently licensed by the Federal Communications Commission (FCC) to operate as a telecommunications service provider.

(M) The applicant shall demonstrate that the tower will be painted in a color scheme which minimizes visual impact while also meeting any applicable Federal Aviation Administration (FAA) regulations. No cellular or wireless communications towers may be artificially lighted except when required by the FAA.

(N) No cellular or wireless communications antenna, tower, or site shall contain any signage or advertisement containing a commercial or public message, solicitation, or other communication.

(O) The applicant shall provide a plan for all proposed cellular or wireless communications towers, and sites at a scale of 1 inch to 20 feet, indicating as a minimum the following:

- (1) The total area of the site or tower;
- (2) The existing zoning of the property in question and of all adjacent properties;
- (3) All public and private right-of-way and easement lines located on or adjacent to the property which is proposed to be continued, created, relocated or abandoned;
- (4) Existing topography with a maximum of five foot contour intervals;
- (5) The proposed finished grade of the development shown by contours not exceeding five foot intervals;
- (6) The location of all existing buildings and structures and the proposed location of the cellular or wireless communications tower and all cellular or wireless communications support structures including dimensions, heights, and where applicable, the gross floor area of the buildings;
- (7) The locations and dimensions of all curb cuts, driving lanes, off-street parking and loading areas including the number of spaces, grades, surfacing materials, drainage plans and illumination of the facility;
- (8) All existing and proposed sidewalks and open areas on the site;
- (9) The location of all proposed fences, screening and walls;
- (10) The location of all existing and proposed streets;

(11) All existing and proposed utilities including types and grades;

(12) The schedule of any phasing of the plan;

(13) A written statement by the applicant as to the visual and aesthetic impact of the proposed cellular communications tower on adjacent properties;

(14) Any other information as may be required by Village Council to determine conformance with the Village of Lincoln Heights Planning and Zoning Codes; and

(15) The type and number of proposed shrubbery, trees, plants, or ground cover; the particular location of each proposed shrubbery, tree, plant or ground cover; the estimated dimensions, including height and width of any shrubbery, trees, plants, or ground cover at the time of planting; the estimated dimensions, including height and width of any shrubbery, trees, plants, or ground cover at the time of their maturity; and the estimated number of years until full maturity for each type of proposed shrubbery, tree, plant, or ground cover.

(P) The applicant shall demonstrate proof of full compliance with the notice requirements set forth in § 154.07(B)(2).

(Ord. 97-O-47, passed 11-10-1997)

§ 154.09 PERMIT FOR PLACEMENT OF MICRO ANTENNA NOT ATTACHED TO TOWER OR SITE.

(A) Notwithstanding any otherwise applicable provision of Chapter 153 of the Zoning Code the following permit application process shall be the exclusive process for any person seeking the placement or operation of a micro antenna, as defined in § 154.02 within the Village of Lincoln Heights.

(B) In the event the applicant intends to place or operate a micro antenna within the Village of Lincoln Heights and the micro antenna will not be attached to a cellular or wireless communication tower or will not be made part of a cellular or wireless communication site, the applicant must arrange a conference with the Village Building Inspector to provide information regarding the proposed placement within the village. Any designees of the Village Building Inspector shall also be permitted to attend the conference.

(C) At the conference, the applicant shall submit a plan which includes a rendering of the proposed micro antenna(s) in relation to the neighboring area, the proposal for attaching, erecting, or placing the micro antenna to existing structures, buildings, or poles, safety considerations, and the aesthetic impact on neighboring property owners.

(D) In the event the applicant seeks to place or operate a micro antenna outside of a Telecommunications District, the applicant must demonstrate by clear and convincing evidence that there are no feasible locations within the Telecommunications District pursuant to generally accepted telecommunications industry to engineering standards to place or operate the proposed micro antenna.

(E) The Village Building Inspector shall make a determination to issue a permit for placement of micro antennas in accordance with the applicable standards set forth in divisions (C) and (D) above of this section with such modifications of the plan as may be necessary.

(F) In the event the Village Building Inspector does not issue a permit under this section, the applicant may appeal the determination to Village Council, which shall conduct a special session and such additional sessions as it deems necessary in accordance to independently review the decision of the Village Building Inspector. The review shall be based upon the applicable standards set forth in divisions (C) and (D) above of this section and a majority of Village Council may either affirm, overrule, or modify the decision of the Village Building Inspector. Village Council shall publish its findings of fact and conclusions of law supporting its review.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.10 PERMIT FOR PLACEMENT OR OPERATION ANTENNAS, TOWERS OR SITES OUTSIDE OF TELECOMMUNICATION DISTRICT.

In the event that an applicant requests the placement or operation of a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site outside of a Telecommunications District, the applicant shall demonstrate:

(A) That by clear and convincing evidence there are no feasible locations within the Telecommunications District pursuant to generally accepted telecommunications industry to engineering standards to place or operate the proposed cellular or wireless communication tower, or cellular or wireless communication site;

(B) In addition to the requirements set forth in §§ 154.07 and 154.08, the applicant must demonstrate that:

(1) The lot size for the proposed antenna, tower, or site is no less than three acres; and

(2) The proposed antenna, tower or site has a minimum set back of 250 feet from the base of the tower or any guy line to the property line.

(C) The proposed cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site will be situated on a lot which is currently used for an institutional purpose, such as a school, church, playfield, park, recreational area, or other similar use.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.11 VARIANCES.

Notwithstanding § 153.216 of the Zoning Code, in the event an applicant or person requests a variance from any provision of this chapter, the following procedures shall apply.

(A) Where the variance is requested in conjunction with an application to place or operate an antenna, micro antenna, tower, or site, plans and information sufficient to make a fully informed decision shall be included with the permit application. The decision to grant or deny the variance will be rendered at the same time the requested permit is granted or denied.

(B) The procedure for requesting a variance for the placement or operation of an antenna, micro antenna, tower, or site shall be the same as the applicable permit procedure set forth in this chapter.

(C) The applicable standards used to consider whether to grant the variance shall be those listed in § 153.216 of the Zoning Code.

(D) In order for a variance to be granted pursuant to this section, a 2/3 majority vote of Village Council in favor of granting the requested variance shall be required.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.12 MAINTENANCE.

Any owner of property containing tower or site and any operator or owner of the tower or site shall maintain such property, structures, and site in good condition and free from trash, outdoor storage, weeds and other debris. Any cellular or wireless communications tower or site that has discontinued its service for a period of six continuous months or more shall be removed along with all accessory structures related thereto. Discontinued shall mean that the structure has not been properly maintained, has been abandoned, is obsolete, or is unused.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.13 NOTICE OF CHANGE IN OWNERSHIP; DISCONTINUANCE OF OPERATIONS AND ANNUAL MEETING WITH VILLAGE BUILDING INSPECTOR.

(A) In the event that there is a change on the ownership of a tower or site written notice shall be immediately given to the Village Building Inspector. Such notice shall list the address, principal place of business, full name, person who shall act as the point of contact with the village with regard to the tower or site, and that person's business telephone number.

(B) In the event that a tower or site will no longer be operated, or its use discontinued or abandoned, the person operating the tower or site or the owner of property containing the tower or site shall:

(1) Immediately give written notice to the Village Building Inspector upon making such determination or obtaining such knowledge; and

(2) Immediately dismantle and remove the tower or site and:

(a) Reclaim the affected portions of the property such that it is placed back into a condition aesthetically similar to the property's original and natural condition prior to the placement of the tower or site; or

(b) Improve the property for any other permitted use in accordance with the applicable zoning provisions of the Zoning Code.

(C) The Village Building Inspector, at his or her discretion, may conduct an annual status conference with a representative of the owner or operator of an antenna, tower or site. The agenda of the meeting may include, but is not limited to, any issues regarding the ownership, operation, maintenance, and complaints regarding the antenna, tower, or site.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.14 CONTINUING USE OF CELLULAR OR WIRELESS COMMUNICATIONS SITE; ABANDONMENT.

(A) The cellular or wireless communications company or operator shall file and maintain accurate and current records of any antennas, micro antennas, towers, sites within the Village of Lincoln Heights with the Building Inspector. The records shall indicate any additions, deletions, or other changes in its use.

(B) In the event that the village has determined that any tower or site has been discontinued, has been abandoned, or constitutes a safety or health violation, the village shall proceed in accordance with Ohio R.C. §§ 715.26 and 715.261, or pursue any other remedies allowed under law.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.15 COLLOCATION.

(A) No person owning or operating a tower or site which has previously been permitted by the village to place the tower or site in the Village of Lincoln Heights shall unreasonably deny accommodating or collocating the placement of a third party antenna on the tower or at the site.

(B) In cases where an applicant requests placement of an antenna on an existing tower or site, and the owner or operator of the existing tower or site opposes any such placement, as part of the special session proceedings for such application held pursuant to this chapter, both the applicant and person owning or operating the existing tower or site shall be required to demonstrate within a reasonable certainty, based upon technological or generally accepted telecommunications industry standards, the feasibility or non-feasibility of placing the third party antenna on the tower or site. Such feasibility considerations shall include whether a tower antenna can or cannot be located on another communication tower, building, or structure. Village Council shall consider the space available on the existing structure, the technological practicality of the collocation, the financial feasibility of the collocation, and such other factors as Village Council deems appropriate.

(C) Village Council shall take into consideration any such evidence as may provided pursuant to division (B) above of this section, testimony, or other provided plans or information in making its permit determination under this chapter.

(D) Nothing in this section shall impinge upon the right of the person operating the tower or site to require reasonable compensation from the applicant for the placement of the third party antenna on the existing tower or site.

(E) Notwithstanding any provision of this section, any person seeking to collocate or place an antenna on an existing tower, site, or other structure shall be required to seek a permit as set forth in this chapter.

(Ord. 97-O-47, passed 11-10-1997)

§ 154.16 APPLICATION FEES.

The application fee for requesting the placement of an antenna, micro antenna, tower, or site shall be \$250 per application plus actual costs incurred by the village for conducting any Village Council special sessions. The \$250 shall be submitted in full at the time of application, and in cases of applications for antennas, towers, or sites, an additional \$250 refundable deposit shall be made for the anticipated costs of conducting Village Council special sessions.

CHAPTER 155: STORAGE OF WOOD

Section

- 155.01 Intent
- 155.02 Generally
- 155.03 Size of wood
- 155.04 Quantity of wood
- 155.05 Location
- 155.06 Delivery and processing
- 155.07 Exemptions
- 155.08 Existing wood stacks

- 155.99 Penalty

§ 155.01 INTENT.

The keeping or storage of wood or wood products, not contained in a building, is permitted only in neat and secure stacks meeting the conditions listed below.

(Ord. 99-O-6, passed 2-8-1999)

§ 155.02 GENERALLY.

Wood shall include but not be limited to fire wood, lumber and other wood products, whether rough, precut construction grade or finished.

(Ord. 99-O-6, passed 2-8-1999) Penalty, see § 155.99

§ 155.03 SIZE OF WOOD.

Wood stacks shall consist of only individual pieces (no assemblages) not exceeding 48 inches in its maximum dimension with a stacking height not to exceed 5 feet as measured from the ground. Wood stacks shall be secured by racks or other appropriate means to prevent falling.

(Ord. 99-O-6, passed 2-8-1999) Penalty, see § 155.99

§ 155.04 QUANTITY OF WOOD.

The maximum of wood allowed to be stored or kept in a single lot is 300 cubic feet.

(Ord. 99-O-6, passed 2-8-1999) Penalty, see § 155.99

§ 155.05 LOCATION.

The wood stacks shall not be located in any yard or any setback or court, except a rear yard or a rear setback. Wood shall not be stored in any vehicle in the front yard, side yards, rear yard, in public right-of-way except for the purpose of delivery. Any vehicle containing wood, parked, stopped, or standing in the front yard, side yards, rear yard or public right-of-way for more than 48 hours in a 72 hour period shall be a vehicle engaged in the storage of wood in violation of this chapter.

(Ord. 99-O-6, passed 2-8-1999) Penalty, see § 155.99

§ 155.06 DELIVERY AND PROCESSING.

Wood delivered for any purpose, including wood delivered for processing into firewood, is subject to the following conditions.

(A) All wood must be removed to a permanent storage area which is in compliance with §§ 155.03, 155.04, and 155.05 of this chapter within a 72 hour period.

(B) Any addition to or modification of wood piles located in the front or side yards for the purpose of processing shall be considered a continuation of the wood pile which existed prior to the addition or modification and must be removed to a permanent storage area along with the existing wood pile within 72 hours of the date of delivery of the original wood pile.

(C) No wood shall be delivered, sold or stored for the purpose of sale on residentially zoned property.

(D) The number of wood deliveries shall not exceed four per year. Deliveries shall be so spaced that there is a minimum of 30 days between deliveries. Additional deliveries may be authorized by the Village Manager when requested in writing.

(Ord. 99-O-6, passed 2-8-1999) Penalty, see § 155.99

§ 155.07 EXEMPTIONS.

The following are exempt from this section:

(A) A single stack of fire wood not exceeding 64 cubic feet (1/2 cord or 1 rick) per property and located not more than 48 inches from the principal building on the lot.

(B) Temporary storage of wood being used on an ongoing construction project on the same property for a maximum of one year provided the wood is stored on the same property as the approved project and provided the project is evidenced on a valid building permit.

(Ord. 99-O-6, passed 2-8-1999)

§ 155.08 EXISTING WOOD STACKS.

Any existing wood stack not in compliance on the effective date of this chapter must be removed or brought into compliance within 72 hours after a written notice to comply has been served upon the property owner either in person or by certified mail.

(Ord. 99-O-6, passed 2-8-1999) Penalty, see § 155.99

§ 155.99 PENALTY.

Whoever violates any provision of this chapter for which another penalty is not provided shall be guilty of a misdemeanor of the first degree. Each day's violation shall be considered a separate offense.

(Ord. 99-O-45, passed 7-12-1999)